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**“A History of the Anglican Church—Part XXXI:
An Essay on the Role of Christian Lawyers and Judges within the
Secular State”©**

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The ideas expressed in this Apostolate Paper are wholly those of the author, and subject to modification as a result of on-going research into this subject matter. This paper is currently being revised and edited, but this version is submitted for the purpose of sharing Christian scholarship with clergy, the legal profession, and the general public.

INTRODUCTION¹

We now return to St. Augustine of Hippo's central theme of *The City of God*, namely, that God's providence governs the affairs of secular kingdoms, nations, and empires; that the fall of the Roman empire was due in large measure to a widespread failure of Rome's leaders to regulate and abate widespread immorality, licentiousness, infidelity, injustice, and crime; and that no nation can long exist without fundamental law and establishing true justice. See, below, Appendix A, "St Augustine on the Rise and Fall of the Roman Empire: A Theory of Western Constitutional Law."

For this reason, when organizing their colonial government charters and founding documents, the Puritans of colonial New England, who were deeply Mosaic and Calvinistic, adhered largely to Augustinian political theory and philosophy. As this paper reveals throughout the pages that follow, the Puritans of Massachusetts, Connecticut, New Hampshire and Rhode Island wrote the first written constitutions in North America. These documents set forth new and novel ideas such as individual rights, as well as traditional ideas about the sovereignty of God and Providence. Here, we are focusing our attention to the founding documents of two regions of seventeenth-century British North America: the Virginia colony² and the New England colonies of Massachusetts, Connecticut, New Hampshire, and Rhode Island. I believe that the founding documents of these two regions reflect the religious attitude of their constituents regarding the nexus between church and state as well as the Christian foundations of constitutional law and government. Only about eighty years separate the American Revolutionary

¹ This paper is dedicated to President Kenneth Talbot of the **Whitefield College and Theological Seminary** in Lakeland, Florida. Dr Talbot is an ordained minister in the Reformed Presbyterian Church and a life-long student of Calvinist or Reformed-Church covenant theology, and Church-State theory, philosophy, and jurisprudence. I am honored to study with Dr. Talbot as a post-doctoral fellow at the Whitefield Theological Seminary.

² Although not geographically a part of New England, the colony of Virginia was indeed a "sister" colony of the Massachusetts Bay Colony and shared many of the same cultural and theological influences. In fact, when the Mayflower ship landed at Plymouth Rock in 1620, it had been originally trying to reach northern Virginia but has sailed off course too far north.

war period (1775-1783) from the period of early colonial America (i.e., the period 1600-1700). And the Puritan and “catholic-Anglican” foundations of American constitutional law are readily apparent, by comparing the Puritan constitutional documents of the 1600s with the American *Declaration of Independence* (1776) and *Constitution of the United States* (1787). Indeed, Dr. Loraine Boettner, in his essay “Calvinism in America,” writes:

When we come to study the influence of Calvinism as a political force in the history of the United States we come to one of the brightest pages of all Calvinistic history. Calvinism came to America in the Mayflower, and Bancroft, the greatest of American historians, pronounces the Pilgrim Fathers ‘Calvinistic in their faith according to the straightest system.’ John Endicott, the first governor of the Massachusetts Bay Colony; John Winthrop, the second governor of that Colony; Thomas Hooker, the founder of Connecticut; John Davenport, the founder of the Rhode Island Colony, were all Calvinists. William Penn was a disciple of the Huguenots. It is estimated that of the 3,000,000 Americans at the time of the American Revolution, 900,000 were of Scotch or Scotch-Irish origin, 600,000 were Puritan English, and 400,000 were German or Dutch Reformed. In addition to this the Episcopalians had a Calvinistic confession in their Thirty-Nine Articles; and many French Huguenots [Frenchmen who were Calvinists] also had come to his western world. Thus we see that about two-thirds of the colonial population had been trained in the school of Calvin. Never in the world’s history had a nation been founded by such people as these.³

Indeed, as Dr. Boettner also points out, “Calvinism was revolutionary”⁴ when juxtaposed against the backdrop of a society that was organized around the “divine right of kings.”⁵ And Calvinism, like Lutheranism, was a branch of Augustinian theology and political theory, as reflected in St. Augustine’s central theme in *The City of God* regarding the rise and fall of the Roman Empire.

³ Kenneth Talbot, Gary Crampton, and James Kennedy, *Calvinism, Hyper-Calvinism and Arminianism: A Theological Primer* (Whitefield Media Publishing: Lakeland, Fl., 1990), p. 127.

⁴ *Ibid.*, p. 136.

⁵ *Ibid.*, pp. 127-141.

In these difficult days of the American Republic where the Church has become subordinate to the State, and where both the State and the Church have become subordinate to conglomerate Capitalism, the reverence and respect for the sovereignty of God, who is earth's supreme and sovereign Lord, have become significantly curtailed and diminished. And today, "the laws of nature and of Nature's God," as acknowledged in the American *Declaration of Independence*, no binds or governs the judgment of American lawyers and judges or have meaningful significance within American constitutional jurisprudence. Unlike the Puritans of colonial New England, many Western and American constitutional lawyers and judges ignore the essential truths of the Christian religion regarding human nature and its influence upon the rise and fall of nations. These lawyers and judges tend to separate the essential truths of the Christian faith from the essential mandates of secular American jurisprudence, because, they say, the "doctrine of separation of church and state" are constitutionally mandated through the First Amendment's "wall of separation."

But the central theme of St. Augustine's *The City of God* teaches us that such an approach to law and jurisprudence—particularly constitutional law—is both dangerous and wrong. A "truth" that is also a deeply-held religious truth of a particular faith tradition, such as Judaism or Christianity, ought not, on the basis of religion alone, be ignored or rejected by the secular legal system (e.g., the bar and bench)! Indeed, it is very important that American lawyers and judges acknowledge the "catholic" Christian "truths" of American constitutional law, as set forth in both the *Declaration of Independence* and the *U.S. Constitution*. For instance, as Anglican priest Algernon Sidney Crapsey once stated:

When the Constitutional Convention of 1787 sent forth the Constitution which it devised for the government of the nation it did so in these words: 'We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our children, do ordain and establish this Constitution for the United States of America.' Now can any man write a more perfect description of the Kingdom of God on earth or in the heaven than is to be found in these words?

A government resting upon such principles as these is not a godless policy; it is a holy religion....

When the people of the United States decreed by constitutional amendment that the government should never by law establish any religion, they did actually establish the only religion that could comprehend in its membership the whole American people.⁶

For this reason, I have set forth in this paper, together with an appendix of exhibits, the fundamental Christian ideals that undergirded the first constitutional charters of colonial New England and in British North America up to the year 1700.

SUMMARY

St. Augustine of Hippo's *The City of God* thoroughly vetted pagan Greco-Roman culture and excoriated the moral relativism, criminal tendencies, and lasciviousness of the ancient Roman world. The Roman Empire had fallen, wrote St. Augustine, because the Romans had failed to adhere to a stern morality that would prevent social ruin and collapse and to govern the Roman Empire according to God's Will. When the Protestant Reformers emerged during the late sixteenth and early seventeenth centuries, they adopted St. Augustine's view of the Bible and of history; and when separating from the Roman Catholic Church, they sought to establish both state-operated national churches and Christian-based secular governments. The Lutherans and Calvinists of Northern and Central Europe, together with the Anglicans and Puritans of England and British North America, did not recognize the doctrine which is today called "separation of church and state." In colonial Rhode Island, where the doctrine of "separation of church and state" was perhaps first originated, and where "freedom of conscience" became the fundamental law of the colony, the "Christian religion" was still held to be the official religion of the colony, and Rhode Islanders retained the right "to defend themselves, in their just rights and liberties, against all the enemies of the Christian faith."⁷ In Massachusetts and Connecticut, the first written constitutional charters in the history of the world were promulgated and published, and these documents

⁶ Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker, 1905), pp. 305-306.

⁷ See, e.g., Appendix I: Royal Charter of 1663 [Rhode Island].

were both Calvinist memorials of Protestant government and expressly Christian constitutions.

Part XXXI. Anglican Church: “Puritanism and the Constitutional Laws of Colonial New England, 1600-1700”

The Puritan foundations of American constitutional law are readily apparent in the first constitutional charters of colonial New England, by comparing the Puritan constitutional documents of the 1600s with the American *Declaration of Independence* (1776) and *Constitution of the United States* (1787). Premised upon “covenant theology,” Puritan constitutional charters were deeply rooted in a belief in the governing authority of Divine Providence. Like St. Augustine of Hippo, the Puritans did not believe that God’s sovereignty was restricted to an individual’s personal conscience or to the ecclesiastical realm alone, but rather they held to the view that God’s sovereignty reigned supreme over kingdoms, nations, and the entire world.

The Puritans also believed that God’s sovereignty mandated a “covenantal relationship” with Christian kingdoms and Christian nations; that the secular civil magistrate’s authority was therefore ordained by God; that the Christian faith was the revealed “truth” of God and as such the official religion of the body politic; and that all human laws must be subordinate to the fundamental moral law of God. For the Puritans of colonial New England, the idea of the separation of church from the state was not a wholly foreign idea, because through fleeing Roman Catholicism and High Church Anglicanism and settling in the New World, *the Puritans generally did not wish for church officials to share the same offices as the civil magistrate, and vice versa*; and so, to a degree, some form of church-state separation had already been instituted even among the Puritans. But the Puritans of colonial New England never wished for the civil magistrate to operate outside of the moral law and sovereignty of God.

With the exception of the Virginia Charter of 1606, each of the following constitutional charters reflects Puritan ideas and ideals about constitutional law. The Virginia Charter of 1606 was more or less an economic document, but it too acknowledged the Christian religion as the official faith of the colony.

Virginia Charter of 1606

The governing documents of colonial Virginia were Anglican in form. *Although not geographically a part of New England, the colony of Virginia was indeed a “sister” colony of the Massachusetts Bay Colony and shared many of the same cultural and theological influences.* In fact, when the Mayflower ship landed at Plymouth Rock in 1620, it had been originally trying to reach northern Virginia but has sailed off course too far north.

The first charter of colonial Virginia was ratified as a Christian colony in 1606 by King James I of England, Scotland, France and Ireland, as “Defender of the Faith,” with an expressed purpose of the Virginian colonists to, among other things, “greatly commending and graciously accepting of their desires to the furtherance of soe noble a worke which may, by the providence of Almighty God, hereafter tende to the glorie of His Divine Majestie in propagating of Christian religion to suche people as yet live in darknesse and miserable ignorance of the true knoweledge and worshippe of God and may in tyme bring the infidels and salvages living in those parts to humane civilitie and to a setled and quiet govermente, doe by these our lettres patents graciously accepte of and agree to their humble and well intended desires....” See, e.g., Appendix B.

Through this colonial document, the Virginia colony was established as a Christian and commercial “outpost” of England. Similar to the American *Declaration of Independence* and the preamble of the *United States Constitution*,⁸ the 1606 Virginia charter stated: “And wee doe alsoe ordaine, establishe and agree for [us], our heires and successors, that eache of the saide Colonies shall have a Counsell which shall governe and order all matters and causes which shall arise, growe, or happen to or within the same severall Colonies, according to such lawes, ordinannces and instructions as shalbe in that behalfe, given and signed with our

⁸ The American Declaration of Independence (1776) states: “When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government....”

The Preamble of the U.S. Constitution (1787) states: “ We the People of the United States, in Order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

hande or signe manuell and passe under the Privie Seale of our realme of Englande....” See Appendix B.

B. The Mayflower Compact of 1620

The Mayflower Compact of 1620 was created by English Calvinists who were Puritans within the Church of England. Similar to the *American Declaration of Independence* (1776)⁹ and the *U.S. Constitution* (1787)¹⁰, the Puritan Mayflower Compact set forth political objectives that acknowledged the sovereignty of God and the divine ordination of civil government to establish “just and equal Laws, Ordinances, Acts, Constitutions,” etc., etc. See, e.g., Appendix C.

The expressed language of the Mayflower Compact states: “We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King *James*, by the Grace of God, of *Great Britain, France, and Ireland*, King, *Defender of the Faith, &c.* Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of *Virginia*; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience.” Appendix B.

C. The Massachusetts Bay Charter of 1629

The Puritans of Massachusetts believed in God’s covenantal relationship with his elect peoples and that the civil government must operate under God’s divine providence. Nevertheless, their governing documents did not always mention God or acknowledge His Providence. For example, unlike the Virginia Company Charter of 1606 and the Mayflower Compact of 1620, the Massachusetts Bay Charter of 1629 does not mention divine providence or God, but it does utilize the word “ordain” to establish what is apparently a thoroughly secular political compact. Its expressed language deals with the duties of constitutional officers,

⁹ Ibid.

¹⁰ Ibid.

such as the office of governor. Its tone and content have none of the language that relates to natural law or God, as is expressed in the *Declaration of Independence* (1776); however, its subject matter is a close resemblance of the substance and subjects that are enunciated in the *U.S. Constitution* (1787).

D. The Massachusetts Body of Liberties of 1641

Most Puritan constitutional documents, such as the Massachusetts Body of Liberties of 1641, openly acknowledge God's Providence and Will and officially embraced the Christian religion as the official religion of the state government. For example, the Massachusetts Body of Liberties of 1641, which was written by a Cambridge-University trained Puritan lawyer named Nathaniel Ward (1578- 1652), captures the essence of the Calvinist and Puritan ideal of constitutional law. It is a constitutional document that establishes the Christian religion as the foundation of both Church and State; but, so as to implicitly adopt Calvin's "two tables" theory of civil government, the Body of Liberties also separates the powers of both Church and State. The body of this document also contains explicit references to the Old Testament Law, such as Leviticus, Numbers, and Deuteronomy. *Most significantly, the Body of Liberties, while relying on Augustinian-Calvinist ideals, is the first document in colonial America that specifically enumerates individual rights and liberties.*

A brief history of the Massachusetts Body of Liberties of 1641 states:

The **Massachusetts Body of Liberties** was the first legal code established in New England, compiled by Puritan minister Nathaniel Ward. The laws were established by the Massachusetts General Court in 1641. The Body of Liberties begins by establishing the exclusive right of the General Court to legislate and dictate the "Countenance of Authority".

In 1684, King Charles II revoked the Body of Liberties and reinstated English law over the Commonwealth. King James II established the Massachusetts Colony, and the Body of Liberties took effect and remained so until it was replaced by the 1691 Provincial Charter.

Though towns such as Dedham and Watertown had already established them, the Body of Liberties recognized boards of selectmen for the first time.

Rights acknowledged by the Body of Liberties

The Body of Liberties was one of the earliest protections of individual rights in America.^[3] Unlike many of the English sources of the time, the Body of Liberties were express in many of their grants and far more supportive of individual rights.^[3] Despite these grants, the rights were modifiable by the General Court.

To varying degrees, the document contained rights that would later be included in the Bill of Rights. Many of the other rights are now considered fundamental components of procedural due process, such as rights to notice and hearing before the court. The rights also contained in the Bill of Rights included freedom of speech, a right against uncompensated takings, a right to bail, a right to jury trial, a right against cruel and unusual punishment, and a right against double jeopardy.

In addition to those, the Body of Liberties also contained other individual rights, including: a prohibition of a compulsory draft except for territorial defense; a prohibition of monopolies, "No monopolies shall be granted or allowed amongst us, but of such new Inventions that are profitable to the Countrie, and that for a short time."; prohibition of an estate tax; the freedom of all "house holders" to fishing and fowling on public land; and a declaration that a married woman should be "free from bodilie correction or stripes by her husband."

The Body of Liberties also contained regulations against "Tirranny or Crueltie" toward domestic animals, which were the first American modern animal protection laws.

Some of the liberties legislated are explicitly cited as originating from biblical sources. While many of the liberties established still exist in both and law and practice in the Commonwealth today, some do not. The justification for slavery of Africans in Passage 91 of the Body of Liberties was likely based on an interpretation of scriptural passages of the New Testament, such as Ephesians 6:5 and Titus 2:9. Liberties were only extended to Caucasian Northern Europeans, mainly Protestant Christian men.

E. Massachusetts General Laws and Liberties, 1647

Similar to the Massachusetts Body of Liberties of 1641, the “Massachusetts General Laws and Liberties of 1647” carries forth the legal tradition of the Calvinist Puritans and the Anglican Church, in that it places the Christian religion at the foundation of the colonies’ fundamental constitutional laws. The drafters of the documents explicitly acknowledge their references and reliance upon the Holy Scriptures, through the advice of Church Elders: “For this end about nine years wee used the help of some of the Elders of our Churches to compose a modell of the Judiciall lawes of Moses with such other cases as might be referred to them, with intent to make sure of them in composing our laws....”

Furthermore, and significantly, the drafters explicitly acknowledge, in the same vein as does St. Augustine in *The City of God*, that the God of Israel is the sovereign God of the political organizations. The drafters of the “General Laws and Liberties” predicated its subsequent enactments upon the entire Biblical text of the Mosaic Law. This document explicitly states that its objective is to (a) establish a state church and (b) a civil government, which comport with the mandates of the Holy Scriptures:

The Inhabitants of the Massachusets, the Governour, Assistants and Deputies assembled in the Generall Court of that Jurisdiction with grace and peace in our Lord Jesus Christ. So soon as God had set up Politicall Government among his people Israel hee gave them a body of lawes of judgement both in civil and criminal causes. These were brief and fundamental principles, yet withall so full and comprehensive as out of them clear deductions were to be drawne to all particular cases in future times. For a Common-wealth without lawes is like a Ship without rigging and steeradge. Nor is it sufficient to have principles or fundamentalls, but these are to be drawn out into so many of their deductions as the time and condition of that people may have use of. And it is very unsafe & injurious to the body of the people to put them to learn their duty and libertie from generall rules, nor is it enough to have lawes except they be also just. **Therefore among other priviledges which the Lord bestowed upon his peculiar people, these he calls them specially to consider of, that God was neerer to them and their lawes were more righteous then other nations. God was sayd to be amongst them or neer to them because of his Ordnances established by himselfe, and their lawes righteous because himselfe was their Law-giver: yet in the**

comparison are implied two things, first that other nations had something of Gods presence amongst them. Secondly that there was also somewhat of equitie in their lawes, for it pleased the Father (upon the Covenant of Redemption with his Son) to restore so much of his Image to lost man as whereby all nations are disposed to worship God, and to advance righteousnes: Which appears in that of the Apostle Rom. 1. 21. They knew God &c: and in the 2. 14. They did by nature the things contened in the law of God. But the nations corrupting his ordinances (both of Religion, and Justice) God withdrew his presence from them proportionably whereby they were given up to abominable lusts Rom. 2.21. Whereas if they had walked according to that light & law of nature might have been preserved from such moral evils and might have enjoyed a common blessing in all their natural and civil Ordinances: now, if it might have been so with the nations who were so much strangers to the Covenant of Grace, what advantage have they who have interest in this Covenant, and may enjoye the special presence of God in the puritie and native simplicitie of all his Ordinances by which he is so neer to his owne people. *This hath been no small priviledge, and advantage to us in New-England that our Churches, and civil State have been planted, and growne up (like two twinnes) together like that of Israel in the wilderness by which wee were put in minde (and had opportunitie put into our hands) not only to gather our Churches, and set up the Ordinances of Christ Jesus in them according to the Apostolick patterne by such light as the Lord graciously afforded us: but also withall to frame our civil Politie, and lawes according to the rules of his most holy word whereby each do help and strengthen other (the Churches the civil Authoritie, and the civil Authoritie the Churches) and so both prosper the better without such emulation, and contention for priviledges or priority as have proved the misery (if not ruine) of both in some other places.*

F. The Fundamental Orders of Government, 1639 [Connecticut]

Similar to Massachusetts' founding constitutional charters, the Fundamental Orders of Government for the colony of Connecticut is explicitly Christian, Calvinist, and Puritan; and it clearly reflects the Mosaic Law as enunciated in the Penteteuch; as well as the "catholic" Christian philosophy of St. Augustine of Hippo, as enunciated in *The City of God*. The "Fundamental Orders"

acknowledges God’s Divine Providence as the foundation of constitutional law and government. The Preamble to the “Fundamental Orders” states:

FORASMUCH as it hath pleased the Almighty God by the wise disposition of his divine providence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Harteford and Wethersfield are now cohabiting and dwelling in and upon the River of Connecticut and the Lands thereunto adjoining; And well knowing **where a people are gathered together the word of God requires that to maintain the peace and union of such a people there should be an orderly and decent Government *established according to God***, to order and dispose of the affrays of the people at all seasons as occasion shall require; do therefore associate and connive ourselves **to be as one Public State or Commonwealth**; and do, for ourselves and our Successors and such as shall be adjoined to us at any time hereafter, enter into Combination and Confederation to gather, **to maintain and pressure the liberty and purity of the gospel of our Lord Jesus which we now profess, as also the discipline of the Churches**, which according to the truth of the said gospel is now practised amongst vs; **As also in our Civil Affairs to be guided and governed according to such Laws, Rules, Orders and decrees as shall be made, ordered & decreed**, as followeth....

G. Agreement of the Settlers of Exeter, 1639 [New Hampshire]

The charter of New Hampshire of 1639 reflects a conceptualization of wholesome civil government that is expressed in St. Augustine’s *The City of God*. This charter is thoroughly “Anglican” in form and content, and the people of New Hampshire patterned their laws after the Massachusetts Bay Colony. Indeed, these New Englanders considered themselves to be “Brethern of the Church [of England]” and they expressly acknowledged their due allegiance to King Charles I. See Appendix H, “Agreement of the Settlers of Exeter.” Most significantly, they conceptualized law and government as necessarily subordinate to the “holy Will of God” in order for the colony to have “wholesome Lawes and Civil Government among us.” They committed themselves to submitting themselves “to such Godly and Christian Lawes as are established in the realm of England to our best Knowledge.” Its leaders committed themselves “to our best discerning agreeable

to the Will of God professing ourselves Subjects to our Sovereign Lord King Charles according to the Libertyes of our English Colony of Massachusetts, and binding of ourselves solemnly by the Grace and Help of Christ and in His Name....”

H. Patent for Providence Plantations, 1643 [Rhode Island]

Rhode Island’s “Patent for Providence Plantations” was similar to the Virginia colony’s 1606 charter and to the Massachusetts Bay Charter of 1629. This Patent appears on its face to be a purely secular document, with no references to the Christian faith whatsoever. But we may safely conclude that its fundamental mandate was “Anglican” in scope, because as this Patent stated: “Provided nevertheless, that the said Laws, Constitutions, and Punishments, for the Civil Government of the said Plantations, **be conformable to the Laws of England**, so far as the Nature and Constitution of the place will admit.” Thus by this language, “be conformable to the Laws of England,” we may deduce that the English Common Law, wherein which the Christian religion was deeply-rooted, was codified as the law of the Providence Plantations.

I. Royal Charter of 1663 [Rhode Island]

The Royal Charter of 1663 is perhaps the most Protestant of all the early colonial charters. It explicitly disdains the imposition of the Church of England upon the religious liberties of dissenters, but at the same time established the Christian faith as the foundation of justice and liberty. “Religious liberty” thus appears in this document to have a dual meaning: on the one hand, it allows for the freedom of conscience of any person who does not incite or cause civil unrest or disturb the peace, or who does not promote licentiousness or moral turpitude; but on the other hand, it also explicitly acknowledges that the Christian religion is the foundation of true liberty and gives citizens the fundamental right “to defend themselves, in their just rights and liberties, against all the enemies of the Christian faith.” This point of view as to Christian foundations of the civil government is expressed in St. Augustine’s *The City of God*, and was also adopted by the Puritan reformers, including Roger Williams, who was one of the founding father of the Rhode Island colonies. The original idea of “separation of Church and State,” as expressed in the so-called “Rhode Island experiment,” was thus “Pan-Christian” in conception, meaning that “freedom of religion” essentially meant the freedom of Protestant Christian dissenters to co-exist under one civil government, without coercion from one state Church or sect, such as the Church of England, and with

the fundamental right to defend against enemies of the Christian faith. The section of Royal Charter which addresses “Religions freedoms” states:

Religious freedoms

And whereas, in their humble address, they have freely declared, that it is much on their hearts (if they may be permitted) to hold forth a lively experiment, that a most flourishing civil state may stand and best be maintained, and that among our English subjects, with a full liberty in religious concernments and that true piety rightly grounded upon gospel principles, will give the best and greatest security to sovereignty, and will lay in the hearts of men the strongest obligations to true loyalty.

Now, know ye, that we, being willing to encourage the hopeful undertaking of our said loyal and loving subjects, and to secure them in the free exercise and enjoyment of all their civil and religious rights, appertaining to them, as our loving subjects and to preserve unto them that liberty, in the true Christian faith and worship of God, which they have sought with so much travail, and with peaceable minds, and loyal subjection to our royal progenitors and ourselves, to enjoy; and because some of the people and inhabitants of the same colony cannot, in their private opinions, conform to the public exercise of religion, according to the liturgy, forms and ceremonies of the Church of England, or take or subscribe the oaths and articles made and established in that behalf; and for that the same, by reason of the remote distances of those places, will (as we hope) be no breach of the unity and uniformity established in this nation: Have therefore thought fit, and do hereby publish, grant, ordain and declare, that our royal will and pleasure is, that no person within the said colony, at any time hereafter shall be any wise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion, and do not actually disturb the civil peace of our said colony; but that all and every person and persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his and their own judgments and consciences, in matters of religious concernments, throughout the tract of land hereafter mentioned, they behaving themselves peaceably and quietly, and not using this liberty to licentiousness and profaneness, nor to the civil injury or outward disturbance of others, any law, statute, or clause therein contained, or

to be contained, usage or custom of this realm, to the contrary hereof, in any wise notwithstanding.

And that they may be in the better capacity to defend themselves, in their just rights and liberties, against all the enemies of the Christian faith, and others, in all respects, we have further thought fit, and at the humble petition of the persons aforesaid are graciously pleased to declare, That they shall have and enjoy the benefit of our late act of indemnity and free pardon, as the rest of our subjects in other our dominions and territories have; and to create and make them a body politic or corporate, with the powers and privileges hereinafter mentioned.

CONCLUSION

American constitutional law is deeply-rooted in the “catholic” Christian tradition, as reflected in St. Augustine of Hippo’s *The City of God* as well as several of the governing documents of colonial Virginia and New England. The moral lessons of the Old Testament and of the Mosaic Law, together with the moral lessons regarding the rise and fall of the Roman Empire, as recounted in St. Augustine’s *The City of God*, had served as the foundation of Western political theory as well as of England’s “fundamental law” for several centuries prior to the settlements of colonial Virginia and colonial New England. The Book of Deuteronomy, for instance, firmly established God’s moral law and covenant for nations and nation-states to follow, the Puritans of Colonial New England did not hesitate in recounting the Providence and Sovereignty of God in their written constitutional documents. Puritan political theory and philosophy likewise thoroughly incorporated the Mosaic covenantal theory of good and evil into their constitutional documents and states. And they often referenced biblical citations in their statutory regulations.

That the Christian faith was thoroughly sewn into colonial America’s constitutional law is also exemplified by the fact that the Anglican settlers in Virginia and other parts of North America had no conception of separating their church from the state, in the modern sense of the term “separation of church and state.” Just as in sixteenth, seventeenth, and eighteenth-century England, the churches in colonial North America were an officially-state run institution that was an integral part of the state. Throughout the seventeenth- and eighteenth-centuries, the church-state regimes established in the original thirteen American colonies were patterned after those of seventeenth-century England and the Church of England. Each of the original thirteen colonies of British North America had state-supported churches,

and had firmly established the Christian faith as the official state religion of their respective colonies:

1607 -- Virginia
1626 -- New York
1630 -- Massachusetts
1633 -- Maryland
1636 -- Rhodes Island
1636 -- Connecticut
1638 -- New Hampshire
1653 -- Delaware
1663 -- North Carolina
1664 -- New Jersey
1682 -- South Carolina
1732 -- Georgia

In keeping with the established tradition of the Church of England, most of the first residents of colonial British North America generally believed that the church and the state were two sides of the same coin. In fact, as many of their founding documents reflect, most of these first settlers in British North America believed firmly that the state was ordained by God; that it must adopt the “law of Christ”¹¹ as its fundamental law; and that in order to do justice and judgment, it must likewise establish the Christian faith as the official state religion throughout their respective colonies.¹²

But, additionally, if we consider the historical Calvinist view of American history, as espoused by the great American historian Bancroft, we should also here acknowledge that fully two-thirds of the Revolutionary-War generation were Calvinists or had deep Calvinist influences through the Baptist, Congregational, or Presbyterian churches of that era.¹³ “In England and America,” writes Dr. Boettner, “the great struggles for civil and religious liberty were nursed in Calvinism, inspired by Calvinism, and carried out largely by men who were Calvinists.... We live in a day when the services of the Calvinists in the founding of this country have been

¹¹ The Law of Christ is to “love ye one another” (John 15:12); to do justice and judgement (Genesis 18:18-19; Proverbs 21: 1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3).

