

vnder value the least degree of those Offences: they haue xij^d for an Oathe: 5^s for Drunkenesse &c, but for all great Offences & misdemeanors, as periurye, fforgerye, Conspiracyes, Cousenages, oppression, Riott, Batteryes, & other breaches of the Peace &c: there is no penaltie prescribed: how it is in other States in Europe, I cannot relate (because we knowe not their Lawes) otherwise than what appears in their Histories, where we finde Some great offences punished, by the discretion of their Iudges.

Iustice ought to render to everye man accordinge to his deservinge, eye for eye, hand for hand, etc: & Luk: 12: 47: the servant, who transgressed ag^{te} knowledge was to be beaten with more stripes than he who transgressed of ignorance: If we had a Lawe, that every lye should be punished 40^s, & 2 offenders should be convicte at the same tyme: the one a youthe of Honest conversation, never known to lye before: & now suddainly surprized with feare of some discredit, had tould a lye wherein was no danger of harm to any other: The other an olde notorious lyar: & his lye contrived of purpose for a pernicious ende: It were not juste to punish bothe these alike. As 40^s were too little for the one, soe it were too muche for the other. Besides penalties (we knowe) cōminge of *pœna*, should cause paine or greife to the offenders. It must be an Affliction, yet not a destruction except in capitall or other haynous Crimes: but in prescript penalties Auty^e shoots at adventure; if the same penalty hitti a Riche man, it paines him not, it is no Affliction to him; but if it lights vpon a poore man, it breakes his back.

Everye Lawe must be Iust in everye pte of it, but if the penaltie anixed be uniust, how can it be held forthe as a Iust Lawe? To prescribe a penaltie, must be by some Rule, other wise it is an vsurpation of Gods prerogative: but where the Lawe makers, or Declarers canot finde a Rule for prescribinge a penaltie, if it come before the Iudges *pro re nata*, there it is determinable by a certaine Rule, viz: by an ordinance sett up of God for that purpose, w^{ch} hathe a sure promise of Divine assistance, Exo: 21: 22: Deut: 16: 18: Iudges & Officers shalt thou make &c, & they shall Iudge the people wth Iust Iudgm^t: Deut: 25: 1: 2: & 17: 9: 10: 11. If a Lawe were made that if any man were founde drunken he should be punished by the Iudges according to the meritt of his offence: this is a Just Lawe, because it is warranted by a Rule: but if a certaine penaltie were prescribed, this would not be iust, because it wants a Rule, but when suche a case is brought before the Iudges, & the qualite of the pson & other circumstances consid-