

ICAME 2022, Cambridge, UK
Presented July 28, 2022

Corpus linguistics meets the law: Can an American president only be impeached for criminal conduct?

By 5 Aug 2022, this will be posted at
<http://www.clarkcunningham.org/L2-PPT.html>

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Law and Corpus Linguistics: A Rapidly Developing Field



- Over 40 articles in past 5 years, including journals at Harvard, Yale, Stanford, U Chicago, U Mich, U Penn
- Four state supreme court decisions citing CL
- Two federal courts of appeal requested CL briefs
- Friend of court briefs in high profile cases
- Utah Supreme Court judge Thomas Lee retires and creates CL consulting firm
- GSU course where linguistics grad students mentor law students on use of CL
- For details on the above see: **RESOURCES ON LAW & LINGUISTICS**
www.clarkcunningham.org/Law-Linguistics.html

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Law – Linguistics Collaboration



- In this study we combined corpus linguistic and historical research to explore a contested and important issue regarding interpretation of the U.S. Constitution
- We endeavor to model best practices in **applying corpus methods to legal interpretation** through collaboration of experts in the disciplines of law and linguistics

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US Constitution Article II, Section 4



- “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

Drafted by the Constitutional Convention: 1787

Ratification by the 13 states completed: 1790

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Dec 18, 2019

House of Representatives approves two articles of impeachment against President Donald Trump



Jan 15, 2020

House Managers Deliver Articles of Impeachment to the Senate



“Misdemeanor just a synonym for crime” interpretation



1st Senate Impeachment Trial –
Donald Trump, January 27, 2020
Emeritus Harvard law prof Alan
Dershowitz, arguing on behalf of Trump:



- “[the] terms high crimes and misdemeanors do not encompass the two articles [of impeachment] charging abuse of power and obstruction of Congress”
 - Because abuse of power and obstruction are not crimes
- “crimes and misdemeanors are mere synonymous terms”, quoting Blackstone’s *Commentaries on the Laws of England* (1770)

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Dershowitz challenged with corpus evidence-delete?



- Clark D. Cunningham, The One Word Alan Dershowitz Gets Wrong in the Impeachment Clause: There's a reason the Founders didn't just end it at "high crimes" *Politico*, Jan. 24, 2020
- Clark D. Cunningham, The Dershowitz Attack on the Trump Articles of Impeachment is Weakened, Perhaps Fatally, by the Possibility That "Misdemeanors" Could Mean "Misconduct", *Harvard Law Review Blog*, Jan. 29, 2020

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“Term of art” interpretation of impeachment clause



- “high Crimes and Misdemeanors was a term of art [taken] from British parliamentary practice ... habitually used to preface description of any conduct for which Parliament thought an official should be impeached.”
 - Frank Bowman, *High Crimes and Misdemeanors: A History of Impeachment for the Age of Trump* (2019)
- Similar position:
 - Laurence Tribe & Joshua Matz, *To End a Presidency: The Power of Impeachment* (2019)
 - Michael Gerhardt, *Impeachment: What Everyone Needs to Know* (2018)

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Research Questions



1. In founding-era America, was “high crimes and misdemeanors” a “term of art” or idiom such that the entire phrase had a fixed lexicalized meaning and was not under-stood as the sum of the meaning of its component parts?
2. Were “crimes” and “misdemeanors” used synonymously in founding era American English? If not, how do they differ?
3. Does “high” in the impeachment clause modify both “crimes” and “misdemeanors” or only “crimes”?
4. What is the scope of the modifier “other” in the impeachment clause?
5. How was “high misdemeanor” used in founding-era America?

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Data and methods



- Corpus of 180,000+ texts downloaded from **Founders Online** (<https://founders.archives.gov/>)
- Some findings reconfirmed using
 - Corpus of Founding Era American English (**COFEA**) 1760-1799 (<https://lawcorpus.byu.edu/>)
 - Corpus of Early Modern English (**COEME**) 1475-1800 (<https://lawcorpus.byu.edu/>)

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Founders Online



CORRESPONDENCE AND OTHER WRITINGS OF SEVEN MAJOR SHAPERS OF THE UNITED STATES:

