

Publisher's Note

Defining Documents in American History series, produced by Salem Press, offers a closer look at important historical documents by pairing primary source documents on a broad range of subjects with essays written especially for the series by a diverse range of writers. This established series includes thirty-two titles that present documents selected to illuminate specific eras in American history—including *Postwar 1940s*, *The Emergence of Modern America*, and *Reconstruction Era*—or to explore significant themes and developments in American society—*Prison Reform*, *The Legacy of 9/11*, and *Environment & Conservation*.

This set, *Defining Documents in American History: Capital Punishment*, offers in-depth analysis of over thirty documents, including letters, memoirs, newspaper accounts, book excerpts, speeches, court rulings, legal texts, and legislative acts.

The material is organized under four sections:

- **Constitutional Questions** begins with a few of the historical documents such as the Great Muscovite Code, Hammurabi's Law Code, and the Magna Carta, which provided the foundation for the U.S. Bill of Rights by illuminating such important concepts as "Cruel and Unusual Punishments" and proportionality, and includes an analysis and discussion of the Eighth and Fourteenth Amendments to the Constitution. These concepts have been argued through the courts and resulted in important decision regarding the constitutionality of capital punishment, through both opinions and dissents, in cases such as *Hurtado v. California* and *Furman v. Georgia*.
- **Mental Capacity and Age** examines important debates on whether or not a person with a very low I.Q., or who is under the age of 18, can ever be sentenced to death. This section includes decisions in *Atkins v. Virginia* and *Roper v. Simmons*, as well as a curriculum on the death penalty, "The Death Penalty for Juveniles" and reports about the execution of Aileen Wuornos in Florida.
- **Race** considers the issue of racial disparity in sentencing. Lynching is an inescapable part of the U.S.'s history, a form of capital punishment enacted outside the system of courts. Important decisions handed down in *Witherspoon v. Illinois* and

McClesky v. Kemp have tackled questions related to not only the race of the defendant but also the composition of the jury. Statements from groups like Amnesty International and the American Civil Liberties Union are also included.

- **Methods** takes a close look at the ways that executions have changed over time. While public hangings and firings squads were once the norm, efforts to make capital punishment more humane and to avoid inflicting undue pain or harm have resulted in such innovations as the electric chair and death by lethal injection. In statements from the American Nurses' Association (ANA) and Pfizer, it becomes clear that obtaining the appropriate staffing or materials for an execution are complicated and highly controversial issues. Inmates on death row have mounted cases against capital punishment, leading to decision is the following significant cases: *Wilkinson v. Utah*, *Louisiana ex rel. Francis v. Resweber*, and *Baze v. Rees*.

These documents provide a compelling view of how capital punishment has evolved over the years from Hammurabi's "eye for an eye" to compelling arguments both for and against capital punishment, in terms of its humanity, its cost to society, its role as an effective deterrent to further crime.

Essay Format

Each Historical Document is supported by a critical essay, written by historians and teachers, that includes a Summary Overview, Defining Moment, About the Author, and Document Themes. An important feature of each essay is a close reading and analysis of the primary source that develops broader themes, such as the author's rhetorical purpose, social or class position, point of view, and other relevant issues.

Some documents also include Supplemental Historical Documents, meant to add richness and depth to the main historical document as well as the critical essay.

Each section begins with a brief introduction that defines questions and problems underlying the subjects addressed in the historical documents. Each essay also includes an Additional Reading section for further research.

Appendixes

- **Chronological List** arranges all documents by year.
- **Web Resources** is an annotated list of websites that offer valuable supplemental resources.
- **Bibliography** lists helpful articles and books for further study.

Contributors

Salem Press would like to extend its appreciation to all involved in the development and production of this work. The essays have been written and signed by scholars of history, humanities, and other disciplines related to the essays' topics. Without these expert contributions, a project of this nature would not be possible.

CONSTITUTIONAL QUESTIONS

The issue of the state's right to deprive a person of life is a complex one that can be examined from a number of perspectives. The principal one has to do with the constitutionality of capital punishment. According to the Eighth Amendment to the U.S. Constitution, part of the Constitution's Bill of Rights, "cruel and unusual punishments" are not to be "inflicted." For some observers, capital punishment, through its very extremity and irrevocability, is by definition a cruel and unusual punishment, particularly when the method used fails in some way. Often, the spotlight is turned on instances of botched executions, where, for example, the electric chair has malfunctioned, causing burns while the prisoner is still alive, or where the cocktail of lethal drugs injected into a criminal's bloodstream has not taken immediate effect; in these cases, pain was inflicted on the person being executed.

Yet in the late eighteenth century, when the Eighth Amendment was written, notions of what might have constituted "cruel and unusual punishments" were likely very different from what they are today, for the framers of the Constitution came from a society where capital punishment often took horrific forms, including hanging, drawing, and quartering, evisceration, or death by burning at the stake. At the center of this component of the debate is the concept of what the courts have called "evolving standards of decency." As civilization has progressed, modern sensibilities have concluded that practices that might have been considered acceptable, or at least tolerable, in a former, more brutal, age are inconsistent with the values of a democratic, humane, and rational society. In a former age, for example, executions were public spectacles, often watched by crowds with great

relish; in the twenty-first century, conducting an execution in public, to the cheering of a crowd, would seem indecent, almost obscene.

