

= Crimes Act of 1790 =

The Crimes Act of 1790 ( or the Federal Criminal Code of 1790 ) , formally titled An Act for the Punishment of Certain Crimes Against the United States , defined some of the first federal crimes in the United States and expanded on the criminal procedure provisions of the Judiciary Act of 1789 . The Crimes Act was a " comprehensive statute defining an impressive variety of federal crimes . "

As an enactment of the First Congress , the Crimes Act is often regarded as a quasi @-@ constitutional text . The punishment of treason , piracy , counterfeiting , as well as crimes committed on the high seas or against the law of nations , followed from relatively explicit constitutional authority . The creation of crimes within areas under exclusive federal jurisdiction followed from the plenary power of Congress over the " Seat of the Government , " federal enclaves , and federal territories . The creation of crimes involving the integrity of the judicial process derived from Congress 's authority to establish such courts .

The Crimes Act also established a statute of limitations for federal crimes , provided for criminal venue , ensured procedural protections for treason and capital defendants , simplified the pleading requirements for perjury , and broadened the constitutional protection against " corruption of blood . " Further , the act provided for punitive dissection of murderers and codified diplomatic immunity .

= = Background = =

Even after the passage of the Judiciary Act of 1789 , " the definition of crimes and the establishment of punishments " remained a " missing link of the criminal system . " The Judiciary Act of 1789 divided original jurisdiction for the trial of federal crimes between the district courts and the circuit courts . The district courts were given jurisdiction over all federal crimes " where no other punishment than whipping , not exceeding thirty stripes , a fine not exceeding one hundred dollars , or a term of imprisonment not exceeding six months , is to be inflicted . " The circuit courts were given concurrent jurisdiction over these crimes , and exclusive jurisdiction over all other federal crimes . The circuit courts also exercised appellate jurisdiction over the district courts , but only in civil cases .

The Judiciary Act of 1789 also placed the responsibility for prosecuting federal crimes in the United States Attorney for each federal judicial district . The Act provided that " there shall be appointed in each district " a " person learned in the law to act as attorney for the United States in such district , who shall be sworn or affirmed to the faithful execution of his office , whose duty it shall be to prosecute in such district all delinquents for crimes and offences , cognizable under the authority of the United States . "

Prior to the Crimes Act , Congress had passed very few federal crimes . Among Congress 's earlier criminal statutes were :

The renewal of the Northwest Ordinance , which authorized the executive to adopt state law within the Northwest Territory ; and

A prohibition on unloading ships in the dark or without a license , as well as customs bribery and false statements ; and

A prohibition on census takers failing to report their findings .

= = Drafting = =

The Senate passed an act to define a variety of federal crimes on August 31 , 1789 , but the House did not act on that bill .

Like the Judiciary Act of 1789 and the Process Act of 1789 , the Crimes Act was primarily authored by Senator ( and future Chief Justice ) Oliver Ellsworth as the chair of the Senate committee . The committee examined the state criminal laws of Massachusetts , New Jersey , Pennsylvania , Virginia , and South Carolina at the beginning of the drafting process . The Crimes Act generated " little reported debate " on the floor of Congress . The act was passed on April 30 , 1790 .

= = Crimes established = =

Due to the seriousness of the authorized sentences , under the Judiciary Act of 1789 , original jurisdiction for the trial of all of the crimes created by the Crimes Act would have rested with the circuit courts ; none of the crimes created could have been tried in the district courts .

= = = Treason = = =

Article Three provides that : " 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 . "

As to misprision of treason , according to David P. Currie , because " [ t ] he Constitution said nothing of this offense , " " the legislators must have interpreted the narrow definition of treason in Article III not to preclude it from creating lesser related offenses that might otherwise fall within federal purview ? although nothing in the misprision provision suggested that Congress had yet considered the possible impact of the Treason Clause on its efforts to punish seditious expression . "