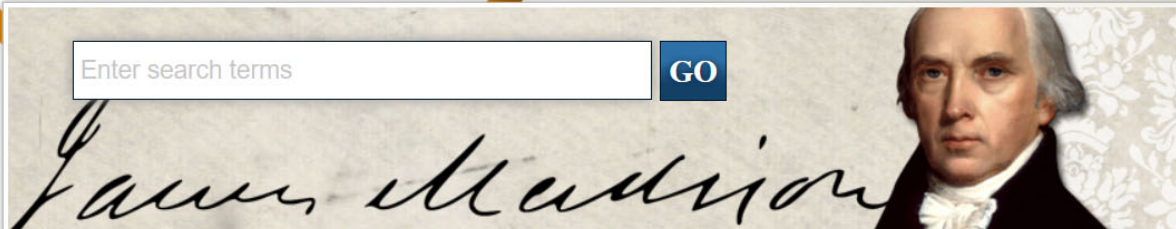
George Washington, Benjamin Franklin, John Adams (and family), Thomas Jefferson, Alexander Hamilton, John Jay, and James Madison. Over 185,000 searchable documents, fully annotated, from the authoritative Founding Fathers Papers projects.

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September 17 2020: [Papers of John Jay added to Founders Online](#)



AUTHOR

Sort: Frequency / **Alphabetical**

Washington, George (32,090)
Jefferson, Thomas (20,477)
Adams, John (10,398)
Madison, James (8,559)
Hamilton, Alexander (7,665)
Franklin, Benjamin (4,831)
Adams, John Quincy (3,633)
Jay, John (1,372)
Adams, Abigail (1,123)
Monroe, James (990)

Show: Top 10 / **Top 50**

RECIPIENT

Sort: Frequency / **Alphabetical**

Jefferson, Thomas (27,027)
Washington, George (23,171)
Madison, James (19,532)
Adams, John (9,704)
Franklin, Benjamin (9,270)
Hamilton, Alexander (6,818)
Adams, Abigail (1,473)
Jay, John (1,345)
Adams, John Quincy (1,147)
Lee, Arthur (953)

Show: Top 10 / **Top 50**

PERIOD

Colonial 1706–1775 (16,167)
Revolutionary War 1775–1783 (49,076)
Confederation Period 1783–1789 (18,187)
Washington Presidency 1789–1797 (27,815)
Adams Presidency 1797–1801 (13,594)
Jefferson Presidency 1801–1809 (29,465)
Madison Presidency 1809–1817 (15,231)
post-Madison Presidency 1817–1836 (15,151)

Data and methods



- Corpus of 180,000+ texts downloaded from **Founders Online** (<https://founders.archives.gov/>)
 - Texts written by/to and collected by John Adams (and family), Benjamin Franklin, Alexander Hamilton, Thomas Jefferson, James Madison, and George Washington
 - Texts cover time periods from Colonial (1706-1775) to post-Madison presidency (1817-1836)
 - Corpus size: **over 67 million words**
- Use of *AntConc* (Anthony, 2020) to explore the **distributional and contextual patterns of “misdemeanors”** and related lexical items (concordance, collocation, cluster, and text dispersion analysis)

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AntConc 3.5.8 (Windows) 2019

File Global Settings Tool Preferences Help

Corpus Files

Concordance Concordance Plot File View Clusters/N-Grams Collocates Word List Keyword List

Concordance Hits 294

Hit KWIC

137 New Kent county, on the ground that ne had been guilty of diverse gross misdemeanors, disgracerui to the Character which should be preserved by a Ju

138 ler the fourth article of the confederation; charging the assault to be a high misdemeanor. In support of this demand, the affidavit of Mr. Beard was also tra

139 tribunal. If a law of So. C. should proclaim every assault to be a high misdemeanor in the sense of an unequivocal attack on the state, what is to be l

140 may be in future disclosed even constitute the assault on Mr. Beard a high misdemeanour in common and british interpretation; yet as So. C. may change

141 ? But on the other hand if what a state shall choose to call a high misdemeanor, is to rule, there is another desideratum in the information transr

142 „ upon the supposition of such a law, he would have suffered as for a high misdemeanor, without the possibility of a murmur from Virginia. Ought his flig

143 regulating trade. "To deny the supreme authority of the state, is a high misdemeanor; to oppose it by force, an overt act of treason." True: and therefor

144 ; and therefore is intitled to credit in respect to such matters. It is a high misdemeanor to publish any Thing as from Royal Authority which is not so. Th

145 ves, to be the supreme authority of this province, has been guilty of a high misdemeanor: and those ministers, governors, and their instruments, who ha

146 tested. Wherefore, as the said Joshua Wentworth, has been guilty of a high misdemeanor in his office, , in misapplying public money, the Secy no submi

147 f previous inquiry. The next consideration was the definition of a high misdemeanor. But neither in vulgar import, nor in the construction of british la

148 not a syllable of the accusation advances the offence to the rank of a high misdemeanor. For "the sitting of the court of general sessions" may mean the t