The issue of capital punishment's constitutionality came to a head in 1972, when the U.S. Supreme Court issued its opinion in the landmark case of *Furman v. Georgia*, a case that consolidated a number of death penalty appeals. The Court wrote: "The Court holds that the imposition and carrying out of the death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." (The Fourteenth Amendment mandates "due process of law" and "equal protection of the laws.") It must be noted that the Court's ruling in this case pertained to the particular cases before it and was based on the Court's conclusion that the death penalty was being imposed in an arbitrary and capricious manner. Put differently, it was not the death penalty itself that the Court declared unconstitutional but the seemingly capricious manner in which it was imposed. The effect of the decision was to render state death penalty statutes void and essentially to impose a moratorium on executions, which fell to historic lows during the mid-1970s. That moratorium was in effect lifted in 1976 in the case of *Gregg v. Georgia*, when the Court ruled that death penalty statutes that provided for a bifurcated trial in capital cases—that is, a trial to determine guilt or innocence, and a separate trial to determine the sentence—were constitutional. In the meantime, states had rewritten their laws in accordance with *Furman* guidelines to make it more likely that sentencing guidelines reflected rational standards for when capital punishment was to be imposed and when it was not.



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The first chapter of the Great Muscovite Code (Sobornoye Ulozheniye)

■ Great Muscovite Law Code

Date: 1649

Author: Alexis I

Summary Overview

The Ulozhenie, or Great Muscovite Law Code, was Muscovite Russia's main legal code, issued by Alexis I Mikhaylovich ("Alexei Mikhailovich" in the document) in 1649. Its full title, *Sobornoe Ulozhenie*, literally means "Collected Code of Laws." It replaced the *Sudebniki* (law codes) of Ivan III Vasilyevich (1497) and Ivan IV Vasilyevich (1550). These codes had promoted state centralization and the rise of state and legal bureaucracies. The Ulozhenie—a complex document running well over two hundred pages in modern printings—continued this process. It is primarily known, however, for its passages on serfdom, which take up only a few pages. In this, the code represented the legal climax of a long historical process whereby Russia's once-free peasants (about 90 percent of the total population) had been reduced to a form of serfdom often compared to slavery. The new code terminated the few remaining rights of movement left to serfs from earlier legislation; ended time limitations on the return of runaways; eroded the differences between serf and slave classes (the two categories remained legally distinct until 1723, however); and pronounced the resulting system hereditary, permanent, and irrevocable. More generally, the Ulozhenie was a striking statement of political authority and social hierarchy, covering topics that included the relation of various social classes to the state and questions of authority within families.

Defining Moment

As a general statement of state authority and social hierarchy, the Ulozhenie was intended ultimately for the entire Russian populace. It would, however, have been directly read or encountered only by a small literate minority, especially members of the service gentry, court officials, and the church hierarchy. Twelve hundred copies were made in the spring of 1649, and a further twelve hundred in the winter. Both quickly sold out, with the majority of copies probably going to courts and other government offices in Moscow and throughout provincial towns, where it henceforth provided the framework

for legal cases and procedures (with the main exception of cases coming under church jurisdiction). It is unclear how well the document would have been known by litigants, at least in the first decades after publication. The illiterate masses of serfs would have come to know of the Ulozhenie only slowly, sporadically, and dimly. Parts of it might have been read to them by priests or landlords, perhaps as justification for their removal to another estate. Aspects of it would have spread by word of mouth. Generally, however, at this time and later, peasants tended to attribute their exploitation and suffering not to the czar or to any specific piece of legislation, but instead to landlords, local officials, and other persons of whom they had direct experience.

Author Biography

The Ulozhenie was established at the order of Czar Alexis I. Alexis was born in March of 1629 and took the throne at the age of sixteen. His father and royal predecessor, Mikhail, was the founder of the Romanov Dynasty. Most historians consider Alexis to have been a pious and fairly effective ruler. Conservative rather than reactionary, he was cautiously favorable to reforms that appeared likely to strengthen or preserve tradition and authority, such as a new and more comprehensive law code. He was also distinguished by an ability to choose wise and talented advisers and to give them sufficient freedom of action. This latter trait is also clearly exemplified by the Ulozhenie, which Alexis authorized but did not compose. He died in 1676.

In the early summer of 1648, Alexis consulted with Patriarch Joseph of Moscow, church officials, boyars (nobles), and other prominent advisers. Then, on July 16, he appointed a five-person commission headed by the talented and prominent state servant Nikita Odoevsky and ordered them to compile a draft law. This was done by October 3. Odoevsky, a favorite also of the previous czar, was a minor noble who had already carved out successful careers for himself as a diplomat and military commander. Before being recruited for work on the Ulozhenie,

he had proved himself in legal affairs, running the chancelleries of Kazan and Siberia. His commission drew on a wide body of existing legislation, including past legal cases, earlier Russian secular law codes, Orthodox ecclesiastical law, and Byzantine and Lithuanian codes. The draft was then amended and expanded by an “Assembly of the Land,” comprising men from every rank of soci-

ety (except the peasant masses) and two noblemen from each town. All these men were required to read and sign the finished product. The Ulozhenie was essentially a compilation and codification of existing laws, rather than an original composition. Nonetheless it is considered one of the great achievements of Russian literature prior to the nineteenth century.

HISTORICAL DOCUMENT

Chapter 22.—Decree: For Which Offenses the Death Penalty Should Be Inflicted on Someone, and for Which Offenses the Penalty Should Not Be Death, But [Another] Punishment Should Be Imposed. In It Are 26 Articles.

