

# Treason and the Law

The history of how treason has been dealt with in law is a complex tapestry woven from various legal traditions, cultures, and historical contexts. At its core, treason is the crime of betraying one's country, a definition that has evolved and adapted over centuries. In ancient Rome, the concept of *perduellio* (capital offense of high treason) laid early groundwork for treason laws, focusing on betrayal against the city of Rome. This foundation was built upon during medieval times, particularly in England with the English Treason Act of 1351. This act broadened the definition of treason, encompassing various acts against the monarch's authority. It marked a significant shift in understanding treason as a crime not just against a ruler, but against the state's stability. In the Asian context, during Japan's Tokugawa period, the concept of treason was viewed through the prism of loyalty to the *shogun* (military commander or leader). This highlighted a cultural difference in the interpretation of treason, where loyalty and governance were intrinsically linked.

The American Revolution marked a pivotal moment in the evolution of treason laws. The shift from loyalty to a monarch to loyalty to a nation or constitution redefined the concept of treason. This period saw the enactment of laws like the Alien and Sedition Acts of 1798 and the Logan Act of 1799 in the United States, expanding the scope of what could be considered treasonous, especially concerning speech and actions against the government. The American Civil War and the World Wars era further shaped treason laws. The Espionage Act of 1917 and the Sedition Act of 1918 targeted espionage and seditious speech, reflecting the times' heightened focus on national security. The Smith Act of 1940, criminalizing the advocacy of government overthrow, was a response to the growing concerns about internal threats during a period of global instability. U.S. Supreme Court decisions have been instrumental in shaping treason law in the United States. Notable among these are *Ex Parte Milligan* (1866), which established that military tribunals could not try civilians when civil courts were open, and

*Cramer v. United States* (1945), which clarified the constitutional parameters of treason. *Dennis v. United States* (1951) further emphasized the need for concrete evidence and an overt act for a conviction of treason.

The legal history of treason reflects broader changes in societal values, governance, and perceptions of loyalty and national identity. From its early roots in Roman law to modern constitutional definitions, the handling of treason highlights the ongoing balance between protecting state security and upholding individual rights. The evolution of treason laws, especially in the United States, demonstrates the dynamic interplay between national security concerns and the preservation of civil liberties. This history underscores the complexity of defining and prosecuting treason within a constitutional democracy. It shows a continual struggle to reconcile the need for state security with the protection of individual freedoms. The shift from a monarch-centric view of treason to a state or constitution-centric view in the United States is particularly telling of the changing nature of governance and the concept of national loyalty.

Treason laws have always reflected their times, adapting to new threats and changing political landscapes. In the modern era, this is evident in the way these laws intersect with legislation related to terrorism and espionage. The severe punishment traditionally associated with treason remains, but there is an increased emphasis on fair trials and the rights of the accused, reflecting broader changes in human rights and international law. The history of how treason has been dealt with in law is not just a history of legal statutes and court rulings. It is a mirror to the shifting sands of political power, national identity, and the delicate balance between security and freedom. As societies continue to evolve, so too will the legal frameworks that define and address the crime of betraying one's country.

—Steven L. Danver, PhD

# English Treason Act of 1351

**Date:** 1351

**Authors:** King Edward III and the English Parliament

**Genre:** legislative act

## Summary Overview

*The English Treason Act of 1351, formally known as “A Declaration which Offences shall be adjudged Treason,” was a significant piece of legislation enacted during the reign of King Edward III. It was passed by the English Parliament to clarify what constituted the crime of treason against the Crown. Before this act, the definition of treason was ambiguous and often manipulated to suit the desires of the ruling monarch. The treason act provided a clearer distinction between high treason and petty treason, specifying that offenses such as plotting the king’s death, violating the king’s wife, counterfeiting the royal seal or money, and providing aid to the king’s enemies were high treason. In contrast, petty treason involved servants killing their masters or wives murdering their husbands. This act laid the foundation for subsequent English (and later British) treason law and played a role in how treason was understood in colonial America.*