149 t it advisable to point out the mode of arresting the perpetrator of a high misdemeanor in another state, lest the executive should hold sentiments, contr

150 law" is a contradiction in terms. I therefore entertain no doubt, that a high misdemeanour has been committed. The point however is under submission to

151 of the fact by more substantial information, and of its amounting to a high misdemesnor, by inspection of the law of S. C. which, and not the British law, o

152 d of the fact, by more substantial information, & of its amounting to a high misdemesnor, by inspection of the law of S. C. which & not the British law ougl

153 tion of the American system is little less than Treason, or at lowest an high misdemeanor contra maiestatem populi. To such however whose opinions of F

154 to gain a sanctuary for the authors of the numerous offences below "high misdemeanors." In a word, experience will shew if I mistake not that the relative

155 . C. The questions which arise upon it are 1. Whether it be a charge of high misdemesnor within the meaning of the 4 art: of confederation. 2. Whether in e

156 . C. The questions which arise upon it are 1. whether it be a charge of high misdemesnor within the meaning of the 4 art: of Confederation. 2. whether in e

157 to convict Mr. Burr of infamous Conduct in the Eyes of Morality, & of high misdemeanors in the Eye of the Law-I shall keep this person in

158 f a Christian ordonance. She is accused of being guilty of a number of high misdemeanours; first, of stripping a Judge of his Robes, and secondly of being

159 And if any person guilty of, or charged with treason, felony, or other high misdemeanor, in any of the said states, shall flee from justice and be found in tl

160 itizens to the laws of other States in cases of treason, felony or other high misdemeanors. The act provides however for a domestic trial in cases where a

161 itizens to the laws of other States, in cases of treason, felony or other high misdemeanors. The act provides however for a domestic trial in cases where a

162 ng of the 4 art: of confederation. 2. Whether in expounding the terms high misdemesnor the Law of S. Carolina, or the British Law as in force in the U.

163 ng of the 4 art: of Confederation. 2. whether in expounding the terms high misdemesnor the Law of S. Carolina, or the British law as in force in the U

164 unishment belong. substantial evidence was exhibited that treason & high misdemeanor were intended, and prepared, and probable gro

165 of Mr. Hodge. He continued in that office two or three years until, for his misdemeanors, in permitting an entry of vessels while at sea, to evade our lum

166 erify the facts as they really bear on Kuzloff; and satisfy the Emperor of his misdemeanor, of the misrepresentations of Daschkoff, and of the justice and de

167 was by the Governor of Massachusetts sent into England, & for other of his misdemeanors amongst them in that government, they demolished his house,

168 was by the Governor of Massachusetts sent into England, & for other of his misdemeanours amongst them in that government, they demolished his house

169 en the microscope of party Spirit could not magnify it into an impeachable misdemeanor.-The constitutional majority necessary to convict could not be c

Search Term ☒ Words ☐ Case ☐ Regex

misdem*

Advanced

Start Stop Sort Show Every Nth Row 1

Kwic Sort

☒ Level 1 1L ☒ Level 2 2L ☒ Level 3 3L

Search Window Size 100

Clone Results

Total No. 181773

Files Processed

Search for **misdem***

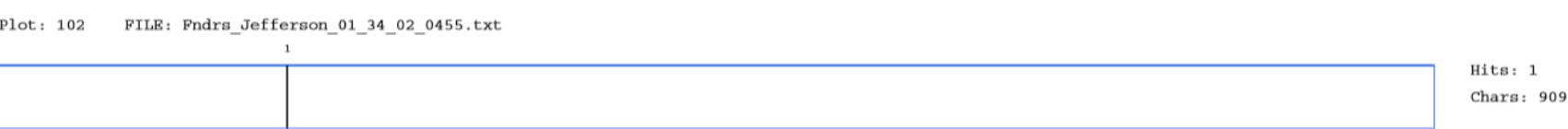
to capture sg/pl
forms and spelling
variants:

misdemeanor(s)
misdemesnor(s)
misdemeanour(s)
misdemianor(s)
misdemeanure(s)

Result: **294 instances**
across 203 texts

Concordance sorting
(1L/2L/3L and 1R/2R/3R)
to highlight co-
occurrence patterns

Manual inspection of
saved concordances



Distribution of **misdem***
across text files

1-4 instances per text,
except for 3 files:

Madison_04_02_02_018
2.txt (**8 instances**);
Jefferson_01_06_02_037
7.txt (**8 instances**);
Jefferson_01_30_02_003
6.txt (**19 instances**)