= = = Piracy and the high seas = = =

Article One provides that Congress shall have the power " [ t ] o define and punish Piracies and Felonies committed on the high Seas . " Five sections in the Crimes Act " were devoted to the subject . " Currie notes that the various piracy offenses " take an exceedingly broad view of what constituted piracy , " but that " [ f ] rom a constitutional standpoint no harm was done , since all of the acts punished were felonious and Congress 's power extended to all felonies on the high seas . "

" The principal provisions with respect to piracy were incorporated in section 8 . " Section 8 applied not only to the " high Seas , " but also to " any river , haven , basin , or bay , out of the jurisdiction of any particular State . " Currie notes a variety of constitutional theories which Congress might have espoused in order to justify this provision : " Whether Congress thought authority over such places included within the ostensibly narrower term ' high Seas , " necessary and proper to the regulation of commerce or to the exercise of admiralty jurisdiction , or implicit in a central government responsible for external affairs is not clear . "

Currie also argues that the phrase " offence , which , if committed within the body of a county , would , by laws of the United States , be punishable with death " is vague . He suggests that it could refer to any federal law , to any state or federal law , or only to federal laws applicable to places under exclusive federal jurisdiction .

= = = Counterfeiting = = =

Article One provides that Congress shall have the power " [ t ] o provide for the Punishment of counterfeiting the Securities and current Coin of the United States . " Currie argues that section 14 's somewhat broad reading of the word " Securities " is fair enough . Currie suggests that " [ n ] othing was said of counterfeiting coins " because the United States Mint had not yet been established .

Some members of the House , including Theodore Sedgwick of Massachusetts , spoke against the prescribing death penalty for counterfeiting , viewing it as too harsh .

= = = Crimes against the law of nations = = =

Article One provides that Congress shall have the power " [ t ] o define and punish . . . Offenses

against the Law of Nations . " According to Currie : " No reliance on inherent on implied powers over foreign affairs was necessary to justify " sections 26 and 28 as each " plausibly described " offenses against the law of nations . Congress had also created a civil offense against the law of nations in the Alien Tort Statute of the Judiciary Act of 1789 .

= = = Exclusive federal jurisdiction = = =

Several offenses were limited to acts committed in places " under the sole and exclusive jurisdiction of the United States . " Such regulations would have applied in the " Seat of the Government , " federal enclaves , and federal territories .

Article One provides that Congress shall have the power " [ t ] o exercise exclusive Legislation in all Cases whatsoever , over such District ( not exceeding ten Miles square ) as may , by Cession of particular States , and the acceptance of Congress , become the Seat of the Government of the United States , and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be , for the Erection of Forts , Magazines , Arsenals , dock @-@ Yards , and other needful Buildings . " And Article Four provides that " Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory . . . . "

With reference to the " arms , ordnance , munition , shot , powder , or habiliments of war belonging to the United States " provision of section 16 , Currie argues that it could have been justified under Congress 's Article One power to " raise and support armies " or Congress 's Article Four power to make needful rules respecting " property belonging to the United States . "

In *United States v. Bevens* ( 1818 ) , although the defendant had only been charged under § 8 of the Crimes Act , Chief Justice Marshall proceeded to consider whether the offense would have been cognizable under § 3 . Following the canon of *noscitur a sociis* , Marshall interpreted the jurisdictional phrase " any fort , arsenal , dockyard , magazine , or in any other place , or district of country " to be limited to places that are " fixed and territorial " ( i.e. not to include a navy vessel ) .

Crimes against persons

Crimes against property

Misprision

= = = Integrity of the judicial process = = =

The constitutional authorization of these crimes was less explicit , but Article One does provide that Congress shall have the power " [ t ] o constitute Tribunals inferior to the supreme Court . " According to Currie :

This is the point at which explicit constitutional authority for the creation of federal crimes runs out . But the statute went on to define additional crimes : theft or falsification of court records , perjury , bribery of federal judges , interference with judicial process , and liberation of federal prisoners . All of these were plainly necessary and proper to the operation of the federal courts ; Marshall was to cite the perjury section as precedent for the existence of implicit powers in *M 'Culloch v. Maryland* .

