dayl. 3 but if de furtis who in our law is called outfang thief or [illegible] taken in the fang i.e. in the act. In the Law of England any person in the fact is termed handhabend if he hath the stolen goods upon his back. Not Manifest his hand, and backberind if they be upon his back. Not Manifest Theft is where the thief is not so discovered, or taken in the Act before he brought the thing stolen to the Designed place &c. F. Ecc. Who in our law is called outfang thief. By the laws of England, theft is Divided into simple and Compleat or Mixt Larceny. Simple Larceny is a fraudulent taking away another's goods otherways than from his person or out of his house, Cooke 3 Just. 107. Hale pl. Cr. 60. Which is subdivided into Grand and petit or petty Larceny. Grand Larceny is the stealing of goods above the Value of twelve pence. Petit or petty Larceny if the goods not Exceeding that Value. And in Scotland goods to the Value of twelve pence or under Cooke ibid. 109. Hale pl. Cr. 70. Mixt or Complicated Larceny is a fraudulent taking away one's goods from his person or out of his house, in fear, called Robbery, or without putting him in fear, called Larceny from the person which doth not put him in fear, if done privily without his knowledge, as by picking his pocket or cutting his purse and stealing from them above the Value of twelve pence, or done openly with his knowledge and in his sight, as by taking off his hat or Wig from his head and Running away with it Cooke 3 Just. 68. Hale ibid. 75.

In order to clear the punishment due to theft, I shall not offer to Discuss the question whether it be agreeable to the Reason of Justice to Inflict the pain of death for simple theft; which hath been acutely Disputed on both sides by Very Learned Lawyers, as Carpzovius (Prom. part 2. qu. 74) Harpocrat (ad S. S. Just. de obl. ex Delict) Grotius (de J. B. & P. lib. 2. c. 1. §. 9. n. 2.) Leg. Abrog. (ad d. S. S.) who plead the affirmative = wogan (de Leg. Mathaeus (de Prom. lib. 47. tit. 1 cap. 2. n. 6.) Paul Ant. Matthaeus (de Furtis lib. 1. cap. 2. n. 19.) who maintain the Negative Vool (de Statut. sect. 5 cap. 2 n. 19.) but Content my self to Notice the laws and Customs of several Nations Concerning the punishment of this Crime.

By the Law of Moses a pecuniary punishment only is appointed for theft Exod. 22. & the Israelites having a greater Interest in one another's goods, than Lucks of other Nations, as appears from their Jubilee, and their not being allowed to take pledges or Interest from borrowers. The Roman Law punish'd all theft either Privately by Restoring to the owner the things Stolen and some times the thief was Manacled for such the Value of the thing stolen from him, besides the Recovery of the thing stolen from the thief or from any person who had power & Will. Just. de obligationes Delict. Or if punished Criminally by an Arbitrary punishment Will. de furtis not Extending to life or Limb Novellae 134 cap. ult. But now the Law word in Different Countries of Scotland Distinction of Manifest and not Manifest theft, punish'd thieves Variously, some times with Death, and some times with other pains more or less severe, According as the Crimes have a greater or lesser tendency to Disturb the publick peace and quietness which is to be determined with Respect to the Offender or thing stolen, or the place and time where and when stolen, or the way and Manner of Committing the theft. In Sweden theft is not punished with death, but by a kind of perpetual slavery, the guilty person being condemned to work all his life for the King in Mines, Fortifications or other Drudgery, and having a Chain or Collar of iron about his Neck, with a Bow coming over his head, to which a bell is fashioned that rings as he goes along, Account of Sweden chap. 3. And some are of opinion that Death ought to be inflicted for a first theft, than taking away that life which perhaps is a burden to him that has nothing many Men fear hanging less than living Constantly Employed in Correction houses. We have no positive law in Scotland for punishing theft Capitally Mr Lorimer observes act 49 Parl. 1. J. 2. But that our law allows the punishing of theft with death is Clear from Reg. Buzy. cap. 124 n. 6. Where a thief is hanged for the stealing of thirty two pennies and a half penny, Stat. David 2. cap. 17 where a man Defamed for theft who cannot find surety, is to die as if the Crime was proved Against him, Reg. Maj. lib. 4 cap. 16 where none should be hanged for stealing less than two sheep and ibid. cap. 17 where a thief hanged falling from the Gallows is to be no further punished and Acts 1749 Parl. 6 Act. 160