## Defining Moment

The Treason Act of 1351, a landmark statute in English law, was enacted during the reign of King Edward III. This act is significant for its clarification and narrowing of the definition of treason. It categorized treason into two main types: high treason and petty treason. High treason, the more severe form, included acts directly against the monarch, such as plotting the king’s death, levying war against him, or aiding his enemies. This was a significant shift, as it placed the king’s person and political position at the center of what constituted the gravest form of treason. Petty treason referred to acts against a superior, such as a servant killing a master or a wife killing her husband. This reflected the hierarchical nature of feudal society at the time. Importantly, the act introduced legal procedures for prosecuting treason, including trial by one’s peers and the requirement for evidence by two witnesses. This was a move towards more standardized and fair legal practices. It set a precedent for future legislation on treason in England and, by extension, the United States, and has had a lasting impact on the legal definition of treason in common

law countries. It represents an early step in the evolution of the legal system, moving away from arbitrary rule towards a more codified and structured legal framework.

## Author Biography

King Edward III (1312-1377) was one of medieval England’s most prominent monarchs, ruling from 1327 to 1377. His reign witnessed significant developments in legislation and government, warfare, and the arts. Edward’s reign started when he was young, and his mother and her lover initially held power. By the age of twenty, however, Edward asserted control and began a reign characterized by military successes, notably in the Hundred Years’ War against France. As a monarch, he was instrumental in shaping parliamentary procedures and introducing important legislative acts. Edward believed in a strong centralized government and sought to strengthen royal authority. His collaboration with the English Parliament in codifying treason illustrates his method of blending royal prerogatives with legislative sanction.

# ■ Observance of the Fifth of November Act: The Gunpowder Plot of 1605

**Date:** January 23, 1606

**Author:** Edward Montagu

**Genre:** observance act

## Summary Overview

*The Gunpowder Plot of 1605 involved a group of English Catholics, including Guy Fawkes, who planned to assassinate King James I and destroy the House of Lords during the State Opening of Parliament. Their aim was to end the persecution of Roman Catholics by the English government. The plan was to ignite a massive cache of gunpowder placed beneath the House of Lords. However, the plot was foiled just hours before it was set to take place, following an anonymous tip. In the aftermath, James I asked Parliament to draft a celebratory act in response to the Gunpowder Plot, enacting a national day of thanksgiving for the plot's failure. The act highlights the perceived divine intervention in saving the King and Parliament, attributing the discovery of the plot to a "divine spirit" inspiring King James. It mandated an annual commemoration with a church service and sermon, ensuring that the memory of the event and the deliverance from perceived Catholic treachery would be remembered in perpetuity. The significance of the Gunpowder Plot lies in its profound impact on the perception and treatment of Catholics in England. The plot intensified the fear of Catholic conspiracies and led to stricter laws against Catholics. It also reinforced the concept of treason not only as a political crime but as a moral and religious transgression against the established order. The annual commemoration served to embed this narrative in the national consciousness, reinforcing Protestant dominance and the legitimacy of the Stuart monarchy. The Gunpowder Plot remains a potent symbol of treason and religious conflict in British history, remembered every year on November 5th with the phrase "Remember, remember the fifth of November."*

## Defining Moment

The Gunpowder Plot of 1605 was a failed assassination attempt against King James I of England and VI of Scotland by a group of provincial English Catholics led by Robert Catesby. The aim of the plot was to blow up the House of Lords during the State Opening of Parliament on November 5, 1605, in an attempt to spark a popular revolt in the Midlands during which James's nine-year-old daughter, Princess Elizabeth, was to be installed as the Catholic head of state. The plan was to kill the king, his family, and most of the Protestant aristocracy in a single attack by blowing up the Houses of Parliament with gunpowder. This was to be achieved by placing thirty-six barrels of gunpowder in the cellars of the House of Lords—a considerable amount that would have completely destroyed the building and caused extensive damage to the sur-

rounding area. The plot began to unravel when a letter, warning a Catholic lord to stay away from the Parliament, was made public. This led to an investigation that uncovered the plot. The most famous of the plotters, Guy Fawkes, was found guarding the explosives. He and his coconspirators were captured, tried, and executed.