1. If any son or daughter kills his father or mother: for patricide or matricide, punish them also with death, without the slightest mercy.
2. If any son or daughter kills his or her father or mother with some other people, and that is established conclusively: after investigation, also punish with death, without the slightest mercy, those who committed such a deed with them.
3. If a father or mother kills a son or daughter: imprison them for a year after that. After having sat in prison for a year, they shall go to God’s church, and in God’s church they shall declare aloud that sin of theirs to all the people. Do not punish a father or mother with death for [killing] a son or daughter.
4. If someone, a son or a daughter, forgetting Christian law, proceeds to utter coarse speeches to a father or mother, or out of impudence strikes a father or mother, and the father or mother proceeds to petition against them for that: beat such forgetters of Christian law with the knout for the father and mother.
5. If any son or daughter plunder[s] a father’s or mother’s movable property by force; or not honoring the father and mother and [attempting] to drive them out, proceed[s] to denounce them for some evil deeds; or a son or daughter

does not proceed to respect and feed a father and mother in their old age, does not proceed to support them materially in any way, and the father or mother proceed[s] to petition the sovereign against him or her about that: inflict a severe punishment on such children for such deeds of theirs, beat them mercilessly with the knout, and command them to attend to their father and mother in all obedience without any back-talk. Do not believe their denunciation.

6. If any son or daughter proceed[s] to petition for a trial against a father or mother: do not grant them a trial in any matter against a father or mother. Beat them with the knout for such a petition and return them to the father and mother....

14. If a wife kills her husband, or feeds him poison, and that is established conclusively: punish her for that, bury her alive in the ground and punish her with that punishment without any mercy, even if the children of the killed [husband], or any other close relatives of his, do not desire that she be executed. Do not show her the slightest mercy, and keep her in the ground until that time when she dies.

15. If a woman is sentenced to the death penalty and she is pregnant at that time: do not punish that woman with death until she gives birth, and execute her at the time when she has given birth. Until that time, keep her in prison, or in the custody of reliable bailiffs, so that she will not depart.

16. If someone with felonious intent comes into someone’s house, and desires to do something shameful to the

mistress of that house, or desires to carry her away somewhere out of that house; and her slaves do not defend her against that felon, and proceed to assist those people who have come for her in the commission [of the crime]; and subsequently such a deed of theirs is discovered: punish with death all those felons who with such intent come into another's house and those slaves who assist them in the commission of such a felony....

20. If someone shoot[s] from a handgun or from a bow at a wild animal, or at a bird, or at a target; and the arrow or bullet goes astray and kills someone over a hill or beyond a fence; or if someone by any chance kills someone with a piece of wood, or a rock, or anything else in a non-deliberate act; and previously there was no enmity or other animosity between that person who killed and that [person] he killed; and it is established about that conclusively that such a homicide occurred without deliberation and without intent: do not punish anyone with death for such a homicide and do not incarcerate anyone in prison because that event occurred accidentally, without intent....

24. If a Muslim by any means whatsoever, by force or by deceit, compels a Russian [to convert] to his Islamic faith; and he circumcises that Russian according to his

Islamic faith; and that is established conclusively: punish that Muslim after investigation, burn him with fire without any mercy.

Concerning the Russian whom he converted to Islam: send that Russian to the patriarch, or to another high ecclesiastical figure, and order him to compile a decree according to the canons of the Holy Apostles and the Holy Fathers.

25. If someone of the male gender, or the female gender, having forgotten the wrath of God and Christian law, proceeds to procure adult women and mature girls for fornication, and that is established conclusively: inflict a severe punishment on them for such a lawless and vile business, beat them with the knout.

26. If a woman proceeds to live in fornication and vile-ness, and in fornication begets children with someone; and she herself, or someone else at her command, destroys those children; and that is established conclusively: punish with death without any mercy such lawless women and that person who destroyed her children at her order so that others looking on will not commit such a lawless and vile deed and will refrain from fornication.

GLOSSARY

manumission documents: official papers stating that the bearer, a former slave, has been freed

Mikhail Fedorovich: Mikhail Fedorovich Romanov (1596–1645)

service landholding: rented land whose tenant was required to serve the state lifelong or until too infirm to continue his duties (that is, until superannuated)

spiritual fathers: Orthodox clergy and other personnel

stol'niki, ..., striapchie, ..., dvoriane, ... zhil'tsy: specific ranks or titles within the service gentry, with *dvoriane* referring to nobles and gentry in state service

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Document Themes & Analysis

The complete Ulozhenie is divided into twenty-five chapters, each dealing with a different general topic or legislative area. They are presented in a specific order, corresponding to the importance or status accorded to each at the time, from the highest to the lowest. Thus, chapter 1 considers the honor and authority of God and his church, the second chapter treats the personal honor of the czar, the third looks at matters of conduct in the czar's court, and so on. The final chapter (the "lowest," not excerpted here) treats unlawful taverns. The chapters between consider a wealth of issues, including the mint and currency, travel and foreigners, various ranks of service personnel, tolls and fees, the judicial process at various social levels, monasteries, different categories of landholding, social and political estates, slaves and serfs, robbery and theft, the death penalty, and palace musketeers. Some chapters are short—the one on palace musketeers has only three articles. Others are much longer. There are, for instance, 104 articles on robbery and theft and 119 on the judicial process regarding slaves. The longest of all, at 287 articles, considers the judicial process in general.

