



John Marshall



Aaron Burr

Ex parte Bollman & Swartwout (1807) - Chief Justice John Marshall.

Issue: This was the trial of Aaron Burr's confederates for treason. These men were among the alleged conspirators in Burr's plan to seize Western territory and some land acquired under the Louisiana Purchase to create a new Western empire. The former vice president had been moving around for months, allegedly to hatch his plan, and had gone so far as to acquire vessels and a band of men to bring the action into effect.

Held: There must be an actual assembling of men for the treasonable purpose to constitute a levying of war.

Treason is the only crime defined in the Constitution. Justice Marshall ruled that conspiracy to levy war was not sufficient to prove treason.

United States v. Aaron Burr (1807) - Chief Justice John Marshall.

Issue: Again, to define the parameters of treason.

Held: One of the men Burr had approached alerted President Jefferson, and Burr was eventually brought to trial. Chief Justice John Marshall, who heard the case and wrote *Ex parte Bollman*, made clear that he understood why the founders had set treason into a special category. "There is no crime which can more excite and agitate the passions of men than treason, no charge demands more from the tribunal before which it is made a deliberate and temperate inquiry," Marshall wrote, before referring to the limitations prescribed in Article III.

"To constitute that specific crime for which the prisoners now before the court have been committed, war must be actually levied against the United States," Marshall ruled. "However flagitious may be the crime of conspiring to subvert by force the government of our country, such conspiracy is not treason. To conspire to levy war, and actually to levy war, are distinct offences. The first must be brought into operation by the assemblage of men for a purpose treasonable in itself, or the fact of levying war cannot have been committed."

This distinction led to the abandonment of the treason case against Burr's alleged co-conspirators. But in making the ruling, Marshall issued a warning about treason that carries great force down through the centuries. "It is not the intention of the court to say that no individual can be guilty of this crime who has not appeared in arms against his country," Marshall wrote. "On the contrary, if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors. But there must be an actual assembling of men for the treasonable purpose, to constitute a levying of war."