The Gunpowder Plot struck at the heart of the early Stuart monarchy. James had succeeded the childless Elizabeth I in 1603, bringing hopes of tolerance for Catholics. However, his subsequent reinforcement of anti-Catholic laws left many feeling betrayed. The plot's failure was celebrated with great relief and led to the institution of November 5th as a day of public thanksgiving. The annual commemoration, known as Guy Fawkes Night, involves bonfires and fireworks, symbolizing the explosives that were



*Festivities in Windsor Castle during Guy Fawkes night, by Paul Sandby, 1776. Image via Wikimedia Commons. [Public domain.]*

never used. The plot has had a lasting impact on British culture and historical memory. It is seen not just as a foiled act of treason but as a symbol of the deep religious divisions of the period. It also contributed to the ongoing suspicion and persecution of Catholics in England.

### **Author Biography**

Edward Montagu (1562-1644) served as a Member of Parliament and a peer during the late Tudor and early Stuart periods. Born into the influential Montagu family, his career was marked by significant political and social contributions during a transform-

ative era in England. Montagu's political journey began in the House of Commons, where he represented Tavistock and later, Huntingdonshire. His astute political skills and dedication led to his elevation to the House of Lords in 1621, when he was created Baron Montagu of Boughton. His tenure in Parliament spanned several monarchs, from Elizabeth I to Charles I, allowing him to witness and influence some of the pivotal events of the time, including the transition from Tudor to Stuart rule. His legacy is reflective of the complexities and changes of early seventeenth-century England, embodying the traits of a dedicated public servant and patron of progress.



## Historical Document

### United States Constitution, Article III, Section 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.



## Glossary

**overt act:** an open and visible action that demonstrates the intention to commit a crime

**testimony:** a formal written or spoken statement, especially one given in a court of law

**treason:** a crime that involves betraying one's country, specifically by attempting to overthrow the government or harm or kill its sovereign

## ■ Espionage Act of 1917

**Date:** June 25, 1917

**Authors:** Asst. Atty. Gen. Charles Warren on behalf of the Wilson administration

**Genre:** legislation

### Summary Overview

*On April 6, 1917, the United States declared war on Germany, marking U.S. entry into World War I. Two months later, on June 15, 1917, the U.S. Congress passed the Espionage Act, which imposed severe penalties for treasonous activities such as spying, interfering with military operations, or obstructing the recruitment or enlistment of U.S. service personnel. In May 1918 the Sedition Act made it a crime to discourage the sale of bonds used to finance the war or to make statements critical of the government. A source of occasional confusion is that the Sedition Act consisted of a series of amendments to the Espionage Act and thus is part of the Espionage Act.*

*With the onset of World War I, anti-German sentiment was widespread in the United States. In St. Paul, Minnesota, for example, the Germania Life Insurance Company was renamed Guardian Insurance in 1918, and the statue of a female Germanic warrior was taken down from its building. The term hot dog was adopted to replace frankfurter (after the German city of Frankfurt), and Salisbury steak, a very British-sounding name, replaced hamburger (after the German city of Hamburg). People of German descent were suspected of being prone to treasonous actions because of their ancestry, and were, thus, ostracized, harassed, and in some cases lynched. In this climate, the American public pressured the federal government to take harsh action against those who might be spying for Germany or otherwise trying to undermine the U.S. war effort.*

*President Woodrow Wilson largely agreed, but he wanted to avoid the proposals of some members of Congress to turn the prosecution of pro-German activity over to the War Department, which would use courts-martial that would probably have been unconstitutional. Accordingly, he supported passage of the Espionage Act, which left prosecution of spies and saboteurs in the hands of the Department of Justice. Wilson would have preferred a less aggressive bill, but he regarded the Espionage Act as a compromise that would allay the fears of the American public. Ultimately, about two thousand people were prosecuted under the law (and the Sedition Act amendments), including the Socialist presidential candidate and labor leader Eugene V. Debs, the anarchist Emma Goldman, and the poet e e cummings.*