Cluster search to
extract repeated
phrases containing
misdem*

Span: 2 to 6 words

Min. freq.: 3

AntConc 3.5.8 (Windows) 2019

File Global Settings Tool Preferences Help

Corpus Files

Concordance Concordance Plot File View Clusters/N-Grams Collocates Word List Keyword List

Total No. of Collocate Types: 159 Total No. of Collocate Tokens: 2222

Rank	Freq	Freq(L)	Freq(R)	Stat	Collocate
1	10	8	2	15.83420	felonies
2	11	10	1	15.75557	treasons
3	7	2	5	15.06634	misdeemeanors
4	6	3	3	14.90641	impeachments
5	9	9	0	14.81970	felony
6	55	49	6	14.67388	crimes
7	3	0	3	14.59731	uttering
8	6	1	5	14.52692	punishable
9	6	0	6	14.17200	precincts
10	4	4	0	14.11926	trespasses
11	8	6	2	14.01235	indictment
12	27	26	1	13.90641	treason
13	3	3	0	13.88110	misdeemeanor
14	11	10	1	13.52692	convicted
15	3	3	0	13.31720	impeached
16	8	7	1	13.12761	impeachment
17	20	17	3	13.01958	crime
18	3	1	2	12.78408	breaches
19	3	3	0	12.51227	murders
20	7	2	5	12.44516	offences
21	3	2	1	12.17970	prosecutions
22	6	2	4	12.16054	imprisonment
23	6	4	2	12.12854	trespass
24	3	2	1	11.90641	blount
25	15	14	1	11.49345	guilty
26	3	0	3	11.48819	aaron
27	3	3	0	11.22476	accused
28	4	2	2	11.22426	punished
29	3	1	2	11.16817	dayton
30	3	1	2	11.06660	alleged
31	60	58	2	11.00199	high
32	4	1	3	10.87836	criminal

Search Term ☒ Words ☐ Case ☐ Regex ☐ Advanced

Window Span ☐ Same

From... 5L To... 5R

Min. Collocate Frequency 3

Sort by ☐ Invert Order

Sort by Stat

Clone Results

Total No. 181773

Files Processed

Collocates search for **misdem***

Span: 5L to 5R

Min. freq.: 3

Sorted by association strength measure (Mutual Information)

AntConc 3.5.8 (Windows) 2019

File Global Settings Tool Preferences Help

Corpus Files

Concordance Concordance Plot File View Clusters/N-Grams Collocates Word List Keyword List

Total No. of Collocate Types: 1078 Total No. of Collocate Tokens: 22839

Rank	Freq	Freq(L)	Freq(R)	Stat	Collocate
1	4	1	3	16.15304	inexpiable
2	3	0	3	15.73801	leze
3	4	0	4	15.15304	punishmts
4	4	0	4	15.15304	misdmesnors
5	4	0	4	14.93065	buggery
6	11	1	10	14.61248	misdeemeanours
7	43	5	38	14.28163	misdeemeanors
8	30	24	6	14.23551	heinous
9	3	2	1	14.00104	plagiat
10	19	19	0	13.85665	proportioning
11	4	0	4	13.83112	deposing
12	3	0	3	13.73801	aggravated
13	3	3	0	13.62253	denizens
14	3	2	1	13.51561	scandalize
15	3	1	2	13.51561	fornication
16	68	13	55	13.17442	punishments
17	3	0	3	13.15304	misdemeanour
18	16	13	3	13.07980	enormity
19	3	3	0	13.07504	perpetrator
20	11	6	5	12.89366	blackest
21	14	3	11	12.69987	misdemeanor
22	17	2	15	12.62580	punishable
23	5	0	5	12.56808	trioble
24	5	5	0	12.53637	atrocious
25	5	1	4	12.53637	adultery
26	7	5	2	12.52299	commits
27	9	0	9	12.51561	cognizable
28	5	4	1	12.44523	accomplice
29	3	2	1	12.41608	reprobates
30	3	1	2	12.32297	pillory
31	3	2	1	12.23551	commettre
32	17	12	5	12.21814	unpardonable

Search Term ☒ Words ☐ Case ☐ Regex ☐ Window Span ☐ Same

crime* From... 5L To... 5R

Min. Collocate Frequency 3

Sort by ☐ Invert Order

Total No. 181773

Files Processed

Collocates search for
crime*

Span: 5L to 5R

Min. freq.: 3

Sorted by association
strength measure
(Mutual Information)

Question 1: “term of art” / idiom?