¹² Perhaps most revealing is the colony of Rhode Island where religious freedom was championed. Even in Rhode Island, the Christian religion was firmly established as the “true faith” and its citizens retained a fundamental right to defend against any enemies of the Christian faith. See, e.g., Royal Charter of 1663 for Rhode Island.

¹³ Kenneth Talbot, Gary Crampton, and James Kennedy, *Calvinism, Hyper-Calvinism and Arminianism: A Theological Primer* (Whitefield Media Publishing: Lakeland, FL, 1990), pp. 127-141.

largely forgotten, and one can hardly treat of this subject without appearing to be a mere eulogizer of Calvinism. We may well do honor to that Creed which has been borne such sweet fruits and to which America owes so much.”¹⁴

Indeed, the influence of Calvinism upon establishing the constitutional foundation of the Declaration of Independence and the United States Constitution was profound; and Calvinism, like Lutheranism, was a branch of Augustinian theology and political theory, as reflected in St. Augustine’s central theme in *The City of God* regarding the rise and fall of the Roman Empire.

THE END

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¹⁴ Ibid., p. 136.

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APPENDIX A: “St Augustine on the Rise and Fall of the Roman Empire: A Theory of Western Constitutional Law”

by

Roderick O. Ford, Litt. D.

The Church of England was a constituent part of the Western Church, with deep roots in the Roman Catholic Church. Therefore, when Henry VIII and Elizabeth I brought the Church of England into existence during the hey-day of the Protestant Reformation, it contained many elements of the Protestant Faith: Anglicanism, Puritanism, Baptist theology, Independent theological doctrines, etc. Regardless, all Anglicans uniformly accepted certain fundamental aspects of the Western Church’s established Creeds, such as the Nicene Creed; and certain theological doctrines of the Western Church’s Fathers, particularly those voluminous writings of St. Augustine of Hippo. When the Protestant Reformation was being launched, a humanist revival was also being created through the rediscovery of Aristotle and the Greco-Roman classics. But instead of using the rediscovered pagan classics to undermine the Christian faith, most of the humanists looked to men like St. Augustine of Hippo and St. Thomas Aquinas for guidance with synthesizing these Greco-Roman classics into their catholic Christian identities. Significantly, the rediscovery of the Greco-Roman pagan classics created “Christian humanists”—not secular humanists. The Italian Renaissance was thus scientific, secular, and catholic Christian. In essence, the pagan worlds and the Christian worlds collided and formed a new synthesis of culture, law and theology. The result was the Protestant Reformation. And, above all, St. Augustine of Hippo’s writings and philosophy, which Proteste Reformers Martin Luther and John Calvin heavily relied upon, reigned supreme. Hence, it is safe to conclude that St. Augustine was a founding father of the Protestant Reformation. For, as Professor Mark Vessy’s “Introduction” to St. Augustine’s *Confessions* states:

Augustine was renowned in the Latin-speaking world as a founding father of Christian theology, but his influence proceeds far beyond that. In the *Confessions*, Augustine broke ground by exploring his chosen topic—faith in God—using a tool that had little precedent in prior scholarship: his own life. Equally important, Augustine found room in the young Christian religion for the highly evolved thought of the so-called pagan philosophers, particularly Plato. This may seem simple enough on its face, but, without exaggeration, Augustine was centuries ahead of his time. The personal nature of the *Confessions* gave everyday relevance to the more abstract elements of Platonic thought and Christian theology, *bringing the rival philosophies into harmony and delivering them to millions of readers. Weaving together introspection, classical learning, and faith, Augustine outlined the underpinnings of the Renaissance in Europe, two centuries that followed the Middle Ages and were marked by a ‘rebirth’ of classical values and humanism, the belief in the dignity of each member of the human race. The Renaissance, according to many scholars, began on the spring day in 1336 when a young poet named Petrarch opened a copy of the Confessions and found in it a justification for scanning his own consciousness rather than searching the world for answers to the great questions of life. In some ways, the Renaissance never ended, as the innovations made during*

that period in art, science, commerce, and politics laid the basis for the world as recognize today. In many fundamental ways, in the *Confessions* Augustine articulated the soul of modern man....¹⁵

The *Confessions* stands in a unique relationship to the Western idea of the literary classic. Augustine's most famous work challenges one of the supreme classics of ancient Latin literature, Virgil's *Aeneid*, the epic of Rome's imperial destiny. It contends against the sacred Roman model in an idiom derived from the Jewish and Christian scriptures, texts with their own strong claim to normative status in cultures of the ancient, medieval, and modern worlds. In the *Confessions* we witness the collision of two mighty traditions of storytelling, alike devoted to the long-term dealing of god(s) with human beings and societies. ...

In the time of Augustus Caesar, the first Roman emperor, the poet Virgil devised a prophetic storyline in which the Trojan refugee Aeneas, making his way to Italy under the gods' direction to found the future nation of Rome, was hospitably received at Carthage by Queen Dido. Aeneas' tale of the fall of Troy, told to Dido and her entourage in books 2 and 3 of the *Aeneid*, is the leading first-person narrative in Roman literature. Augustine, who composed mock speeches based on episodes in the *Aeneid* as a schoolboy and taught the poem to his own students for years afterward, would have known it by heart....

When T.S. Eliot was asked to give a lecture on Virgil in wartime London—another city lit by fire—he made his subject the question 'What Is a Classic?' (1944). He answered it by claiming Virgil as the universal classic of European literature, and the *Aeneid* as the poem par excellence of European civilization. For Eliot, the Roman destiny of Aeneas already prefigured the Christian destiny of the Western nations after Rome. The idea was not altogether original; like others who appealed to Virgil as guardian spirit of 'the West' during the dark years of the mid-twentieth century. Eliot was deeply indebted to Dante, the Christian poet who, in the *Commedia* (Divine Comedy) had taken the pagan Virgil as guide for part of his journey.... Augustine, not Virgil, created the plot of the 'divine comedy' onto which Eliot and other post-Romantic readers of Dante would one day graft their personal histories of the West....

Cicero was their exemplar of Latin eloquence, Virgil their poet of Rome's civilizing mission... Ever since the foundation of the Empire under Augustus four centuries earlier, the Romans had maintained a strong conviction of their own manifest destiny. Even if the Greeks were the original masters of the finer arts of humanity, fate had decreed that the Romans would impose the rule of law—by force if necessary—and pacify the nations of the earth. That was the vision proclaimed by Virgil's *Aeneid* and famously illustrated by the scenes on Aeneas' divinely forged shield in book 8 of the poem....

¹⁵ *Confessions*, p. 293.

For centuries the *Aeneid* defined what it meant to be Roman. Augustine's *Confessions* is the first work to strike directly at the mythical foundations of that collective sense of identity....¹⁶

If St. Augustine's *Confessions* struck at the cultural and literary core of the ancient Roman world, then his landmark work *The City of God* struck at the political philosophy, public-policies, public laws, and constitutional foundations of the Roman Empire. Both the *Confessions* and *The City of God* unambiguously establish the supremacy of the Christian faith over and above ancient Roman culture: Roman paganism, Roman philosophy, Roman religion, and Roman jurisprudence.

For St. Augustine, as he forcefully argued in *The City of God*, the Roman Empire had arisen and fallen under the weight of its own viciousness, immorality, and licentiousness. At the same time, he argued in *The City of God*, "that the Christian religion is health-giving."¹⁷ The fall of the Roman Empire was for St. Augustine and the Church much similar to the deluge during the time of Noah when God had cleansed the world of demonism and spiritual rot and filth, and saved only a few people who resided inside of an ark, which prefigured the body of Christ. The rise of the Christian Church in the West was seen as God's covenantal ark for the whole human race, thus replacing imperial Rome. This new belief system, known as the Christian faith, became the foundation of Western constitutional law and jurisprudence; and in England and British North America, that foundation remained firmly entrenched within their respective secular legal systems. This paper therefore, as set forth below, reveals why the Church of England's influence upon Anglo-American constitutional jurisprudence was also thoroughly Augustinian.

I. St. Augustine (*The City of God*): The Opinion of Rome's Imminent Citizens as to the Condition of the Roman Empire

Perhaps the most important legacy of St. Augustine's *The City of God* is his theological and historical analysis of the rise and fall of the Roman Empire. For St. Augustine, the fall of Rome was similar to the deluge during the time of Noah, when God cleansed the world of sin. For St. Augustine, the various gross deceptions—i.e., the gross deviant lifestyles, immorality, and unholiness-- which captivated the ancient Romans, were none other than "demons"¹⁸ or "false gods," often presented in their various forms of entertainment, such as the gladioator contests and the scenic plays at the theatres, whereby depraved lewdness and immorality were promoted and spread throughout the empire. Thus relying upon writings of ancient Roman historians, poets, and practical statesmen, St. Augustine concluded that immorality, lewdness, lasciviousness, pornography, adulterous living, drunkenness, riotous behaviors, and the like, ruined the Roman Empire, or at least debased the empire to the point at which the barbarian invasions and calamities were made easier.¹⁹ In *The City of God*, he writes:

Here, then, is this Roman republic, 'which has changed little by little from the fair and virtuous city it was, and **has become utterly wicked and dissolute.**' It is not

¹⁶ St. Augustine, *Confessions* (New York, N.Y.: Barnes & Noble Books, 2007), pp. xv- xlii.

¹⁷ St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), pp. 71-73.

¹⁸ *Ibid.*, pp. 70-75.

¹⁹ *Ibid.*

I who am the first to say this, but their own authors, from whom we learned it for a fee, and who wrote it long before the coming of Christ....²⁰

Let them read our commandments in the Prophets, Gospels, Acts of the Apostles, or Epistles; let them peruse the large number of precepts against avarice and luxury which are everywhere read to the congregations that meet for this purpose, and which strike the ear, not with the uncertain sound of a philosophical discussion, but with the thunder of God's own oracle peeling from the clouds...²¹

But if our adversaries do not care **how foully and disgracefully the Roman republic be stained by corrupt practices**, so long only as it holds together and continues in being...²² We have been forced to bring forward these facts, because **their authors have not scrupled to say and to write that the Roman republic had already been ruined by the depraved moral habits of the citizens**, and had ceased to exist before the advent of our Lord Jesus Christ. Now this ruin they do not impute to their own gods, though they impute to our Christ the evils of this life, which cannot ruin good men, be they alive or dead. And this they do, though our Christ has issued so many precepts inculcating virtue and restraining vice; while their own gods have done nothing whatever to preserve that republic that served them, and to restrain it from ruin by such precepts, but have rather hastened its destruction, by corrupting its morality through their pestilent example. No one, I fancy, will now be bold enough to say that the republic was then ruined because of the departure of the gods 'from each fane, each sacred shrine,' as if they were the friends of virtue, and were offended by the vices of men. No, there are too many presages from entrails, auguries, soothsayings, whereby they boastingly proclaimed themselves prescient of future events and controllers of the fortune of war—all of which prove them to have been present. And had they been indeed absent, the Romans would never in these civil wars have been so far transported by their own passions as they by the instigations of these gods....

Seeing that this is so—seeing that the filthy and cruel deeds, the disgraceful and criminal actions of the gods, whether real or feigned, were at their own request published, and were consecrated, and dedicated in their honor as sacred and stated solemnities; seeing they vowed vengeance on those who refused to exhibit them to the eyes of all, that they might be proposed as deeds worthy of imitation, why is it that these same demons, who, by taking pleasure in such obscenities, acknowledge themselves to be unclean spirits, and by delighting in their own villanies and iniquities, real or imaginary, and by requesting from the immodest, and extorting from the modes, the celebration of these licentious acts, proclaim themselves instigators to a criminal and lewd life; -- why, I ask, are they represented as giving some good moral precepts to a few of their own elect,

²⁰ Ibid., p. 58.

²¹ Ibid.

²² Ibid., p. 60.

initiated in the secrecy of their shrines?²³ If it be so, this very thing only serves further to demonstrate the malicious craft of these pestilent spirits. For so great is the influence of probity and chastity, that all men, or almost all men, are moved by the praise of these virtues; nor is any man so depraved by vice, but he hath some feeling of honor left in him....²⁴

Furthermore, St. Augustine pointed out that the Roman Pontiff Scipio Nascia,²⁵ elected by the Roman Senate, and whom St. Augustine described as “your chief pontiff, your best man in the judgment of the whole senate.”²⁶ This same Scipio had refused to consent to the destruction of Carthage during the Punic Wars, because:

“[h]e feared security, that enemy of weeks minds, and he perceived that a wholesome fear would be a fit guardian for citizens. And he was not mistaken: the event proved how wisely he had spoken. **For when Carthage was destroyed, and the Roman republic delivered from its great cause of anxiety, a crowd of disastrous evils forthwith resulted from the prosperous condition of things.** First concord was weakened, and destroyed by **fierce and bloody seditions**; then followed, by a concatenation of baleful causes, **civil wars**, which brought in their train such massacres, **such bloodshed, such lawless and cruel proscription and plunder**, that those Romans who, in the days of their enemies, now that their virtue was lost, **suffered greater cruelties at the hands of their fellow-citizens.** The lust of rule, which with other vices existed among the Romans in more unmitigated intensity than among any other people, after it had taken possession of the more powerful few, subdued under its yoke the rest, worn and wearied.²⁷

Rome’s moral decay, says St. Augustine, was due to cultural influences such as the “scenic entertainments” in which “exhibitions of shameless folly and licence,”²⁸ and pestilential and wicked spirits²⁹ reigned without censure or limitation. “Besides,” says Augustine, “though the pestilence was stayed, this was not because the voluptuous madness of stage-plays had taken possession of a warlike people... these astute and wicked spirits... took occasion to infect, not the bodies, but the morals of their worshippers, with a far more serious disease.”³⁰ But perhaps the most serious disease of all were the “corrupt practices” that inhibited justice throughout the Roman Republic; even up to the time of the birth of Christ Jesus, when Caesar Augustus reigned, and when Cicero was assassinated for advocating for a more just and human republic. For in *The City of God*, St. Augustine says that this same Cicero confessed that within the Roman empire, “[m]orality has perished through poverty of great men; a poverty for which we must not only assign a reason, but for the guilt of which we must answer as criminals charged with a capital crime. For it is through our vices, and not by any mishap, that we retain only the name of a

²³ Ibid., p 69.

²⁴ Ibid., p. 68-69.

²⁵ Ibid., p. 35.

²⁶ Ibid., p. 35.

²⁷ Ibid., p. 35.

²⁸ Ibid., p. 36.

²⁹ Ibid., p. 37.

³⁰ Ibid.

republic, and have long since lost the reality.”³¹ To this, St. Augustine added that the fall of the Roman empire was due in large measure to “the decay of morality” which “involved the republic in such disastrous ruin, that though the houses and walls remained standing, the leading writers do not scruple to say that the republic was destroyed.”³²

St. Augustine thus described the prevailing Roman political philosophy and logic, and the “corrupt practices” that had been allowed to prevail throughout the Roman Empire of his time, “**so long only as it holds together and continues in being**”³³:

Only let [the republic] remain undefeated, they say, only let it flourish and abound in resources; let it be glorious by its victories, or still better, secure in peace; and what matters it to us?

This is our concern, that every man be able to increase his wealth so as to supply his daily prodigalities, and so that the powerful may subject the weak for their own purposes.

Let the poor court the rich for a living, and that under their protection they may enjoy a sluggish tranquility; and let the rich abuse the poor as their dependants, to minister to their pride.

Let the people applaud not those who protect their interests, but those who provide them with pleasure.

Let no severe duty be commanded, no impurity forbidden.

Let kings estimate their prosperity, not by the righteousness, but by the servility of their subjects.

Let the provinces stand loyal to the kings, not as moral guides, but as lords of their possessions and purveyors of their pleasures; not with a hearty reverence, but a crooked and servile fear.

Let the laws take cognizance rather of the injury done to another man’s property, than of that done to one’s own person.

If a man be a nuisance to his neighbor, or injure his property, family, or person, let him be actionable; but in his own affairs let every one with impunity do what he will in company with his own family, and with those who willingly join him.

Let there be a plentiful supply of public prostitutes for every one who wishes to use them, but specially for those who are too poor to keep one for their private use.

³¹ Ibid., p. 62.

³² Ibid., p. 64.

³³ Ibid. p. 60.

Let there be erected houses of the largest and most ornate description: in these let there be provided the most sumptuous banquets, where every one who pleases may, by day or night, play, drink, vomit, dissipate.

Let there be everywhere heard the rustling of dancers, the loud, immodest laughter of the theatre; et a succession of the most cruel and the most voluptuous pleasures maintain a perpetual excitement.

If such happiness is distasteful to any, let him be branded as a public enemy; and if any attempt to modify or put an end to it, let him be silenced, banished, put an end to.

Let these be reckoned the true gods, who procure for the people this condition of things, and preserve it when once possessed.³⁴

Within this Roman scheme of things, the new Christian religion emerged, stood out conspicuously, and eventually reigned supreme within the hearts and minds of men and women who longed for a more just and humane world. For example, the Christians had begun to introduce to the Roman legions a humane law of war, such as “clemency,” so as to curtail the senseless Roman “slaughter, plundering, burning, and misery” amongst their conquered victims.³⁵ St. Augustine pointed out that just as the barbarians sacked the western half of the Roman empire, the saintly Christians not only survived, but they thrived!³⁶ The ancient bishops attained their supremacy of the western half of the Roman empire because the great wartime distress, including captivity by the barbarians, rendered these ancient Christians most suitable for worldly leadership, even among the barbarians.³⁷ St. Augustine compared these ancient Christians to the “three youths” including “Daniel” who were captive in ancient Babylon in the Old Testament— simply put, the civilizing effect of the Christian faith arose supreme from the ashes of Rome’s wicked fall.³⁸

II. St. Augustine (*The City of God*): A Summation of the History of the City-State of Rome

In *The City of God*, St. Augustine relies upon the Roman historian Varro, “a very learned heathen,”³⁹ for assistance with reconstructing the history of the ancient city-state of Rome. Firstly, Augustine proves that the “fabulous” or “mythical” history of the founding of Rome was utterly false. According to the historian Varro, “many of the religions and sacred legends should be feigned in a community in which it was judged profitable for the citizens that lies should be told even about the gods themselves.”⁴⁰ Among such lies was the belief in the divine origins of Julius Caesar, and the belief that he had descended from the goddess Venus. As this ancient

³⁴Ibid., pp. 59-60.

³⁵Ibid., p. 9.

³⁶Ibid., pp. 10-12.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid., p. 76.

⁴⁰ Ibid., p. 77.

history goes: ancient Troy fell to the ancient Greeks in the Trojan war, perhaps as recounted and memorialized in Homer's *Illiad*. And then the Romans defeated the Greeks, and the city of Rome was founded by two brothers: Romulus and Remus. But Romulus in an act of fratricide murdered his brother Remus and took kingship over the City of Rome.⁴¹ *Romulus* was then deified, and the city-state of Rome was founded.⁴² The second king of Rome was *Julius Prochulus*, and he commanded the Romulus be worshipped "as a god; and that in this way the people, who were beginning to resent the action of the senate, were quieted and pacified."⁴³ *Tullus Hostilius* became the third king of Rome; St. Augustine recounts that Hostilius "all his house" was "consumed by lightning."⁴⁴ Next, *Piscus Tarquinius* became the fourth king, and he was himself assassinated by the sons of *Servius Tullius*, who succeeded him as the fifth king.⁴⁵ *Servius* was then himself murdered by his own son-in-law, *Tarquinius Superbus* ("Tarquin"), who had become the sixth king of the city-state of Rome.⁴⁶ St. Augustine concludes, then, that up to the year 243 B.C., six kings had governed the city-state of ancient Rome, and that each of them had either attained the throne through violence:

- A. *Romulus*, the founder of the city-state of Rome, had murdered his brother Remus;
- B. *Julius Prochulus* may have been given the throne by the Senate, after it had secretly plotted to assassinate Romulus, the city's founder;⁴⁷
- C. *Tullus Hostilius* was no saint, and he and his entire house was mysteriously consumed by lightening, which means that they may have been executed or murdered;
- D. *Piscus Tarquinius* was assassinated by his successor *Servius Tullius*'s sons; and,
- E. *Servius Tullius* was assassinated by his own son-in-law *Tarquinius Superbus*, who became the sixth and last king of the city-state of Rome.

Of this period, Augustine writes: "[s]uch was the life of the Romans under the kings during the much-praised epoch of the state which extends to the expulsion of *Tarquinius Superbus* in the 243d year, during which all those victories, which were bought with so much blood and such disasters...."⁴⁸ According to St. Augusting, just as Cain had killed his brother Abel, as recounted in the *Book of Genesis*, the foundation of the city-state of Rome was founded upon a fratricide, when Romulus killed his brother Remus; and the ensuing plots, murders, and assassinations perpetuated this lust for glory and power that is the exemplification of the "City of Man" which is opposite to the "City of God."

⁴¹ Ibid., p. 86.

⁴² Ibid.

⁴³ Ibid., pp. 87-88.

⁴⁴ Ibid., p. 88-89.

⁴⁵ Ibid., p. 89.

⁴⁶ Ibid.

⁴⁷ Ibid., p. 87.

⁴⁸ Ibid., p. 90.

III. St. Augustine (*The City of God*): Summation of the History of the first Roman Emperors, 243 B.C. to 33 A.D.

Augustine next turns his attention to the period of the expansion of the city-state of Rome into what emerged as the ancient Roman Empire. That period began after the death of King Tarquinius Superbus in 243 B.C., when the Roman senate established the consulship, and there were initially two consuls: Collatinus and Brutus.⁴⁹ “[C]onsuls were first created, when the kingly power was abolished.”⁵⁰ St. Augustine succinctly described the Roman Empire as “an empire acquired by wars,”⁵¹ and by robbery (“[b]ut to make war on your neighbours, and thence to proceed to others, and through mere lust of dominion to crush and subdue people who do you no harm, what else is this to be called than great robbery?”)⁵² Moreover, under the Roman consulship, the Roman leadership intentionally deceived the Roman people, inculcating gods and myths which they knew to be false,⁵³ and largely for the purpose of empire-building.

Thus, under this same consulship, the Roman Empire expanded; there was “constant wars”⁵⁴ and to pay for these wars, the Roman patricians began to lord over their own people through taxation and usury.⁵⁵ “Frequent mobs, seditions, and at last civil wars, became common, while a few leading men on whom the masses were dependent, affected supreme power under the seemly pretence of seeking the good of senate and people; citizens were judged good or bad, without reference to their loyalty to the republic (for all were equally corrupt); but the wealthy and dangerously powerful were esteemed good citizens, because they maintained the existing state of things.”⁵⁶ “Nay, during this plague they introduced a new pestilence of scenic entertainments, which spread its more fatal contagion, not to the bodies, but the morals of the Romans... the poisonings imputed to an incredible number of noble Roman matrons... Or when, at one time, the Lucanians, Brutinians, Samnites, Tuscans, and Senonian Gauls conspired against Rome, and first slew her ambassadors, then overthrew an army under the praetor, putting to the sword 13,000 men, besides the commander and seven tribunes?”⁵⁷ “Or when both consuls at the head of the army were beset the Samnites in the Caudine Forks, and forced to strike a shameful treaty, 600 Roman knights being kept as hostages; while the troops, having laid down their arms, and being stripped of every thing, were made to pass under the yoke with one garment each?”⁵⁸ At the same time, mortal humans were assigned “quasi-divine authority,” and, induced by “the evil spirits” and inspired by the fictitious myths of the false Greco-Roman gods, the Roman consuls and people were often incited “to wicked actions.”⁵⁹ And so, even long before the barbarian invasions of the Roman Empire during the fifth century A.D., “the Roman republic had already been ruined by the depraved moral habits of the citizens.”⁶⁰ Next, in addition to this

⁴⁹ Ibid., pp. 90-91.

⁵⁰ Ibid., p. 90.

⁵¹ Ibid., p. 111-112.

⁵² Ibid., p. 114.

⁵³ Ibid., pp. 138, 140.

⁵⁴ Ibid., p. 91.

⁵⁵ Ibid., p. 91-92.

⁵⁶ Ibid., p. 92.

⁵⁷ Ibid., p. 93.

⁵⁸ Ibid., p. 93.

⁵⁹ Ibid., p. 68-69.

⁶⁰ Ibid., p. 69.

general decline in morals, the Romans were vexed with inexplicable health-care crisis and the spread of terrible diseases,⁶¹ the widespread death of women during childbirth,⁶² the widespread death of farm animals,⁶³ the constant conscription of young men into the Roman army—“so many wars were everywhere engaged in.”⁶⁴

Amongst these taxing, vexing, and terrible military campaigns were the three Punic Wars (264 B.C. to 146 B.C.)⁶⁵, of which St. Augustine writes: “[i]n the Punic wars, again, when victory hung so long in the balance between the two kingdoms, when two powerful nations were straining every nerve and using all their resources against one another, how many smaller kingdoms were crushed, how many large and flourishing cities were demolished, how many states were overwhelmed and ruined, how many districts and lands far and near were desolated! How often were the victors on either side vanquished! What multitudes of men, both of those actually in arms and of others, were destroyed! What huge navies, too, were crippled in engagements, or were sunk by every kind of marine disaster! Were we to attempt to recount or mention these calamities, we should become writers of history.”⁶⁶

And, in addition to the three Punic wars, were seditions and the outbreak of civil war within the Roman empire. This included the “servile wars” and the “gladiator rebellions.”⁶⁷ On this point, Augustine writes: “[t]he civil wars originated in the seditions which the Gracchi excited regarding the agrarian laws; for they were minded to divide among the people the lands which were wrongfully possessed by the nobility.”⁶⁸ “For noble and ignoble were indiscriminately massacred...”⁶⁹ Assassins and murders ran rampant, together with the judicial examinations and tortures of thousands of Roman citizens.⁷⁰ “The assassin of Gracchus himself sold his head to the consul for its weight in gold, such being the previous agreement. In this massacre, too, Marcus Fulvius, a man of consular rank, with all his children, was put to death.”⁷¹ “Then even historians themselves find it difficult to explain how the servile war was begun by a very few, certainly less than seventy gladiators, what numbers of fierce and cruel men attached themselves to these, how many of the Roman generals this band defeated, and how it laid waste many districts and cities. And that was not the only servile war: the province of Macedonia, and subsequently Sicily and the sea-coast, were also depopulated by bands of slaves. And who can adequately describe either the horrible atrocities which the pirates first committed, or the wars they afterwards maintained against Rome?”⁷²

Then began, about the year 140 B.C., a series of civil contests and civil wars between Roman consuls and the Roman senate, down to the reign of Caesar Augustus “in whose reign

⁶¹ Ibid., p. 94.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid., p. 95-103.

⁶⁶ Ibid., p. 95.

⁶⁷ Ibid., p 102-103.

⁶⁸ Ibid., pp. 101-102.

⁶⁹ Ibid., p. 102.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid., p. 103.

