

# Penal Law Code for the Kingdom of Bavaria (1813)

## Abstract

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This code aimed both to ensure the legal-institutional integration of the newly expanded Bavarian state and to reformulate criminal law in the spirit of Enlightenment liberalism. It was principally the work of jurist P.J. Anselm Ritter von Feuerbach (1775-1833). The penal law code abolished many of the old regime's capital crimes and methods of capital punishment, replacing the latter with incarceration sentences that applied equally (with some exceptions for the upper classes) among all citizens. Yet, as this excerpt shows, severe corporal punishment persisted. The code showed innovation in regulating crimes committed by state servants in office, but shrank from introducing public and oral courtroom proceedings heard by citizen juries, a step taken by the French revolutionaries and their agents in the annexed Rhineland and the satellite German Kingdom of Westphalia.

## Source

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We Maximilian Joseph, King of Bavaria by the Grace of God.

We have deemed it, since the accession of Our government, one of Our highest governing concerns to advance the legislation of the realm toward appropriate agreement with the progress of the nation and the altered conditions of these times, and to unite the different parts of Our Kingdom under a common legislation. In particular, the great variety of *penal laws* existing to date has drawn our concern toward this branch of legislation, prompting Us to have several proposals and drafts put before Us for ten years. In the process of this, We did not fail to hear the public voice in addition to Our state authorities.

After subjecting the draft selected as a basis for the general penal code to the most diligent examination, first by a separate legislative commission comprised of reliable men of the law from all parts of the kingdom, then by the privy councilors' sections of the judiciary, finally having it presented in the assembled Privy Council with Ourselves and the Crown Prince present, We have, in accordance with the constitution of Our realm, Title I. Paragraph I. and Title V. Paragraph 7, and following the appraisal by Our Privy Councilor, resolved to sanction by Our royal hand the first and second part of the general penal code, ordering its immediate promulgation. [...]

*First Book. General legal provisions concerning crimes and offences.*

*First Chapter. Of illegal acts and their punishment in general.*

Art. 1. Anyone responsible for an illegal act or negligence, for which a law threatens certain retaliation will be subjected to that legal retaliation as his penalty. And just as punishment suffered does not cancel or reduce compensation, compensation rendered cancels or reduces the deserved penalty neither. [...]

Art. 4. The different types of penalties are the following: *I. Death penalty, II. Punishment by shackling, III. Imprisonment, IV. Hard labor camp, V. Imprisonment in a fortress, VI. Infamies and punishment by public humiliation, VII. Corporal punishment, VIII. Detention in prison or in a fortress, IX. Fines.*

Art. 5. Anyone who has forfeited his life shall be led to the place of execution bareheaded, wearing a gray smock and a sign on the front and back indicating the crime committed, and shall be decapitated there.

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Art. 22. The following shall be applied henceforth as *infamies*: I. Removal from office (dishonorable dismissal), which results in the loss of the service rank and salary, as well as ineligibility for any honors, public and honorary offices; II. Assertion of *ineligibility for honorary posts and public offices*; III. Simple *dismissal from service*, which certainly results in the loss of service rank and salary but not in ineligibility for public and honorary offices.

The following are classed as *humiliating penalties*: I. Demotion of a public servant to a post lower in rank and salary (*degradation*); II. *Revocation and formal plea for forgiveness*; III. *Judicial reprimand*. [...]

Art. 25. Corporal punishment must never exceed the number of fifty blows.

The number of blows is to be specified in the sentence.

Corporal punishment is to be administered onto the bare back, using a switch tied together from birch twigs.

In cases where the law does not specifically stipulate public corporal punishment, punishment shall be administered in prison by the bailiff with a judicial official attending.

Art. 26. Corporal punishment may only be administered after a favorable appraisal by the forensic pathologist. [...]

*Second Chapter. Of injuries and other abuses to the person.*

Art. 178. Anyone attacking someone else by force without intent to kill but with unlawful premeditation, mistreating that person physically or damaging that person's health through wounding, injuring, or other means shall be deemed guilty of the *offence of bodily harm*. [...]

*Seventh Chapter. Of the particular offences of state officials and public servants.*

Art. 351. If by committing a *malicious crime*, a state official or public servant has forfeited the penalty of imprisonment or hard labor camp, the proper punishment is always connected with *removal from office*. [...]

Art. 354. In addition to exacerbating the regular penalty for this offence, subordinate officials showing disobedience toward their superiors in official dealings have to reckon with *removal from office*, if they are guilty of the offence of insubordination (Art. 315. f.).

Art. 355. A public official who allows himself, by acceptance of a gift or whatever benefit, to be induced to an act or negligence that runs counter to the laws of the state, to the rights of others, or to his undoubted official duties, is guilty of the *offence of bribery*.

Acceptance of the gift or benefit is deemed to have materialized as soon as the public servant agrees to take the promised item, or if he has not reported that which has been given to him or one of his relatives by a party or soliciting person at the latest within *three days* after he has learned about it to the court or to his superior official.

Art. 356. Such a criminal is to be punished with *removal from office*.

This penalty, however, does not rule out a more severe one, if at the same time the breach of duty merges into another crime.

Art. 357. Anyone who misuses, out of private motives, hatred, bias, or self-interest, the official authority entrusted to him for exerting pressure on or mistreating subjects shall be punished with *removal from*

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office, subject to any penalties incurred beyond that.

[...]

Source: *Strafgesetzbuch für das Königreich Baiern*. Munich, 1813, p. III–V, 1–3, 10 f., 73, 137–39; reprinted in Walter Demel and Uwe Puschner, eds. *Von der Französischen Revolution bis zum Wiener Kongreß 1789-1815*, Deutsche Geschichte in Quellen und Darstellung, edited by Rainer A. Müller, Vol. 6. Stuttgart: P. Reclam, 1995, pp. 232–35.

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