- “misdemeanor(s)” occurs in a range of repeatedly used patterns
 - 18 instances of “high crimes and misdemeanors” (plus 8x “high crimes & misdemeanors”)
 - **Other frequent phrases:** “crime or misdemeanor” (14x), “crimes or misdemeanors” (10x), “a high misdemeanor” (16x), “high misdemeanors” (11x), “other misdemeanors” (12x), “misdemeanors, and other (pleas | crimes)” (6x), “treasons, felonies, misdemeanors” (5x)
 - “high crimes and misdemeanors” does not appear to be a fixed phrase before/during the Founding Era (constituency and positional variation)
- We’re doing it #thestateway**

Question 2: “misdemeanors” and “crimes” synonyms?



- A comparison of the collocates most strongly associated with “crime*” and “misdem*” indicates distinctive usage profiles of the two nouns
- “crime*” and “misdem*” are **unlikely to have been used synonymously** before/during the Founding Era
- Collocates with high MI scores for “crime(s)” but absent from the collocates list for “misdemeanor(s)” point towards **severe legal offences** (e.g., manslaughter, murder, bribery, forgery, adultery) and punishments they resulted in (hanging)

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	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
1	MISDEM* collocates, MI-sorted, min freq 3							CRIME* collocates, MI-sorted, min freq 3								
2	Rank	Freq	Left	Right	MI	Collocate		Rank	Freq	Left	Right	MI	Collocate			
3	1	10	8	2	15.8342	felonies		1	4	1	3	16.153	inexpiable			
4	2	11	10	1	15.7556	treasons		2	3	0	3	15.738	leze			
5	3	7	2	5	15.0663	misdemeanors		3	4	0	4	15.153	punishmts			
6	4	6	3	3	14.9064	impeachments		4	4	0	4	15.153	misdemesnors			
7	5	9	Collocates strongly associated with “ misdem* ” but not with “ crime* ”: trespass(es), precincts, pleas, blount													
8	6	55													eanours	
9	7	3													eanors	
10	8	6														
11	9	6														
12	10	4	Collocates strongly associated with “ crime* ” but not with “ misdem* ”: heinous, inexpiable, buggery, punishment(s), fornication, adultery, enormity, enormous, black(est), at(t)rocious, unpardonable, manslaughter, follies, theft, stealing, robbery, sin(s), vice(s), bribery, murder, forgery, horrid, horror, piracy/ies, abominable, scandalous, hang, pernicious, sentence(d)												ioning	
13	11	8													g	
14	12	27													ed	
15	13	3													s	
16	14	11													ze	
17	15	3													ion	
18	16	8													nents	
19	17	20													eanour	
20	18	3													y	
21	19	3													ator	
22	20	7													.	
23	21	3													eanor	
24	22	6													ble	
25	23	6														
26	24	3	2	1	11.9064	blount		24	5	5	0	12.5364	atrocious			
27	25	15	14	1	11.4935	guilty		25	5	1	4	12.5364	adultery			
28	26	3	0	3	11.4882	aaron		26	7	5	2	12.523	commits			
29	27	3	3	0	11.2248	accused		27	9	0	9	12.5156	cognizable			
30	28	4	2	2	11.2243	punished		28	5	4	1	12.4452	accomplice			

Question 2: “misdemeanors” and “crimes” synonyms?



- Additional evidence: **diachronic data** on “misdemeanor(s)” and **constructions** with “misdemeanor(s)”
- Focus on all FO examples in which “misdem*” co-occurs with “other” (a frequent collocate): 25 of 294
 - **A, B (C), and/or other** (high crimes and/or) **misdemeanor(s)** (18x)
all Treasons Murders Felonies or other Misdemeanors whatsoever
[Fndrs_Madison_01_08_02_0088.txt]
And if any person guilty of, or charged with treason, felony, or other high misdemeanor, in any of the said states, shall flee from justice...
[Fndrs_Jefferson_0004_0055.txt]
 - **A, B, (and) misdemeanors and/or other C** (6x)
in which treasons, felonies, misdemeanors, and other pleas of the commonwealth only shall be heard and determined [Fndrs_Jefferson_0004_0091.txt]
 - **other A, B and misdemeanors** (1x)
All other faults, disorders and misdemeanors which shall be committed...
[Fndrs_Adams_0076_0009.txt]

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Question 2: “misdemeanors” and “crimes” synonyms?



- The construction “A, B and/or other misdemeanors” appears over 20 times in COFEA, typically with “misdemeanors” as a catch-all term of inclusion at the end of a list:
 - *all officers accused of cowardice, plundering, embezzlement of public monies, and other misdemeanors*
 - *prevent and punish Riots, Perjuries , and other Misdemeanors*
 - *all Treasons, Misprisions of Treason, Murders, Felonies, Burglaries , Trespasses , and other Misdemeanours whatsoever*
 - *injustice, corruption or other misdemeanours in an office were sufficient causes for removal and displacing the offenders*
- Both serious crimes, e.g. “murder,” and misconduct such as “cowardice” and “injustice” are listed as types of misdemeanor

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Question 2: “misdemeanors” and “crimes” synonyms?