According to Stacy and Dayton , these provision are " compelling evidence that the founders did not intend the national role in criminal law to be limited to crimes expressly mentioned in the Constitution . "

= = Criminal procedure = =

= = = Statute of limitations = = =

Section 32 provided for the following statutes of limitations : no statute of limitations for wilfull murder or forgery ; no statute of limitations for fugitives from justice ; three ( 3 ) years for capital offenses ( other than wilfull murder and forgery ) ; two ( 2 ) years for non @-@ capital offenses . In

United States v. Cook ( 1872 ) , the Court held that indictments need not plead facts establishing that these limitations periods have not run .

= = = Venue = = =

Section 8 provided that " the trial of crimes committed on the high seas , or in any place out of the jurisdiction of any particular State , shall be in the district where the offender is apprehended , or into which he may first be brought . " Thus , section 8 was an exercise of Congress 's authority under Article Three to define criminal venue for all crimes " not committed within any State . " But , the Supreme Court did not interpret section 8 as exercising the full extent of Congress 's authority under Article Three . In *Ex parte Bollman* ( 1807 ) , the Court held that the statutory term " any place out of the jurisdiction of any particular state " applied only to " any river , haven , bason or bay , not within the jurisdiction of any particular state , " and only in " those cases there is no court which has particular cognizance of the crime . "

= = = Treason and capital cases = = =

The Crimes Act prescribed death as the exclusive punishment for the crimes of treason , counterfeiting , wilfull murder , and aiding the escape of a death row prisoner , as well as piracy , murder , and robbery on the high seas . Section 29 provided treason and capital defendants a right to a copy of the indictment , a list of the jury ( and , in treason cases , witnesses ) , appointed counsel , and compulsory process :

[ A ] ny person who shall be accused and indicted of treason , shall have a copy of the indictment , and a list of the jury and witnesses , to be produced on the trial for proving the said indictment , mentioning the names and places of abode of such witnesses and jurors , delivered unto him at least three entire days before he shall be tried for the same ; and in other capital offences , shall have such copy of the indictment and list of the jury two entire days at least before the trial : And that every person so accused and indicted for any of the crimes aforesaid , shall also be allowed and admitted to make his full defence by counsel learned in the law ; and the court before whom such person shall be tried , or some judge thereof , shall , and they are hereby authorized and required immediately upon his request to assign to such person such counsel , not exceeding two , as such person shall desire , to whom such counsel shall have free at all reasonable hours ; and every such person or persons accused or indicted of the crimes aforesaid , shall be allowed and admitted in his said defence to make any proof that he or they can produce , by lawful witness or witnesses , and shall have the like process of the court where he or they shall be tried , to compel his or their witnesses to appear at his or their trial , as is usually granted to compel witnesses to appear on the prosecution against them .

Most of the provisions of section 29 are plainly similar to those of the Sixth Amendment , namely the Information Clause , the Assistance of Counsel Clause , and the Compulsory Process Clause . The Sixth Amendment ( and the remainder of the Bill of Rights ) had not yet been ratified at the time of the Crimes Act 's passage .

Section 30 provided treason and capital defendants with peremptory challenges and provided for a plea of not guilty in the case that the defendant refused to enter a plea :

if any person or persons be indicted of treason against the United States , and shall stand mute or refuse to plead , or shall challenge peremptorily above the number of thirty @-@ five of the jury ; or if any person or persons be indicted of other of the offences herein for which the punishment is declared to be death , if he or they shall also stand mute or will not answer to the indictment , or challenge peremptorily above the number of twenty persons of the jury ; the court , in any of the cases aforesaid , shall notwithstanding proceed to the trial of the person or persons so standing mute or challenging , as if he or they had pleaded not guilty , and render judgment thereon accordingly .

In *United States v. Shackleford* ( 1855 ) , the Court held that the section 30 's allocation of peremptory challenges controlled , rather than an 1840 statute that required federal jury selection to

generally follow state law ( and , thus , the prosecutor was given no peremptory challenges in such cases ) . Ten years later , Congress abrogated *Shackleford* , granting prosecutors five peremptory challenges in treason and capital cases ( and two in non @-@ capital felony cases ) ; the 1865 act left the defendant 's number of peremptory challenges unchanged .

