



HILLSDALE COLLEGE

LAW ENFORCEMENT OUTREACH

A Bill for Proportioning Crimes and Punishments

Thomas Jefferson, 1778

Whereas it frequently happens that wicked and dissolute men resigning themselves to the dominion of inordinate passions, commit violations on the lives, liberties and property of others, and, the secure enjoyment of these having principally induced men to enter into society, government would be defective in it's principal purpose were it not to restrain such criminal acts, by inflicting due punishments on those who perpetrate them; but it appears at the same time equally deducible from the purposes of society that a member thereof, committing an inferior injury, does not wholly forfeit the protection of his fellow citizens, but, after suffering a punishment in proportion to his offence is entitled to their protection from all greater pain, so that it becomes a duty in the legislature to arrange in a proper scale the crimes which it may be necessary for them to repress, and to adjust thereto a corresponding gradation of punishments.

And whereas the reformation of offenders, tho' an object worthy the attention of the laws, is not effected at all by capital punishments, which exterminate instead of reforming, and should be the last melancholy resource against those whose existence is become inconsistent with the safety of their fellow citizens, which also weaken the state by cutting off so many who, if reformed, might be restored sound members to society, who, even under a course of correction, might be rendered useful in various labors for the public, and would be living and long continued spectacles to deter others from committing the like offences.

And forasmuch the experience of all ages and countries hath shewn that cruel and sanguinary laws defeat their own purpose by engaging the benevolence of mankind to withhold prosecutions, to smother testimony, or to listen to it with bias, when, if the punishment were only proportioned to the injury, men would feel it their inclination as well as their duty to see the laws observed.

For rendering crimes and punishments therefore more proportionate to each other: Be it enacted by the General assembly that no crime shall be henceforth punished by deprivation of life or limb except those hereinafter ordained to be so punished.

If a man do levy war against the Commonwealth or be adherent to the enemies of the commonwealth giving to them aid or comfort in the commonwealth, or elsewhere, and thereof be convicted of open deed, by the evidence of two sufficient witnesses, or his own voluntary confession, the said cases, and no others, shall be adjudged treasons which extend to the commonwealth, and the person so convicted shall suffer death by hanging, and shall forfeit his lands and goods to the Commonwealth.

If any person commit Petty treason, or a husband murder his wife, a parent his child, or a child his parent, he shall suffer death by hanging, and his body be delivered to Anatomists to be dissected.

Whosoever committeth murder by poisoning shall suffer death by poison.

Whosoever committeth murder by way of duel, shall suffer death by hanging; and if he were the challenger, his body, after death, shall be gibbeted. He who removeth it from the gibbet shall be guilty of a misdemeanor; and the officer shall see that it be replaced.

Whosoever shall commit murder in any other way shall suffer death by hanging.

And in all cases of Petty treason and murder one half of the lands and goods of the offender shall be forfeited to the next of kin to the person killed, and the other half descend and go to his own representatives. Save only where one shall slay the Challenger in at duel, in which case no part of his lands or goods shall be forfeited to the kindred of the party slain, but instead thereof a moiety shall go to the Commonwealth.

The same evidence shall suffice, and order and course of trial be observed in cases of Petty treason as in those of other murders.

Whosoever shall be guilty of Manslaughter, shall for the first offence, be condemned to hard labor for seven years, in the public works, shall forfeit one half of his lands and goods to the next of kin to the person slain; the other half to be sequestered during such term, in the hands and to the use of the Commonwealth, allowing a reasonable part of the profits for the support of his family. The second offence shall be deemed Murder.

And where persons, meaning to commit a trespass only, or larceny, or other unlawful deed, and doing an act from which involuntary homicide hath ensued, have heretofore been adjudged guilty of manslaughter, or of murder, by transferring such their unlawful intention to an act much more penal than they could have in probable contemplation; no such case shall hereafter be deemed manslaughter, unless manslaughter was intended, nor murder, unless murder was intended.

In other cases of homicide the law will not add to the miseries of the party by punishments or forfeitures.

Whenever sentence of death shall have been pronounced against any person for treason or murder, execution shall be done on the next day but one after such sentence, unless it be Sunday, and then on the Monday following.

Whosoever shall be guilty of Rape, Polygamy, or Sodomy with man or woman shall be punished, if a man, by castration, if a woman, by cutting thro' the cartilage of her nose a hole of one half inch diameter at the least.

But no one shall be punished for Polygamy who shall have married after probable information of the death of his or her husband or wife, or after his or her husband or wife hath absented him or herself, so that no notice of his or her being alive hath reached such person for 7. years together, or hath suffered the punishments before prescribed for rape, polygamy or sodomy.