*President Wilson, under whom the Espionage and Sedition Acts were enacted. Photo via Wikimedia Commons. [Public domain.]*

## ■ General Benedict Arnold to Major John André

**Date:** July 15, 1780

**Authors:** Benedict Arnold

**Genre:** encrypted correspondence

### Summary Overview

*Benedict Arnold's status as the most famous traitor in the history of the United States is so well-established that most Americans are unaware of his reputation as a military hero before his betrayal was uncovered. This document is an encoded letter from Arnold to British Major John André, which outlines the terms of Arnold's betrayal of American forces. While this is only one example of the great deal of correspondence between Arnold and his British contacts, it is a clear summary of Arnold's willingness to give the British information that would allow them to capture West Point—if the plan would have worked, it would have been a significant blow against American forces.*

*Included here, as well, is the encoded text of the letter. The code used by Arnold was a "book code." In this encryption method, correspondents used an agreed upon book—Arnold and André often used Nathan Bailey's Dictionary—and relied on substituting words for a number corresponding to the page, line, and word of the book selected. So, for example, if "north" was the word in question, and it was the sixth word from the left on page 3, line 12, it would be represented as "3.12.6."*

### Defining Moment

In spring 1779, Benedict Arnold made contact with Joseph Stansbury, a Philadelphia merchant who had been a loyalist city leader during the British occupation and had stayed behind after the Americans took the city. Through Stansbury (and a chain of spies and couriers), Arnold offered his services to British commander Sir Henry Clinton. Major John André served as Arnold's handler. By the summer of 1779, he was providing the British information about American troop numbers. Throughout 1779, however, Arnold was unhappy with British commitments to provide him the compensation he believed his intelligence was worth. The British, for their part, were unsure of Arnold's value or commitment. He provided only summaries, rather than actual documents, he was focused on payment for his services, and—given the legal troubles he faced (see *Author Biography* below)—there was concern that Arnold would not have any po-



Benedict Arnold, portrait by Thomas Hart, 1776. Image via Wikimedia Commons. [Public domain.]

## ■ Telex Message by the Stauffenberg Group to the Holders of Executive Power: The Valkyrie Plot

**Date:** July 20, 1944

**Author:** Claus von Stauffenberg

**Genre:** political announcement

### Summary Overview

*The Valkyrie plot, led by Claus von Stauffenberg and others on July 20, 1944, aimed to assassinate Adolf Hitler and overthrow the Nazi regime in Germany, and the telex Stauffenberg had sent on the assumption of the plan's success is emblematic of much of German resistance during World War II. It represented a major internal challenge to Hitler's rule, carried out by high-ranking military officers. The plot highlighted the deep-seated opposition within Germany to Hitler's tyrannical and destructive policies. Additionally, the failure of the plot and the subsequent brutal crackdown on the conspirators and their families underscored the regime's ruthlessness and its tight grip on power. Lastly, the Valkyrie plot has since been viewed as a symbol of resistance against tyranny and an ethical stand by individuals against an oppressive regime, despite its ultimate failure. This episode remains a poignant reminder of the moral complexity and personal courage involved in acts of political treason against totalitarian governments.*

### Defining Moment

The Stauffenberg telex spuriously announces the death of Adolf Hitler and describes the group's immediate actions to seize control. The message declares a state of martial law, transfers executive power to the group, and outlines the restructuring of military and civil authority. This includes integrating the Waffen SS into the army and assigning executive power to territorial commanders. The message emphasizes the importance of unity and discipline in the Wehrmacht, urging commanders to ensure obedience to the new directives. This telex represents a crucial moment in the July 20 Plot, illustrating the group's plan to reorganize German leadership post-Hitler.

### Author Biography

Claus von Stauffenberg (1907-1944) was a German army officer and a key figure in the German resistance against Nazi rule during World War II. Born into an aristocratic family, Stauffenberg served with distinction in the Wehrmacht. However, he grew increasingly disillusioned with Adolf Hitler's regime, especially af-



Claus von Stauffenberg, c. 1934. Photo via Wikimedia Commons. [Public domain.]



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