

riousness, and many to gratify a vain curiosity. Curiosity is but a poor motive for collecting on such an occasion—the person who can go and look on death, merely to gratify an idle humour, is destitute both of humanity and piety.

Such awful exhibitions are designed that others may see and fear. Go not to that place of horror with elevated spirits, and gay hearts, for death is there! justice and judgment are there! the power of government displayed in its most awful form, is there.

One reason why it is necessary the unhappy person should thus die, is that others may be fortified against temptation by the spectacle of horror, and the bitter consequences of transgression. When you look thereon, learn the venerableness of the state and of civil government—the sacred nature of those laws made to protect liberty and property—and our obligations to obedience—learn that sin is punished by infamy, distress and death—that the man who injures his country, and will not be restrained by considerations of duty, justice and gratitude, must be cut off from the earth that others may be safe—remember that lesser sins, though they are not made capital by the laws of the State, lead directly towards the same untimely end.

Source: Nathan Strong, *The Reasons and Design of Public Punishments* (Hartford, Conn.: Eben. Watson, 1777). [Early American Imprints (New York: Readex Microprint, 1985), 17.]

DOCUMENT 6: *A Bill for Proportioning Crimes and Punishments* (Thomas Jefferson, 1779)

By 1779, the first abolitionist rumblings with regard to capital punishment were just beginning to make their way to America from Europe.

The European debate over capital punishment had been instigated primarily by Cesare Beccaria (1738–1794), the jurist son of an Italian marquis, in his 1764 book *An Essay on Crimes and Punishments*. Beccaria argued that the death penalty served as an example of barbarity rather than a deterrent to it, because it sanctioned the taking of human life—the very act it was intended to deter.

As an alternative to capital punishment, Beccaria advocated proportional punishments designed to deter crime—such as a lifetime of imprisonment and servitude as punishment for murder. He argued that such punishments not only would serve as a lasting—rather than fleeting—example to others, but were in some ways harsher than execution because of their duration, and thus served as a more effective deterrent.

On the other side of the Atlantic, Thomas Jefferson (1743–1826) was among the first Americans to be influenced by Beccaria's philosophy of punishment. Although Jefferson was not in favor of the complete abolition of capital punishment, he appears to have been impressed by Beccaria's ideas on proportioning punishments to fit crimes.

Shortly before becoming Governor of Virginia in 1779, and some twenty-two years before he was inaugurated as President of the United States, Jefferson drafted *A Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital* for submission to the Virginia legislature. In it, he cited Beccaria several times.

The bill proposed the elimination of the death penalty in Virginia for all crimes except murder and treason. For other crimes, such as manslaughter, rape, and robbery, Jefferson advocated specific penalties such as a number of years at hard labor, loss of land and goods, reparation, or a physical punishment based upon the crime committed.

However, while Beccaria's philosophies eventually would gain a wide following in America during the decades that followed, Jefferson's bill was slightly ahead of its time. It was not adopted, and the Virginia legislature did not reform its penal code until 1796.

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 shew

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, to the commonwealth, and no others, shall be adjudged treasons which extend 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 poisoning.

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.

Source: Thomas Jefferson, *A Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital* (1779). In Julian P. Boyd, ed., *The Papers of Thomas Jefferson*, Vol. 2 (Princeton: Princeton University Press, 1950), 492–495 (footnotes omitted).

DOCUMENT 7: The Execution of Hannah Ocuish (1786)

Despite early attempts toward penal reform that began in America shortly after the Revolution, many executions continued to take place under circumstances that would be considered appalling by today's standards.

The execution of twelve-year-old Hannah Ocuish, for example, is significant because of her extreme youth, apparent mental retardation,

and numerous other mitigating factors that were taken into account at her trial but not considered sufficient to spare her life.

Hannah, whose mother was an alcoholic Pequot Indian and whose father was an unknown white man, was abandoned when she was quite young and eventually went from foster home to foster home.

Already well known for stealing and harassing people in her home town of Groton, Connecticut, Hannah was condemned for pummeling and strangling to death the six-year-old daughter of a well-to-do New London family who had tattled on her for stealing some strawberries a few weeks earlier. While there was no question that Hannah had committed the murder—in fact, she had confessed to it—her age, low I.Q., and disrupted family background made it questionable whether she could be held wholly accountable for her actions. However, the judge disagreed, saying, “the sparing of you on account of your age, would, as the law says, be of dangerous consequences to the public by holding up an idea, that children might commit such atrocious acts with impunity” (quoted in Streib 1987:75).

Indeed, Henry Channing, who delivered Hannah's execution sermon, took the opportunity to send a warning to the youngsters in the audience, along with the usual admonition of the condemned.

My Young Friends.

To you the present scene speaks in striking language, teaching you the value of a parent's tender care.—Think not that crimes are peculiar to the *complexion* of the prisoner, and that ours is pure from these stains. Surely an idea so illiberal and contracted cannot find a place in the breast of a generous youth.—Know, my brothers, that *that* casket, notwithstanding its colour, contains an immortal soul, a Jewel of inestimable value; which, polished by divine grace, would shine in yonder world with a glorious lustre: while the Jewel in a brighter casket, being left in its natural state, would be *blackness and darkness forever*.

There behold, my young brethren, the fate of one, who, with a mind not below the common level, has been left unrestrained to the guidance of guilty passions and a corrupt heart.—Have you virtuous and affectionate parents who, with anxious concern, endeavour to instruct you in those principles which are necessary to secure you from infamy like this? Can you refuse them an unreserved obedience and the returns of grateful affection?—Can you wish to add one pang to those which a parent's heart has already felt on your account?—Think, O heart-rending thought! think what would be their feelings, if they whom their souls love should for their over-much wickedness be made, as this unhappy criminal, a public spectacle of infamy and guilt.—Could there be any sorrow like unto this sorrow?—Spare, O spare a parent's aching heart