Chapter 22: Decree: For Which Offenses the Death Penalty Should Be Inflicted on Someone, and for Which Offenses the Penalty Should Not Be Death but [Another] Punishment Should Be Imposed

This chapter contains twenty-six articles, half of which are reproduced here. Many of these articles exemplify the Ulozhenie's emphasis on clear hierarchy, unquestionable authority, and strict punishment. They are largely untempered by concerns for mitigating circumstances and possible exceptions. When reading the first articles, dealing with murders within families, it should be kept in mind that the law's authors imagined the nuclear family as a microcosm of the larger "state family." The authority given to parents, especially fathers, as heads of families mirrors that assumed by the czar over his larger "family"—the population of the Muscovite state. Similarly, the lack of power given to children represents in microcosm the subordination of all subjects to their social superiors and ultimately to the czar. Thus, crimes committed by children against their parents are considered extremely serious, while crimes committed by parents against their children are reckoned to be minor. Following articles 5 and 6, any complaints made by children against their parents are to be ignored and even punished, but their responsibility to care for and feed their parents in old age

is sacrosanct. Of course, one can also see in these articles the influence of some of the Ten Commandments, rather strictly and literally applied.

Returning to family themes, articles 14 to 16 reflect the harsh patriarchal culture of the time. A man's authority over his wife is considered absolute and sacred. A woman who violates this order by murdering her husband has committed a terrible crime. Whereas clauses treating the murder of a master by his slave (not reproduced here) simply call for the slave's death, article 14 goes so far as to prescribe the manner of the offending wife's execution. The seriousness of her action, as viewed by Muscovite culture, is further emphasized in the same article by the refusal to contemplate any mitigating circumstances or calls for leniency made by the children or other relatives. This stands in stark contrast to some other parts of the code, where a clear concern is indeed shown for mitigating circumstances and intent (see, for example, article 20 in this chapter). Note, however, that article 15 stipulates that the wife's crime, though unpardonable, is not to be paid for by the death of any innocent unborn child. The concern shown in article 16 for a woman's honor echoes the patriarchalism of article 14 in that it seeks primarily to protect the exclusive ownership of the wife by her husband. The use of the term "mistress of that house" speaks to the fact that the law had in mind primarily elite women and not the ordinary peasant, whose affairs were largely regulated by this time by their landlords. Articles 24 to 26 return to religious themes and freely mix elements of harsh legalism with Christian compassion.

Several factors contributed to the creation and promulgation of the Ulozhenie. Ostensibly, it was an effort to bring order to a corpus of law that, owing to the issuance of numerous edicts over the previous two centuries, had become confusing, contradictory, and ineffective. A more specific trigger was a major riot that shook Moscow in 1648. The riot was in response to an unpopular salt tax and perceived corruption and abuses among state officials. More generally, the Ulozhenie was intended as a means of enforcing authority, order, and social hierarchy in a state that had suffered numerous major upheavals in the preceding decades, including foreign invasions, civil war, peasant uprisings, "false" czars, and mass migrations, many of them connected with the difficult interregnum of 1598 to 1613 known as the Time of Troubles. This traumatic period followed the death in 1598 of Fyodor I Ivanovich, son of Ivan IV (known as Ivan the Terrible). Fyodor was the last member of the seven-century-old

Rurik Dynasty of Russian rulers. The Time of Troubles almost led to the complete collapse of Russia and the establishment of Polish Catholic rule in Moscow. Ultimately, however, it instead spawned a broad-based national movement for the regeneration of Muscovite and Orthodox Christian Russia as well as a deeply ingrained sense of the need for strong, central rule and clear lines of authority. The Ulozhenie addressed all these concerns.

As noted, some of the Ulozhenie's most important articles involve serfdom, specifically its transformation into virtual slavery. From the founding in 878 of Kievan Rus (the first ancestor state to both modern Russia and Ukraine, with its capital at Kiev), most peasants had enjoyed considerable freedom and independence. Typically organized in groups, they often entered voluntarily into agricultural communes, including on privately owned land, in order to produce and share food and other necessities. They left when they wished. Affairs changed little in this regard, even as Kiev's influence waned and Rus fragmented during the eleventh and twelfth centuries into an increasingly decentralized collection of principalities. The peasants' freedoms began seriously to erode, however, with the arrival of the Mongols, whose armies—primarily made up of Turkic Tatars under Mongol leadership—conquered most of the Rus from 1237 to 1241. The Mongol-Tatar hordes did not occupy their conquered areas but instead became absentee tax-collectors. They delegated to subordinate Rus princes the task of collecting payments from Russian peasant communes and other entities. Thus, the Rus princes came to wield considerable power over the communes and peasant constituents. Over the next two hundred years, one Russian principality, Moscow, increased its tax-collecting authority and political power prodigiously. By the end of the reign of Ivan III (“the Great”), in the first decade of sixteenth century the principality of Moscow had achieved two critical goals: the unification of most of the Russian lands under its own control and the end of Mongol-Tatar domination.

The resulting state was known as Muscovite Russia, or simply Muscovy, and its success and continued development was based in large part on the ever-increasing enserfment of the Russian peasantry. The reason for this lay in the importance of land grants. Church officials and nobles from many Russian lands had cooperated with power-hungry Muscovite princes primarily in return for permanent grants of land. Thereafter, during the fifteenth and sixteenth centuries, ever-more grants were made; increasingly, they went to the lower-ranking “ser-

vice gentry” as revocable payment for ongoing state service, usually in civil administration or as military officers. Thus, there evolved two main types of land grant: permanent hereditary ones known as *votchiny* (held mainly by the nobility) and temporary service-related ones known as *pomestie* (held by the service gentry).

