

Parly. act 82 Parl. 11 J. 6 where Certain offenders are pun^{ish}d
with Death as thieves and from the Rubric of the act 13
Parl. 11 J. 2 which bears that forners should be punished to the
Death, Compared with the Body of that Statute which ordains
the Justice to do law upon forners, as upon a thief or Rower.
But Sir George Makenzie C. Crim. part 1 Cit. 19 5. D. thinks that
the pain of Death cannot be inflicted for simple theft, but
only for qualified theft attended with highly aggravating
Circumstances. The Punishment of theft is aggravated or
Mitigated.

1/4 With respect to the offender. Child Landd Mon.
Convicted of Common (i.e. simple) theft frequently committed
formerly incurred the pain of treason act 50 Parl. 11 J. 6
and now are punishable capitally 7 A. caps. 21 5, partly
because it is easier for such persons than others to commit
theft; partly, for that they want the Common interest of the
society or Authority to Excuse them, and therefore supposed
to be Extremely base and Malicious, and pernicious Mem-
bers of the Common Wealth. In which case they only
understood to be Landd Men who stand for theft in lands,
and not such as have only Dispositions and Carters or
Designations in their favour, or who having been once for
feists are Disposed in favour of others. Makenzie C. Crim.
part 1 Cit. 19 5. 12. Quertius if an apparent, is punishable
his forns and Retainers but not his feists, is punishable
as a Landd Man; seeing his not taking in feistment bears
his own fault, should not Defend him.

By the General Custom of several Nations, one who hath
been thrice guilty of theft committed at different times
and hath suffered punishment or been pardoned by the
Prince for the first two, is adjudged to die for the third
fault, whether these several thefts were committed
within the same jurisdiction or in different Jurisdic-
tions, Hosp. Garin. de furtis q. 167 n. 48 1499. and
M. Att. de Crim. lib. 47 Cit. 1 caps. 3 n. 10. Groswogge
de leg. abrogat 55 Jus. de obli. que ex Delict. de Ver-
Comm. ad Cit. de furtis n. 18. Because he who hath
often committed the same Crime is hardened in crime,

and supposed to make a Trade of it. Child Custom idem
observed in Scotland, where the third theft is capital, tho the
last thing stolen be very inconsiderable value, as the 513.
Person convicted of burning Yeards and stealing wood
hives, being again found guilty of breaking several
Yeards and stealing wood hives, was adjudged to be hangd
25 July 1623 John Reid W. Alexander Deane Pickins and
Potty thieving by one Field and reputed an Egyptian 14 De-
cember 1698 Bailid Egyptians & Or by a person guilty of Com-
mon theft and Common Robb of theft 1 July 1679 John Lindsay
12 December 1698 Hamilton alias fearful 3 Young who
made a Trade of it is punishable with Death. Albeit
by the Civil law Domestic theft was not to be punished
publicly, but left to be punished privately by the Mas-
ter of the family according to his Discretion, C. 11 51 5. 10
Lor of the family according to his Discretion, C. 11 51 5. 10
penal l. 17 pr. l. 36 51. 80 50 Furs. Vol Nov. General by the
Custom of Nations Domestic theft, as when a servant
misemploys or spends money wrongfully on his Masters
Account, or sells his Masters horse with which he was put
to a friend, or other ways Embowels his Masters goods, or
when a traveller steals from his host, he is punishable
with Death. Gil. Blas. forend. lib. 5 5. firstum n. 22 Camp
200. Crim. part 2 q. 82 n. 55 8 1499. Gulor Cod. lib. 5
Cit. de penal. Tit. 2. Boer. Deud. 316. And. Matth. ibid.
n. 2. 3. Groswogge ad 512 Jus. de obli. que ex Delict.
Because it is more heinous than ordinary thefts, by being
best guarded against and aggravated with the Breach
of trust and friends ship. Child a servant was bound to
be rewarded for stealing a Coffin with write in her Masters
house 22 June 1659 Grizol Mattheus. Head sustaine
Relevant to infer the pain of Death th against a servant
found who a sleep broke up his Masters Closet and stole
further thereof Monney and prints. But it was not just tan-
ced to infer that he had some Cloath and Arms out
of his Masters house, unless it were qualified that