Christ was born”⁷³ First: the civil war between two Roman consuls Marius and Sylla. Marius put to death “the foremost men in the state.”⁷⁴ In fuller description of Marius’ violence, Augustine writes:

As soon as Marius triumphed, and returned from exile, besides the butcheries everywhere perpetuated, the head of the consul Octavius was exposed on the rostrum; Caesar and Fimbria were assistanted in their own houses; the two Crassi, father and son were murdered in one another’s sight; Bebi and Numitorius were disemboweled by being dragged with hooks; Catulus escaped the hands of his enemies by drinking poison; Merula, the flamen of Jupiter, cut his veins and made a libation of his own blood to his god. Moreover, every one whose salutation Marius did not answer by giving his hand, was at once cut down before his face.⁷⁵

The bloodshed of Marius was next avenged by “the victory of Sylla... but when hostilities were finished, hostility survived, and subsequent peace was bloody as the war.”⁷⁶

Second: the civil war between the Roman consuls Sertorius and Catiline ensued, “of whom the one was proscribed, the other brought up by Sylla; from this to the war of Lepidus and Catulus, of whom the one wished to rescinde, the other to defend the acts of Sylla; from this to the war of Pompey and Caesar, of whom Pompey had been a partisan of Sylla, whose power he equaled or even surpassed, while Caesar condemned Pompey’s power because it was not his own, and yet exceeded it when Pompey was defeated and slain.”⁷⁷ Hence, the victory of Sylla over Marius in the first civil war extended down the reign of Julius Caesar various factions, one in favor of Sylla, and others opposed. Julius Caesar “when he had conquered Pompey, though he used his victory with clemency, and granted to men of the opposite faction both life and honours, was suspected of aiming at royalty, and was assassinated in the curia by a party of noble senators, who had conspired to defend the liberty of the republic. His power was then coveted by Antony, a man of very different character, polluted and debased by every kind of vice, who was strenuously resisted by Cicero on the same plea of defending the liberty of the republic.”⁷⁸

Thus, upon the death of Julius Caesar, three men contended for power or influence: Augustus, Antony, and Cicero. Indeed, Augustus was “the second Caesar, afterwards called Augustus, and in whose reign Christ was born.”⁷⁹ Caesar Augustus and Antony contended for the imperial throne. Cicero, who was a defender of Rome’s liberty, supported Augustus, and opposed Antony. Cicero favored Augustus “in order that his influence might counteract that of Antony; for he hoped that Caesar would overthrow and blast the power of Anthony, and establish a free state—so blind and unaware of the future was he: for that very young man, whose advancement and influence he was fostering, allowed Cicero to be killed as the seal of an alliance with Antony, and subjected to his own rule the very liberty of the republic in defence of

⁷³ Ibid., p. 106.

⁷⁴ Ibid., p. 104.

⁷⁵ Ibid., p. 104.

⁷⁶ Ibid., pp 104-105.

⁷⁷ Ibid., p. 106.

⁷⁸ Ibid.

⁷⁹ Ibid., pp. 106-107.

which he had made so many orations.”⁸⁰ Hence, Caesar Augustus’s conspiratorial role in the assassination of Cicero signified, and alliance with Mark Antony, as recounted in the words of St. Augustine, reflected the sadistic state of the Roman Empire during the time of Christ.⁸¹

IV. St. Augustine (*The City of God*): Theology that All Secular Power is Ordained by the one, true God

From the historical example of the decline and ultimate fall of the Roman Empire, St. Augustine then extrapolated a catholic theology of church and state. For in *The City of God*, Augustine asked “whether it is quite fitting for good men to rejoice in extended empire.”⁸² His answer is yes, if the “growth of a kingdom” is extended through “just wars” against the wicked. Conversely, the growth of bad empires or kingdoms through the conquering and subjugation of innocent, just nations is a form of evil. “Therefore, to carry on war and extend a kingdom over wholly subdued nations seems to bad men to be felicity, to good men necessity.... But beyond doubt it is greater felicity to have a good neighbor at peace, than to conquer a bad one by making war.”⁸³ Nevertheless, St. Augustine shows that evil kingdoms and empires cannot sustain their sovereignty without ordination and power from God. According to St. Augustine, such evil kingdoms and empires cannot exist without some form of virtue and value. In the case of the ancient Romans, they valued happiness and honor, or “Virtue and Felicity”⁸⁴—each and all very good things. The ancient Romans elevated “Virtue and Felicity” to the status of goddesses.⁸⁵ But St. Augustine believed that these ancient Romans did good by pursuing and promoting “virtue” and “felicity” as noble goals, but that they had seriously erred in not recognizing the fact that “virtue” and “felicity” were not “gods,” but rather these things were “a gift of God.”⁸⁶ In other words, St. Augustine concluded that the ancient Romans has fallen into error, because they worshipped “the divine gifts themselves,” rather than the one true God who is the author of those divine gifts. Nevertheless, St. Augustine affirms that even the ancient Romans had enough light in them to know that “felicity to be given by a certain God whom they know not....”⁸⁷ So a few leading men amongst the ancient Romans came very close to knowing the one, true God; but they were, nevertheless, still led astray by their lack of moral virtue.

The Roman leadership also intentionally misled and deceived the masses,⁸⁸ such that falsehoods were “useful for the common people to know... falsely” regarding the pagan theological myths displayed in “scenic plays.”⁸⁹ And that Rome’s collapse was due in large measure to the widespread deceptions by civic rulers and poets.⁹⁰ Had the Romans clung to “Virtue and Felicity”— even though “gifts” of God and not God Himself — they might have maintained the majesty of the Roman Empire, but the ancient Romans fell into deception (i.e.,

⁸⁰ Ibid., p. 106.

⁸¹ Ibid., p. 107.

⁸² Ibid., p. 123.

⁸³ Ibid.

⁸⁴ Ibid., p. 128.

⁸⁵ Ibid., pp. 128-130.

⁸⁶ Ibid., p. 131.

⁸⁷ Ibid., p. 132.

⁸⁸ Ibid., p. 138.

⁸⁹ Ibid.

⁹⁰ Ibid., p. 140.

clung to demons) which hastened its decline as result of a lack of moral virtue. Thus, “although not understanding them to be gifts of God,” wrote St. Augustine, “they ought at least to have been content with Virtue and Felicity” and to have ordered their laws and customs toward sustaining these ends.⁹¹ But the ancient Romans blindly took a different course, and they refused to be modest or to restrain their passions. On this point, St. Augustine further elaborated, using the following analogy:

That this may be more easily discerned, let us not come to nought by being carried away with empty boasting, or blunt the edge of our attention by loud-sounding names of things, when we hear of peoples, kingdoms, provinces. But let us suppose a case of two men; for each individual man, like one letter in a language, is as it were the element of a city or kingdom, however far-spreading in its occupation of the earth. Of these two men let us suppose that one is poor, or rather of middling circumstance; the other very rich. But the rich man is anxious with fears, pining with discontent, burning with covetousness, never secure, always uneasy, panting from the perpetual strife of his enemies, adding to his patrimony indeed by these miseries to an immense degree, and by these additions also heaping up most bitter cares. But that other man of moderate wealth is contented with a small and compact estate, most dear to his own family, enjoying the sweetest peace with his kindred neighbours and friends, in piety religious, benignant in mind, healthy in body, in life frugal, in manners chaste, in conscience secure. I know not whether any one can be such a fool, that he dare hesitate which to prefer. As, therefore, in the case of two men, so in the two families, in two nations, in two kingdoms, this test of tranquility holds good; and if we apply it vigilantly and without prejudice, we shall quite easily see where the mere show of happiness dwells, and where real felicity. **Wherefore if the true God is worshipped, and if He is served with genuine rites and true virtue, it is advantageous so much to themselves, as to those over whom they reign.**⁹²

The ancient Romans sought the good things, the “good life,” the happy life, etc.; but these ancient Romans also elevated those subordinate things to the status of gods and goddess, rather than giving due homage to the one, true God, who is the author of all things.⁹³ For this reason, the ancient Romans went astray and, like several empires which predated it, fell by the wayside. See, e.g., Table 1. “The Mosaic Life-Death Grid.”

Table 1. The Mosaic Life-Death Grid

Law of Moses (Life)	Law of Sin (Death)
Virtue	Vice
Liberty	Slavery

For it is “that God, the author and giver of felicity,” writes St. Augustine, Who “alone is the true God,” and Who “gives earthly kingdoms both to the good and bad. Neither does He do

⁹¹Ibid., pp. 126-128.

⁹²Ibid., p. 112.

⁹³ Ibid., pp. 140-141.

this rashly, and, as it were, fortuitously—because He is God, not fortune—but according to the order of things and times, which is hidden from us, but thoroughly known to Himself; which same order of times, however, He does not serve as subject to it, but Himself rules as lord and appoints as governor.”⁹⁴ Kingdoms are given by God to both the good and the bad; but God gives true happiness or felicity only to the good, who are both rich and poor alike. **True happiness or felicity are the fruits of moral virtue, righteousness, and holiness—for this precept is both a fundamental Law of Moses and a fundamental Law of Christ.** See, e.g., Table 1, “The Mosaic Life-Death Grid.” Therefore, says St. Augustine, the just worshippers of the true God should not covet the riches, splendor or authority of earthly kingdoms. “[T]his is the mystery of the Old Testament, in which the New was hidden, that there even earthly gifts are promised: those who were spiritual understanding even then, although not yet openly declaring, both the eternity which was symbolized by these earthly things, and in what gifts of God true felicity could be found.”⁹⁵ The fall of kingdoms and empires, much like the fall and decline of individuals, is due in large measure to “enslavement to sin.”

The Roman Empire, says St. Augustine, became enslaved to sin, and that this empire declined and collapsed because the Roman people were “[d]epraved by good fortune, and not chastened by adversity,”⁹⁶ and not told to heed sound moral doctrine. In a word, says St. Augustine, the ancient Romans became immoral, criminal and licentious; and this moral state of things, without the Church of God to teach and influence it,⁹⁷ was the chief cause of the fall of the Roman Empire:

This is the reason why those divinities quite neglected the lives and morals of the cities and nations who worshipped them, and threw no prohibition in their way to hinder them from becoming utterly corrupt, and to preserve them from those terrible and detestable evils which visit not harvests and vintages, not house and possessions, not the body which is subject to the soul, *but the soul itself*, the spirit that rules the whole man. If there was any such prohibition, let it be produced, let it be proved. . . . Let them show or name to us the places which were at any time consecrated to assemblages in which, instead of the obscene songs and licentious acting of players, instead of the celebrations of those most filthy and shameless Fugalia (well called Fugalia, since they banish modesty and right feeling), the people were commanded in the name of the gods to restrain avarice, bridle impurity, and conquer ambition; where, in short, they might learn in that school which Persius vehemently lashes them to, when he says: ‘Be taught, ye abandoned creatures, and ascertain the causes of things; what we are, and for what end we are born; what is the law of our success in life, and by what are we may turn the goal without making shipwreck; what limit we should put to our wealth, what we may lawfully desire, and what uses filthy lucre serves; how much we should bestow upon our country and our family; learn, in short, what God meant

⁹⁴ Ibid., p. 140.

⁹⁵ Ibid.

⁹⁶ Ibid., p. 37.

⁹⁷ Ibid., p. 45 (“Let them name to us the places where such instructions were wont to be communicated from the gods, and where the people who worshipped them were accustomed to resort to hear them, as we can point to our churches built for this purpose in every land where the Christian religion is received.”)

thee to be, and what place He has ordered you to fill.’ Let them name to us the places where such instructions were wont to be communicated from the gods, and where the people who worshipped them were accustomed to resort to hear them, as we can point to our churches built for this purpose in every land where the Christian religion is received.⁹⁸

But let us suppose a case of two men; for each individual man, like one letter in a language, is as it were the element of a city or kingdom, however far-spreading in its occupation of the earth. Of these two men let us suppose that one is poor, or rather of middling circumstances; the other very rich. But the rich man is anxious with fears, pining with discontent, burning with covetousness, never secure, always uneasy, panting from the perpetual strife of his enemies, adding to his patrimony indeed by these miseries to an immense degree, and by these additions also heaping up most bitter cares. But that other man of moderate wealth is contented with a small and compact estate, most dear to his own family, enjoying the sweetest peace with his kindred neighbors and friends, in piety religious, benignant in mind, healthy in body, in life frugal, in manners chaste, in conscience secure. I know not whether any one can be such a fool, that he dare hesitate which to prefer. As, therefore, in the case of two men, so in two families, in two nations, in two kingdoms, this test of tranquility holds good; and if we apply it vigilantly and without prejudice, we shall quite easily see where the mere show of happiness dwells, and where real felicity. Wherefore if the true God is worshipped, and if He is served with genuine rites and true virtue, it is advantageous so much to themselves, as to those over whom they reign.⁹⁹

We have been forced to bring forward these facts, because their authors have not scrupled to say and to write that that the Roman republic had already been ruined by the depraved moral habits of the citizens, and had ceased to exist before the advent of our Lord Jesus Christ.¹⁰⁰

The Augustinian view of political science likewise places “virtue” or “holiness” (morality, equity, and justice) at the center of constitutional law. Forms of government are only secondary, for so long as virtue is thoroughly instilled within the customs and everyday practices of the citizenry. See, e.g., Table 2, “Western Political Science and Constitutional Legal Theory (1100 A.D. to 1900 A.D.).

⁹⁸ Ibid., p. 45.

⁹⁹ Ibid., p. 112.

¹⁰⁰ Ibid., pp. 68-69.

Table 2. Western Political Science and Constitutional Legal Theory (1100 A.D. to 1900 A.D.)

Law of Moses (Life)	Law of Sin (Death)
God (Good)	Sin (Evil or Satan)
Virtue	Vice
Liberty	Slavery
Forms of Government (Life) ¹⁰¹	Forms of Government (Death) ¹⁰²
<i>Monarchy</i> – (Republican Form- Limited by Principles of Equity and Natural Justice; Rule of Law; Checks and Balances)	<i>Tyranny</i> – (Imperial Government Form- Perverted by Absolute Authority; Divine Right Theory; Unchecked Crimes against Nature and Natural Law (i.e., Equity))
<i>Aristocracy</i> – (Republican Form- Limited by Principles of Equity and Natural Justice; Rule of Law; Checks and Balances)	<i>Oligarchy</i> – (Imperial Government Form- Perverted by Economic and Political Monopoly; Unchecked Crimes against Nature and Natural Law (i.e., Equity))
<i>Democracy</i> – (Direct Government Form- Limited by Principles of Equity and Natural Justice; Rule of Law; Checks and Balances)	<i>Anarchy</i> – (Government perverted by unchecked crimes; governmental conspiracy to perpetuate immorality and crime against Nature and Natural Law (i.e., Equity))

Significantly, the Augustinian view of political science holds that “peace” and “happiness” which the secular world desires is noble and good, but that the God of Israel, who is the God of the whole world, is the source of that “peace” and “happiness.” This Augustinian viewpoint likewise holds that this same God of Israel gives kingdoms and empires to both good and bad; and that His Providence controls the actions and destiny of the entire world. But the Augustinian view of the pagan views of “peace,” “felicity,” “virtue,” and the like, is that they have incorrectly elevated these concepts to the status of “gods” and “goddesses,” while ignoring and refusing due worship of the one, true God of Israel, who is the Creator of all. Nevertheless,

¹⁰¹ “Scipio reverts to the original thread of discourse, and repeats with commendation his own brief definition of a republic, that it is the weal of the people. ‘The people’ he defines as being not every assemblage or mob, but an assemblage associated by a common acknowledge of law, and by community of interests. Then he shows the use of definition in debate; and from these definitions of his own he gathers that a republic, or ‘weal of the people,’ then exists only when it is well and justly governed, **whether by a monarch, or an aristocracy, or by the whole people [i.e., democracy]**. But when the monarch is unjust, or, as the Greeks say, a tyrant; or the aristocrats are unjust, and form a faction; or the people themselves are unjust, and become, as Scipio for want of a better name calls them, themselves the tyrant, then the republic is not only blemished (as had been proved the day before), but by legitimate deduction from those definitions, it altogether ceases to be. For it could not be the people’s weal when a tyrant factiously lorded it over the state; neither would the people be any longer a people if it were unjust, since it would no longer answer the definition of a people—‘an assemblage associated by a common acknowledgment of law, and by a community of interests.’” St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), p. 62.

¹⁰² Ibid.

St. Augustine gave credit to the pagan philosophers who endeavored to live virtuous lives and he concluded that pagan “virtue” was close in nature to the “holiness” espoused in Judea-Christian ethical standards. See, e.g., Table 3, “St. Augustine’s Catholic View of Virtue and Holiness.”

Table 3. St. Augustine’s Catholic View of Virtue and Holiness

Personal or Individual Ethical Standard (Theology of the Human Will and the Will of God)	Cultural or National Source
Virtue (Pagan)	Ancient Egyptians, Greeks, Romans and other nationalities of the ancient world; Philosophy
Holiness (Old Testament)	Ancient Israelites or Jews; Theology
Holiness (New Testament)	The universal (i.e., catholic) Christian Church; Theology and Philosophy

In *The City of God*, Augustine relied upon pagan writers Cicero, Scipio, Varro, and Porphyry, in order to make his point that even the pagans were not completely void of “nature,” “natural justice,” or the “power of reason”; nor were those ancient pagans completely void of just desires and motives, such as having the desire for “peace” and “happiness.” Nevertheless, St. Augustine was crystal clear that God was the foundation and source of “true justice,” and that no nation which ignores due homage and worship to that one, true God, cannot morally instruct or discipline its citizenry so as to inspire it to live virtuous lives or to establish true justice. In *The City of God*, St. Augustine writes:

But if we discard this definition of a people, and, assuming another, say that a people is an assemblage of reasonable beings bound together by a common agreement as to the objects of their love, then, in order to discover the character of any people, we have only to observe what they love.... According to this definition of ours, the Roman people is a people, and its weal is without doubt a commonwealth or republic. But what its tastes were in its early and subsequent days, and how it declined into sanguinary seditions and then to social and civil wars, and so burst asunder or rotted of the bond of concord in which the health of a people consists, history shows, and in the preceding books I have related at large. And yet I would not on this account say either that it was not a people, or that its administration was not a republic, so long as there remains an assemblage of reasonable beings bound together by a common agreement as to the objects of love. **But what I say of this people [i.e., the ancient Romans] and of this republic I must be understood to think and say of the Athenians or any Greek state, of the Egyptians, of the early Assyrian Babylon, and of every other nation, great or small, which had a public government. For, in general, the city of the ungodly, which did not obey the command of God that it should offer no sacrifice save to Him alone, and which, therefore, could not**

give the soul its proper command over the body, nor to the reason its just authority over the vices, is void of true justice.¹⁰³

Thus in the western world, since at least the fourth century, A.D., the “catholic” Christian religion may be rightfully said to have been placed at the foundation of western jurisprudence and constitutional law. It must be fully understood, that the generic name “gentiles” rightfully assigned to all of the non-Jewish/ non-Hebrew races of the world, for whom the true religion was extended, such that the “catholic” Christian faith takes and draws all races, cultures, and religions into one conception of a true, sovereign God whose Divine Providence reigns supreme over all nations. Here, we may place St. Augustine’s words into a proper context: “in general, the city of the ungodly, **which did not obey the command of God** that it should offer no sacrifice save to Him alone, and which, therefore, could not give the soul its proper command over the body, nor to the reason its just authority over the vices, **is void of true justice.**”¹⁰⁴

It is upon this theological and constitutional foundation (to wit, that nations must obey God in order to establish justice and just government) that the Protestant Reformers of central and northern Europe and the Calvinist-Puritans of colonial New England built their new Christian nation-states in both Europe and America. The Protestant Reformers (men such as Luther, Calvin, the Presbyterians, and the Puritans) looked to the Bible (i.e., especially the Book of Deuteronomy) for samples and examples of constitutional government. Even ideas of “federalism” and “separation of powers” were originally adopted in the West as Hebraic political ideals found in the Bible. See, e.g., Table 4, “Biblical (Ancient Israel) Origins of Constitutional Monarchy, Federalism, and Separation of Powers.”¹⁰⁵

Table 4. Biblical (Ancient Israel) Origins of Constitutional Monarchy, Federalism, and Separation of Powers

Doctrine of Federalism	Biblical Sources: See, e.g., “The Ancient Hebrew Polity,” <i>The Presbyterian Quarterly</i> 12.2 (April 1898): 153-169. http://www.pcahistory.org/HCLibrary/periodicals/tpq/12-2-2.pdf
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¹⁰³ Ibid., p. 706.

¹⁰⁴ Ibid.

¹⁰⁵ It may in fairness be said that the Egyptians influenced the ancient Hebrews, the ancient Babylonians, the ancient Greeks, the ancient Romans, etc.; and so many of the Bible’s ideas of justice and law may also be found in many other nations and cultures. This convergence between Christians and non-Christians of ideas of justice and law, however, only supports St. Augustine’s theological conclusions: the “command of God” and the “mandate to do justice” are timeless and universal. Nevertheless, the Protestant Reformers who ushered in the modern world were deeply religious and adamant in their desires to subjugate their new world order and new nation-states to the sovereignty of God’s Divine Providence.

	<p>See, e.g., Daniel Eleazar, Covenant & Polity in Biblical Israel: Biblical Foundations & Jewish Expressions (New York, N.Y.: Routledge, 1998).</p> <p>Daniel J. Eleazar, “Deuteronomy as Israel’s Ancient Constitution: Some Preliminary Reflection,” Jerusalem Center for Public Affairs, https://www.jcpa.org/dje/articles2/deut-const.htm</p> <p>Peter Barenboim, Biblical Origins of Separation of Powers Doctrine (E-Book, Moscow Florentine Society Site: Letny Sad Moscow 2005).</p>
<p>Doctrine of Separation of Powers</p>	<p>Biblical Sources:</p> <p>See, e.g., “The Ancient Hebrew Polity,” <i>The Presbyterian Quarterly</i> 12.2 (April 1898): 153-169. http://www.pcahistory.org/HCLibrary/periodicals/tpq/12-2-2.pdf</p> <p>See, e.g., Daniel Eleazar, Covenant & Polity in Biblical Israel: Biblical Foundations & Jewish Expressions (New York, N.Y.: Routledge, 1998).</p> <p>Daniel J. Eleazar, “Deuteronomy as Israel’s Ancient Constitution: Some Preliminary Reflection,” Jerusalem Center for Public Affairs, https://www.jcpa.org/dje/articles2/deut-const.htm</p> <p>Peter Barenboim, Biblical Origins of Separation of Powers Doctrine (E-Book, Moscow Florentine Society Site: Letny Sad Moscow 2005).</p>

St. Augustine of Hippo's political theory of justice, as expressed in *The City of God*, which is a *polemic*¹⁰⁶ patterned after the Book of Deuteronomy, in defense of the Christian faith against widespread charges that it had been the *primary cause for the fall of the Roman empire*, most influenced the political thought of Protestant leaders such as Martin Luther, John Calvin, the Puritan founding fathers of colonial New England, and the Founding Fathers of the United States.¹⁰⁷ (With respect to the American Founding Fathers during the 18th century, there were, of course, other important secular influences, such as those of the Enlightenment philosophes, but those other influences pale by comparison to the influence of Anglican-Catholic-Protestant Christianity, which was decisively "Augustinian."¹⁰⁸) For example, Professor Daniel J. Elazar in his article "Deuteronomy as Israel's Ancient Constitution,"¹⁰⁹ has written:

Deuteronomy had a similar impact on the Christian world. Whenever Christian theologians, political philosophers or reformers sought biblical sources for political ideas, they turned to Deuteronomy as a major Scriptural source.¹⁵ **The use of Deuteronomy reached its apogee during the Protestant Reformation in the sixteenth and seventeenth centuries when the founders of the new Swiss, Huguenot, Rhineland, Dutch, Puritan, and Scottish commonwealths rested their polities on Deuteronomic foundations.**¹⁶ The culmination of this trend came at the time of the American

¹⁰⁶In the history of constitutional law in the West, the Book of Deuteronomy is a most important text. For example, Daniel J. Elazar has written in his article "Deuteronomy as Israel's Ancient Constitution" that ancient and modern-day Jews continued to look to the Book of Deuteronomy for authority in structuring ecclesiastical and secular polity. Elazar also writes: "**Deuteronomy had a similar impact on the Christian world. Whenever Christian theologians, political philosophers or reformers sought biblical sources for political ideas, they turned to Deuteronomy as a major Scriptural source. The use of Deuteronomy reached its apogee during the Protestant Reformation in the sixteenth and seventeenth centuries when the founders of the new Swiss, Huguenot, Rhineland, Dutch, Puritan, and Scottish commonwealths rested their polities on Deuteronomic foundations. The culmination of this trend came at the time of the American revolutionary polemical literature between 1765 and 1805. As Donald Lutz has pointed out, Deuteronomy was cited more frequently than all citations of European political philosophers combined, a major source for the myriad political sermons of the period.**"

¹⁰⁷ Ibid.

¹⁰⁸ During the 18th century, the Renaissance morphed into the Enlightenment, but it did not shake the foundation of Augustinian Catholicism's (i.e., mainline Protestantism) or Thomist Catholicism's (i.e., the Roman Catholic Church) influence upon the secular legal system in England, Europe, or North America. Sir Isaac Newton's mathematics, which was perhaps the most profound discovery of the Enlightenment, simply could not be defined as antithetical heresy in violation of the fundamental tenets of the Church of England. Science, inventions, and discovery were, instead, carried forth under the auspices of bishops, theologians, and churchmen. Once Martin Luther had elevated the common man to the status of priest, under the doctrine of the "priesthood of all believers," the commoners of Europe began to insist upon attaining constitutional rights and economic justice. As they re-read the Sacred Scriptures, which had only recently been interpreted into their native languages (i.e., German, English, Dutch, French, etc.), they began to firmly rely upon the "Word of God" as their firm authority for requesting ecclesiastical, social, economic, and political change. The Bible was, in essence, the de facto constitution of Europe, England, and North America—the source of the canon law, the civil law, the common law, and the written compacts (i.e., social contracts or constitutions). **But perhaps the most important Biblical text was the Book of Deuteronomy.** For example, Daniel J. Elazar has written in his article "Deuteronomy as Israel's Ancient Constitution" that ancient and modern-day Jews continued to look to the Book of Deuteronomy for authority in structuring ecclesiastical and secular polity. Elazar also writes: "Deuteronomy had a similar impact on the Christian world. Whenever Christian theologians, political philosophers or reformers sought biblical sources for political ideas, they turned to Deuteronomy as a major Scriptural source. **The use of Deuteronomy reached its apogee during the Protestant Reformation in the sixteenth and seventeenth centuries when the founders of the new Swiss, Huguenot, Rhineland, Dutch, Puritan, and Scottish commonwealths rested their polities on Deuteronomic**

revolutionary polemical **literature between 1765 and 1805**. As Donald Lutz has pointed out, Deuteronomy was cited more frequently than all citations of European political philosophers combined, a major source for the myriad political sermons of the period.

In fact, in “Deuteronomy as Israel’s Ancient Constitution,” Professor Elazar describes the Book of Deuteronomy as ancient Israel’s “constitution,” whereby Moses summarized the fundamental law of God and set forth the basic concepts of ecclesiastical and civil government. Importantly, Professor Elazar explains “ancient constitutions” as being “distinguished from modern ones by devoting as much or more attention to the moral and socio-economic bases of the polity as to the frame of government.”¹¹⁰ “The whole document [i.e., the Book of Deuteronomy],” writes Professor Elazar, “is presented as a covenant in the spirit and format of Israelite constitutions.”¹¹¹ Although the Book of Deuteronomy does not require a particular form of government, it does explicitly restrict a monarchical form of government to that of the “constitutional monarch,” citing Deuteronomy 17: 16-20: “That his heart be not lifted up above his brethren, and that he turn not aside from the commandment, to the right hand, or to the left: to the end that he may prolong his days in his kingdom, he, and his children, in the midst of Israel.”¹¹²

In his article, “Biblical Origins of the Separation of Powers Doctrine,” Professor Peter Barenboim concluded that the Law of Moses published the first “Bill of Rights,” to wit: Deuteronomy 1: 16, 27; 7:11; 16: 18, 19; 11: 19; 17; 20; 25: 1-3; and Exodus. 20:13; 21: 12-14; 22:28.¹¹³ Furthermore, Prof. Barenboim argues that the Old Testament also established the idea that the “divine king” should only rule subject to a “divine fundamental law,” which in turn would be interpreted by an independent judge—whether priest, prophet, or judge. “All Israeli kings or aristocrats,” writes Professor Barenboim, “were subject to” the rule of divine fundamental law.¹¹⁴ “A famous Anglo-American commentary states that Moses’ father-in-law advised him to delegate his judiciary powers, which led to the establishment of a hierarchical structure for conflict resolution,” writes Prof. Barenboim. “The Old Testament laid the basis of the separation of church and state, as well as separation of powers, which nearly three thousand years later, in the 18th century, again moved into the foreground of history.”¹¹⁵ “[T]he word ‘judge’ in the Old Testament means what it means today, even though some of them were military leaders and prophets....”¹¹⁶ According to Prof. Barenboim, the prophet Samuel was

foundations. The culmination of this trend came at the time of the American revolutionary polemical literature between 1765 and 1805. As Donald Lutz has pointed out, Deuteronomy was cited more frequently than all citations of European political philosophers combined, a major source for the myriad political sermons of the period.”