Regardless of type, the value of a land grant was determined almost entirely by the presence of peasants, who provided income in the form of labor and crops—the primary and often the only sources of revenue for the landlord. Until the late fifteenth century, it had remained common for landlords to negotiate terms of labor with peasants residing upon their lands. The two groups often had opposite interests, however. The landlords wanted permanent and reliable workers and ever-higher incomes. The peasants valued their freedom and independence, and they resented encroaching authority and rising taxation. Often, they simply moved on, leaving their landlords to face untended fields and economic hardship. The absence of natural boundaries and the lure of seemingly endless horizons to the east and south compounded the problem. Flight was especially common during the dislocations of the Time of Troubles.

Among landlords, however, the service gentry were especially vulnerable, since they faced the additional threat of having their peasants seized and transferred wholesale to the estates of higher-ranking and more powerful nobles. Thus, it was the service gentry who most actively pressured the state for help. Since Muscovy relied heavily on them for services and loyalty, as well as on military recruits from their lands, their pleas were taken to heart.

The state responded in stages. Ivan III's 1497 Sudebnik barred peasants from moving at any time of the year except during a two-week period at the end of the harvest, around Saint George's Day. Peasants also had to fulfill all contracted obligations to their landlords and pay a large contract-release fee. Continued peasant flight spurred ever-more repressive countermeasures. In 1570 in parts of the province of Novgorod, Ivan IV declared a one-off “prohibited year,” during which peasants would not be able to move for any reason, even around Saint George's Day, regardless of their ability to pay all debts and release fees. Thereafter, the concept was applied more widely. By the 1580s prohibited years had become the norm throughout Muscovite Russia. Instead, the state designated occasional “free years.” The last one was in 1602. Around the same time, the statute of limitations on recovery of a runaway peasant was increased, reaching fifteen years in the first part of the sixteenth century.

The Ulozhenie abolished the limitation altogether, and subsequent legislation criminalized peasant flight.

The service gentry also lobbied the state for permanent possession of their service lands and for the right to pass them on as heritable property. The Ulozhenie reinforced the legal distinction between the two. In practice, however, service lands were treated increasingly as hereditary possessions as the sixteenth century progressed.

All classes of persons were affected by the Ulozhenie. The law's most enduring and significant consequences centered on its codification of serfdom, however. This system became the backbone of the economy and a fundamental determinant of the historical trajectory of the Russian state. Although serfdom had long provided both elites and the state with more or less stable sources of income, labor, and conscripts, it also fostered diverse and huge challenges that ultimately hampered the country's development. Under conditions of serf labor, for example, there was little incentive for investment in more productive or efficient farming methods and technologies, with the result that agriculture in Russia remained less efficient and productive than in many Western European regions. Russia's industrial and military development also lagged for similar reasons. Not surprisingly, the peasants themselves chafed under the burden of serfdom. After 1649, rebellions grew in frequency and scale. Peasant unrest, along with Russia's humiliating defeat in the Crimean War (1853–1856), which also could be traced to serfdom, eventually persuaded Alexander II to abol-

ish the system “from above” in 1861, before the peasants abolished it themselves “from below.” By 1861 serfdom was widely blamed for a stifling backwardness in many aspects of Russian society, whether in agriculture, industry, military effectiveness, or public morality.

Additional Reading

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SUPPLEMENTAL HISTORICAL DOCUMENT

Hammurabi Code of Laws

1. If any one ensnare another, putting a ban upon him, but he can not prove it, then he that ensnared him shall be put to death.

2. If any one bring an accusation against a man, and the accused go to the river and leap into the river, if he sink in the river his accuser shall take possession of his house. But if the river prove that the accused is not guilty, and he escape unhurt, then he who had brought the accusation shall be put to death, while he who leaped into the river shall take possession of the house that had belonged to his accuser.

3. If any one bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offense charged, be put to death.

* * * *

6. If any one steal the property of a temple or of the court, he shall be put to death, and also the one who receives the stolen thing from him shall be put to death.

7. If any one buy from the son or the slave of another man, without witnesses or a contract, silver or gold, a male or female slave, an ox or a sheep, an ass or anything, or if he take it in charge, he is considered a thief and shall be put to death.

8. If any one steal cattle or sheep, or an ass, or a pig or a goat, if it belong to a god or to the court, the thief shall pay thirtyfold therefor; if they belonged to a freed man of the king he shall pay tenfold; if the thief has nothing with which to pay he shall be put to death.

9. If any one lose an article, and find it in the possession of another: if the person in whose possession the thing is found say "A merchant sold it to me, I paid for it before witnesses," and if the owner of the thing say, "I will bring witnesses who know my property," then shall the

purchaser bring the merchant who sold it to him, and the witnesses before whom he bought it, and the owner shall bring witnesses who can identify his property. The judge shall examine their testimony--both of the witnesses before whom the price was paid, and of the witnesses who identify the lost article on oath. The merchant is then proved to be a thief and shall be put to death. The owner of the lost article receives his property, and he who bought it receives the money he paid from the estate of the merchant.

10. If the purchaser does not bring the merchant and the witnesses before whom he bought the article, but its owner bring witnesses who identify it, then the buyer is the thief and shall be put to death, and the owner receives the lost article.

11. If the owner do not bring witnesses to identify the lost article, he is an evil-doer, he has traduced, and shall be put to death.

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14. If any one steal the minor son of another, he shall be put to death.

15. If any one take a male or female slave of the court, or a male or female slave of a freed man, outside the city gates, he shall be put to death.

16. If any one receive into his house a runaway male or female slave of the court, or of a freedman, and does not bring it out at the public proclamation of the major domus, the master of the house shall be put to death.

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19. If he hold the slaves in his house, and they are caught there, he shall be put to death.

