

Excerpt from the Penal Code of the Electorate of Bavaria (1751)

Abstract

Although the *Constitutio Criminalis Carolina*, passed in 1532, was the binding legal code for the entire Holy Roman Empire, some of the larger territories also drew up their own criminal codes. While in Prussia the influence of the Enlightenment had led to reforms in criminal law since 1740, the penal code of the Electorate of Bavaria, from which an excerpt is reproduced here, remained unaffected by this, as can be seen in the emphasis on capital punishment, corporal punishment and humiliation. The code remained in force until 1813.

Source

Codex Juris Bavarici Criminalis

Chapter 1

Of Criminal Offences and Punishments in General.

§ 1

Not all offences and punishable deeds are to be considered criminal, but only those for which either corporal or capital punishment is imposed, or that are otherwise of a nature deemed by law or custom to belong *ad Forum Criminale*.

§ 2

These are either light, grave or extremely grave, in Latin: *leviora, graviora, atrocissima*. Among the first are those punishable only by prison, monetary fines, public shaming or other minor penalties. The second entails corporal or capital punishment, and the third type is punishable not just by death, but even by a harsher and slower death, or by a severe additional penalty.

§ 3

A crime is committed when one does or fails to do something against the law, either out of dangerous malicious intent or out of a marked negligence, in Latin: *dolo vel culpa*. Both of which are sometimes treated equally in *civilibus*, but in *criminalibus* the penalties are always different.

§ 4

Those lacking in sufficient intellect or free will are incapable of committing a crime. Thus what is done by irrational animals, minor children, the insane or while the perpetrator is asleep, drunk or in error, ignorance or under duress, is not considered to be a crime.

§ 5

The punishment of criminal offences can affect the body, honor and property, or even life itself. The last is applied in various ways, but, according to the custom of this country, generally by the sword, the rope or the wheel, and the last of these with or without the so-called coup de grace, either while still alive or

following prior strangulation or beheading.

§ 6

The aforementioned capital punishments are often heightened by additional penalties, and the poor sinners are dragged to the place of execution, torn with glowing tongs, have ribbons cut out of them, have their hands hacked off, tongues ripped out, the lifeless body laid upon the wheel, burned, quartered, and the quarters displayed in the public streets. Which last should henceforth be omitted to avoid unnecessary expense.

§ 7

The death penalty is considered the equivalent of sentencing to eternal imprisonment as well as of the imperial ban and being declared an outlaw.

§ 8

Punishments that are corporal but not capital, in Latin: *poenae corporis afflictivae*, consisting of flogging, or being branded with the letter B, both of which are consistently associated with display in the stocks, including permanent banishment from the land and the swearing of an oath of truce or condemnation *ad opera publica*. The other types of corporal punishment, however, where not applied in addition to the death penalty, are hereby abolished.

§ 9

Of the lesser criminal penalties, which are neither corporal nor capital, the following are the most widely applied: (a) expulsion from an administrative district or even from the country. (b) Expulsion to a specific place, where the person must remain and may not leave without permission. (c) The person is declared to be dishonorable, with or without a public notice. (d) Jail or *opera publica* for a certain period. (e) Exposure in the stocks, or on the sloped walls at the church door, or public pillory columns. (f) Seizure of assets, (g) fines, (h) ducking,^[1] (i) dismissal, (k) confinement to the town or house arrest, (l) canonical penalties or *poenae canonicae*, and the like.

[...]

NOTES

[1] *Wasserschnellung*, translated here as ducking, was a humiliating punishment in which the offender (generally a baker who had sold substandard or underweight bread) was suspended over a pond or other body of water in a basket hanging from a pole, to the amusement of onlookers. If he did not jump into the water, the pole and basket were swung upward, causing him to fall in.

Source: *Codex Juris Bavarici Criminalis*, Munich 1751, pp. 1–3. Available online at: <https://www.digitale-sammlungen.de/view/bsb10316154?page=%2C1>

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