- “crimes and/or misdemeanors” common phrase
- “other misdemeanors” commonly concludes a listing phrase
- If one or more nouns follows a list containing “misdemeanors” it is typically an even more inclusive term than “misdemeanors”:
 - *treason, misdemeanor, or whatever other offence the act may amount to*
Fndrs_Jefferson_99_01_02_4462.txt
 - *treasons, felonies, misdemeanors, and other pleas of the commonwealth*
Fndrs_Jefferson_01_02_02_0132_0004_0091.txt
- “misdemeanors and/or crimes” very rare in both Founders and COFEA

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Intriguing suggestion from founding era dictionary



- *MISDEMEANOR*, in its usual acception,
- is applied to all those crimes and offenses
- for which the law hath not
- provided a particular name
 - Richard Burn & John Burn, A New Law Dictionary (1792)

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Question 2: “misdemeanors” and “crimes” synonyms?



- Diachronic data on “misdemeanor(s)” indicates a semantic shift

Founding Era	21 st Century
Pattern: <i>felonies... and other misdemeanors</i> (felony as a type of misdemeanor) Pattern: ... <i>crimes and other misdemeanors</i> Rare: ... misdemeanors and other crimes (<i>misdemeanor</i> and <i>crime</i> are both terms of inclusion but <i>misdemeanor</i> appears more inclusive)	Misdemeanors are minor crimes; felonies are major crimes (mutually exclusive: A or B) No instances in COCA of: <i>felonies... and other misdemeanors</i> <i>misdemeanors and other felonies/crimes</i> <i>crimes and other felonies/misdemeanors</i> Pattern: [<i>minor crimes</i>] <i>and other misdemeanors</i>

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Question 2: “misdemeanors” and “crimes” synonyms?



COCA KWIC search for “and other mism*”, left-sorted

Corpus of Contemporary American English

SEARCH FREQUENCY CONTEXT CONTEXT +

L 3 2 1 - - - R * RE-SORT ?

☐ Select entries below | CHOOSE LIST CREATE NEW LIST SAVE LIST [?] HELP

1	1995	MAG	NewRepublic	A	B	C	the wildest stories of satanic rituals cannibalism and other misdemeanors of suburban life . # The consequences of believing these
2	2014	NEWS	Atlanta	A	B	C	in the courts that handle traffic offenses DUIs and other misdemeanor charges . The decision means thousands of people accused of
3	2014	NEWS	Atlanta	A	B	C	in the courts that handle traffic offenses DUIs and other misdemeanor charges.The decision means thousands of people accused of
4	2008	NEWS	Houston	A	B	C	422 license revocations Alcohol-related offenses and other misdemeanor crimes were the most common reasons people lost their licenses.
5	2015	NEWS	Atlanta	A	B	C	collected from those convicted of traffic offenses and other misdemeanor crimes , " said Nusrat Choudhury , an attorney at the American
6	2012	BLOG	agingrebel.com	A	B	C	court of ordinance violations traffic violations and other misdemeanors . Is there a specific date you want us to use for
7	2000	MAG	Ebony	A	B	C	, where she prosecuted domestic violence DUI 's and other misdemeanor cases , Keyes , who has a strong commitment to her community

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Question 3: Does “high” modify “misdemeanors”?



- In “**high N and N**” constructions, does “high” tend to modify both or only the first noun in the sequence?
- Concordance results for “high * and” (1,738 instances) indicate that, when “and” is preceded and followed by a noun, “**high**” **tends to modify both nouns**: e.g.,
 - “high consideration and respect”
 - “high regard and esteem”
 - “high esteem and respect”

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Question 4: Does “other” modify “misdemeanors”?