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21. If any one break a hole into a house (break in to steal), he shall be put to death before that hole and be buried.

22. If any one is committing a robbery and is caught, then he shall be put to death.

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25. If fire break out in a house, and some one who comes to put it out cast his eye upon the property of the owner of the house, and take the property of the master of the house, he shall be thrown into that self-same fire.

26. If a chieftain or a man (common soldier), who has been ordered to go upon the king's highway for war does not go, but hires a mercenary, if he withholds the compensation, then shall this officer or man be put to death, and he who represented him shall take possession of his house.

* * * *

33. If a . . . or a . . . enter himself as withdrawn from the "Way of the King," and send a mercenary as substitute, but withdraw him, then the . . . or . . . shall be put to death.

34. If a . . . or a . . . harm the property of a captain, injure the captain, or take away from the captain a gift presented to him by the king, then the . . . or . . . shall be put to death.

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109. If conspirators meet in the house of a tavern-keeper, and these conspirators are not captured and delivered to the court, the tavern-keeper shall be put to death.

110. If a "sister of a god" open a tavern, or enter a tavern to drink, then shall this woman be burned to death.

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130. If a man violate the wife (betrothed or child-wife) of another man, who has never known a man, and still lives

in her father's house, and sleep with her and be surprised, this man shall be put to death, but the wife is blameless.

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153. If the wife of one man on account of another man has their mates (her husband and the other man's wife) murdered, both of them shall be impaled.

* * * *

155. If a man betroth a girl to his son, and his son have intercourse with her, but he (the father) afterward defile her, and be surprised, then he shall be bound and cast into the water (drowned).

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157. If any one be guilty of incest with his mother after his father, both shall be burned.

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209. If a man strike a free-born woman so that she lose her unborn child, he shall pay ten shekels for her loss.

210. If the woman die, his daughter shall be put to death.

211. If a woman of the free class lose her child by a blow, he shall pay five shekels in money.

212. If this woman die, he shall pay half a mina.

213. If he strike the maid-servant of a man, and she lose her child, he shall pay two shekels in money.

214. If this maid-servant die, he shall pay one-third of a mina.

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229. If a builder build a house for some one, and does not construct it properly, and the house which he built fall in and kill its owner, then that builder shall be put to death.

230. If it kill the son of the owner the son of that builder shall be put to death.

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THE EPILOGUE

LAWS of justice which Hammurabi, the wise king, established. A righteous law, and pious statute did he teach the land. Hammurabi, the protecting king am I. I have not withdrawn myself from the men, whom Bel gave to me, the rule over whom Marduk gave to me, I was not negligent, but I made them a peaceful abiding-place. I expounded all great difficulties, I made the light shine upon them. With the mighty weapons which Zamama and Ishtar entrusted to me, with the keen vision with which Ea endowed me, with the wisdom that Marduk gave me, I have uprooted the enemy above and below (in north and south), subdued the earth, brought prosperity to the land, guaranteed security to the inhabitants in their homes; a disturber was not permitted. The great gods have called me, I am the salvation-bearing shepherd, whose staff is straight, the good shadow that is spread over my city; on my breast I cherish the inhabitants of the land of Sumer and Akkad; in my shelter I have let them repose in peace; in my deep wisdom have I enclosed them. That the strong might not injure the weak, in order to protect the widows and orphans, I have in Babylon the city where Anu and Bel raise high their head, in E-Sagil, the Temple, whose foundations stand firm as heaven and earth, in order to bespeak justice in the land, to settle all disputes, and heal all injuries, set up these my precious words, written upon my memorial stone, before the image of me, as king of righteousness.

The king who ruleth among the kings of the cities am I. My words are well considered; there is no wisdom like unto mine. By the command of Shamash, the great judge of heaven and earth, let righteousness go forth in the land: by the order of Marduk, my lord, let no destruction befall my monument. In E-Sagil, which I love, let my name be ever repeated; let the oppressed, who has a case at law, come and stand before this my image as king of righteousness; let him read the inscription, and understand my precious words: the inscription will explain his case to him; he will find out what is just, and his heart will be glad, so that he will say:

“Hammurabi is a ruler, who is as a father to his subjects, who holds the words of Marduk in reverence, who has achieved conquest for Marduk over the north and south, who rejoices the heart of Marduk, his lord, who has bestowed benefits for ever and ever on his subjects, and has established order in the land.”

When he reads the record, let him pray with full heart to Marduk, my lord, and Zarpanit, my lady; and then shall the protecting deities and the gods, who frequent E-Sagil, graciously grant the desires daily presented before Marduk, my lord, and Zarpanit, my lady.

In future time, through all coming generations, let the king, who may be in the land, observe the words of righteousness which I have written on my monument; let him not alter the law of the land which I have given, the edicts which I have enacted; my monument let him not mar. If such a ruler have wisdom, and be able to keep his land in order, he shall observe the words which I have written in this inscription; the rule, statute, and law of the land which I have given; the decisions which I have made will this inscription show him; let him rule his subjects accordingly, speak justice to them, give right decisions, root out the miscreants and criminals from this land, and grant prosperity to his subjects.