Section 31 eliminated the benefit of clergy for capital crimes . Section 33 designated the means of execution as " hanging . . . by the neck until dead . "

= = = Perjury indictments = = =

Section 19 , applicable to perjury prosecutions under section 18 , provided that  
in every presentment or indictment to be prosecuted against any person for wilful and corrupt perjury , it shall be sufficient to set forth the substance of the offence charged upon the defendant , and by what court , or before whom the oath or affirmation was taken , ( averring such court , or person or persons to have a competent authority to administer the same ) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned ; without setting forth the bill , answer , information , indictment , declaration , or any part of any record or proceeding , either in law or equity , other than as aforesaid , and without setting forth the commission or authority of the court , or person or persons before whom the perjury was committed .

and section 20 provided that

in every presentment or indictment for subornation of perjury , or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury , it shall be sufficient to set forth the substance of the offence charged upon the defendant , without setting forth the bill , answer , information , indictment , declaration , or any part of any record or proceeding , either in law or equity , and without setting forth the commmsion or authority of the court , or person or persons before whom the perjtrty was committed , or was agreed or promised to be committed .

= = = Sentencing = = =

Section 24 provided that " no conviction or judgment of any of the offences aforesaid , shall work corruption of blood , or any forfeiture of estate . " This generalized the guarantee of Article Three that " no Attainder of Treason shall work Corruption of Blood , or Forfeiture except during the Life of the Person attainted . "

The Crimes Act made no provision for the creation of federal prisons . Instead , a September 21 , 1789 concurrent resolution asked the state legislatures to authorize their prisons to imprison federal prisoners . The first federal prison was not opened until 1894 at Fort Leavenworth .

= = Other provisions = =

= = = Dissection = = =

Section 4 authorized a court to order the post @-@ execution dissection of the corpse of convicted murderers . According to David P. Currie , this was the " most controversial provision of the entire statute . " Dissection @-@ as @-@ punishment had its roots in a 1789 New York statute and a 1752 English law . Rep. Michael J. Stone of Maryland argued against the inclusion of this provision as cruel . Currie argues that Congress was on a firm constitutional footing in enacting this provision in relation to murders committed in areas under exclusive federal jurisdiction , but perhaps less so for murders committed on the high seas .

= = = Diplomatic immunity = = =

Section 25 provided :

[ I ] f any writ or process shall at any time hereafter be sued forth or prosecuted by any person or persons , in any of the courts of the United States , or in any of the courts of a particular state , or by any judge or justice therein respectively , whereby the person of any ambassador or other public minister of any foreign prince or state , authorized and received as such by the President of the United States , or any domestic or domestic servant of any much ambassador or other public minister , may be arrested or imprisoned , or his or their goods or chattels be distrained , seized or attached , such writ or process shall be deemed and adjudged to be utterly null and void to all intents , construction and purposes whatsoever .

Section 27 provided a limited exception for private debts contracted by ambassadors prior to the passage of the act .

= = Prosecutions = =

Between 1790 and 1797 , only 147 criminal cases were brought in the circuit courts , and more than half of those cases were brought in the Pennsylvania circuit court concerning the Whiskey Rebellion . And , between 1790 and 1801 , only 426 criminal cases were brought in all federal courts ( the district courts and the circuit courts combined ) .

= = Amendments and repeals = =

Section 1 was supplemented by an omnibus treason law during the Civil War , which , inter alia , provided for punishments other than death and additional lesser offenses . The offense of treason , and the punishment thereof , were codified in consecutive sections of the Revised Statutes . Both were repealed and replaced by the Criminal Code of 1909 . During the 1948 re @-@ codification of the Criminal Code , the treason offense was amended and moved to 18 U.S.C. § 2381 , where it remains . It was amended in 1994 .

Section 2 was codified in the Revised Statutes , and re @-@ codified by the Criminal Code of 1909 , and the 1948 re @-@ codification . It was amended in 1994 .