¹⁰⁹ See Table 4 for References Citation.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

believed to be the last independent Judge.¹¹⁷ “Both the Bible and the Constitution,” says he, “were binding on political authorities and have served as restraints on power. The king was subject to the Torah... powerful Presidents and powerful Congresses, we know, are subject to the Constitution.”¹¹⁸

It is my position, then, that St. Augustine’s influence upon the American Founding Fathers would have come indirectly through the Church of England, the Puritans of colonial New England, and the English Baptists. The Puritan divines, particularly the more conservative Calvinists, would have relied strictly upon the Bible in crafting constitutional principles for the civil magistrate. And this readily apparent in the first founding documents of colonial New England, to wit:

- (1). Charter of the Virginia Colony, 1606
- (2). Mayflower Compact, 1620
- (3). Massachusetts Bay Charter, 1629
- (4). Massachusetts Body of Liberties, 1641
- (5). Massachusetts General Law and Liberties, 1647
- (6). The Fundamental Orders of Government, 1639 [Connecticut]
- (7). Patent for Providence Plantations, 1643 [Rhode Island]
- (8). Royal Charter of 1663 [Rhode Island]

The fundamental constitutional principles which undergird these colonial documents [e.g., the sovereignty and providence of God; the Christian religion as the true faith; the laws of nature, natural justice, and domestic tranquility; etc.] may also be found in the American Declaration of Independence and the U.S. Constitution. See, e.g., Table 5, “Catholic (Natural Law) Interpretation of the U.S. Constitution.”

Table 5. Catholic (Natural Law) Interpretation of the U.S. Constitution

St. Augustine’s <i>The City of God</i>	American Constitutional Law
	<i>Declaration of Independence</i>

¹¹⁷ Ibid.

¹¹⁸ Ibid.

“The unanimous Declaration of the thirteen united States of America,

“When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an

	absolute Tyranny over these States.”
Nature ¹¹⁹	Nature’s God
God ¹²⁰	Law’s of Nature
Natural Law (Providence) ¹²¹	Entitlement to disserve political bonds which connect a people to another as a result of theft, robbery, abuse, etc.
Justice taken away... Robbery ¹²²	
Liberty (Man’s Nature) ¹²³	
Happiness ¹²⁴	
Definition of Republic/ Empire ¹²⁵	

¹¹⁹ St Augustine defines “nature” as “essential.” He writes: “Consequently, to that nature which supremely is, and which created all else that exists, no nature is contrary save that which does not exist. For nonentity is the contrary of that which is. And thus there is no being contrary to God, that Supreme Being, and Author of all beings whatsoever... It is not nature, therefore, but vice, which is contrary to God.” *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 382. Similarly, in another section of *The City of God*, St. Augustine describes “God Himself,” as “the fountain of all justice.” *Ibid*, p. 27.

¹²⁰ St. Augustine defines the idea of the “God of Nature” as follows: “In Scripture they are called God’s enemies who oppose His rule, not by nature, but by vice; having no power to hurt Him, but only themselves. For they are His enemies, not through their power to hurt, but by their will to oppose Him. For God is unchangeable, and wholly proof against injury. Therefore the vice which makes those who are called His enemies resist Him, is an evil not to God, but to themselves. And to them it is an evil, solely because it corrupts the good of their nature.” *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 382. And, in another section of *The City of God*, St. Augustine writes: “The spirit of life, therefore, which quickens all things, and is the creator of every body, and of every created spirit, is God Himself, the uncreated spirit. In His supreme will resides the power which acts on the wills of all created spirits, helping the good, judging the evil, controlling all, granting power to some, not granting it to others. For, as He is the creator of all natures, so also is He the betower of all powers, not of all wills; for wicked wills are not from Him, being contrary to nature, which is from Him.... The cause of things, therefore, which makes but is not made, is God; but all other causes both make and are made.” *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 155. And, finally, St. Augustine makes no bones about the fact that the “gods” of the pagans are non-existent; that the “God” of the pagans and other non-Christians is none other than the God of Israel. For on this point, St Augustine writes: “Who is this God, or what proof is there that He alone is worthy to

Tranquility; Order ¹²⁶	
	Life, Liberty and Pursuit of Happiness, Gov't instituted to secure liberty, natural rights; justice, etc.
	<p style="text-align: center;"><i>U.S. Constitution</i></p> <hr/> <p style="text-align: center;"><i>Preamble to the U.S. Constitution:</i></p> <p>“WE THE PEOPLE of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and</p>

receive sacrifice from the Romans? One must be very blind to be still asking who this god is. He is the God whose prophets predicted the things we see accomplished. He is the God from whom Abraham received the assurance, ‘In they seed shall all nations of be blessed.’ That this was fulfilled in Christ, who, according to the flesh sprang from that seed, is recognized, whether they will or no, even by those who have continued to be the enemies of this name.... He is the God whom Porphyry, the most learned of the philosophers, though the bitterest enemy of the Christians, confesses to be a great God, even according to the oracles of those whom he esteems gods.” *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 701.

¹²¹ St. Augustine does not use the words “natural law” but nevertheless defines the substance of natural law as follows: “All natures, then, inasmuch as they are, and have therefore a rank and species of their own, and a kind of internal harmony, are certainly good. And when they are in the places assigned to them by the order of their nature, they preserve such being as they have received. And those things which have not received everlasting being, are altered for better or for worse, ***so as to suit the wants and motions of those things to which the Creator’s law has made them subservient***; and thus they tend in the divine providence to that end which is embraced in the general scheme of the government of the universe.” *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 384. And, again, in another place, St. Augustine described “**nature**” as “**peace**”; and “**natural law**” as the “**law of peace**.” According this view, “inequality” is inherent in nature, even though all beings are equal in worth, importance, and dignity. Inequality is necessary to balance out the forces of nature and to establish the peace, tranquility (e.g., health and prosperity), and concord within every aspect of creation, including human political organizations, families, and nations. “The peace of all things is the tranquility of order,” wrote St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 690-693. “**Order is the distribution which allots things equal and unequal**, each to its own place.... God, then, the most wise Creator **and most just Ordainer of all natures**, who placed the human race upon earth as its greatest ornament, imparted to men some good things adapted to this life, to wit, temporal peace, such as we can enjoy in this life from health and safety and human fellowship, and all things needful for the preservation and recovery of this peace.... But as this divine Master inculcates two precepts—the love of God and the love of our neighbor—and as in these precepts a man finds three things he has to love—God; himself, and his neighbor—and that he who loves God loves himself thereby, it follows that he must endeavor to get his neighbor to love God, **since he is ordered to love his neighbor as himself. He ought to make this endeavor in behalf of his wife, his children, his household, all within his reach, even as he would wish his neighbor to do the same for him if he needed it; and consequently he will be at peace, or in well-ordered concord, with all men, as far as in him lies. And this is the order of this concord that a man, in the first place, injure no one, and, in the second, do good to every one he can reach.** Primarily, therefore, his

	establish this Constitution for the United States of America.”
<p>Anglican clergyman <u>Algernon Sidney Crapsey’s <i>Religion and Politics</i></u> comment on The Preamble of U.S. Constitution¹²⁷</p> <p><u>St. Augustine’s <i>City of God</i></u></p> <hr/> <p>Justice¹²⁸</p> <p>Tranquility¹²⁹</p> <p>Liberty¹³⁰</p> <p>Common Weal of People/ General Welfare¹³¹</p> <p>Common Defense (“Just War”)¹³²</p>	<p>A More Perfect Union</p> <p>Establish justice</p> <p>Domestic tranquility</p> <p>General Welfare</p> <p>Blessing of Liberty</p> <p>Common Defense</p>

own household are his care, for **the law of nature and of society** gives him readier access to them and greater opportunity of serving them. And hence the apostle says, ‘Now, if any provide not for his own, and specially for those of his own house, he hath denied the faith, and is worse than an infidel.’ **This is the origin of domestic peace, or the well-ordered concord of those in the family who rule and those who obey. For they who care for the rest rule—husband the wife, the parents the children, the masters the servants; and they who are cared for obey—the women their husbands, the children their parents, the servants their masters. But in the family of the just man who lies by faith and is as yet a pilgrim journeying on to the celestial city, even those who rule serve those whom they seem to command; for they rule not from a love of power, but from a sense of the duty they owe to others—not because they are proud of authority, but because they love mercy.**”

¹²² “Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity. Indeed, that was an apt and true reply which was given to Alexander the Great by a private who had been seized. For when that king had asked the man what he meant by keeping hostile possession of the sea, he answered with bold pride, ‘What thou meanest by seizing the whole earth; but because I do it with a petty ship, I am called a robber, whilst thou who dost it with a great fleet are styled emperor.’” St. Augustine, *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 112-113.

¹²³ “This is prescribed by the order of nature: it is thus that God has created man. For ‘let them,’ He says, ‘have dominion over the fish of the sea, and over the fowl of the air, and over every creeping thing which creepeth on the earth.’ He did not intend that His rational creature, who was made in His image, should have dominion over anything but the irrational creation—not man over man, but man over the beasts... for it is with justice, we believe, that the condition of slavery is the result of sin. And this is why we do not find the word ‘slave’ in any part of

Scripture until righteous Noah branded the sin of his son with this name. It is a name, therefore, introduced by sin and not by nature. The origin of the Latin word for slave is supposed to be found in the circumstances that those who by the law of war were liable to be killed were sometimes preserved by their victors, and were hence called servants. And these circumstances could never have arisen save through sin. For even if we wage a just war, our adversaries must be sinning; and every victory, even though gained by wicked men, is a result of the first judgment of God... But by nature, as God first created us, no one is the slave either of man or of sin. This servitude is, however, penal, and is appointed by that law which enjoins the preservation of the natural order and forbids its disturbance; for if nothing had been done in violation of that law, there would have been nothing to restrain by penal servitude.” St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 693-694.

¹²⁴ “For to what but to felicity should men consecrate themselves, were felicity a goddess? However, as it is not a goddess, but a gift of God, to what God but the giver of happiness ought we to consecrate ourselves, who piously love eternal life, in which there is true and full felicity? But I think, from what has been said, no one ought to doubt that none of these gods is the giver of happiness, who are worshipped with such shame, and who, if they are not so worshipped, are more shamefully enraged, and thus confess that they are most foul spirits. Moreover, how can he give eternal life who cannot give happiness? For we mean by eternal life that life where there is endless happiness... So, then, He only who gives true happiness gives eternal life, that is, an endlessly happy life.” St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 693-694. Furthermore, St. Augustine goes so far as to say unequivocally that the worship of any gods, or the pursuit from any other source, other than in the name of Christ, cannot merit true happiness: “And since those gods whom this civil theology worships have been proved to be unable to give this happiness, they ought not to be worshipped on account of those temporal and terrestrial things, as we showed in the give former books....” *Ibid.*, pp. 204-205. Finally, St. Augustine declares that “happiness” as the final, eternal end of all true Christians: “Of the happiness of the eternal peace, which constitutes the end or true perfection of the saints.... And thus we may say of peace, as we have said of eternal life, that it is the end of our good; and the rather because the Psalmist says of the city of God, the subject of this laborious work, ‘Praise the Lord, O Jerusalem; praise thy God, O Zion: for He hath strengthened the bars of thy gates; He hath blessed thy children within thee; who hath made thy borders peace.’ For when the bars of her gates shall be strengthened, none shall go in or come out from her; consequently we ought to understand the peace of her borders as that final peace we are wishing to declare.” *Ibid.*, p. 696.

¹²⁵ In *The City of God*, p. 706, St. Augustine summarized his whole philosophy of “catholic” political science, as follows: “But if we discard this definition of a people, and, assuming another, say that a people is an assemblage of reasonable beings bound together by a common agreement as to the objects of their love, then, in order to discover the character of any people, we have only to observe what they love.... According to this definition of ours, the Roman people is a people, and its weal is without doubt a commonwealth or republic. But what its tastes were in its early and subsequent days, and how it declined into sanguinary seditions and then to social and civil wars, and so burst asunder or rotted of the bond of concord in which the health of a people consists, history shows, and in the preceding books I have related at large. And yet I would not on this account say either that it was not a people, or that its administration was not a republic, so long as there remains an assemblage of reasonable beings bound together by a common agreement as to the objects of love. But what I say of this people and of this republic I must be understood to think and say of the Athenians or any Greek state, of the Egyptians, of the early Assyrian Babylon, and of every other nation, great or small, which had a public government. For, in general, the city of the ungodly, which did not obey the command of God that it should offer no sacrifice save to Him alone, and which, therefore, could not give the soul its proper command over the body, nor to the reason its just authority over the vices, is void of true justice.” And in another part of *The City of God*, St. Augustine writes:

Scipio reverts to the original thread of discourse, and repeats with commendation his own brief definition of a republic, that it is the weal of the people. ‘The people’ he defines as being not every assemblage or mob, but an assemblage associated by a common acknowledgment of law, and by community of interests. Then he shows the use of definition in debate; and from these definitions of his own he gathers that a republic, or ‘weal of the people,’ then exists only when it is well and justly governed, whether by a monarch, or an aristocracy, or by the whole people [i.e., democracy]. But when the monarch is unjust, or, as the Greeks say, a tyrant; or the aristocrats are unjust, and form a faction; or the people themselves are unjust, and become, as Scipio for want of a better name calls them, themselves the tyrant, then the republic is not only blemished (as had been proved the day before), but by legitimate deduction from those definitions, it altogether

ceases to be. For it could not be the people's weal when a tyrant factiously lorded it over the state; neither would the people be any longer a people if it were unjust, since it would no longer answer the definition of a people—'an assemblage associated by a common acknowledgment of law, and by a community of interests.'" St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), p. 62.

¹²⁶ "The peace of all things is the tranquility of order," wrote St. Augustine. "**Order is the distribution which allots things equal and unequal**, each to its own place.... God, then, the most wise Creator **and most just Ordainer of all natures**, who placed the human race upon earth as its greatest ornament, imparted to men some good things adapted to this life, to wit, temporal peace, such as we can enjoy in this life from health and safety and human fellowship, and all things needful for the preservation and recovery of this peace.... But as this divine Master inculcates two precepts—the love of God and the love of our neighbor—and as in these precepts a man finds three things he has to love—God; himself, and his neighbor—and that he who loves God loves himself thereby, it follows that he must endeavor to get his neighbor to love God, **since he is ordered to love his neighbor as himself.**" *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 690-693.

¹²⁷ Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker, 1905), pp. 305-306 ("When the Constitutional Convention of 1787 sent forth the Constitution which it devised for the government of the nation it did so in these words: 'We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our children, do ordain and establish this Constitution for the United States of America.' Now can any man write a more perfect description of the Kingdom of God on earth or in the heaven than is to be found in these words? A government resting upon such principles as these is not a godless policy; it is a holy religion.... When the people of the United States decreed by constitutional amendment that the government should never by law establish any religion, they did actually establish the only religion that could comprehend in its membership the whole American people.")

¹²⁸ "Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on." *The City of God*, p. 112.

¹²⁹ "The peace of all things is the tranquility of order," wrote St. Augustine. "**Order is the distribution which allots things equal and unequal**, each to its own place.... God, then, the most wise Creator **and most just Ordainer of all natures**, who placed the human race upon earth as its greatest ornament, imparted to men some good things adapted to this life, to wit, temporal peace, such as we can enjoy in this life from health and safety and human fellowship, and all things needful for the preservation and recovery of this peace.... But as this divine Master inculcates two precepts—the love of God and the love of our neighbor—and as in these precepts a man finds three things he has to love—God; himself, and his neighbor—and that he who loves God loves himself thereby, it follows that he must endeavor to get his neighbor to love God, **since he is ordered to love his neighbor as himself.**" *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 690-693.

¹³⁰ "This is prescribed by the order of nature: it is thus that God has created man. For 'let them,' He says, 'have dominion over the fish of the sea, and over the fowl of the air, and over every creeping thing which creepeth on the earth.' He did not intend that His rational creature, who was made in His image, should have dominion over anything but the irrational creation—not man over man, but man over the beasts... for it is with justice, we believe, that the condition of slavery is the result of sin. And this is why we do not find the word 'slave' in any part of Scripture until righteous Noah branded the sin of his son with this name. It is a name, therefore, introduced by sin and not by nature. The origin of the Latin word for slave is supposed to be found in the circumstances that those who by the law of war were liable to be killed were sometimes preserved by their victors, and were hence called servants. And these circumstances could never have arisen save through sin. For even if we wage a just war, our adversaries must be sinning; and every victory, even though gained by wicked men, is a result of the first judgment of God... But by nature, as God first created us, no one is the slave either of man or of sin. This servitude is, however, penal, and is appointed by that law which enjoins the preservation of the natural order and forbids its disturbance; for if nothing had been done in violation of that law, there would have been nothing to restrain by penal servitude." St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 693-694.

¹³¹ "Scipio reverts to the original thread of discourse, and repeats with commendation his own brief definition of a republic, that it is the weal of the people. 'The people' he defines as being not every assemblage or mob, but an assemblage associated by a common acknowledge of law, and by community of interests. Then he shows the use of

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CONCLUSION

St. Augustine of Hippo's *The City of God* is perhaps the official position of the Western Church regarding the political theory and constitutional law. This Western Church includes both the Roman Catholic and the Protestant wings of Christendom. This official position holds that a law of morality (i.e., virtue) is necessary in order for a civilization to flourish and that the human body may be subject to the rule of reason within the human soul in order for civil governments to establish true justice. The objective of this moral law is to preserve peace, order, and domestic tranquility; and, even though the civil magistrate has valid authority to mete out civil justice, this valid civil authority is ordained and given by God Himself and governed by His moral law. In *The City of God*, St. Augustine explained to his contemporaries that the Roman Empire had fallen under the weight of its own licentiousness and immorality; and that the Christian religion was "life-giving" because it promoted morality and virtue. For this reason, the Western Church (especially the Roman Catholic Church and the Church of England) have held to the position that any separation of Church from the State must be "procedural" but not "substantive," because there is only one substantive fundamental law which governs both Church and State. The Church is responsible for certain important aspects of human life, whereas the State is responsible for other very important aspects of secular life. In the Anglican worldview (as reflected in the constitutional documents of colonial New England), both the Church and the State must cooperate and act in tandem with each other, as two sides of the same coin.

definition in debate; and from these definitions of his own he gathers that a republic, or 'weal of the people,' then exists only when it is well and justly governed, whether by a monarch, or an aristocracy, or by the whole people [i.e., democracy]. But when the monarch is unjust, or, as the Greeks say, a tyrant; or the aristocrats are unjust, and form a faction; or the people themselves are unjust, and become, as Scipio for want of a better name calls them, themselves the tyrant, then the republic is not only blemished (as had been proved the day before), but by legitimate deduction from those definitions, it altogether ceases to be. For it could not be the people's weal when a tyrant factiously lorded it over the state; neither would the people be any longer a people if it were unjust, since it would no longer answer the definition of a people—"an assemblage associated by a common acknowledgment of law, and by a community of interests." St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), p. 62.

¹³² St. Augustine acknowledges the idea of "just war" in *The City of God*, where he states: "And, accordingly, they who have waged war in obedience to the divine command, or in conformity with His laws have represented in their persons the public justice or the wisdom of government, and in this capacity have put to death wicked men; such persons have by no means violated the commandment, 'Thou shalt not kill.'" Ibid, p. 27.

APPENDIX B. Charter of the Colony of Virginia, 1606

The First Virginia Charter (April 10, 1606)

James, by the grace of God [King of England, Scotland, France, and Ireland, Defender of the Faith], etc. Whereas our loving and weldisposed subjects, Sir Thomas Gates and Sir George Somers, Knightes; Richarde Hackluit, Clarke, Prebendarie of Westminster; and Edwarde Maria Winghfeilde, Thomas Hannam and Raleighe Gilberde, Esquiers; William Parker and George Popham, Gentlemen; and divers others of our loving subjects, have been humble sutors unto us that wee woulde vouchsafe unto them our licence to make habitacion, plantacion and to deduce a colonie of sondrie of our people into that parte of America commonly called Virginia, and other parts and territories in America either appartaining unto us or which are not nowe actuallie possessed by anie Christian prince or people, scituate, lying and being all along the sea coastes between fower and thirtie degrees of northerly latitude from the equinoctiall line and five and fortie degrees of the same latitude and in the maine lande betweene the same fower and thirtie and five and fourtie degrees, and the ilandes thereunto adjacente or within one hundred miles of the coaste thereof;

And to that ende, and for the more speedy accomlishement of their saide intended plantacion and habitacion there, are desirous to devide themselves into two severall colonies and companies, the one consisting of certaine Knightes, gentlemen, marchanntes and other adventurers of our cittie of London, and elsewhere, which are and from time to time shalbe joined unto them which doe desire to begin their plantacions and habitacions in some fitt and conveniente place between fower and thirtie and one and fortie degrees of the said latitude all alongst the coaste of Virginia and coastes of America aforesaid and the other consisting of sondrie Knightes, gentlemen, merchanntes, and other adventurers of our citties of Bristoll and Exeter, and of our towne of Plymouthe, and of other places which doe joine themselves unto that colonie which doe desire to beginn their plantacions and habitacions in some fitt and convenient place betweene eighte and thirtie degrees and five and fortie degrees of the saide latitude all alongst the saide coaste of Virginia and America as that coaste lieth;

Wee, greatly commending and graciously accepting of their desires to the furtherance of soe noble a worke which may, by the providence of Almighty God, hereafter tende to the glorie of His Divine Majestie in propagating of Christian religion to suche people as yet live in darknesse and miserable ignorance of the true knoweledge and worshippe of God and may in tyme bring the infidels and salvages living in those parts to humane civilitie and to a settled and quiet govermente, doe by these our lettres patents graciously accepte of and agree to their humble and well intended desires;

And doe, therefore, for us, our heires and successors, grannte and agree that the saide Sir Thomas Gates, Sir George Sumers, Richarde Hackluit and Edwarde Maria Winghfeilde, adventurers of and for our cittie of London, and all suche others as are or shalbe joined unto them of that Colonie, shalbe called the Firste Colonie, and they shall and may beginne their saide firste plantacion and seate of their firste aboade and habitacion at anie place upon the saide coaste of Virginia or America where they shall thincke fitt and conveniente betweene the saide fower and thirtie and one and fortie degrees of the saide latitude; and that they shall have

all the landes, woods, soile, groundes, havens, ports, rivers, mines, mineralls, marshes, waters, fishinges, commodities and hereditamentes whatsoever, from the said first seate of their plantacion and habitacion by the space of fiftie miles of Englishe statute measure all alongest the saide coaste of Virginia and America towards the weste and southe weste as the coaste lieth, with all the islandes within one hundred miles directlie over againste the same sea coaste; and alsoe all the landes, soile, groundes havens, ports, rivers, mines, mineralls, woods, marrishes [marshes], waters, fishinges, commodities and hereditamentes whatsoever, from the saide place of their firste plantacion and habitacion for the space of fiftie like Englishe miles, all alongest the saide coaste of Virginia and America towards the easte and northeaste [or toward the north] as the coaste lieth, together with all the islandes within one hundred miles directlie over againste the same sea coaste; and alsoe all the landes, woodes, soile, groundes, havens, portes, rivers, mines, mineralls, marrishes, waters, fishinges, commodities and hereditamentes whatsoever, from the same fiftie miles everie waie on the sea coaste directly into the maine lande by the space of one hundred like Englishe miles; and shall and may inhabit and remaine there; and shall and may alsoe builde and fortifie within anie the same for their better safegarde and defence, according to their best discrecions and the direction of the Counsell of that Colonie; and that noe other of our subjectes shalbe permitted or suffered to plante or inhabit behinde or on the backside of them towards the maine lande, without the expresse licence or consente of the Counsell of that Colonie thereunto in writing firste had or obtained.

And wee doe likewise for us, our heires and successors, by these presentes grannte and agree that the saide Thomas Hannam and Raleigh Gilberde, William Parker and George Popham, and all others of the towne of Plymouthe in the countie of Devon, or elsewhere, which are or shalbe joined unto them of that Colonie, shalbe called the Seconde Colonie; and that they shall and may beginne their saide firste plantacion and seate of their first abode and habitacion at anie place upon the saide coaste of Virginia and America, where they shall thincke fitt and conveniente, betweene eighte and thirtie degrees of the saide latitude and five and fortie degrees of the same latitude; and that they shall have all the landes, soile, groundes, havens, ports, rivers, mines, mineralls, woods, marishes, waters, fishinges, commodities and hereditaments whatsoever, from the firste seate of their plantacion and habitacion by the space of fiftie like Englishe miles, as is aforesaide, all alongeste the saide coaste of Virginia and America towards the weste and southwest, or towards the southe, as the coaste lieth, and all the islandes within one hundred miles directlie over againste the saide sea coaste; and alsoe all the landes, soile, groundes, havens, portes, rivers, mines, mineralls, woods, marishes, waters, fishinges, commodities and hereditamentes whatsoever, from the saide place of their firste plantacion and habitacion for the space of fiftie like miles all alongest the saide coaste of Virginia and America towards the easte and northeaste or towards the northe, as the coaste lieth, and all the islandes alsoe within one hundred miles directly over againste the same sea coaste; and alsoe all the landes, soile, groundes, havens, ports, rivers, woodes, mines, mineralls, marishes, waters, fishings, commodities and hereditaments whatsoever, from the same fiftie miles everie waie on the sea coaste, directlie into the maine lande by the space of one hundred like Englishe miles; and shall and may inhabit and remaine there; and shall and may alsoe builde and fortifie within anie the same for their better saufegarde according to their beste discrecions and the direction of the Counsell of that Colonie; and that none of our subjectes shalbe permitted or suffered to plante or inhabit behinde or on the backe of them towards the maine lande

without the expresse licence or consente of the Counsell of that Colonie, in writing thereunto, firste had and obtained.

Provided alwaies, and our will and pleasure herein is, that the plantacion and habitacion of suche of the saide Colonies as shall laste plante themselves, as aforesaid, shall not be made within one hundred like Englishe miles of the other of them that firste beganne to make their plantacion, as aforesaide.

And wee doe alsoe ordaine, establishe and agree for [us], our heires and successors, that eache of the saide Colonies shall have a Counsell which shall governe and order all matters and causes which shall arise, growe, or happen to or within the same severall Colonies, according to such lawes, ordinances and instructions as shalbe in that behalfe, given and signed with our hande or signe manuell and passe under the Privie Seale of our realme of Englande; eache of which Counsells shall consist of thirteene parsons and to be ordained, made and removed from time to time according as shalbe directed and comprised in the same instructions; and shall have a severall seale for all matters that shall passe or concerne the same severall Counsells, eache of which seales shall have the Kinges armes engraven on the one side there of and his pourtraiture on the other; and that the seale for the Counsell of the saide Firste Colonie shall have engraven rounde about on the one side these wordes: Sigillum Regis Magne Britanie, Francie [et] Hibernie; on the other side this inscripture rounde about: Pro Consillio Prime Colonie Virginie. And the seale for the Counsell of the saide Seconde Colonie shall alsoe have engraven rounde about the one side thereof the foresaide wordes: Sigillum Regis Magne Britanie, Francie [et] Hibernie; and on the other side: Pro Consilio Secunde Colonie Virginie.

And that alsoe ther shalbe a Counsell established here in Englande which shall in like manner consist of thirteen parsons to be, for that purpose, appointed by us, our heires and successors, which shalbe called our Counsell of Virginia; and shall from time to time have the superior managing and direction onelie of and for all matters that shall or may concerne the govermente, as well of the said severall Colonies as of and for anie other parte or place within the aforesaide precinctes of fower and thirtie and five and fortie degrees abovementioned; which Counsell shal in like manner have a seale for matters concerning the Counsell [or Colonies] with the like armes and purtraiture as aforesaide, with this inscription engraven rounde about the one side: Sigillum Regis Magne Britanie, Francie [et] Hibernie; and rounde about the other side: Pro Consilio Suo Virginie.

And more over wee doe grannte and agree for us, our heires and successors, that the saide severall Counsells of and for the saide severall Colonies shall and lawfully may by vertue hereof, from time to time, without interruption of us, our heires or successors, give and take order to digg, mine and searche for all manner of mines of goulde, silver and copper, as well within anie parte of their saide severall Colonies as of the saide maine landes on the backside of the same Colonies; and to have and enjoy the goulde, silver and copper to be gotten there of to the use and behoofe of the same Colonies and the plantacions thereof; yeilding therefore yerelie to us, our heires and successors, the fite parte onelie of all the same goulde and silver and the fifteenth parte of all the same copper soe to be gotten or had, as is aforesaid, and without anie other manner of profitt or accompte to be given or yeilded to us, our heires or successors, for or in respecte of the same.