- In “**other N and N**” constructions, does “other” tend to modify both or only the first noun in the sequence?
- Concordance results for “other * and” (4,857 instances) indicate that, when “and” is preceded and followed by a noun, “**other**” **tends to modify both nouns**: e.g.,
 - “other officers and soldiers”
 - “other days and times”
 - “other matters and things”

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US Constitution Article II, Section 4



- “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

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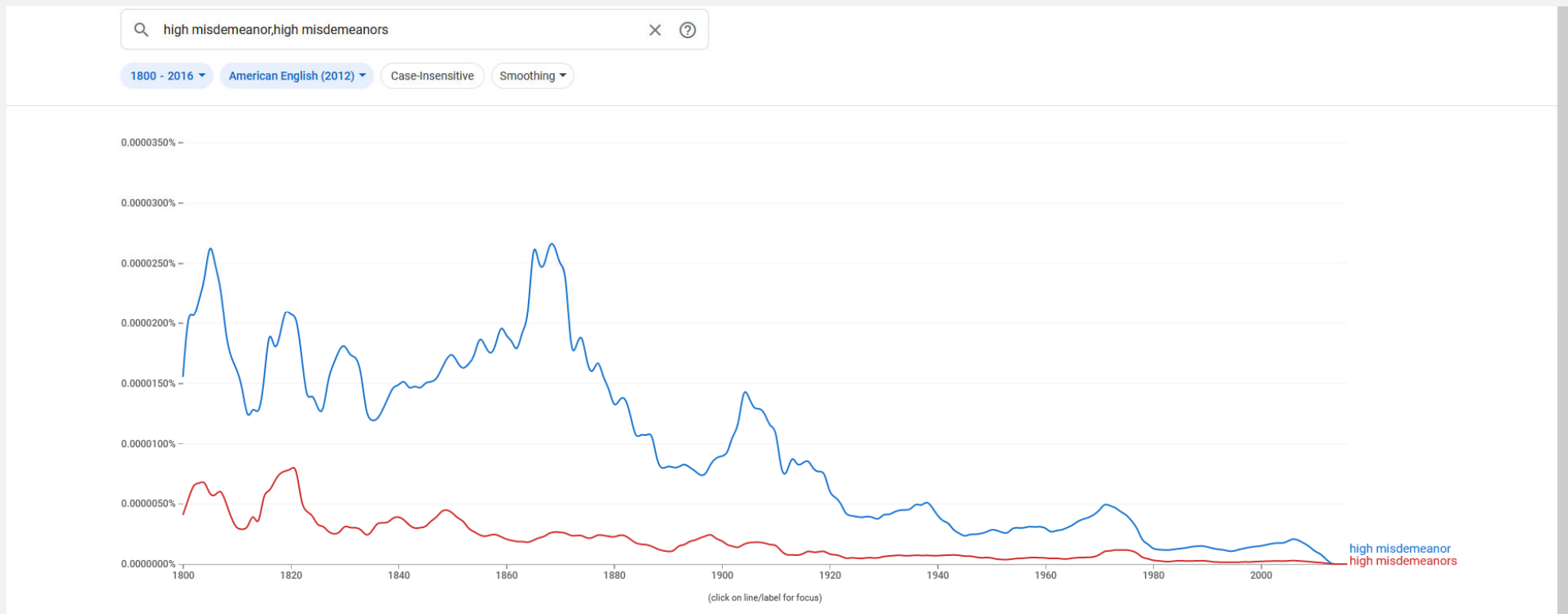
- “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and [other high] Misdemeanors.”

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Question 5: Usage of “high misdemeanor(s)”



The disappearance of “high misdemeanor(s)”: Google Books



Question 5: Usage of “high misdemeanor(s)”



The disappearance of “high misdemeanor(s)”: all COCA data

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1	2012	WEB	missoulain.com	🔊	🔍	Q	the affidavit said . # Cruelty to animals is a high misdemeanor punishable by
2	2012	NEWS	CSMonitor	🔊	🔍	Q	assassins , created a new offense , making it a high misdemeanor to attempt to " disturb " the queen . This carried the
3	1998	NEWS	SanFranChron	🔊	🔍	Q	the respondent Andrew Johnson guilty or not guilty of a high misdemeanor as charged in this article ? ' # " Every voice was
4	2012	WEB	avalon.law.yale.edu	🔊	🔍	Q	, he or they shall be deemed guilty of a high misdemeanor , and on conviction , before any court of the United States
5	2012	WEB	njleg.state.nj.us	🔊	🔍	Q	General Assembly shall , in all cases except treason and high misdemeanor , be privileged from arrest during their attendance at the
6	2003	SPOK	Fox_OReilly	🔊	🔍	Q	and clearly not on the basis of any crimes or high misdemeanors that he did not commit . This recall is about a personality
7	2012	WEB	slavenorth.com	🔊	🔍	Q	and stayed more than 10 days were guilty of high misdemeanor . " Even those that did n't
8	2012	WEB	pjmedia.com	🔊	🔍	Q	threatened and U.S. assets mangled abroad is plainly one high misdemeanor " too many . The coverup is a " high crime "

Used in quotation marks, or recounting historical events

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Question 5: Usage of “high misdemeanor(s)”