Section 3 was amended by § 4 of the Crimes Act of 1825 and codified in the Revised Statutes .

Section 4 was codified in the Revised Statutes .

Section 5 was codified in the Revised Statutes .

Section 6 was codified in the Revised Statutes .

Section 7 was amended in 1857 and 1875 and codified in the Revised States .

Section 8 was amended in 1820 , 1835 , and 1846 and codified in five sections of the Revised Statutes . Further , § 8 was supplemented by additional prohibitions in § 5 of an 1819 act and § 3 of an 1820 act . Despite the similarity of the provisions , all three were all separately codified in the Revised Statutes in 1874 . Section 8 was repealed by the Criminal Code of 1909 . Section 8 's venue provision was re @-@ enacted by § 14 of the Crimes Act of 1825 , with minor changes .

Section 9 was codified in the Revised Statutes .

Section 10 was codified in the Revised Statutes .

Section 11 was codified in two sections of the Revised Statutes .

Section 12 was amended in 1835 and codified in two sections of the Revised Statutes .

Section 13 was codified in the Revised Statutes .

Section 14 was repealed by § 17 of the Crimes Act of 1825 , which broadened the offense of counterfeiting and reduced authorized the punishment from death to 10 years hard labor and a \$ 5000 fine . Sections 18 through 21 of the 1825 Act created additional counterfeiting offenses .

Section 15 was amended in 1874 and codified in the Revised Statutes .

Section 16 was amended in 1842 and codified in the Revised Statutes .

Section 17 was amended by § 8 of the Crimes Act of 1825 and codified in the Revised Statutes .

Section 18 was amended by § 13 of the Crimes Act of 1825 ? which defined the term " perjury " and increased the authorized punishment to 5 years hard labor and a \$ 3000 fine ? and further amended in 1874 and 1876 . Perjury and subornation were separately codified in the Revised Statutes .

Section 19 was codified in three sections of the Revised Statutes .

Section 21 was codified in two sections of the Revised Statutes .

Section 22 was amended in 1866 and codified in the Revised Statutes .

Section 23 was codified in the Revised Statutes .

Section 24 was codified in the Revised Statutes .

Sections 25 through 29 were not codified in Title LXX of the Revised Statutes .

Section 30 , with regard to peremptory challenges , was re-enacted and supplemented in 1865 . Section 30 , with regard to a defendant 's failure to enter a plea , was extended from capital to all crimes by § 14 of the Crimes Act of 1825 .

Section 31 was codified in the Revised Statutes .

Section 33 was codified in the Revised Statutes .

= = Constitutionality = =

According to Taylor : " Like the Judiciary Act of 1789 , the Process Act of 1789 and the Crimes Act of 1790 , having been passed by the First Congress , are perhaps the statutes most informative of an original understanding of Congress 's constitutional power over the federal judiciary . "

According to Kurland , " for the most part , Congress enacted statutes that closely tracked the specific constitutional grants of federal criminal authority . However , Congress continued to venture slightly , but significantly , into areas outside the specific constitutional grants . " As examples in the later category , Kurland cites the provisions concerning the integrity of the federal criminal process , bribery , misprison of treason , and the revenue provisions .

Currie notes that the Crimes Act " resolved a number of interesting constitutional questions . " For example , with reference to the punishments of " stripes " and disqualification from office , Currie argues that : " These provisions suggest not only that Congress viewed neither of these punishments as cruel and unusual , but also that they did not understand impeachment to be the sole avenue for the future disqualification of current officeholders . " Taylor goes further in arguing the disqualification provision was not merely prospective : " The Crimes Act of 1790 indicates that , beyond its plenary power over federal court jurisdiction and procedure , the First Congress believed it had the constitutional power to make conviction by a court an alternative means of removing a federal judge , outside the impeachment context , and it sheds light on the First Congress 's understanding of its own powers to discipline federal judges . "

Similarly , the Supreme Court and individual justices have cited the Crimes Act 's authorization of the death penalty as evidence that the founders believed it was constitutional .