And that they shall or lawfullie may establishe and cawse to be made a coine, to passe current there betwene the people of those severall Colonies for the more ease of traffique and bargaining betwene and amongst them and the natives there, of such mettall and in such manner and forme as the same severall Counsellis there shall limitt and appointe. And wee doe likewise for us, our heires and successors, by these presents give full power and auctoritie to the said Sir Thomas Gates, Sir George Somers, Richard Hackluit, Edward Maria Wingfield, Thomas Hannam, Raleigh Gilberde, William Parker and George Popham, and to everie of them, and to the saide severall Companies, plantacions and Colonies, that they and everie of them shall and may at all and everie time and times hereafter have, take and leade in the saide voyage, and for and towards the saide severall plantacions and Colonies, and to travell thitherwarde and to abide and inhabit there in everie of the saide Colonies and plantacions, such and somanie of our subjectes as shall willinglie accompanie them, or anie of them, in the saide voyages and plantacions, with sufficiente shipping and furniture of armour, weapon, ordonnance, powder, victall, and all other thinges necessarie for the saide plantacions and for their use and defence there: provided alwaies that none of the said parsons be such as hereafter shalbe speciallie restrained by us, our heires or successors.

Moreover, wee doe by these presents, for us, our heires and successors, give and grannte licence unto the said Sir Thomas Gates, Sir George Somers, Richard Hackluite, Edward Maria Wingfield, Thomas Hannam, Raleigh Gilberde, William Parker and George Popham, and to everie of the said Colonies, that they and everie of them shall and may, from time to time and at all times for ever hereafter, for their severall defences, incounter or expulse, repell and resist, aswell by sea as by lande, by all waies and meanes whatsoever, all and everie suche parson and parsons as without espiciall licence of the said severall Colonies and plantacions shall attempte to inhabit within the saide severall precincts and limitts of the saide severall Colonies and plantacions, or anie of them, or that shall enterprise or attempt at anie time hereafter the hurte, detrimente or annoyance of the saide severall Colonies or plantacions.

Giving and granting by these presents unto the saide Sir Thomas Gates, Sir George Somers, Richard Hackluite, and Edward Maria Wingfield, and their associates of the said Firste Colonie, and unto the said Thomas Hannam, Raleigh Gilberde, William Parker and George Popham, and their associates of the saide Second Colonie, and to everie of them from time to time and at all times for ever hereafter, power and auctoritie to take and surprize by all waies and meanes whatsoever all and everie parson and parsons with their shippes, vessels, goods and other furniture, which shalbe founde traffiqueing into anie harbor or harbors, creeke, creekes or place within the limitts or precincts of the saide severall Colonies and plantacions, not being of the same Colonie, untill such time as they, being of anie realmes or dominions under our obedience, shall paie or agree to paie to the handes of the Tresorer of the Colonie, within whose limitts and precincts they shall soe traffique, twoe and a halfe upon anie hundred of anie thing soe by them traffiqued, boughte or sould; and being stranngers and not subjects under our obeysannce, untill they shall paie five upon everie hundred of suche wares and commoditie as they shall traffique, buy or sell within the precincts of the saide severall Colonies wherein they shall soe traffique, buy or sell, as aforesaide; which sommes of money or benefitt, as aforesaide, for and during the space of one and twentie yeres nexte ensuing the date hereof shalbe whollie imploied to the use, benefitt and behoofe of the saide severall plantacions where such trafficque shalbe made; and after the saide one and twentie yeres ended the same shalbe taken to the use of

us, our heires and successors by such officer and minister as by us, our heires and successors shalbe thereunto assigned or appointed.

And wee doe further, by these presentes, for us, our heires and successors, give and grannte unto the saide Sir Thomas Gates, Sir George Summers, Richarde Hackluit, and Edwarde Maria Wingheilde, and to their associates of the saide Firste Colonie and plantacion, and to the saide Thomas Hannam, Raleigh Gilberde, William Parker and George Popham, and their associates of the saide Seconde Colonie and plantacion, that theie and everie of them by their deputies, ministers and factors may transport the goods, chattells, armor, munition and furniture, needfull to be used by them for their saide apparrell, defence or otherwise in respecte of the saide plantacions, out of our realmes of Englande and Irelande and all other our dominions from time to time, for and during the time of seaven yeres nexte ensuing the date hereof for the better reliefe of the said severall Colonies and plantacions, without anie custome, subsidie or other dutie unto us, our heires or successors to be yeilded or paid for the same.

Alsoe wee doe, for us, our heires and successors, declare by these presentes that all and everie the parsons being our subjects which shall dwell and inhabit within everie or anie of the saide severall Colonies and plantacions and everie of their children which shall happen to be borne within the limitts and precincts of the said severall Colonies and plantacions shall have and enjoy all liberties, franchises and immunities within anie of our other dominions to all intents and purposes as if they had been abiding and borne within this our realme of Englande or anie other of our saide dominions.

Moreover our gracious will and pleasure is, and wee doe by these presents, for us, our heires and successors, declare and sett forthe, that if anie parson or parsons which shalbe of anie of the said Colonies and plantacions or anie other, which shall trafficque to the saide Colonies and plantacions or anie of them, shall at anie time or times hereafter transporte anie wares, marchandize or commodities out of [any] our dominions with a pretence and purpose to lande, sell or otherwise dispose the same within anie the limitts and precincts of anie of the saide Colonies and plantacions, and yet nevertheles being at the sea or after he hath landed the same within anie of the said Colonies and plantacions, shall carrie the same into any other forraine countrie with a purpose there to sell or dispose of the same without the licence of us, our heires or successors in that behalfe first had or obtained, that then all the goods and chattels of the saide parson or parsons soe offending and transporting, together with the said shippe or vessell wherein suche transportacion was made, shall be forfeited to us, our heires and successors.

Provided alwaies, and our will and pleasure is and wee doe hereby declare to all Christian kinges, princes and estates, that if anie parson or parsons which shall hereafter be of anie of the said severall Colonies and plantacions, or anie other, by his, their, or anie of their licence or appointment, shall at anie time or times hereafter robb or spoile by sea or by lande or doe anie acte of unjust and unlawfull hostilitie to anie the subjects of us, our heires or successors, or anie of the subjects of anie king, prince, ruler, governor or state being then in league or amitie with us, our heires or successors, and that upon suche injurie or upon juste complainte of such prince, ruler, governor or state or their subjects, wee, our heires or successors, shall make open proclamation within anie the ports of our realme of Englande, commodious for that purpose, that the saide parson or parsons having committed anie such robberie or spoile shall, within the terme

to be limited by suche proclamations, make full restitution or satisfaction of all suche injuries done, soe as the saide princes or others soe complained may houlde themselves fully satisfied and contented; and that if the saide parson or parsons having committed such robberie or spoile shall not make or cause to be made satisfaction accordingly with[in] such time soe to be limited, that then it shalbe lawfull to us, our heires and successors to put the saide parson or parsons having committed such robberie or spoile and their procurers, abettors or comfortors out of our alleageance and protection; and that it shalbe lawfull and free for all princes and others to pursue with hostilitie the saide offenders and everie of them and their and everie of their procurors, aiders, abettors and comfortors in that behalfe.

And finallie wee doe, for us, our heires and successors, grannte and agree, to and with the saide Sir Thomas Gates, Sir George Summers, Richarde Hackluit and Edwarde Maria Wingheilde, and all other of the saide Firste Colonie, that wee, our heires or successors, upon petition in that behalfe to be made, shall, by lettres patents under the Greate [Seale] of Englande, give and grannte unto such parsons, their heires and assignees, as the Counsell of that Colonie or the most part of them shall for that purpose nominate and assigne, all the landes, tenements and hereditaments which shalbe within the precincts limited for that Colonie, as is aforesaid, to be houlden of us, our heires and successors as of our manor of Eastgreenwiche in the countie of Kente, in free and common soccage onelie and not in capite.

And doe, in like manner, grannte and agree, for us, our heires and successors, to and with the saide Thomas Hannam, Raleigh Gilberd, William Parker and George Popham, and all others of the saide Seconde Colonie, that wee, our heires [and] successors, upon petition in that behalfe to be made, shall, by lettres patentes under the Great Seale of Englande, give and grannte unto such parsons, their heires and assignees, as the Counsell of that Colonie or the most parte of them shall for that purpose nominate and assigne, all the landes, tenementes and hereditaments which shalbe within the precinctes limited for that Colonie as is afore said, to be houlden of us, our heires and successors as of our manor of Eastgreenwich in the countie of Kente, in free and common soccage onelie and not in capite.

All which landes, tenements and hereditaments soe to be passed by the saide severall lettres patents, shalbe, by sufficient assurances from the same patentees, soe distributed and devided amongst the undertakers for the plantacion of the said severall Colonies, and such as shall make their plantacion in either of the said severall Colonies, in such manner and forme and for such estates as shall [be] ordered and sett [downe] by the Counsell of the same Colonie, or the most part of them, respectively, within which the same lands, tenements and hereditaments shall ly or be. Althoughe expresse mencion [of the true yearly value or certainty of the premises, or any of them, or of any other gifts or grants, by us or any our progenitors or predecessors, to the aforesaid Sir Thomas Gates, Knt. Sir George Somers, Knt. Richard Hackluit, Edward-Maria Wingfield, Thomas Hanham, Raleigh Gilbert, William Parker, and George Popham, or any of them, heretofore made, in these presents, is not made; or any statute, act, ordnance, or provision, proclamation, or restraint, to the contrary hereof had, made, ordained, or any other thing, cause, or matter whatsoever, in any wise notwithstanding.] In wisse wherof [we have caused these our letters to be made patents;] wisse our selfe at Westminster the xth day of Aprill [1606, in the fourth year of our reign of England, France, and Ireland, and of Scotland the nine and thirtieth.]

Appendix C

Mayflower Compact, 1620

IN THE NAME OF GOD, AMEN. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King *James*, by the Grace of God, of *Great Britain, France, and Ireland*, King, *Defender of the Faith*, &c. Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of *Virginia*; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience. **IN WITNESS** whereof we have hereunto subscribed our names at *Cape-Cod* the eleventh of November, in the Reign of our Sovereign Lord King *James*, of *England, France, and Ireland*, the eighteenth, and of *Scotland* the fifty-fourth, *Anno Domini*; 1620.

Appendix D Massachusetts Bay Charter, 1629

“The charter of Massachusetts Bay represents still another way in which self-government was established in the English colonies of North America. In this case, the Massachusetts Bay Company, a joint-stock company resident in England, whose membership included merchants and landed gentry, received a charter from the Crown. The government of the company and the extent of its authority were clearly stated in the charter, with an unstated premise that the management of the company and thus the charter itself would remain in England. However, a group of Puritans within the Massachusetts Bay Company adopted a pledge known as the Cambridge Agreement, in which they stipulated that they would not only migrate to the New World but also carry the charter with them. This last step was taken to assure those Puritans in the company who settled in New England that they would retain control of company management. By bringing the charter to America, the Puritans took the first step in transforming Massachusetts Bay from a trading company into a commonwealth, because the charter became the constitution of the colony.”¹³³

And further, That the said Governour and Companye, and their Successors, maie have forever one comon Seale, to be used in all Causes and Occasions of the said Company, and the same Seale may alter, chaunge, breake, and newe make, from tyme to tyme, at their pleasures. And our Will and Pleasure is, and Wee doe hereby for Us, our Heires and Successors, ordeyne and graunte, That from henceforth for ever, there shalbe one Governor, one Deputy Governor, and eighteene Assistants of the same Company, to be from tyme to tyme constituted, elected and chosen out of the Freemen of the saide Company, for the twyme being, in such Manner and Forme as hereafter in this Presents is expressed, which said Officers shall applie themselves to take Care for the best disposing and ordering of the generall buysines and Affaires of, for, and concerning the said Landes and Premisses hereby mentioned, to be graunted, and the Plantation thereof, and the Government of the People there. And for the better Execution of our Royall Pleasure and Graunte in this Behalf, Wee doe, by this presents, for Us, our Heires and Successors, nominate, ordeyne, make, and constitute; our welbeloved the saide Mathewe Cradocke, to be the first and present Governor of the said Company, and the saide Thomas Goffe, to be Deputy Governor of the saide Company, and the saide Sir Richard Saltonstall, Isaack Johnson, Samuell Aldersey, John Ven, John Humfrey, John Endecott, Simon Whetcombe, Increase Noell, Richard Pery, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Adams, Thomas Hutchins, John Browne, George Foxcrofte, William Vassall, and William Pinchion, to be the present Assistants of the saide Company, to continue in the saide several

¹³³ <http://www.let.rug.nl/usa/documents/1600-1650/charter-of-massachusetts-bay-1629.php>

Offices respectivelie for such tyme, and in such manner, as in and by theis Presents is hereafter declared and appointed.

And further, Wee will, and by theis Presents, for Us, our Heires and Successors, doe ordeyne and graunte, That the Governor of the saide Company for the tyme being, or in his Absence by Occasion of Sicknes or otherwise, the Deputie Governor for the tyme being, shall have Authoritie from tyme to tyme upon all Occasions, to give order for the assembling of the saide Company, and calling them together to consult and advise of the Bussinesses and Affaires of the saide Company, and that the said Governor, Deputie Governor, and Assistants of the saide Company, for the tyme being, shall or maie once every Moneth, or oftener at their Pleasures, assemble and houlde and keepe a Courte or Assemblie of themselves, for the better ordering and directing of their Affaires, and that any seaven or more persons of the Assistants, together with the Governor, or Deputie Governor soe assembled, shalbe saide, taken, held, and reputed to be, and shalbe a full and sufficient Courte or Assemblie of the said Company, for the handling, ordering, and dispatching of all such Buysinesses and Occurrents as shall from tyme to tyme happen, touching or concerning the. said Company or Plantation; and that there shall or maie be held and kept by the Governor, or Deputie Governor of the said Company, and seaven or more of the said Assistants for the tyme being, upon every last Wednesday in Hillary, Easter, Trinity, and Michas Termes respectivelie forever, one greate generall and solemne assemblie, which foure generall assemblies shalbe stiled and called the foure greate and generall Courts of the saide Company.

In all and every, or any of which saide greate and generall Courts soe assembled, Wee doe for Us, our Heires and Successors, give and graunte to the said Governor and Company, and their Successors, That the Governor, or in his absence, the Deputie Governor of the saide Company for the tyme being, and such of the Assistants and Freeman of the saide Company as shalbe present, or the greater number of them so assembled, whereof the Governor or Deputie Governor and six of the Assistants at the least to be seaven, shall have full Power and authoritie to choose, nominate, and appointe, such and soe many others as they shall thinke fitt, and that shall be willing to accept the same, to be free of the said Company and Body, and them into the same to admitt; and to elect and constitute such officers as they shall thinke fill and requisite, for the ordering, mannaging, and dispatching of the Affaires of the saide Governor and Company, and their Successors; And to make Lawes and Ordinances for the Good and Welfare of the saide Company, and for the Government and ordering of the saide Landes and Plantation, and the People inhabiting and to inhabite the same, as to them from tyme to tyme shalbe thought meete, soe as such Lawes and Ordinances be not contrarie or repugnant to the Lawes and Statuts of this our Realme of England.

And, our Will and Pleasure is, and Wee doe hereby for Us, our Heires and Successors, establish and ordeyne, That yearly once in the yeare, for ever hereafter, namely, the last Wednesday in Easter Tearme, yearly, the Governor, Deputy-Governor, and Assistants of the saide Company and all other officers of the saide Company shalbe in the Generall Court or Assembly to be held for that Day or Tyme, newly chosen for the Yeare ensueing by such greater parte of the said Company, for the Tyme being, then and there present, as is aforesaide. And, if it shall happen the present governor, Deputy Governor, and assistants, by theis presents appointed, or such as shall hereafter be newly chosen into their Roomes, or any of them, or any other of the

officers to be appointed for the said Company, to dye, or to be removed from his or their severall Offices or Places before the saide generall Day of Election (whome Wee doe hereby declare for any Misdemeanor or Defect to be removeable by the Governor, Deputie Governor, Assistants, and Company, or such greater Parte of them in any of the publique Courts to be assembled as is aforesaid) That then, and in every such Case, it shall and maie be lawfull, to and for the Governor, Deputie Governor, Assistants, and Company aforesaide, or such greater Parte of them soe to be assembled as is aforesaide, in any of their Assemblies, to proceade to a new Election of one or more others of their Company in the Roome or Place, Roomes or Places of such Officer or Officers soe dyeing or removed according to their Discretions, And, immediately upon and after such Election and Elections made of such Governor, Deputie Governor, Assistant or Assistants, or any other officer of the saide Company, in Manner and Forme aforesaid, the Authoritie, Office, and Power, before given to the former Governor, Deputie Governor, or other Officer and Officers soe removed, in whose Steade and Place newe shalbe soe chosen, shall as to him and them, and everie of them, cease and determine

Provided alsoe, and our Will and Pleasure is, That aswell such as are by theis Presents appointed to be the present Governor, Deputie Governor, and Assistants of the said Company, as those that shall succeed them, and all other Officers to be appointed and chosen as aforesaid, shall, before they undertake the Execution of their saide Offices and Places respectivelie, take their Corporal Oathes for the due and faithfull Performance of their Duties in their severall Offices and Places, before such Person or Persons as are by theis Presents hereunder appointed to take and receive the same. . . .

And, further our Will and Pleasure is, and Wee doe hereby for Us, our Heires and Successors, ordeyne and declare, and graunte to the saide Governor and Company and their Successors, That all and every the Subjects of Us, our Heires or Successors, which shall goe to and inhabite within the saide Landes and Premisses hereby mentioned to be graunted, and every of their Children which shall happen to be borne there, or on the Seas in goeing thither, or returning from thence, shall have and enjoy all liberties and Immunities of free and naturall Subjects within any of the Domyions of Us, our Heires or Successors, to all Intents, Constructions, and Purposes whatsoever, as if they and everie of them were borne within the Realme of England. And that the Governor and Deputie Governor of the said Company for the Tyme being, or either of them, and any two or more of such of the saide Assistants as shalbe thereunto appointed by the saide Governor and Company at any of their Courts or Assemblies to be held as aforesaide, shall and maie at all Tymes, and from tyme to tyme hereafter, have full Power and Authoritie to minister and give the Oathe and Oathes of Supremacie and Allegiance, or either of them, to all and everie Person and Persons, which shall at any Tyme or Tymes hereafter goe or passe to the Landes and Premisses hereby mentioned to be graunted to inhabite in the same.

And, Wee doe of our further Grace, certen Knowledg and meere Motion, give and graunte to the saide Governor and Company, and their Successors, That it shall and maie be lawfull, to and for the Governor or Deputie Governor, and such of the Assistants and Freemen of the said Company for the Tyme being as shalbe assembled in any of their generall Courts aforesaide, or in any other Courtes to be specially sumoned and assembled for that Purpose, or the greater Parte of them (whereof the Governor or Deputie Governor, and six of the Assistants

to be alwaies seaven) from tyme to tyme, to make, ordeine, and establishe all Manner of wholesome and reasonable Orders, Lawes, Statutes, and Ordinances, Directions, and Instructions, not contrairie to the Lawes of this our Realme of England, aswell for setting of the Formes and Ceremonies of Government and Magistracy, fitt and necessary for the said Plantation, and the Inhabitants there, and for nameing and setting of all sorts of Officers, both superior and inferior, which they shall finde needefull for that Governement and Plantation, and the distinguishing and setting forth of the severall duties, Powers, and Lymytts of every such Office and Place, and the Formes of such Oathes warrantable by the Lawes and Statutes of this our Realme of England, as shalbe respectivelie ministred unto them for the Execution of the said severall Offices and Places; as also, for the disposing and ordering of the Elections of such of the said Officers as shalbe annuall, and of such others as shalbe to succede in Case of Death or Removeall, and ministring the said Oathes to the newe elected Officers, and for Impositions of lawfull Fynes, Mulcts, Imprisonment, or other lawfull Correction, according to the Course of other Corporations in this our Realme of England, and for the directing, ruling, and disposing of all other Matters and Thinges, whereby our said People, Inhabitants there, may be soe religiously, peaceable, and civilly governed, as their good Life and orderlie Conversation, maie wynn and incite the Natives of Country, to the Knowledg and Obedience of the onlie true God and Savior of Mankinde, and the Christian Fayth, which in our Royall Intention, and the Adventurers free Profession, is the principall Ende of this Plantation.

Willing, commaunding, and requiring, and by theis Presents for Us, our Heires, and Successors, ordeyning and appointing, that all such Orders, Lawes, Statuts and Ordinances, Instructions and Directions, as shalbe soe made by the Governor, or Deputie Governor of the said Company, and such of the Assistants and Freemen as aforesaide, and published in Writing, under their common Seale, shalbe carefullie and dulle observed, kept, performed, and putt in Execution, according to the true Intent and Meaning of the same; and theis our Letters- patents, or the Duplicate or exemplification thereof, shalbe to all and everie such Officers, superior and inferior, from Tyme to Tyme, for the putting of the same Orders, Lawes, Statutes, and Ordinances, Instructions, and Directions, in due Execution against Us, our Heires and Successors, a sufficient Warrant and Discharge.

And Wee doe further, for Us, our Heires and Successors, give and graunt to the said Governor and Company, and their Successors by theis Presents, that all and everie such Chiefe Comaunders, Captaines, Governors, and other Officers and Ministers, as by the said Orders, Lawes, Statuts, Ordinances, Instructions, or Directions of the said Governor and Company for the Tyme being, shalbe from Tyme to Tyme hereafter imploied either in the Government of the saide Inhabitants and Plantation, or in the Waye by Sea thither, or from thence, according to the Natures and Lymytts of their Offices and Places respectively, shall from Tyme to Tyme hereafter for ever, within the Precincts and Partes of Newe England hereby mentioned to be graunted and confirmed, or in the Waie by Sea thither, or from thence, have full and Absolute Power and Authoritie to correct, punishe, pardon, governe, and rule all such the Subjects of Us, our Heires and Successors, as shall from Tyme to Tyme adventure themselves in any Voyadge thither or from thence, or that shall at any Tyme hereafter, inhabite within the Precincts and Partes of Newe England aforesaid, according to the Orders, Lawes, Ordinances, Instructions, and Directions aforesaid, not being repugnant to the Lawes and Statutes of our Realme of England as aforesaid. . . .

Appendix E

Massachusetts Body of Liberties, 1641

A Coppie of the Liberties of the Massachusetts Collonie in New England

The free fruition of such liberties Immunities and priveledges as humanitie, Civilitie, and Christianitie call for as due to every man in his place and proportion; without impeachment and Infringement hath ever bene and ever will be the tranquillitie and Stabilitie of Churches and Commonwealths. And the deniall or deprivall thereof, the disturbance if not the ruine of both.

We hould it therefore our dutie and safetie whilst we are about the further establishing of this Government to collect and expresse all such freedoms as for present we foresee may concerne us, and our posteritie after us, And to ratify them with our sollemne consent.

Wee doe therefore this day religiously and unanimously decree and confirme these following Rites, liberties, and priveledges concerneing our Churches, and Civill State to be respectively impartiallie and inviolably enjoyed and observed throughout our Jurisdiction for ever.

1. No mans life shall be taken away, no mans honour or good name shall be stayned, no mans person shall be arested, restrayned, banished, dismembred, nor any wayes punished, no man shall be deprived of his wife or children, no mans goods or estaite shall be taken away from him, nor any way indammaged under Coulor of law, or Countenance of Authoritie, unlesse it be by vertue or equitie of some expresse law of the Country warranting the same, established by a generall Court and sufficiently published, or in case of the defect of a law in any partecular case by the word of god. And in Capitall cases, or in cases concerning dismembring or banishment, according to that word to be judged by the Generall Court.

2. Every person within Jurisdiction, whether Inhabitant or forreiner shall enjoy the same justice and law, that is generall for the plantation, which we constitute and execute one towards another, without partialitie or delay.

3. No man shall be urged to take any oath or subscribe any articles, covenants or remonstrance, of a publique and Civill nature, but such as the Generall Court hath considered, allowed, and required.

4. No man shall be punished for not appearing at or before any Civill Assembly, Court, Councill, Magistrate, or officer, nor for the omission of any office or service, if he shall be necessarily hindred, by any apparent Act or providenc of god, which he could neither foresee nor avoid. Provided that this law shall not prejudice any person of his just cost or damage in any civill action.

5. No man shall be compelled to any publique worke or service unlesse the presse be grounded upon some act of the generall Court, and have reasonable allowance therefore.

6. No man shall be pressed in person to any office, worke, warres, or other publike service, that is necessarily and suffitiently exempted by any naturall or personall impediment, as by want of yeares, greatnes of age, defect of minde, fayling of sences, or impotencie of Lymbes.

7. No man shall be compelled to goe out of the limits of this plantation upon any offensive warres which this Commonwealth or any of our freinds or confederats shall volentarily undertake. But onely upon such vindictive and defensive warres in our owne behalfe, or the behalfe of our freinds, and confederats as shall be enterprized by the Counsell and consent of a Court generall, or by Authority derived from the same.

8. No mans Cattell or goods of what kinde soever shall be pressed or taken for any publike use or service, unlesse it be by warrant grounded upon some act of the generall Court, nor without such reasonable prices and hire as the ordinarie rates of the Countrie do afford. And if his Cattle or goods shall perish or suffer damage in such service, the owner shall be suffitiently recompenced.

9. No monoplies shall be granted or allowed amongst us, but of such new Inventions that are profitable to the Countrie, and that for a short time.

10. All our lands and heritages shall be free from all finds and licences upon Alienations, and from all harrlots, wardships, Liveries, Primerseisens, yeare day and wast, Escheates, and forfeitures, upon the deaths of parents, or Ancestors, be they naturall, casuall, or Juditiall.

11. All persons which are of the age of 21 yeares, and of right understanding and meamories, whether excommunicate or condemned shall have full power and libertie to make their wills and testaments, and other lawfull alienations of their lands and estates.

12. Every man whether Inhabitant or fforreiner, free or not free shall have libertie to come to any publike Court, Councell, or Towne meeting, and either by speech or writing to move any lawful, seasonable, and materiall question, or to present any necessary motion, complaint, petition, Bill or information, whereof that meeting hath proper cognizance, so it be done in convenient time, due order, and respective manner.

[13.] No man shall be rated here for any estaite or revenue he hath in England, or in any forreine parties till it be transported hither.

[14.] Any conveyance or Alienation of land or other estaite what so ever, made by any woman that is married, any childe under age, Ideott, or distracted person, shall be good, if it be passed and ratified by the consent of a generall Court.

15. All Covenous or fraudulent Alienations or Conveyances of lands, tenements, or any hereditaments, shall be of no validitie to defeate any man from due debts or legacies, or from any just title, clame or possession, of that which is so fradulently conveyed.

16. Every Inhabitant that is an howse holder shall have free fishing and fowling in any great ponds and Bayes, Coves and Rivers, so farre as the sea ebbes and flowes within the presincts of the towne where they dwell, unlesse the freemen of the same Towne or the Generall Court have otherwise appropriated them, provided that this shall not be extended to give leave to any man to come upon other proprietie without there leave.

17. Every man of or within this Jurisdiction shall have free libertie, not with standing any Civill power to remove both himselfe, and his familie at their pleasure out of the same, provided there be no legall impediment to the contrarie.

18. No mans person shall be restrained or imprisoned by any Authority what so ever, before the law hath sentenced him thereto, If he can put in sufficient securitie, bayle, or mainprise, for his appearance, and good behaviour in the meane time, unlesse it be in Crimes Capitall, and Contempts in open Court, and in such cases where some expresse act of Court doth allow it.

19. If in a generall Court any miscariage shall be amongst the Assistants when they are by themselves that may deserve an Admonition or fine under 20 sh, it shall be examined and sentenced amongst themselves, If amongst the Deputies when they are by themselves, It shall be examined and sentenced amongst themselves, If it be when the whole Court is togeather, it shall be judged by the whole Court, and not severallie as before.

20. If any which are to sit as Judges in any other Court shall demeane themselves offensively in the Court, the rest of the Judges present shall have power to censure him for it, if the cause be of a high nature it shall be presented to and censured at the next superior Court.

21. In all cases where the first summons are not served six dayes before the Court, and the cause briefly specified in the warrant, where appearance is to be made by the partie summoned, it shall be at his libertie whether he will appeare or not, except all cases that are to be handled in Courts suddainly called upon extraordinary occasions, In all cases where there appeares present and urgent cause Any Assistant or officer apointed shal have power to make out Attaichments for the first summons.