Hammurabi, the king of righteousness, on whom Shamash has conferred right (or law) am I. My words are well considered; my deeds are not equaled; to bring low those that were high; to humble the proud, to expel insolence. If a succeeding ruler considers my words, which I have written in this my inscription, if he do not annul my law, nor corrupt my words, nor change my monument, then may Shamash lengthen that king's reign, as he has that of me, the king of righteousness, that he may reign in righteousness over his subjects. If this ruler do not esteem my words, which I have written in my inscription, if he despise my curses, and fear not the curse of God, if he destroy the law which I have given, corrupt my words, change my monument, efface my name, write his name there, or on account of the curses commission another so to do, that man, whether king or ruler, patesi, or commoner, no matter what he be, may the great God (Anu), the Father of the gods, who has ordered my rule, withdraw from him the glory of royalty, break his scepter, curse his destiny. May Bel, the lord, who fixeth destiny, whose command can not be altered, who has made my

kingdom great, order a rebellion which his hand can not control; may he let the wind of the overthrow of his habitation blow, may he ordain the years of his rule in groaning, years of scarcity, years of famine, darkness without light, death with seeing eyes be fated to him; may he (Bel) order with his potent mouth the destruction of his city, the dispersion of his subjects, the cutting off of his rule, the removal of his name and memory from the land. May Belit, the great Mother, whose command is potent in E-Kur (the Babylonian Olympus), the Mistress, who harkens graciously to my petitions, in the seat of judgment and decision (where Bel fixes destiny), turn his affairs evil before Bel, and put the devastation of his land, the destruction of his subjects, the pouring out of his life like water into the mouth of King Bel. May Ea, the great ruler, whose fated decrees come to pass, the thinker of the gods, the omniscient, who maketh long the days of my life, withdraw understanding and wisdom from him, lead him to forgetfulness, shut up his rivers at their sources, and not allow corn or sustenance for man to grow in his land. May Shamash, the great Judge of heaven and earth, who supporteth all means of livelihood, Lord of life-courage, shatter his dominion, annul his law, destroy his way, make vain the march of his troops, send him in his visions forecasts of the uprooting of the foundations of his throne and of the destruction of his land. May the condemnation of Shamash overtake him forthwith; may he be deprived of water above among the living, and his spirit below in the earth. May Sin (the Moon-god), the Lord of Heaven, the divine father, whose crescent gives light among the gods, take away the crown and regal throne from him; may he put upon him heavy guilt, great decay, that nothing may be lower than he. May he destine him as fated, days, months and years of dominion filled with sighing and tears, increase of the burden of dominion, a life that is like unto death. May Adad, the lord of fruitfulness, ruler of heaven and earth, my helper, withhold from him rain from heaven, and the flood of water

from the springs, destroying his land by famine and want; may he rage mightily over his city, and make his land into flood-hills (heaps of ruined cities). May Zamama, the great warrior, the first-born son of E-Kur, who goeth at my right hand, shatter his weapons on the field of battle, turn day into night for him, and let his foe triumph over him. May Ishtar, the goddess of fighting and war, who unfetters my weapons, my gracious protecting spirit, who loveth my dominion, curse his kingdom in her angry heart; in her great wrath, change his grace into evil, and shatter his weapons on the place of fighting and war. May she create disorder and sedition for him, strike down his warriors, that the earth may drink their blood, and throw down the piles of corpses of his warriors on the field; may she not grant him a life of mercy, deliver him into the hands of his enemies, and imprison him in the land of his enemies. May Nergal, the might among the gods, whose contest is irresistible, who grants me victory, in his great might burn up his subjects like a slender reedstalk, cut off his limbs with his mighty weapons, and shatter him like an earthen image. May Nin-tu, the sublime mistress of the lands, the fruitful mother, deny him a son, vouchsafe him no name, give him no successor among men. May Nin-karak, the daughter of Anu, who adjudges grace to me, cause to come upon his members in E-kur high fever, severe wounds, that can not be healed, whose nature the physician does not understand, which he can not treat with dressing, which, like the bite of death, can not be removed, until they have sapped away his life.

May he lament the loss of his life-power, and may the great gods of heaven and earth, the Anunaki, altogether inflict a curse and evil upon the confines of the temple, the walls of this E-barra (the Sun temple of Sippara), upon his dominion, his land, his warriors, his subjects, and his troops. May Bel curse him with the potent curses of his mouth that can not be altered, and may they come upon him forthwith.

SUPPLEMENTAL HISTORICAL DOCUMENT

A further account of the tryals of the New-England witches with the observations of a person who was upon the place several days when the suspected witches were first taken into examination: to which is added, Cases of conscience concerning witchcrafts and evil spirits personating men

Author: Increase Mather (1693-1723)

Date: June 10. 1692

Genre: Letter

HEre were in *Salem*, *June 10. 1692.* about 40 persons that were afflicted with horrible torments by *Evil Spirits*, and the afflicted have accused 60 or 70 as Witches, for that they have *Spectral appearances* of them, tho the Persons are absent when they are tormented. When these Witches were Tried, several of them confessed a contract with the Devil, by signing his Book, and did express much sorrow for the same, delareing also thir *Confederate Witches*, and said the Tempters of them desired 'em to sign the *Devils Book*, who tormented them till they did it. There were at the time of *Examination*, before many hundreds of Witnesses strange Pranks play'd; such as the taking Pins out of the Clothes of the afflicted, and thrusting them into their flesh, many of which were taken out again by the *Judges* own hands. Thorns also in like kind were thrust into their flesh; the accusers were sometimes *struck dumb, deaf, blind*, and sometimes lay as if they were dead for a while, and all foreseen and declared by the afflicted just before 'twas done. Of the afflicted there were two Girls, about 12 or 13 years of age, who saw all that was done, and were therefore called the *Visionary Girls*; they would say, *Now he, or she, or they, are going to bite, or pinch the Indian*; and all there present in Court saw the visible marks on the *Indians* arms; they would also cry out, *Now look, look, they are going to bind such an ones Legs*, and all present saw the same person spoken of, fall with her Legs twisted in an extraordinary manner; Now say they, we shall all fall, and immediately 7 or 8 of the afflicted fell down, with *terrible shrieks and Out-crys*: at the time when one of the Witches was *sentenc'd, and*