Whosoever on purpose and of malice forethought shall maim another, or shall disfigure him, by cutting out or disabling the tongue, slitting or cutting off a nose, lip or ear, branding, or otherwise, shall be maimed or disfigured in like sort: or if that cannot be for want of the same part, then as nearly as may be in some other part of at least equal value and estimation in the opinion of a jury and moreover shall forfeit one half of his lands and goods to the sufferer.

Whosoever shall counterfeit any coin current by law within this Commonwealth, or any paper bills issued in the nature of money, or of certificates of loan on the credit of this Commonwealth, or of all or any of the United States of America, or any Inspectors notes for tobacco, or shall pass any such counterfeited coin, paper bills, or notes, knowing them to be counterfeit; or, for the sake of lucre, shall diminish, case, or wash any such coin, shall be condemned to hard labor six years in the public works, and shall forfeit all his lands and goods to the Commonwealth.

Whosoever committeth Arson shall be condemned to hard labor five years in the public works, and shall make good the loss of the sufferers threefold.

If any person shall within this Commonwealth, or being a citizen thereof shall without the same, wilfully destroy, or run away with any sea-vessel or goods laden on board thereof, or plunder or pilfer any wreck, he shall be condemned to hard labor five years in the public works, and shall make good the loss of the sufferers three-fold.

Whosoever committeth Robbery shall be condemned to hard labor four years in the public works, and shall make double reparation to the persons injured.

Whatsoever act, if committed on any Mansion house, would be deemed Burglary, shall be Burglary if committed on any other house; and he who is guilty of Burglary, shall be condemned to hard labor four years in the public works, and shall make double reparation to the persons injured.

Whatsoever act, if committed in the night time, shall constitute the crime of Burglary, shall, if committed in the day be deemed Housebreaking; and whosoever is guilty thereof shall be condemned to hard labor three years in the public works, and shall make reparation to the persons injured.

Whosoever shall be guilty of Horsestealing shall be condemned to hard labor three years in the public works, and shall make reparation to the person injured.

Grand Larceny shall be where the goods stolen are of the value of five dollars, and whosoever shall be guilty thereof shall be forthwith put in the pillory for one half hour, shall be condemned to hard labor two years in the public works, and shall make reparation to the person injured.

Petty Larceny shall be where the goods stolen are of less value than five dollars; whosoever shall be guilty thereof shall be forthwith put in the pillory for a quarter of an hour, shall be condemned to hard labor one year in the public works, and shall make reparation to the person injured.

Robbery or Larceny of Bonds, bills obligatory, bills of exchange, or promisory notes for the payment of money or tobacco, lottery tickets, paper bills issued in the nature of money, or of certificates of loan on the credit of this commonwealth, or of all or any of the United States of America, or Inspectors notes for tobacco, shall be punished in the same manner as robbery or larceny of the money or tobacco due on, or represented by such papers.

Buyers and Receivers of goods taken by way of robbery or larceny, knowing them to have been so taken, shall be deemed Accessories to such robbery or larceny after the fact.

Prison breakers also shall be deemed Accessories after the fact to traitors or felons whom they enlarge from prison.

All attempts to delude the people, or to abuse their understanding by exercise of the pretended arts of witchcraft, conjuration, incantment, or sorcery or by pretended prophecies, shall be punished by ducking and whipping at the discretion of a jury, not exceeding 15. stripes.

If the principal offender be fled, or secreted from justice, in any case not touching life or member, the Accessories may notwithstanding be prosecuted as if their principal were convicted.

If any offender stand mute of obstinacy, or challenge peremptorily more of the jurors than by law he may, being first warned of the consequence thereof, the court shall proceed as if he had confessed the charge.

Pardon and Privilege of clergy shall henceforth be abolished, that none may be induced to injure through hope of impunity. But if the verdict be against the defendant, and the court before whom the offence is heard and determined, shall doubt that it may be untrue for defect of testimony, or other cause, they may direct a new trial to be had.

No attainder shall work corruption of blood in any case.

In all cases of forfeiture, the widow's dower shall be saved to her, during her title thereto; after which it shall be disposed of as if no such saving had been.

The aid of Counsel, and examination of their witnesses on oath shall be allowed to defendants in criminal prosecutions.

Slaves guilty of any offence punishable in others by labor in the public works, shall be transported to such parts in the West Indies, S. America or Africa, as the Governor shall direct, there to be continued in slavery.

Source: *The Papers of Thomas Jefferson*, vol. 2, 1777–18 June 1779, ed. Julian P. Boyd (Princeton, NJ: Princeton University Press, 1950), 492-507.