22. No man in any suit or action against an other shall falsely pretend great debts or damages to vex his Adversary, if it shall appeare any doth so, The Court shall have power to set a reasonable fine on his head.

23. No man shall be adjudged to pay for detaining any Debt from any Crediter above eight pounds in the hundred for one yeare, And not above that rate proportionable for all somes what so ever, neither shall this be a coulour or countenance to allow any usurie amongst us contrarie to the law of god.

24. In all Trespasses or damages done to any man or men, If it can be proved to be done by the meere default of him or them to whome the trespasse is done, It shall be judged no trespasse, nor any damage given for it.

25. No Summons pleading Judgement, or any kinde of proceeding in Court or course of Justice shall be abated, arested, or reversed, upon any kinde of cercumstantiall errors or mistakes, If the person and cause be rightly understood and intended by the Court.

26. Every man that findeth himselfe unfit to plead his owne cause in any Court, shall have Libertie to imploy any man against whom the Court doth not except, to helpe him, Provided he give him noe fee, or reward for his paines. This shall not exempt the partie him selfe from Answering such Questions in person as the Court shall thinke meete to demand of him.

27. If any plaintife shall give into any Court a declaration of his cause in writeing, The defendant shall also have libertie and time to give in his answer in writeing, And so in all further proceedings betwene partie and partie, So it doth not further hinder the dispatch of Justice then the Court shall be willing unto.

28. The plaintife in all Actions brought in any Court shall have libertie to withdraw his Action, or to be nonsuited before the Jurie hath given in their verdict, in which case he shall alwaies pay full cost and chardges to the defendant, and may afterwards renew his suite at an other Court if he please.

29. In all Actions at law it shall be the libertie of the plaintife and defendant by mutual consent to choose whether they will be tryed by the Bench or by a Jurie, unlesse it be where the law upon just reason hath otherwise determined. The like libertie shall be granted to all persons in Criminall cases.

30. It shall be in the libertie both of plaintife and defendant, and likewise every delinquent (to be judged by a Jurie) to challenge any of the Jurors. And if his challenge be found just and reasonable by the Bench, or the rest of the Jurie, as the challenger shall choose it shall be allowed him, and tales de cercumstantibus impaneled in their room.

31. In all cases where evidence is so obscure or defective that the Jurie cannot clearely and safely give a positive verdict, whether it be a grand or petit Jurie, It shall have libertie to give a non Liquit, or a spetiall verdict, in which last, that is in a spetiall veredict, the Judgement of the cause shall be left to the Court, and all Jurors shall have libertie in matters of fact if they cannot finde the maine issue, yet to finde and present in their verdict so much as they can, If the Bench and Jurors shall so differ at any time about their verdict that either of them can not proceed with peace of conscience the case shall be referred to the Generall Court, who shall take the question from both and determine it.

32. Every man shall have libertie to replevy his Cattell or goods impounded, distreined, seised, or extended, unless it be upon execution after Judgement, and in paiment of fines. Provided he puts in good securitie to prosecute his replevin, And to satisfie such demands as his Adversary shall recover against him in Law.

33. No mans person shall be Arrested, or imprisoned upon execution or judgment for any debt or fine, if the law can finde competent meanes of satisfaction otherwise from his estaite, And if not his person may be arrested and imprisoned where he shall be kept at his owne charge,

not the plaintife's till satisfaction be made: unlesse the Court that had cognizance of the cause or some superior Court shall otherwise provide.

34. If any man shall be proved and Judged a common Barrator vexing others with unjust frequent and endlesse suites, It shall be in the power of Courts both to denie him the benefit of the law, and to punish him for his Barratry.

35. No mans Corne nor hay that is in the field or upon the Cart, nor his garden stuffe, nor any thing subject to present decay, shall be taken in any distresse, unles he that takes it doth presently bestow it where it may not be imbesled nor suffer spoile or decay, or give securitie to satisfie the worth thereof if it comes to any harme.

36. It shall be in the libertie of every man cast condemned or sentenced in any cause in any Inferior Court, to make their Appeale to the Court of Assistants, provided they tender their appeale and put in securitie to prosecute it before the Court be ended wherein they were condemned, And within six dayes next ensuing put in good securitie before some Assistant to satisfie what his Adversarie shall recover against him; And if the cause be of a Criminall nature, for his good behaviour and appearance, And everie man shall have libertie to complaine to the Generall Court of any Injustice done him in any Court of Assistants or other.

37. In all cases where it appeares to the Court that the plaintife hath willingly and witingly done wronge to the defendant in commenceing and prosecuting any action or complaint against him, They shall have power to impose upon him a proportionable fine to the use of the defendant, or accused person, for his false complaint or clamor.

38. Everie man shall have libertie to Record in the publique Rolles of any Court any Testimony give[n] upon oath in the same Court, or before two Assistants, or any Deede or evidence legally confirmed there to remaine in perpetuum rei memoriam, that is for perpetuall memoriall or evidence upon occasion.

39. In all Actions both reall and personall betweene partie and partie, the Court shall have power to respite execution for a convenient time, when in their prudence they see just cause so to doe.

40. No Conveyance, Deede, or promise what so ever shall be of validitie, If it be gotten by Illegal violence, imprisonment, threatenings, or any kinde of forcible compulsion called Dures.

41. Everie man that is to Answer for any Criminall cause, whether he be in prison or under bayle, his cause shall be heard and determined at the next Court that hath proper Cognizance thereof, And may be done without prejudice of Justice.

42. No man shall be twice sentenced by Civill Justice for one and the same Crime, offence, or Trespasse.

43. No man shall be beaten with above 40 stripes, nor shall any true gentleman, nor any man equall to a gentleman be punished with whipping, unless his crime be very shamefull, and his course of life vitious and profligate.

44. No man condemned to dye shall be put to death within fower dayes next after his condemnation, unles the Court see spetiall cause to the contrary, or in case of martiall law, nor shall the body of any man so put to death be unburied 12 howers, unlesse it be in case of Anatomie.

45. No man shall be forced by Torture to confesse any Crime against himselfe nor any other unlesse it be in some Capitall case where he is first fullie convicted by cleare and suffittient evidence to be guilty, After which if the cause be of that nature, That it is very apparent there be other conspiratours, or confederates with him, Then he may be tortured, yet not with such Tortures as be Barbarous and inhumane.

46. For bodilie punishments we allow amongst us none that are inhumane Barbarous or cruell.

47. No man shall be put to death without the testimony of two or three witnesses, or that which is equivalent there unto.

48. Every Inhabitant of the Countrie shall have free libertie to search and veewe any Rooles, Records, or Regesters of any Court or office except the Councell, And to have a transcript or exemplification thereof written examined, and signed by the hand of the officer of the office paying the appointed fees therefore.

49. No free man shall be compelled to serve upon Juries above two Courts in a yeare, except grand Jurie men, who shall hould two Courts together at the least.

50. All Jurors shall be chosen continuallie by the freemen of the Towne where they dwell.

51. All Associates selected at any time to Assist the Assistants in Inferior Courts, shall be nominated by the Townes belonging to that Court, by orderly agreement amonge themselves.

52. Children, Idiots, Distracted persons, and all that are strangers, or new commers to our plantation, shall have such allowances and dispensations in any cause whether Criminall or other as religion and reason require.

53. The age of discretion of passing away of lands or such kinde of hereditments, or for giving of votes, verdicts or Sentence in any Civill Courts or causes, shall be one and twentie yeares.

54. When so ever anything is to be put to vote, any sentence to be pronounced, or any other matter to be proposed, or read in any Court or Assembly, If the president or moderator

thereof shall refuse to performe it, the Major parte of the members of that Court or Assembly shall have power to appoint any other meete man of them to do it, And if there be just cause to punish him that should and would not.

55. In all suites or Actions in any Court, the plaintife shall have libertie to make all the titles and claims to that he sues for he can. And the Defendant shall have libertie to plead all the pleas he can in answeere to them, and the Court shall judge according to the intire evidence of all.

56. If any man shall behave himselfe offensively at any Towne meeting, the rest of the freemen then present, shall have power to sentence him for his offence, So be it the mulct or penaltie exceed not twentie shilings.

57. When so ever any person shall come to any very suddaine untimely and unnaturall death, Some Assistant, or the Constables of that Towne shall forthwith sumon a Jury of twelve free men to inquire of the cause and manner of their death, and shall present a true verdict thereof to some neere Assistant, or the next Court to be helde for that Towne upon their oath.

LIBERTIES MORE PECULIARLIE CONCERNING THE FREE MEN.

58. Civill Authoritie hath power and libertie to see the peace, ordinances and Rules of Christ observed in every church according to his word, so it be done in a Civill and not in an Ecclesiastical way.

59. Civill Authoritie hath power and libertie to deale with any Church member in a way of Civill Justice, notwithstanding any Church relation, office, or interest.

60. No church censure shall degrade or depose any man from any Civill dignitie, office, or Authoritie he shall have in the Commonwealth.

61. No Magistrate, Juror, Officer, or other man shall be bound to informe present or reveale any private crim or offence, wherein there is no perill or danger to this plantation or any member thereof, when any necessarietye of conscience binds him to secreisie grounded upon the word of god, unlesse it be in case of testimony lawfully required.

62. Any Shire or Towne shall have libertie to choose their Deputies whom and where they please for the General Court, So be it they be free men, and have taken there oath of fealtie, and Inhabiting in this Jurisdiction.

63. No Governor, Deputie Governor, Assistant, Associate, or grand Jury man at any Court, nor any Deputie for the Generall Court, shall at any time beare his owne chardges at any Court, but their necessary expences shall be defrayed either by the Towne, or Shire on whose service they are, or by the Country in generall.

64. Everie Action betweene partie and partie, and proceedings against delinquents in Criminall causes shall be briefly and distinctly entered in the Rolles of every Court by the Recorder thereof. That such actions be not afterwards brought againe to the vexation of any man.

65. No custome or prescription shall ever prevaile amongst us in any morall cause, our meaneing is maintaine anythinge that can be proved to bee morrallie sinfull by the word of god.

66. The Freemen of everie Township shall have power to make such by laws and constitutions as may concerne the wellfare of their Towne, provided they be not of a Criminall, but onely of a prudentiall nature. And that their penalties exceede not 20 sh. for one offence. And that they be not repugnant to the publique laws and orders of the Countrie. And if any Inhabitant shall neglect or refuse to observe them, they shall have power to levy the appointed penalties by distresse.

67. It is the constant libertie of the freemen of this plantation to choose yearly at the Court of Election out of the freemen all the Generall officers of this Jurisdiction. If they please to discharge them at the day of Election by way of vote. They may do it without shewing cause. But if at any other generall Court, we hould it due justice, that the reasons thereof be alleadged and proved. By Generall officers we meane, our Governor, Deputie Governor, Assistants, Treasurer, Generall of our warres. And our Admiral at Sea, and such as are or hereafter may be of the like generall nature.

68. It is the libertie of the freemen to choose such deputies for the Generall Court out of themselves, either in their owne Townes or elsewhere as they judge fittest, And because we cannot foresee what varietie and weight of occasions may fall into future consideration, And what counsells we may stand in neede of, we decree. That the Deputies (to attend the Generall Court in the behalfe of the Countrie) shall not any time be stated or inacted, but from Court to Court, or at the most but for one yeare. that the Countrie may have an Annuall libertie to do in that case what is most behoofefull for the best welfaire thereof.

69. No Generall Court shall be desolved or adjourned without the consent of the Major parte thereof.

70. All Freemen called to give any advise, vote, verdict, or sentence in any Court, Counsell, or Civill Assembly, shall have full freedome to doe it according to their true Judgments and Consciences, So it be done orderly and inofensively for the manner.

71. The Governor shall have a casting voice whensoever an Equi vote shall fall out of the Court of Assistants, or generall assembly, So shall the presendent or moderator have in all Civill Courts or Assemblies.

72. The Governor and Deputie Governor Joyntly consenting or any three Assistants concurring in consent shall have power out of Court to reprove a condemned malefactor, till the next quarter or generall Court. The generall Court onely shall have power to pardon a condemned malefactor.

73. The Generall Court hath libertie and Authoritie to send out any member of the Comanwealth of what qualitie, condition or office whatsoever into forreine parts about any publique message or Negotiation. Provided the partie sent be acquainted with the affaire he goeth about, and be willing to undertake the service.

74. The freemen of every Towne or Towneship, shall have full power to choose yearly or for lesse time out of themselves a convenient number of fitt men to order the planting or prudential occasions of that Towne, according to Instructions given them in writeing, Provided nothing be done by them contrary to the publique laws and orders of the Countrie, provided also the number of such select persons be not above nine.

75. It is and shall be the libertie of any member or members of any Court, Councill or Civill Assembly in cases of makeing or executing any order or law, that properlie concerne religion, or any cause capitall or warres, or Subscription to any publique Articles or Remonstrance, in case they cannot in Judgement and conscience consent to that way the Major vote or suffrage goes, to make their contra Remonstrance or protestation in speech or writeing, and upon request to have their dissent recorded in the Rolles of that Court. So it be done Christianlie and respectively for the manner. And their dissent onely be entered without the reasons thereof, for the avoiding of tediousness.

76. When so ever any Jurie of trialls or Jurours are not cleare in their Judgments or consciences conserneing any cause wherein they are to give their verdict, They shall have libertie in open Court to advise with any man they thinke fitt to resolve or direct them, before they give in their verdict.

77. In all cases wherein any freeman is to give his vote, be it in point of Election, makeing constitutions and orders, or passing sentence in any case of Judicature or the like, if he cannot see reason to give it positively one way or an other, he shall have libertie to be silent, and not pressed to a determined vote.

78. The Generall or publique Treasure or any parte thereof shall never be expended but by the appointment of a Generall Court, nor any Shire Treasure, but by the appointment of the freemen thereof, nor any Towne Treasurie but by freemen of that Towneship.

LIBERTIES OF WOEMEN

79. If any man at his death shall not leave his wife a competent portion of his estaite, upon just complaint made to the Generall Court she shall be relieved.

80. Everie married woeman shall be free from bodilie correction or stripes by her husband, unlesse it be in his owne defence upon her assault. If there be any just cause of correction complaint shall be made to Authoritie assembled in some Court, from which onely she shall receive it.

LIBERTIES OF CHILDREN

81. When Parents dye intestate, the Elder sonne shall have a doble portion of his whole estate reall and personall, unlesse the Generall Court upon just cause alleadged shall Judge otherwise.

82. When parents dye intestate, haveing noe heires males of their bodies their Daughters shall inherit as Copartners, unles the Generall Court upon just reason shall judge otherwise.

83. If any parents shall wilfullie and unreasonably deny any childe timely or convenient mariage, or shall exercise any unnaturall severitie towards them, Such children shall have free libertie to complain to Authoritie for redresse.

84. No Orphan dureing their minoritie which was not committed to tuition or service by the parents in their life time, shall afterwards be absolutely disposed of by any kindred, friend, Executor, Towneship, or Church, nor by themselves without the consent of some Court, wherein two Assistants at least shall be present.

LIBERTIES OF SERVANTS

85. If any servants shall flee from the Tiranny and crueltie of their masters to the howse of any freeman of the same Towne, they shall be there protected and susteyned till due order be taken for their relife. Provided due notice thereof be speedily given to their masters from whom they fled. And the next Assistant or Constable where the partie flying is harboured.

86. No servant shall be put of for above a yeare to any other neither in the life of their master nor after their death by their Executors or Administrators unlesse it be by consent of Authoritie assembled in some Court, or two Assistants.

87. If any man smite out the eye or tooth of his man servant, or maid servant, or otherwise mayme or much disfigure him, unlesse it be by meere casualtie, he shall let them goe free from his service. And shall have such further recompense as the Court shall allow him.

88. Servants that have served diligentlie and faithfully to the benefit of their maisters seaven yeares, shall not be sent away emptie. And if any have bene unfaithfull, negligent or unprofitable in their service, notwithstanding the good usage of their maisters, they shall not be dismissed till they have made satisfaction according to the Judgement of Authoritie.

LIBERTIES OF FORREINERS AND STRANGERS

89. If any people of other Nations professing the true Christian Religion shall flee to us from the Tiranny or oppression of their persecutors, or from famyne, warres, or the like necessary and compulsarie cause, They shall be entertayned and succoured amongst us, according to that power and prudence god shall give us.

90. If any ships or other vessels, be it freind or enemy, shall suffer shipwrack upon our Coast, there shall be no violence or wrong offered to their persons or goods. But their persons shall be harboured, and relieved, and their goods preserved in safety till Authoritie may be certified thereof, and shall take further order therein.

91. There shall never be any bond slaverie villinage or Captivitie amongst us, unles it be lawfull Captives taken in just warres, and such strangers as willingly belie themselves or are sold to us. And these shall have all the liberties and Christian usages which the law of god established in Israell concerning such persons doeth morally require. This exempts none from servitude who shall be Judged thereto by Authoritie.

OFF THE BRUITE CREATURE

92. No man shall exercise any Tirranny or Crueltie towards any brute Creature which are usuallie kept for mans use.

93. If any man shall have occasion to leade or drive Cattel from place to place that is far of, So that they be weary, or hungry, or fall sick, or lambe, It shall be lawful to rest or refresh them, for a competent time, in any open place that is not Corne, meadow, or inclosed for some peculiar use.

1. If any man after legall conviction shall have or worship any other god, but the lord god, he shall be put to death. DUT. 13.6.10, DUT. 17.2.6, EX. 22.20

2. If any man or woeman be a witch, (that is hath or consulteth with a familiar spirit,) They shall be put to death. EX. 22.18, LEV. 20.27, DUT. 18.10

3. If any person shall Blaspheme the name of God, the father, Sonne, or Holie ghost, with direct expresse, presumptuous or high handed blasphemie, or shall curse god in the like manner, he shall be put to death. LEV. 24.15.16

4. If any person committ any wilfull murther, which is manslaughter, committed upon premeditated mallice, hatred, or Crueltie, not in a mans necessarie and just defence, nor by meere casualtie against his will, he shall be put to death. EX. 21.12, NUMB. 35.13.14, 30.31

5. If any person slayeth an other suddainely in his anger or Crueltie of passion, he shall be put to death. NUMB. 25.20.21, LEV. 24.17

6. If any person shall slay an other through guile, either by poysoning or other such divelish practice, he shall be put to death. EX. 21.14

7. If any man or woman shall lye with any beast or brute creature by Carnall Copulation, They shall surely be put to death. And the beast shall be slaine and buried and not eaten. LEV. 19.23

8. If any man lyeth with mankinde as he lyeth with a woeman, both of them have committed abhominacion, they both shall surely be put to death. LEV. 19.22

9. If any person committeth Adultery with a married or espoused wife, the Adulterer and Adulteresse shall surely be put to death. EX. 20.14

10. If any man stealeth a man or mankinde, he shall surely be put to death. EX. 21.16

11. If any man rise up by false witnes, wittingly and of purpose to take away any man's life, he shall be put to death. DUT. 19.16, 18. 19

12. If any man shall conspire and attempt any invation, insurrection, or publique rebellion against our commonwealth, or shall indeavour to surprize any Towne or Townes, fort or forts therein, or shall treacherously and perfediouslie attempt the alteration and subversion of our frame of politie or Government fundamentallie, he shall be put to death.

95. A declaration of the Liberties the Lord Jesus hath given to the Churches.

1. All the people of god within this Jurisdiction who are not in a church way, and be orthodox in Judgement, and not scandalous in life, shall have full libertie to gather themselves into a Church Estaite. Provided they doe it in a Christian way, with due observation of the rules of Christ revealed in his word.

2. Every Church hath full libertie to exercise all the ordinances of god, according to the rules of Scripture.

3. Every Church hath free libertie of Election and ordination of all their officers from time to time, provided they be able pious and orthodox.

4. Every Church hath free libertie of Admission, Recommendation, Dismission, and Expulsion, or deposall of their officers, and members, upon due cause, with free exercise of the Discipline and Censures of Christ according to the rules of his word.

5. No Injunctions are to be put upon any Church, Church Officers or member in point of Doctrine, worship or Discipline, whether for substance or cercumstance besides the Institutions of the lord.

6. Every Church of Christ hath freedome to celebrate dayes of fasting and prayer, and of thanksgiving according to the word of god.

7. The Elders of Churches have free libertie to meete monthly, Quarterly, or otherwise, in convenient numbers and places, for conferences, and consultations about Christian and Church questions and occasions.

8. All Churches have libertie to deale with any of their members in a church way that are in the hand of Justice. So it be not to retard or hinder the course thereof.

9. Every Church hath libertie to deal with any magistrate, Deputie of Court or other officer what soe ever that is a member in a church way in case of apparent and just offence given in their places. so it be done with due observance and respect.

10. Wee allowe private meetings for edification in religion amongst Christians of all sortes of people. So it be without just offence both for number, time, place, and other circumstances.

11. For the preventing and removeing of errour and offence that may grow and spread in any of the Churches in this Jurisdiction. And for the preserveing of trueith and peace in the severall churches within them selves, and for the maintenance and exercise of brotherly communion, amongst all the churches in the Countrie, It is allowed and ratified, by the Authoritie of this Generall Court as a lawfull libertie of the Churches of Christ. That once in every month of the yeare (when the season will beare it) It shall be lawfull for the minesters and Elders, of the Churches neere adjoyneing together, with any other of the bretheren with the consent of the churches to assemble by course in each severall Church one after an other. To the intent after the preaching of the word by such a minister as shall be requested thereto by the Elders of the church where the Assembly is held, The rest of the day may be spent in publike Christian Conference about the discussing and resolveing of any such doubts and cases of conscience concerning matter of doctrine or worship or government of the church as shall be propounded by any of the Bretheren of that church, with leave also to any other Brother to propound his objections or answeres for further satisfaction according to the word of god. Provided that the whole action be guided and moderated by the Elders of the Church where the Assemblie is helde, or by such others as they shall appoint. And that no thing be concluded and imposed by way of Authoritie from one or more Churches upon an other, but onely by way of Brotherly conference and consultations. That the trueth may be searched out to the satisfying of every man's Conscience in the sight of god according to his worde. And because such an Assembly and the worke their of can not be duely attended to if other lectures be held in the same weeke. It is therefore agreed with the consent of the Churches. That in that weeke when such an Assembly is held. All the lectures in all the neighbouring Churches for the weeke shall be forborne. That so the publike service of Christ in this more solemne Assembly may be transacted with greater deligence and attention.

96. How so ever these above specified rites, freedoms, Immunities, Authorities and priveledges, both Civill and Ecclesiasticall are expressed onely under the name and title of Liberties, and not in the exact forme of Laws, or Statutes, yet we do with one consent fullie Authorise, and earnestly intreate all that are and shall be in Authoritie to consider them as laws, and not to faile to inflict condigne and proportionable punishments upon every man impartiallie, that shall infringe or violate any of them.

97. Wee likewise give full power and libertie to any person that shall at any time be denied or deprived of any of them, to commence and prosecute their suite, Complaint, or action against any man that shall so doe, in any Court that hath proper Cognizance or judicature thereof.

98. Lastly because our dutie and desire is to do nothing suddainlie which fundamentally concerne us, we decree that these rites and liberties, shall be Audably read and

deliberately weighed at ever Generall Court that shall be held, within three yeares next insueing, And such of them as shall not be altered or repealed they shall stand so ratified, That no man shall infringe them without due punishment.

And if any General Court within these next thre yeares shall faile or forget to reade and consider them as abovesaid. The Governor and Deputie Governor for the time being, and every Assistant present at such Courts shall forfeite 20 sh. a man, and everie Deputie 10 sh. a man for each neglect, which shall be paid out of their proper estate, and not by the Country or the Townes which choose them. And when so ever there shall arise any question in any Court amonge the Assistants and Associates thereof about the explanation of these Rites and liberties, The Generall Court onely shall have power to interprett them.

Appendix F Massachusetts General Laws and Liberties, 1647

Introduction

“Only about 30 percent of the original text is reproduced here. It is based on the copy of the 1648 edition in the Henry E. Huntington Library as reproduced in *The Laws and Liberties of Massachusetts* (Cambridge: Harvard University Press, 1929). The volume has an introduction by Max Farrand but no listed editor. The spelling of the original has been retained, except for replacing the use of the German *s* with the standard English form. The sections of the text here omitted contain more mundane provisions concerning such things as the price of cattle, viewers of pipe-staves, the salting of fish, and surveying.”

“1647

*“Essentially an organized codification of the laws passed in earlier years, with a number of new laws added, this organic act contains everything we might today expect in a constitution and indeed functioned as a constitution for the colony. The document has many notable features. Its preamble efficiently lays out the theoretical basis for government that underlies the document’s contents, and shows the manner and extent to which theological ideas and principles are involved. Note that creating a “city upon a hill” does not involve denigrating the governments of other nations. From the very beginning of the text there is an obvious concern for life, liberty, and property. In addition to laying out the basic institutions of government, *The Laws and Liberties* is an extended bill of rights that mixes very advanced features with some that are less so; for example, the more than two hundred crimes punishable by death under English common law at that time is reduced to sixteen.”¹³⁴*

The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts Collected Out of the Records of the General Court for the Several Years Wherein They Were Made and Established,

And now revised by the same Court and desposed into an Alphabetical order and published by the same Authoritie in the General Court held at Boston the fourteenth of the first month Anno 1647.

TO OUR BELOVED BRETHREN AND NEIGHBOURS

The Inhabitants of the Massachusetts, the Governour, Assistants and Deputies assembled in the Generall Court of that Jurisdiction with grace and peace in our Lord Jesus Christ. So soon as God had set up Politicall Government among his people Israel hee gave them a body of lawes of judgement both in civil and criminal causes. These were brief and fundamental principles, yet withall so full and comprehensive as out of them clear deductions were to be drawne to all

¹³⁴ <https://oll.libertyfund.org/pages/1647-laws-and-liberties-of-massachusetts>

particular cases in future times. For a Common-wealth without lawes is like a Ship without rigging and steeradge. Nor is it sufficient to have principles or fundamentalls, but these are to be drawn out into so many of their deductions as the time and condition of that people may have use of. And it is very unsafe & injurious to the body of the people to put them to learn their duty and libertie from generall rules, nor is it enough to have lawes except they be also just. Therefore among other priviledges which the Lord bestowed upon his peculiar people, these he calls them specially to consider of, that God was neerer to them and their lawes were more righteous then other nations. God was sayd to be amongst them or neer to them because of his Ordnances established by himselfe, and their lawes righteous because himselfe was their Law-giver: yet in the comparison are implyed two things, first that other nations had something of Gods presence amongst them. Secondly that there was also somewhat of equitie in their lawes, for it pleased the Father (upon the Covenant of Redemption with his Son) to restore so much of his Image to lost man as whereby all nations are disposed to worship God, and to advance righteousnes: Which appears in that of the Apostle Rom. 1. 21. They knew God &c: and in the 2. 14. They did by nature the things contained in the law of God. But the nations corrupting his ordinances (both of Religion, and Justice) God withdrew his presence from them proportionably whereby they were given up to abominable lusts Rom. 2.21. Whereas if they had walked according to that light & law of nature might have been preserved from such moral evils and might have enjoyed a common blessing in all their natural and civil Ordinances: now, if it might have been so with the nations who were so much strangers to the Covenant of Grace, what advantage have they who have interest in this Covenant, and may injoye the special presence of God in the puritie and native simplicitie of all his Ordinances by which he is so neer to his owne people. This hath been no small priviledge, and advantage to us in New-England that our Churches, and civil State have been planted, and growne up (like two twinnes) together like that of Israel in the wilderness by which wee were put in minde (and had opportunitie put into our hands) not only to gather our Churches, and set up the Ordinances of Christ Jesus in them according to the Apostolick patterne by such light as the Lord graciously afforded us: but also withall to frame our civil Politie, and lawes according to the rules of his most holy word whereby each do help and strengthen other (the Churches the civil Authoritie, and the civil Authoritie the Churches) and so both prosper the better without such emulation, and contention for priviledges or priority as have proved the misery (if not ruine) of both in some other places.