pinnim'd with a Cord, at the same time was the afflicted *Indian* Servant going home, (being about 2 or 3 miles out of town,) and had both his Wrists at the same instant bound about with a like Cord, in the same manner as she was when she was sentenc'd, but with that violence, that the Cord entred into his flesh, not to be untied, nor hardly cut—Many *Murders* are suppos'd to be in this way committed; for these Girls, and others of the afflicted, say, *they see Coffins, and bodies in Shrowds*, rising up, and looking on the accused, crying, *Vengeance. Vengeance on the Murderers*—Many other strange things were transacted before the Court in the time of their Examination; and especially one thing which I had like to have forgot, which is this, One of the accus'd, whilst the rest were under Examination, was drawn up by a Rope to the Roof of the house where he was, and would have been choak'd in all probability, had not the Rope been presently cut; the Rope hung at the Roof by some *invisibletye*. for there was no hole where it went up; but after it was cut the *remainder* of it was found in the Chamber just above, lying by the very place where it hung down.

In *December 1692*, the Court sate again at *Salem* in *New-England*, and cleared about 40 persons suspected for Witches, and Condemned three. The Evidence against these three was the same as formerly, so the Warrant for their Execution was sent, and the *Graves digged* for the said three, and for about five more that had been Condemned at *Salem* formerly, but were Repreived by the Governour.

In the beginning of *February 1693.* the Court sate at *Charles-Town*, where the Judge exprest himself to this effect.

That who it was that obstructed the Execution of Justice, or hindred those good proceedings they had made, he knew not, but thereby the Kingdom of Satan was advanc'd, &c and the Lord have mercy on this Country; and so declined coming any more into Court. In his absence *Mr. D* sate as Chief Judge 3 several days, in which time 5 or 6 were clear'd by Proclamation, and almost as many by Trial; so that all are acquitted.

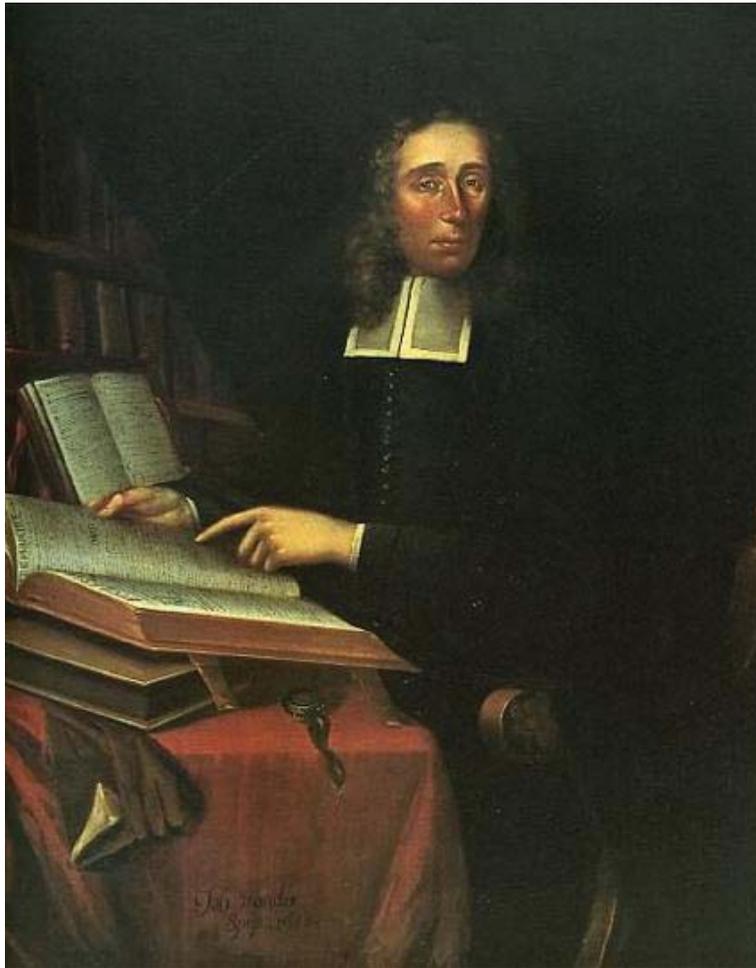
The most remarkable was an Old Woman named *Dayton*, of whom it was said, *If any in the World were a Wich, she was one, and had been so accounted 30 years.*

I had the Curiosity to see her tried; she was a decrepid Woman of about 80 years of age, and did not use many words in her own defence. She was accused by about 30 Witnesses; but the matter alledged against her was such as needed little apology, on her part not one passionate word, or immoral action, or evil, was then objected against her for 20 years past, only strange accidents falling out, after some Christian admonition given by her, as saying, *God would not prosper them, if they wrong'd the Widow*. Upon the whole, there was not prov'd against her

any thing worthy of Reproof, or just admonition, much less so heinous a Charge.

So that by the *Goodness* of God we are once more out of present danger of this *Hobgoblin Monster*; the standing Evidence used at *Salem* were called. but did not appear.

There were others also at *Charles-town* brought upon their *Tryals*, who had formerly confess'd themselves to be Witches; but upon their tryals deny'd it, and were all clear'd; So that at present there is *no further prosecution of any*.



Increase Mather. (By Joan van der Spriet.)