- However, in founding-era America “high misdemeanor(s)” is a relatively frequent pattern
- In **Founders Online**: 29 examples
- In **COFEA**: over 150 examples (albeit many examples concentrated in two particular contexts of use)
- Since **COFEA** examples were not well distributed, we also looked at COEME
- **COEME** (1700-1776): 43 examples

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Question 5: Usage of “high misdemeanor(s)”



- “high misdemeanor” appears to be used as a **compound noun**, rather than a variable ADJ + N sequence (absence of “higher M”, “highest M”, “high * M” in Founders Online)
- “high” does not merely increase the degree or severity of “misdemeanor”
 - Unlike “high praise” or “high cost”
 - “misdemeanor” and “high misdemeanor” are 2 separate concepts
 - “high misdemeanor” does NOT appear to mean “more serious misdemeanor”
- Rather “high misdemeanors” relate to **conduct affecting government**

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Question 5: Usage of “high misdemeanor(s)”



- **High misdemeanor as attack on governmental authority:**
 - "To deny the supreme authority of the state, is a **high misdemeanor**; to oppose it by force, an overt act of treason."
Fndrs_Adams_06_02_02_0072_0009.txt
 - It is a **high misdemeanor** to publish any Thing as from Royal Authority which is not so.
Fndrs_Adams_99_02_02_4276.txt
 - Mr. Wilkes stood accused of writing a Libel [against the King], a Libel in the Sense of the Law was a **High Misdemeanor** but did not come within the Description of Treason, Felony, or Breach of the Peace

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Question 5: Usage of “high misdemeanor(s)”



High misdemeanor as obstruction of government

Alexander Hamilton: regarding resistance to whiskey tax in western Pennsylvania in 1792

- *“incidents announce so determined and persevering a spirit of opposition to the laws, as in my opinion to render a vigorous exertion of the powers of government indispensable.”*
- *“avowed object is to “obstruct the operation of the law.”*
- *“I therefore entertain no doubt, that a high misdemeanour has been committed.”*

fndrs.hamilton.01-12-02-0242

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Question 5: Usage of “high misdemeanor(s)”



High misdemeanor as abuse of government power

- *had taken upon him to issue warrants in the king's name on several occasions, which was construed a high misdemeanor, as he had never been commissioned by the authority of the colony*
- *Committing a high misdemeanor, misleading the other officers of government, and causing money, without a previous appropriation, to be drawn from the Treasury*

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So ...can an American president only be impeached for criminal conduct?



Alan Dershowitz, arguing on behalf of Trump:
“terms high crimes and misdemeanors do not encompass the two articles charging abuse of power and obstruction of Congress because abuse of power and obstruction are not crimes”



- “The President shall be removed from Office on Impeachment for, and Conviction of ... high Crimes and Misdemeanors”
- In founding-era America “high misdemeanors” could be **different** than “high crimes” and
- “high misdemeanors” **did** refer to abuse of power and obstruction of government

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Prior law-linguistics collaborations



- Meaning of “emolument” in the US Constitution
 - “ no Person ... shall, without the Consent of the Congress, accept of any present, **Emolument**, Office or Title” from a foreign state
- Corpus study by Cunningham and Jesse Egbert (NAU)
 - Filed as friend of the court brief (2019) and cited (2020), *In re Trump*, US Court of Appeals, 4th Circuit
 - Published, **Using Empirical Data to Investigate the Original Meaning of “Emolument” in the Constitution**, 36 Georgia State Law Review 465 (2020)
- Aaron Blake, **A big Trump case hinges on the definition of ‘emoluments.’ A new study has bad news for him** (Washington Post Jan 29, 2019)

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Prior law-linguistics collaborations



- Meaning of “cases” in the US Constitution
 - “The judicial power shall extend to all **cases**, in Law and Equity, arising under this Constitution [or] the Laws of the United States”
- Corpus study by Cunningham, Römer, Egbert et al.
 - Filed as friend of the court brief and cited, *Wright v Spaulding*, US Court of Appeals, 6th Circuit (2019)
 - Published, “Questions Involving National Peace and Harmony” or “Injured Plaintiff Litigation”? *The Original Meaning of “Cases” in Article III of the Constitution*, 36 Georgia State L. Rev 491 (2020)
- These briefs and articles, as well as other resources, are available at:
www.clarkcunningham.org/Law-Linguistics.html

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ICAME 2022, Cambridge, UK

Thanks for listening! Questions? Comments?

By 5 Aug 2022, this will be posted at
<http://www.clarkcunningham.org/L2-PPT.html>

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