For this end about nine years wee used the help of some of the Elders of our Churches to compose a modell of the Judiciall lawes of Moses with such other cases as might be referred to them, with intent to make sure of them in composing our lawes, but not to have them published as the lawes of this Jurisdiction: nor were they voted in Court. For that book intituled The Liberties &c: published about seven years since (which conteines also many lawes and orders both for civil & criminal causes, and is commonly [though without ground] reported to be our Fundamentalls that wee owne as established by Authoritie of this Court, and that after three years experience & generall approbation: and accordingly we have inserted them into this volume under the severall heads to which they belong yet not as fundamentalls, for divers of them have since been repealed, or altered, and more may justly be (at least) amended heerafter as further experience shall discover defects or inconveniences for Nihil simul natum et perfectum. The same must we lay of this present Volume, we have not published it as a perfect body of laws sufficient to carry on the Government established for future times, nor could it be expected that we should promise such a thing. For if it be no disparagement to the wisdom of that High

Court of Parliament in England that in four hundred years they could not so compile their lawes, and regulate proceedings in Courts of justice &c: but that they had still new work to do of the same kinde almost every Parliament: there can be no just cause to blame a poor Colonie (being unfurnished of Lawyers and Statemen) that in eighteen years hath produced no more, nor better rules for a good, and settled Government then this Book holds forth: nor have you (our Bretheren and Neighbours) any cause, whether you look back upon our Native Country, or take your observation by other States, & Commonwealths in Europe) to complaine of such as you have employed in this service; for the time which hath been spent in making lawes, and repealing and altering them so often, nor of the charge which the Country hath been put to for those occasions, the Civilian gives you a satisfactorie reason of such continuall alterations additions &c: *Crescit in Orbe dolus.*

These Lawes which were made successively in divers former years, we have reduced under severall heads in an alphabetical method, that so they might the more readily ye be found, & that the divers lawes concerning one matter being placed together the scope and intent of the whole and of every of them might the more easily be apprehended: we must confesse we have not been so exact in placing every law under its most proper title as we might, and would have been: the reason was our hasty indeavour to satisfie your longing expectation, and frequent complaints for want of such a volume to be published in print: wherin (upon every occasion) you might readily see the rule which you ought to walke by. And in this (we hope) you will finde satisfasation, by the help of the references under the severall heads, and the Table which we have added in the end. For such lawes and orders as are not of generall concernment we have not put them into this booke, but they remain still in force, and are to be seen in the booke of the Records of the Court, but all generall lawes not heer inserted nor mentioned to be still of force are to be accounted repealed.

You have called us from amongst the rest of our Bretheren and given us power to make these lawes: we must now call upon you to see them executed: remembering that old & true proverb, The execution of the law is the life of the law. If one sort of you viz: non-Freemen should object that you had no hand in calling us to this worke, and therefore think yourselvs not bound to obedience &c. Wee answer that a subsequent, or implicit consent is of like force in this case, as an expresse precedent power: for in putting your persons and estates into the protection and way of subsistance held forth and exercised within this jurisdiction, you doe tacitly submit to this Government and to all the wholesome lawes thereof, and so is the common repute in all nations and that upon this Maxim.

If any of you meet with some law that seemes not to tend to your particular benefit, you must consider that lawes are made with respect to the whole people, and not to each particular person: and obedience to them must be yeilded with respect to the common welfare, not to thy private advantage, and as thou yeildest obedience to the law for comon good, but to thy disadvantage: so another must observe some other law for them good, though to his own damage; thus must we be content to bear one anothers burden and so fullfill the Law of Christ.

That distinction which is put between the Lawes of God and the lawes of men, becomes a snare to many as it is mis-applied in the ordering of their obedience to civil Authoritie; for when the Authoritie is of God and that in way of an Ordinance Rom. 13. 1. and when the administration of

it is according to deductions, and rules gathered from the word of God, and the clear light of nature in civil nations, surely there is no humane law that tendeth to common good (according to those principles) but the same is mediately a law of God, and that in way of an Ordinance which all are to submit unto and that for conscience sake. Rom. 13. 5.

By order of the General Court.

INCREASE NOWEL, SECR.

The Book of the General Lawes and Libertyes Concerning &c:

FORASMUCH as the free fruition of such Liberties, Immunities, priviledges as humanitie, civilitie & christianity call for as due to everie man in his place, & proportion, without impeachment & infringement hath ever been, & ever will be the tranquility & stability of Churches & Comonwealths; & the deniall or deprivall thereof the disturbance, if not ruine of both:

It is therefore ordered by this Court, & Authority thereof, That no mans life shall be taken away; no mans honour or good name shall be stayned; no mans person shall be arrested, restrained, bannished, dismembred nor any wayes punished; no man shall be deprived of his wife or children; no mans goods or estate shall be taken away from him; nor any wayes indamaged under colour of law or countenance of Authoritie unles it be by the vertue or equity of some expresse law of the Country warranting the same established by a General Court & sufficiently published; or in case of the defect of a law in any particular case by the word of God. And in capital cases, or in cases concerning dismembring or banishment according to that word to be judged by the General Court [1641]

ABILITIE.

All persons of the age of twenty one years, and of right understanding & memorie whether excommunicate, condemned or other, shall have full power and libertie to make their Wills & Testaments & other lawfull Alientations of their lands and estates. [1641]

ACTIONS.

All Action of debt, accounts, slaunder, and Actions of the case concerning debts and accounts shall henceforth be tryed where the Plantiffe pleaseth; so it be in the jurisdiction of that Court where the Plantiffe, or Defendant dwelleth: unles by consent under both their hands it appeare they would have the case tryed in any other Court. All other Actions shal be tryed within that jurisdiction where the cause of Action doth arise. [1642]

2. It is ordered by this Court & Authoritie thereof, That every person impleading another in any court of Assistants, or County court shal pay the sum of ten shillings before his case be entred, unless the court fee cause to admit any to sue in [1642]

3. It is ordered by the Authority aforesayd, That where the debt or damage recovered shall amount to ten pounds in every such case to pay five shillings more, and where it shall amount to

twenty pounds or upward there to pay ten shillings more then the first ten shillings, which sayd additions shall be put to the Judgement and Execution to be levied by the Marshall and accounted for to the Treasurer. [1647]

4. In all actions brought to any court the Plantiffe shall have liberty to withdraw his action or to be non-suted before the Jurie have given in their verdict; in which case he shall alwayes pay full cost and charges to the Defendant, and may afterward renew his sute at another Court. [1641]

AGE.

It is ordered by this Court & the Authoritie thereof, that the age for passing away of lands, or such kinde of hereditaments, or for giving of votes, verdicts or sentences in any civil courts or causes, shall be twenty and one years: but in case of chusing of Guardions, fourteen years [1641 1647]

ANA-BAPTISTS.

Forasmuch as experience hath plentifully & often proved that since the first arising of the Anabaptists about a hundred years past they have been the Incendiaries of Common-Wealths & the Infectors of persons in main matters of Religion, & the Troublers of Churches in most places where they have been, & that they who have held the baptizing of Infants unlawful, have usually held other errors or heresies together therewith (though as hereticks used to doe they have concealed the same untill they espied a fit advantage and opportunity to vent them by way of question or scruple) and wheras divers of this kinde have since our coming into New-England appeared amongst our selvs, some whereof as others before them have denied the Ordinance of Magistracy, and the lawfulness of making warre, others the lawfulness of Magistrates, and their Inspection into any breach of the first Table: which opinions is conived at by us are like to be increased among us & so necessarily bring guilt up us, infection, & trouble to the Churches & hazzard to the whole Common-wealth:

It is therefore ordered by this Court & Authoritie therof, that if any person or persons within this Jurisdiction shall either openly condemn or oppose the baptizing of Infants, or goe about secretly to reduce others from the approbation or use thereof, or shall purposely depart the Congregation at the administration of that Ordinance; or shall deny the Ordinance of Magistracy, or their lawfull right or authoritie to make war, or to punish the outward breaches of the first Table, and shall appear to the Court wilfully and obstinately to continue therin, after due means of conviction, everie such person or persons shall be sentenced to Banishment. [1644] ...

ARRESTS.

It is ordered and decreed by this Court & Authoritie thereof, That no mans person shall be arrested or imprisoned for any debt or fine if the law can finde any competent meanes of satisfaction otherwise from his estate. And if not this person may be arrested and imprisoned, where he shall be kept at his own charge, not the Plaintiffs, till satisfaction be made; unles the Court that had cognisance of the cause or some superiour Court shall otherwise determine: provided neverthesse that no mans person shall be kept in prison for debt but when there

appears some estate which he will not produce, to which end any Court or Commissioners authorized by the General Court may administer an oath to the partie or any others suspected to be privie in concealing his estate, but shall satisfie by service if the Creditor require it but shall not be solde to any but of the English nation. [1641: 1647] ...

BOND-SLAVERY.

It is ordered by this Court and authoritie thereof, that there shall never be any bond-slavery, villenage or captivitie amongst us; unless it be lawfull captives, taken in just warrs, and such strangers as willingly sell themselves, or are solde to us: and such shall have the libertyes and christian usages which the law of God established in Israell concerning such persons doth morally require, provided, this exempts none from servitude who shall be judged thereto by Authoritie. [1641] ...

CAPITAL LAWES.

If any man after legal conviction shall HAVE OR WORSHIP any other God, but the LORD GOD: he shall be put to death. Exod. 22. 20. Deut. 13.6. & 10. Deut. 17. 2. 6.

2. If any man or woman be a WITCH, that is, hath or consulteth with a familiar spirit, they shall be put to death. Exod. 22. 18. Levit. 20. 27. Deut. 18. 10. 11.

3. If any person within this Jurisdiction whether Christian or Pagan shall wittingly and willingly presume to BLASPHEME the holy Name of God, Father, Son or Holy-Ghost, with direct, expresse, presumptuous, or highhanded blasphemy, either by wilfull or obstinate denying the true God, or his Creation, or Government of the world: or shall curse God in like manner, or reproach the holy religion of God as if it were but a politick device to keep ignorant men in awe; or shal utter any other kinde of Blasphemy of the like nature & degree they shall be put to death. Levit. 24. 15. 16.

4. If any person shall commit any wilfull MURDER, which is Man slaughter, committed upon premeditate malice, hatred, or crueltie not in a mans necessary and just defence, nor by meer casualty against his will, he shall be put to death. Exod. 21. 12. 13. Numb. 35. 31.

5. If any person slayeth another suddenly in his ANGER, or CRUELTY of passion, he shall be put to death. Levit. 24. 17. Numb. 35. 20. 21.

6. If any person shall slay another through guile, either by POYSONING, or other such devilish practice, he shall be put to death. Exod. 21. 14.

7. If any man or woman shall LYE WITH ANY BEAST, or bruit creature, by carnall copulation; they shall surely be put to death: and the beast shall be slain, & buried, and not eaten. Lev. 20. 15. 16.

8. If any man LYETH WITH MAN-KINDE as he lieth with a woman, both of them have committed abomination, they both shal surely be put to death: unles the one partie were forced (or be under fourteen years of age in which case he shall be severly punished) Levit. 20. 13.

9. If any person commit ADULTERIE with a married or espoused wife; the Adulterer & Adulteresse shall surely be put to death. Lev. 20. 19. & 18. 20 Deu. 22. 23. 27.

10. If any man STEALETH A MAN, or Man-kinde, he shall surely be put to death Exodus 21. 16.

11. If any man rise up by FALSE-WITNES wittingly and of purpose to take away any mans life: he shal be put to death. Deut. 19. 16. 18. 16.

12. If any man shall CONSPIRE, and attempt any Invasion, Insurrection, or publick Rebellion against our Common-Wealth: or shall indeavour to surprize any Town, or Townes, Fort, or Forts therin; or shall treacherously, & perfidiously attempt the Alteration and Subversion of our frame of Politie, or Government fundamentally he shall be put to death. Numb. 16. 2 Sam. 3. 2 Sam. 18. 2 Sam. 20.

13. If any child, or children, above sixteen years old, and of sufficient understanding, shall CURSE, or SMITE their natural FATHER, or MOTHER; he or they shall be put to death: unles it can be sufficiently testified that the Parents have been very unchristianly negligent in the education of such children; or so provoked them by extream, and cruel correction: that they have been forced therunto to preserve themselves from death or maiming. Exod. 21. 17. Lev. 20. 9. Exod 21. 15.

14. If a man have a stubborn or REBELLIOUS SON, of sufficient years & uderstanding (viz) sixteen years of age, which will not obey the voice of his Father, or the voice of his Mother, and that when they have chastened him will not harken unto them: then shal his Father & Mother being his natural parents, lay hold on him, & bring him to the Magistrates assembled in Court & testifie unto them, that their Son is stubborn & rebellious & will not obey their voice and chastisement, but lives in sundry notorious crimes, such a son shal be put to death. Deut. 21. 20. 21.

15. If any man shal RAVISH any maid or single woman, comitting carnal copulation with her by force, against her own will; that is above the age of ten years he shal be punished either with death, or with some other greivous punishment according to circumstances as the Judges, or General court shal determin. [1641] ...

CHARGES PUBLICK.

And it is further ordered that the Comissioners for the severall towns in everie Shire shall yearly upon the first fourth day of the week in the seventh month, assemble at their shire Town: & bring with them fairly written the just number of males listed as aforesaid, and the assessments of estates made in their several towns according to the rules & directions in this present order expressed, and the said Comissioners being so assembled shall duly and carefully examin all the said lists and assessments of the severall towns in that Shire, and shall correct & perfect the same according to the true intent of this order, as they or the major part of them shall determine, & the same so perfected they shal speedily transmit to the Treasurer under their hands or the hands of the major part of them and therupon the Treasurer shal give warrants to the Constables to collect & levie the same; so as the whole assessment both for persons & estates may be paid in unto the Treasurer before the twentieth day of the ninth month, yearly, & everie one shal pay their rate to the Constable in the same town where it shal be assessed. Nor shall any land or estate be rated in

any other town but where the same shal lye, is, or was improved to the owners, reputed owners or other proprietors use or behoof if it be within this Jurisdiction. And if the Treasurer cannot dispose of it there, the Constable shall send it to such place in Boston, or elsewhere as the Treasurer shall appoint at the charge of the Countrey to be allowed the Constable upon his account with the Treasurer. And for all peculiars viz: such places as are not yet layd within the bounds of any town the same lands with the persons and estates thereupon shall be assessed by the rates of the town next unto it, the measure or estimation shall be by the distance of the Meeting houses ...

CHILDREN.

For as much as the good education of children is of singular behoof and benefit to any Commonwealth; and wher as many parents & masters are too indulgent and negligent of their duty in that kinde. It is therefore ordered that the Selectmen of every town, in the severall precincts and quarters where they dwell, shall have a vigilant eye over their brethren & neighbours, to see, first that none of them shall suffer so much barbarism in any of their families as not to endeavour to teach by themselves or others, their children & apprentices so much learning as may enable them perfectly to read the english tongue, & knowledge of the Capital laws: upon penaltie of twentie shillings for each neglect therein. Also that all masters of families doe once a week (at the least) catechize their children and servants in the grounds & principles of Religion, & if any be unable to doe so much: that then at the least they procure such children or apprentices to learn some short orthodox catechism without book, that they may be able to answer unto the questions that shall be propounded to them out of such catechism by their parents or masters or any of the Selectmen when they shall call them to a tryall of what they have learned in this kinde. And further that all parents and masters do breed & bring up their children & apprentices in some honest lawful calling, labour or employmet, either in husbandry, or some other trade profitable for themselves, and the Common-wealth if they will not or cannot train them up in learning to fit them for higher employments. And if any of the Selectmen after admonition by them given such masters of families shal finde them still negligent of their dutie in the particulars aforementioned, wherby children and servants become rude, stubborn & unruly; the said Selectmen with the help of two Magistrates, or the next County court for that Shire, shall take such children or apprentices from them & place them with some masters for years (boyes till they come to twenty-one, and girls eighteen years of age compleat) which will more strictly look unto, and force them to submit unto government according to the rules of this order, if by fair means and former instructions they will not be drawn unto it. [1642]

2. Wheras sundry gentlemen of qualitie, and others oft times send over their children into this country unto some freinds heer, hoping at the least thereby to prevent their extravagant and riotous courses, who not with standing by means of some unadvised and ill-affected persons, which give them credit, in expectation their freinds, either in favour to them or prevention of blemish to themselves, will discharge what ever is done that way, they are no lesse lavish & profuse heer to the great greif of their freinds, dishonour of God & reproach of the Countrey.

It is therefore ordered by this Court & authoritie thereof; That if any person after publication hereof shall any way give credit to any such youth, or other person under twentie one years of age, without order from such their freinds, heer, or elsewhere, under their hands in writing they shall lose their debt whatever it be. And further if such youth or other person incur any penalty

by such means and have not wherewith to pay, such person, or persons, as are occasions therof shall pay it as delinquents in the like case should doe. [1647]

3. If any parents shall wilfully, and unreasonably deny any childe timely or convenient marriage, or shall exercise any unnaturall severitie towards them such children shal have libertie to complain to Authoritie for redresse in such cases. [1641]

4. No Orphan during their minority which was not committed to tuition, or service by their parents in their life time, shall afterward be absolutely disposed of by any without the consent of some Court wherin two Assistants (at least) shall be present, except in case of marriage, in which the approbation of the major part of the Selectmen, in that town or any one of the next Assistants shall be sufficient. And the minoritie of women in case of marriage shall be till sixteen years. [1646] ...

COUNCILL.

This Court considering how the weighty affairs of this Jurisdiction whether they concern this peculiarly or have reference to the rest of our confederated Colonies may be duly and speedily transacted in the vacancy of the Generall Court for the satisfaction of the Comissioners, in respect of the weighty and sodain occasions which may be then in hand, doth heerby expresse and declare, That the General Court ought to be called by the Governour, when the importancy of the busines doth require it, and that time and opportunitie will safely admit the same, and that all other necessary matters are to be ordered and dispatched by the major part of the Council of the Common-wealth, & therefore to that end letters signifying, breifly, the busines and the time and place of meeting for consultation ought to be sent unto the Assistants. Also it is heerby declared, that seven of the said Assistants meeting, the Governour or Deputy Governour being one is a sufficient Assembly to act, by impressing of soldiers or otherwise as need shall be. And in case of extream and urgent necessitie, when indeavours are reasonably used to call together the Assistants and the busines will not admit delay, then the acts of so many as do assemble are to be accounted, and are accounted valid, & sufficient. Also it is intended that the generall words aforementioned contein in them power to impresse & send forth soldiers, and all manner of victuails, vessels at sea, carriages and all other necessaries, and to send warrants to the Treasurer to pay for them. [1645]

COURTS.

For the better administration of justice and easing the Countrie of unnecessary charge and travells: it is ordered by this Court and Authoritie thereof;

That there shal be four Quarter Courts of Assistants yearly kept by the Governour, or Deputy Gover: and the rest of the Magistrates, the first of them on the first third day (viz: tuisday) in the fourth month called June: the second on the first third day of the seventh month: the third on the first third day of the tenth month: the fourth on the first third day of the first month called March. Also there be four County Courts held at Boston, by such of the Magistrates as shall reside in, or neer the same, viz: by any five, four or three of them, who shall have power to assemble together upo the last fift day of the eight, eleventh, second & fift months everie year, and there to hear &

determin all civil causes & criminal, not extending to life, member or banishment according to the course of the court of Assistants, & to summon Juries out of the neighbour towns, & the Marshall & other Officers shall give attendance there as at other Courts. And it is further ordered that there shall be four Quarter Courts kept yearly by the Magistrates of Essex, with such other persons of worth as shall from time to time be appointed by the General Court; at the nomination of the towns in that Shire by orderly agreement among themselves, to be joynd in Commission with them so that with the Magistrates they be five in all and so that no Court be kept without one Magistrate at the least: and so any three of the Commissioners aforesaid may keep Court in the absence of the rest: yet none of all the Magistrates are excluded from any of these Courts who can, and please to attend the same. And the General Court to appoint from time to time, which of the said Magistrates shall specially belong to everie of the said Courts. Two of these Quarter Courts shall be kept at Salem, the other at Ipswich. The first, the last third day of the week in the seventh month at Ipswich. The second at Salem the last third day of the tenth month. The third at Ipswich the last third day of the first month. The fourth the last third day of the fourth month at Salem. All and every which Courts shall be holden by the Magistrates of Salem and Ipswich with the rest of that County or so many of them shall attend the same; but no Jurie men shall be warned from Ipswich to Salem nor from Salem to Ipswich. Also there shall be a Grand Jurie at either place, once a year. Which Courts shall have the same power in civil and criminal causes as the courts of Assistants have (at Boston) except tryalls for life, limb or banishment, which are wholly reserved unto the courts of Assistants. The like libertie for County courts and tryall of causes is graunted to the Shire town of Cambridge for the County of Midlesex, as Essex hath, to be holden by the Magistrates of Midlesex & Suffolk & such other men of worth as shall be nominated and chosen as aforesaid, one of which Courts shall be holden on the last third day of the eighth month, and another on the last third day of the second month from year to year. And the like libertie for County Courts and tryall of causes is graunted to the County of Norfolk to be holden at Salisburie on the last third day of the second month; and another at Hampton on such day as the General Court shall appoint to be kept in each place from time to time. And if any shall finde himselfe greived with the sentence of any the said County courts he may appeal to the next court of Assistants. Provided he put in sufficient caution according to law. Lastly, it is ordered by the Authoritie aforesaid that all causes brought to the courts of Assistants by way of appeal, and other causes specially belonging to the said courts, shall be first determined from time to time: & that causes of divorce shall be tryed only in the said court of Assistants. [1635 1636 1639 1641 1642]

2. For the more speedy dispatch of all causes which shall concern Strangers, who cannot stay to attend the ordinary Courts of justice, It is ordered by this Court and Authoritie therof;

That the Governour or Deputy Governour with any two other Magistrates, or when the Governour or Deputy Governour cannot attend it, that any three Magistrates shall have power to hear and determin by a Jurie of twelve men, or otherwise as is used in other Courts, all causes civil and criminal triable in County Courts, which shall arise between such Strangers, or wherin any such Stranger shall be a partie. And all records of such proceedings shall be transmitted to the Records of the Court of Assistants, to be entered as tryalls in other Courts, all which shall be at the charge of the parties, as the Court shall determin, so as the Country be no wayes charged by such courts. [1639]

3. For the electing of our Governour, Deputy Governor, Assistants and other general Officers upon the day or dayes appointed by our Patten to hold our yearly Court being the last fourth day of the week (viz: Wednesday) of every Easter Term; it is solemnly and unanimously decreed and established,

That henceforth the Freemen of this Jurisdiction shal either in person or by proxie without any Summons attend & consummate the Elections, at which time also they shal send their Deputies with full power to consult of and determin such matters as concern the welfare of this Commonwealth; from which General Court no Magistrates or Deputy shall depart or be discharged without the consent of the major part both of Magistrates and Deputies, during the first four dayes of the first Session therof, under the penaltie of one hundred pounds for everie such default on either part. And for the after Sessions, if any be, the Deputies for Dover are at libertie whether to atted or not. [1643]

4. Forasmuch as after long experience wee finde divers inconveniences in the manner of our proceeding in Courts by Magistrates and Deputies sitting together, and account it wisdom to follow the laudable practice of other States, who have layd ground works for government and order for issuing busines of greatest and highest consequence: it is therefore ordered by this Court and Authoritie therof,

That henceforth the Magistrates may sit and act busines by themselves, by drawing up Bills and Orders which they shall see good in their wisdom, which having agreed upon, they may present them to the Deputies to be considered of, how good and wholesom such orders are for the Countrie & accordingly to give their assent or dissent. The Deputies in like manner sitting apart by themselves and consulting about such orders and laws as they in their discretion and experience shall finde meet for the common good: which agreed upon by them they may present to the Magistrates who having seriously considered of them may manifest their consent or dissent thereto. And when any Orders have passed the approbation of both Magistrates and Deputies, then to be ingrossed: which in the last day of this Court or Sessions shal be deliberately read over. Provided also that all matters of Judicature which this Court shall take cognisance of, shall be issued in like manner (unles the Court upon some particular occasion or busines agree otherwise). [1644] ...

DEPUTIES FOR THE GENERALL COURT.

For easing the body of Freemen now increasing, and better dispatching the busines of General Courts, It is ordered and by this Court declared;

That henceforth it shall be lawfull for the Freemen of everie Plantation to choose their Deputies before every Generall Court, to confer of, and prepare such publick busines as by them shall be thought fit to consider of at the next General court. And that such persons as shall be heerafter so deputed by the Freemen of the several Plantations to deal on their behalfe in the publick affairs of the Common-wealth, shall have the full power and voices of all the said Freemen derived to them for the making and establishing of Laws, graunting of lands, and to deal in all other affairs of the Comon-wealth wherin the Freemen have to doe: the matter of election of Magistrates and other officers only excepted wherin every Freeman is to give his own voice. [1634]

2. Forasmuch as through the blessing of God the number of towns are much increased, It is therefore ordered and by this Court enacted;

That henceforth no town shall send more then two Deputies to the General Court; though the number of Freemen in any town be more then twenty. And that all towns which have not to the number of twenty Freemen shall send but one Deputy, & such towns as have not ten Freemen shall send none, but such Freemen shall vote with the next town in the choice of their Deputie or Deputies til this Court take further order. [1636 1638]

3. It is ordered by this Court and Authoritie therof, That when the Deputyes for severall towns are met together before, or at any General court, it shall be lawfull for them or the major part of them to hear and determin any difference that may arise about the election of any of their members, and to order things amongst themselves that may concern the well ordering of their body. And that heerafter the Deputies for the General court shall be elected by papers as the Governour is chosen. [1634 1635]

4. It is ordered by this Court and Authoritie therof; That the Freemen of any Shire or town have liberty to choose such Deputies for the General court either in their own Shire, Town, or elsewhere, as they judge fittest, so be it they be Freemen and inhabiting within this Jurisdiction. And because wee cannot foresee what variety and weight of occasions may fall into future consideration, & what counsells we may stand in need of: wee decree that the Deputies to attend the General court in behalfe of the Coutry shall not at any time be stated and enacted but from court to court, or at the most but for one year, that the Countrie may have an annual liberty to doe in what case what is most behoofefull for the best welfare therof. [1641] ...

ECCLESIASTICALL:

1. All the people of God within this Jurisdiction who are not in a Church way and be orthodox in judgement and not scandalous in life shall have full libertie to gather themselves into a Church estate, provided they doe it in a christian way with due observation of the rules of Christ revealed in his word. Provided also that the General Court doth not, nor will heerafter approve of any such companyes of men as shall joyne in any pretended way of Church fellowship unles they shall acquaint the Magistrates and the Elders of the neighbour Churches where they intend to joyn, & have their approbation therein.

2. And it is farther ordered, that no person being a member of any Church which shall be gathered without the approbation of the Magistrates and the said Churches shall be admitted to the Freedom of this Common-wealth.

3. Everie Church hath free liberty to exercise all the Ordinances of God according to the rules of the Scripture.

4. Everie Church hath free libertie of election and ordination of all her Officers from time to time. Provided they be able, pious and orthodox.

5. Everie Church hath also free libertie of admission, recommendation, dismissal & expulsion or deposall of their Officers and members upon due cause, with free exercise of the disciplin and censures of Christ according to the rules of his word.
6. No injunction shall be put upon any Church, church Officer or member in point of doctrine, worship or disciplin, whether for substance or circumstance besides the institutions of the Lord.
7. Everie Church of Christ hath freedom to celebrate dayes of Fasting and prayer and of Thanksgiving according to the word of God.
8. The Elders of churches also have libertie to meet monthly, quarterly or otherwise in convenient numbers and places, for conference and consultations about christian and church questions and occasions.
9. All Churches also have libertie to deal with any their members in a church way that are in the hands of justice, so it be not to retard and hinder the course therof.
10. Everie Church hath libertie to deal with any Magistrate, Deputy of court, or other Officer whatsoever that is a member of theirs, in a church way in case of apparent and just offence, given in their places, so it be done with due observance and respect.
11. Wee also allow private meetings for edification in Religion amongst christians of all sorts of people so it be without just offence, both for number, time, place and other circumstances.
12. For the preventing and removing of errour and offence that may grow and spread in any of the Churches in this jurisdiction, and for the preserving of truth & peace in the severall Churches within themselves, and for the maintainance and exercise of brotherly comunion amongst all the Churches in the country.

It is allowed and ratified by the authoritie of this Court, as a lawfull libertie of the Churches of Christ, that once in every month of the year (when the season will bear it) it shall be lawfull for the Ministers and Elders of the Churches neer adjoyning, together with any other of the Brethren, with the consent of the Churches, to assemble by course in everie several church one after another, to the intent, that after the preaching of the word, by such a Minister as shal be requested therto, by the Elders of the Church where the Assemby is held, the rest of the day may be spent in public christian conference, about the discussing and resolving of any such doubts & cases of consciences concerning matter of doctrine, or worship, or government of the Church as shall be propounded by any of the Brethren of that Church; with leave also to any other Brother to propound his objections, or answers, for further satisfaction according to the word of God. Provided that the whole action be guided and moderated by the Elders of the Church where the Assembly is held, or by such others as they shall appoint. And that nothing be concluded and imposed by way of Authoritie from one, or more Churches, upon another, but only by way of brotherly conference & consultations, that the truth may be searched out to the satisfying of every mans conscience in the sight of God according to his word. And because such an Assemblie and the work therof cannot be duly attended if other lectures be held the same week, it

is therefore agreed with the consent of the Churches, that in what week such an Assembly is held all the Lectures in all the neighbouring Churches for the week dayes shall be forborne, that so the publick service of Christ in this Assembly may be transacted with greater diligence & attention. [1641]

13. Forasmuch as the open contempt of Gods word and Messengers therof is the desolating sinne of civil States and Churches and that the preaching of the word by those whom God doth send, is the chief ordinary means ordained of God for the converting, edifying and saving the souls of the Elect through the presence and power of the Holy-Ghost, therunto promised: and that the ministry of the word, is set up by God in his Churches, for those holy ends: and according to the respect or contempt of the same and of those whom God hath set apart for his own work & imployment, the weal or woe of all Christian States is much furthered and promoted; it is therefore ordered and decreed,

That if any christian (so called) within this Jurisdiction shall contemptuously behave himselfe toward the Word preached or the Messengers therof called to dispense the same in any Congregation; when he doth faithfully execute his Service and Office therin, according to the will and word of God, either by interrupting him in his preaching, or by charging him falsely with any error which he hath not taught in the open face of the Church: or like a son of Korah cast upon his true doctrine or himselfe any reproach, to the dishonour of the Lord Jesus who hath sent him and to the disparagement of that his holy Ordinance, and making Gods wayes contemptible and ridiculous: that everie such person or persons (whatsoever censure the Church may passe) shall for the first scandall be convented and reprov'd openly by the Magistrate at some lecture, and bound to their good behaviour. And if a second time they break forth into the like contemptuous carriages, they shall either pay five pounds to the publick Treasurie; or stand two hours openly upon a block or stool, four foot high on a lecture day with a paper fixed on his breast, written in Capital letters [AN OPEN AND OBSTINATE CONTEMNER OF GODS HOLY ORDINANCES] that others may fear and be ashamed of breaking out into the like wickednes. [1646]

14. It is ordered and decreed by this Court and Authoritie thereof; That wheresoever the ministry of the word is established according to the order of the Gospell throughout this Jurisdiction every person shall duly resort and attend therunto respectively upon the Lords days & upon such publick Fast dayes & dayes of Thanksgiving as are to be generally kept by the appointmet of Authoritie: & if any person within this Jurisdiction shal without just and necessarie cause withdraw himselfe from hearing the publick ministry of the word after due meanes of conviction used, he shall forfeit for his absence from everie such publick meeting five shillings. All such offences to be heard and determined by any one Magistrate or more from time to time. [1646]

15. Forasmuch as the peace and prosperity of Churches and members therof as well as civil Rights & Liberties are carefully to be maintained, it is ordered by this Court & decreed, That the civil Authoritie heer established hath power and liberty to see the peace, ordinances and rules of Christ be observed in everie Church according to his word. As also to deal with any church-member in a way of civil justice notwithstanding any church relation, office, or interest; so it be

done in a civil and not in an ecclesiastical way. Nor shall any church censure degrade or depose any man from any civil dignity, office or authoritie he shall have in the Commonwealth. [1641]

16. Forasmuch as there are many Inhabitants in divers towns, who leave their several habitations and therby draw much of the in-come of their estates into other towns wherby the ministry is much neglected, it is therefore ordered by this Court and the authoritie therof; That from henceforth all lands, cattle and other estates of any kinde whatsoever, shall be lyable to be rated to all common charges whatsoever, either for the Church, Town or Comon-wealth in the same place where the estate is from time to time. And to the end there may be a convenient habitation for the use of the ministry in everie town in this Jurisdiction to remain to posterity. It is decreed by the authoritie of this Court that where the major part of the Inhabitants (according to the order of regulating valid town acts) shall graunt, build, or purchase such habitation it shall be good in law, and the particular sum upon each person assessed by just rate, shal be duly paid according as in other cases of town rates. Provided alwayes that such graunt, deed of purchase and the deed of gift therupon to the use of a present preaching Elder and his next successour and so from time to time to his successors: be entred in the town book and acknowledged before a Magistrate, and recorded in the Shire court. [1647]

ELECTIONS.

It is ordered by this Court and Authoritie therof: That for the yearly choosing of Assistants for the time to come instead of papers the Freemen shall use indian corn and beans. The indian corn to manifest election, the beans for blanks. And that if any Freeman shall put in more then one indian corn or bean for the choise or refusal of any publick Officer, he shall forfeit for everie such offence ten pounds. And that any man that is not free or otherwise hath not libertie of voting, putting in any vote shal forfeit the like sum of ten pounds. [1643]

2. For the preventing of many inconveniences that otherwise may arise upon the yearly day of Election, and that the work of that day may be the more orderly, easily and speedily issued, it is ordered by this Court and the authoritie thereof.

That the Freemen in the several towns and villages within this Jurisdiction, shall this next year from time to time either in person or by proxie sealed up, make all their elections, by papers, indian corn and beans as heerafter is expressed, to be taken, sealed up & sent to the court of Election as this order appoints, the Governour, Deputie Governour, Major Generall, Treasurer, Secretary and Comissioners for the united Colonies to be chosen by writing, open or once folded, not twisted or rolled up, that so they may be the sooner and surer perused: and all the Assistants to be chosen by indian corn and beans, the indian corn to manifest election as in Sect: I; and for such small villages as come not in person and that send no Deputies to the Court, the Constable of the said village, together with two or three of the chiefe Freemen shall receive the votes of the rest of their Freemen, and deliver them together with their own sealed up to the Deputie or Deputies for the next town, who shall carefully convey the same unto the said Court of Election. [1647]

3. For asmuch as the choice of Assistants in case of supply is of great concernment, and with all care and circumspection to be attended; It is therefore ordered by this Court and Authoritie therof,

That when any Assistants are to be supplied, the Deputies for the General Court shall give notice to their Constables or Selectmen to call together their freemen in their severall towns: to give in their votes unto the number of seven persons, or as the General Court shall direct, who shall then and there appoint one to carrie them sealed up unto their Shire towns upon the last fourth day of the week in the first month from time to time; which persons for each town so assembled shall appoint one for each Shire to carrie them unto Boston the second third day of the second month there to be opened before two Magistrates. And those seven or other number agreed upon as aforesaid, that have most votes shall be the men which shall be nominated at the court of Election for Assistants as aforesaid. Which persons the Agents for each Shire shall forthwith signifie to the Constables of all their severall towns in writing under their hands with the number of votes for each person: all which the said Constables shall forthwith signifie to their Freemen. And as any hath more votes then other so shall they be put to vote. [1647]

4. It is decreed and by this Court declared That it is the constant libertie of the Freemen of this Jurisdiction to choose yearly at the court of Election out of the Freemen, all the general Officers of this Jurisdiction, and if they please to discharge them at the court of Election by way of vote they may doe it without shewing cause. But if at any other General Court, we hold it due justice that the reason therof be alledged and proved. By general Officers we mean our Governour, Deputy Governour, Assistants, Treasurer, General of our wars, our Admirall at sea, Commissioners for the united-Colonies and such others as are, or heerafter may be of the like general nature. [1641]

FORNICATION

It is ordered by this Court and Authoritie therof, That if any man shall commit Fornication with any single woman, they shall be punished either by enjoying to Marriage, or Fine, or corporall punishment, or all or any of these as the Judges in the courts of Assistants shall appoint most agreeble to the word of God. And this Order to continue till the Court take further order. [1642]

FREEMEN, NON-FREEMEN.

WHERAS there are within this jurisdiction many members of churches who to exempt themselves from all publick service in the Common-wealth will not come in, to be made Freemen, it is therefore ordered by this Court and the Authoritie therof,

That all such members of Churches in the severall towns within this Jurisdiction shall not be exempted from such publick service as they are from time to time chosen to by the Freemen of the severall towns: as Constables, Jurors, Select-men and Surveyors of highwayes. And if any such person shall refuse to serve in, or take upon him any such Office being legally chosen therunto, he shall pay for every such refusall such Fine as the town shall impose, not exceeding twenty shilings as Freemen are lyable to in such cases. [1647]

FUGITIVES, STRANGERS.

It is ordered by this Court and Authoritie therof, That if any people of other nations proressing the true Christian Religion shall flee to us from the tyranie or oppression of their persecutors, or from Famine, Wars, or the like necessarie and compulsarie cause, they shall be entertained and succoured amongst us according to that power and prudence God shall give us. [1641]

GAMING.

UPON Complaint of great disorder by the use of the game called Shuffle-board, in houses of common entertainment, wherby much pretious time is spent unfruitfully and much wast of wine and beer occasioned; it is therefore ordered and enacted by the Authoritie of this Court;

That no person shall henceforth use the said game of Shuffle-board in any such house, nor in any other house used as common for such purpose, upon payn for every Keeper of such house to forfeit for everie such offence five shillings: Nor shall any person at any time play or game for any monie, or mony-worth upon penalty of forfeiting treble the value therof: one half to the partie informing, the other half to the Tresurie. And any Magistrate may hear and determin any offence against this Law. [1646 1647]

GENERAL COURT.

It is ordered, and by this Court declared that the Governour and Deputie Governour joyntly consenting, or any three Assistants concurring in consent shall have power out of Court to reprieve a condemned malefactor till the next Court of Assistants: or General Court. And that the General Court only shall have power to pardon a condemned malefactor.

Also it is declared that the General Court hath libertie and Authoritie to send forth any member of this Common-wealth, of what qualitie and condition or office whatsoever into forrein parts, about any publick Message or negociation: notwithstanding any office or relation whatsoever. Provided the partie so sent be acquainted with the affairs he goeth about, and be willing to undertake the service.

Nor shall any General Court be dissolved or adjourned without the consent of the major part therof. [1641]

GOVERNOUR.

It is ordered, and by this Court declared that the Governour shall have a casting vote whensoever an equivote shall fall out in the Court of Assistants, or general Assemblie: so shall the President or Moderatour have in all civil Courts or Assemblies [1641]

HERESIE.

ALTHOUGH no humane power be Lord over the Faith & Consciences of men, and therefore may not constrein them to beleive or professe against their Consciences: yet because such as bring in damnable heresies, tending to the subversion of the Christian Faith, and destruction of the soules of men, ought duly to be restrained from such notorious impiety, it is therfore ordered and decreed by this Court;

That if any Christian within this Jurisdiction shall go about to subvert and destroy the christian Faith and Religion, by broaching or mainteining any damnable heresie; as denying the immortalitie of the Soul, or the resurrection of the body, or any sin to be repented of in the Regenerate, or any evil done by the outward man to be accounted sin: or denying that Christ gave himself a Ransom for our sins, or shal affirm that wee are not justified by his Death and Righteousnes, but by the perfection of our own works; or shall deny the moralitie of the fourth commandment, or shall indeavour to seduce others to any the herisies aforementioned, everie such person continuing obstinate therin after due means of conviction shall be sentenced to Banishment. [1646] ...

IDLENES.

It is ordered by this Court and Authoritie therof, that no person, Housholder or other shall spend his time idley or unprofitably under pain of such punishment as the Court of Assistants or County Court shall think meet to inflict. And for this end it is ordered that the Constable of everie place shall use speciall care and diligence to take knowledge of offenders in this kinde, especially of common coasters, unprofitable fowlers and tobacco takers, and present the same unto the two next Assistants, who shall have power to hear and determin the cause, or transfer it to the next Court. [1633]

JESUITS.

THIS court taking into consideration the great wars, combustions and divisions which are this day in Europe: and that the same are observed to be rayseed and fomented chiefly by the secret underminings, and solicitations of those of the Jesuiticall Order, men brought up and devoted to the religion and court of Rome; which hath occasioned divers States to expell them their territories; for prevention wherof among our selves, It is ordered and enacted by Authoritie of this Court,

That no Jesuit, or spiritual or ecclesiasticall person [as they are termed] ordained by the authoritie of the Pope, or Sea of Rome shall henceforth at any time repair to, or come within this Jurisdiction: And if any person shal give just cause of suspicion that he is one of such Societie or Order he shall be brought before some of the Magistrates, and if he cannot free himselfe of such suspicion he shall be committed to prison, or bound over to the next Court of Assistants, to be tryed and proceeded with by Banishment or otherwise as the Court shall see cause: and if any person so banished shall be taken the second time within this Jurisdiction upon lawfull tryall and conviction he shall be put to death. Provided this Law shall not extend to any such Jesuit, spiritual or ecclesiasticall person as shall be cast upon our shoars, by ship-wrack or other accident, so as he continue no longer then till he may have opportunitie of passage for his departure; nor to any such as shall come in company with any Messenger hither upon publick

occasions, or any Merchant or Master of any ship, belonging to any place not in emittie with the State of England, or our selves, so as they depart again with the same Messenger, Master or Merchant, and behave themselves inoffensively during their abode heer. [1647] ...

IMPRESSES.

It is ordered, and by this Court declared, that no man shall be compelled to any publick work, or service, unlesse the Presse be grounded upon some act of the General Court; and have reasonable allowance therefore: nor shall any man be compelled in person to any office, work, wars, or other publick service that is necessarily and sufficiently exempted, by any natural or personal impediment; as by want of years, greatnes of age, defect of minde, failing of senses, or impotencye of lims. Nor shall any man be compelled to go out of this Jurisdiction upon any offensive wars, which this Common-wealth, or any of our freinds or confoederates shall voluntarily undertake; but only upon such vindictive and defensive wars, in our own behalf, or the behalf of our freinds and confoederates; as shall be enterprized by the counsell, and consent of a General Court, or by Authoritie derived from the same. Nor shall any mans cattle or goods of what kinde soever be pressed, or taken for any publick use or service; unles it be by Warrant grounded upon some act of the General Court: nor without such reasonable prizes and hire as the ordinarie rates of the Countrie doe afford. And if his cattle or goods shall perish, or suffer damage in such service, the Owner shall be sufficiently recompenced. [1641]

IMPRISONMENT.

It is ordered, and by this Court declared; that no mans person shall be restrained or imprisoned by any authoritie whatsoever before the Law hath sentenced him therto: if he can put in sufficient securitie, Bayle or Mainprize for his appearance, and good behaviour in the mean time: unles it be in crimes Capital, and contempt in open Court, and in such cases where some expresse Act of Court doth allow it. [1641]

INDIANS

It is ordered by Authoritie of this Court; that no person whatsoever shall henceforth buy land of any Indian, without license first had & obtained of the General Court: and if any shall offend heerin, such land so bought shall be forfeited to the Countrie.

Nor shall any man within this Jurisdiction directly or indirectly amend, repair, or cause to be amended or repaired any gun, small or great, belonging to any Indian, nor shall indeavour the same. Nor shall sell or give to any Indian, directly or indirectly any such gun, or any gun-powder, shot or lead, or shotmould, or any militarie weapons or armour: upon payn of ten pounds fine, at the least for everie such offence: and that the court of Assistants shall have power to increase the Fine; or to impose corporall punishment (where a Fine cannot be had) at their discretion.

It is ordered by the Authoritie aforesaid that everie town shall have power to restrain all Indians from profaning the Lords day. [1633 1637 1641]

2. Whereas it appeareth to this Court that notwithstanding the former Laws, made against selling of guns, powder and Ammunition to the Indians, they are yet supplied by indirect means, it is therefore ordered by this Court and Authoritie therof;

That if any person after publication heerof, shall sell, give or barter any gun or guns, powder, bullets, shot or lead to any Indian whatsoever, or unto any person inhabiting out of this Jurisdiction without license of this Court, or the court of Assistants, or some two Magistrates, he shall forfeith for everie gun so sold, given or bartered ten pounds: and for everie pound of powder five pounds: and for everie pound of bullets, shot or lead fourty shillings: and so proportionably for any greater or lesser quantitie. [1642]

3. It is ordered by this Court and Authoritie therof, that in all places, the English and such others as co-inhabit within our Jurisdiction shall keep their cattle from destroying the Indians corn, in any ground where they have right to plant; and if any of their corn be destroyed for want of fencing, or herding; the town shall make satisfaction, and shall have power among themselves to lay the charge where the occasion of the damage did arise. Provided that the Indians shall make proof that the cattle of such a town, farm, or person did the damage. And for encouragement of the Indians toward the fencing in their corn fields, such towns, farms or persons, whose cattle may annoy them that way, shall direct, assist and help them in felling of trees, ryving, and sharpening of rayls, & holing of posts: allowing one English-man to three or more Indians. And shall also draw the fencing into place for them, and allow one man a day or two toward the setting up the same, and either lend or sell them tools to finish it. Provided that such Indians, to whom the Countrie, or any town hath given, or shall give ground to plant upon, or that shall purchase ground of the English shall fence such their corn fields or ground at their own charge as the English doe or should doe; and if any Indians refuse to fence their corn ground (being tendred help as aforesaid) in the presence and hearing of any Magistrate or selected Townsmen being met together they shall keep off all cattle or lose one half of their damages.

And it is also ordered that if any harm be done at any time by the Indians unto the English in their cattle; the Governour or Deputie Governour with two of the Assistants or any three Magistrates or any County Court may order satisfaction according to law and justice. [1640 1648]

4. Considering that one end in planting these parts was to propagate the true Religion unto the Indians: and that divers of them are become subjects to the English and have ingaged themselves to be willing and ready to understand the Law of God, it is therefore ordered and decreed,

That such necessary and wholsom Laws, which are in force, and may be made from time to time, to reduce them to civilitie of life shall be once in the year (if the times be safe) made known to them, by such fit persons as the General Court shall nominate, having the help of some able Interpreter with them.

Considering also that interpretation of tongues is appointed of God for propagating the Truth: and may therefore have a blessed successe in the hearts of others in due season, it is therefore farther ordered and decreed,

That two Ministers shall be chosen by the Elders of the Churches everie year at the Court of Election, and so be sent with the consent of their Churches (with whomsoever will freely offer themselves to accompany them in that service) to make known the heavenly counsell of God among the Indians in most familiar manner, by the help of some able Interpreter; as may be most available to bring them unto the knowledge of the truth, and their conversation to the Rules of Jesus Christ. And for that end that something be allowed them by the General Court, to give away freely unto those Indians whom they shall perceive most willing & ready to be instructed by them.

And it is farther ordered and decreed by this Court; that no Indian shall at any time powaw, or performe outward worship to their false gods: or to the devil in any part of our Jurisdiction; whether they be such as shall dwell heer, or shall come hither: and if any shall transgresse this Law, the Powawer shall pay five pounds; the Procurer five pounds; and every other countenancing by his presence or otherwise being of age of discretion twenty shillings. [1646]

INDITEMENTS.

If any person shall be indicted of any capital crime (who is not then in durance) & shall refuse to render his person to some Magistrates within one month after three Proclamations publickly made in the town where he usually abides, there being a month betwixt Proclamation and Proclamation, his lands and goods shall be seized to the use of the common Treasurie, till he make his lawfull appearance. And such withdrawing of himselfe shall stand in stead of one wittnes to prove his crime, unles he can make it appear to the Court that he was necessarily hindred. [1646]

IN-KEEPERS, TIPPLING, DRUNKENES.

FORASMUCH as there is a necessary use of houses of common entertainment in every Commonwealth, and of such as retail wine, beer and victuals; yet because there are so many abuses of that lawfull libertie, both by persons entertaining and persons entertained, there is also need of strict Laws and rules to regulate such an employment: It is therefore ordered by this Court and Authoritie therof;

That no person or persons shall at any time under any pretence or colour whassoever undertake to be a common Victuailer, Keeper of a Cooks shop, or house for common entertainment, Taverner, or publick seller of wine, ale, beer or strong-water (by re-tale), nor shall any sell wine privately in his house or out of doors by a lesse quantitie, or under a quarter cask: without approbation of the selected Townsmen and Licence of the Shire Court where they dwell: upon pain of forfeiture of five pounds for everie such offence, or imprisonment at pleasure of the Court, where satisfaction cannot be had.

And every person so licenced for common entertainment shall have some inoffensive Signe obvious for strangers direction, and such as have no such Signe after three months so licensed from time to time shall lose their license: and others allowed in their stead. Any licensed person that selleth beer shall not sell any above two-pence the ale-quart: upon penaltie of three shillings

four pence for everie such offence. And it is permitted to any that will to sell beer out of doors at a pennie the ale-quart and under.

Neither shall any such licenced person aforesaid suffer any to be drunken, or drink excessively viz: above half a pinte of wine for one person at one time; or to continue tippling above the space of half an hour, or at unreasonable times, or after nine of the clock at night in, or about any of their houses on penaltie of five shillings for everie such offence.

And everie person found drunken viz: so that he be therby bereaved or disabled in the use of his understanding, appearing in his speech or gesture in any the said houses or elsewhere shall forfeith ten shillings. And for excessive drinking three shillings four pence. And for continuing above half an hour tippling two shillings six pence. And for tippling at unreasonable times, or after nine a clock at night five shillings: for everie offence in these particulars being lawfully convict therof. And for want of payment such shall be imprisoned untill they pay: or be set in the Stocks one hour or more [in some open place] as the weather will permit not exceeding three hours at one time ...

JURIES, JURORS.

It is ordered by this Court and Authoritie therof, that the Constable of everie town upon Proces from the Recorder of each Court, shall give timely notice to the Freemen of their town, to choos so many able discreet men as the Proces shal direct which men so chosen he shall warn to attend the Court wherto they are appointed, and shall make return of the Proces unto the Recorder aforesaid: which men so chosen shall be impannelled and sworn truly to try betwixt partie and partie, who shall finde the matter of fact with the damages and costs according to their evidence, and the Judges shall declare the Sentence (or direct the Jurie to finde) according to the law. And if there be any matter of apparent equitie as upon the forfeiture of an Obligation, breach of covenant without damage, or the like, the Bench shall determin such matter of equitie.

2. Nor shall any tryall passe upon any for life or bannishment but by a special Jurie so summoned for that purpose, or by the General Court.

3. It is also ordered by the Authoritie aforesaid that there shall be Grand-Juries summoned everie year unto the several Courts, in each Jurisdiction; to inform the Court of any misdemeanours that they shall know or hear to be committed by any person or persons whatsoever within this Jurisdiction. And to doe any other service of the Common-wealth, that according to law they shall be enjoyned to by the said Court; and in all cases wherin evidence is so obscure or defective that the Jurie cannot clearly and safely give a positive verdict, whether it be Grand, or Petty Jurie, it shall have libertie to give a [verdict] or a special verdict, in which last, that is, a special verdict the judgement of the Cause shall be left unto the Bench. And all jurors shall have libertie in matters of fact if they cannot finde the main issue yet to finde and present in their verdict so much as they can.

4. And if the Bench and Jurors shall so differ at any time about their verdict that either of them cannot proceed with peace of conscience, the Case shall be referred to the General Court who shall take the question from both and determin it.

5. And it is farther ordered that whensoever any Jurie of tryalls, or Jurors are not clear in their judgements or consciences, concerning any Case wherein they are to give their verdict, they shall have libertie, in open court to advise with any man they shall think fit to resolve or direct them, before they give in their verdict. And no Freeman shall be compelled to serve upon Juries above one ordinary Court in a year: except Grand-jurie men, who shall hold two Courts together at the least, and such others as shall be summoned to serve in case of life and death or bannishment. [1634 1641 1642]

JUSTICE.

It is ordered, and by this Court declared; that every person within this Jurisdiction, whether Inhabitant or other shall enjoy the same justice and law that is general for this Jurisdiction which wee constitute and execute one towards another, in all cases proper to our cognisance without partialitie or delay. [1641] ...

LIBERTIES COMMON

It is ordered by this Court, decreed and declared; that everie man whether Inhabitant or Forreiner, Free or not Free shall have libertie to come to any publick Court, Counsell, or Town-meeting; and either by speech or writing, to move any lawfull, reasonable, or material question; or to present any necessarie motion, complaint, petition, bill or information wherof that Meeting hath proper cognisance, so it be done in convenient time, due order and respective manner. [1641]

2. Everie Inhabitant who is an hous-holder shall have free fishing and fowling, in any great Ponds, Bayes, Coves and Rivers so far as the Sea ebs and flows, within the precincts of the town where they dwell, unles the Freeman of the same town, or the General Court have otherwise appropriated them. Provided that no town shall appropriate to any particular person or persons, any great Pond conteining more then ten acres of land: and that no man shall come upon anothers proprietie without their leave otherwise then as heerafter expressed; the which clearly to determin, it is declared that in all creeks, coves and other places, about and upon salt water where the Sea ebs and flows, the Proprietor of the land adjoyning shall have proprietie to the low water mark where the Sea doth not ebb above a hundred rods, and not more wheresoever it ebs farther. Provided that such Proprietor shall not by this libertie have power to stop or hinder the passage of boats or other vessels in, or through any sea creeks, or coves to other mens houses or lands. And for great Ponds lying in common though within the bounds of some town, it shall be free for any man to fish and fowl there, and may passe and repasse on foot through any mans proprietie for that end, so they trespasse not upon any mans corn or meadow. [1641 1647]

3. Every man of, or within this Jurisdiction shall have free libertie, (notwithstanding any civil power) to remove both himself and his familie at their pleasure out of the same. Provided there be no legal impediment to the contrary. [1641]

LYING.

WHEREAS truth in words as well as in actions is required of all men, especially of Christians who are the professed Servants of the God of Truth; and whereas all lying is contrary to truth, and some sorts of lyes are not only sinfull (as all lyes are) but also pernicious to the Publick-weal, and injurious to particular persons; it is therefore ordered by this Court and Authoritie therof,

That everie person of the age of discretion [which is accounted fourteen years] who shall wittingly and willingly make, or publish any Lye which may be pernicious to the publick weal, or tending to the damage or injurie of any particular person, or with intent to deceive and abuse the people with false news or reports: and the same duly proved in any Court or before any one Magistrate (who hath heerby power graunted to hear, and determin all offences against this Law) such person shall be fined for the first offence ten shillings, or if the partie be unable to pay the same then to be set in the stocks so long as the said Court of Magistrate shall appoint, in some open place, not exceeding two hours. For the second offence in that kinde wherof any shall be legally convicted the sum of twenty shillings, or be whipped upon the naked body not exceeding ten stripes. And for the third offence that way fourty shillings, or if the partie be unable to pay, then to be whipped with more stripes, not exceeding fifteen. And if yet any shall offend in the like kinde, and be legally convicted therof, such person, male or female, shall be fined ten shillings a time more then formerly: or if the partie so offending be unable to pay, then to be whipped with five, or six more stripes then formerly not exceeding fourty at any time.

The aforesaid fines shall be levied, or stripes inflicted either by the Marshal of that Jurisdiction, or Constable of the Town where the offence is committed according as the Court or Magistrate shall direct. And such fines so levied shall be paid to the Treasurie of that Shire where the Cause is tried.

And if any person shall finde himselfe greived with the sentence of any such Magistrate out of Court, he may appeal to the next Court of the same Shire, giving sufficient securitie to prosecute his appeal and abide the Order of the Court. And if the said Court shall judge his appeal causlesse, he shall be double fined and pay the charges of the Court during his Action, or corrected by whipping as aforesaid not exceeding fourtie stripes; and pay the costs of Court and partie complaining or informing, and of Wittnesses in Case.

And for all such as being under age of discretion that shall offend in lying contrary to this Order their Parents or Masters shall give them due correction, and that in the presence of some Officer if any Magistrate shall so appoint. Provided also that no person shall be barred of his just Action of Slauder, or otherwise by any proceeding upon this Order. [1645]

MAGISTRATES.

THIS court being sensible of the great disorder growing in this Commonwealth through the contempts cast upon the civil Authoritie, which willing to prevent, doe order and decree;

That whosoever shall henceforth openly or willingly defame any Court of justice, or the Sentences or proceedings of the same, or any of the Magistrates or other Judges of any such Court in respect of any Act or Sentence therein passed, and being thereof lawfully convict in any General Court or Court of Assistants shall be punished for the same by Fine, Imprisonment, Disfranchisement or Bannishment as the qualitie and measure of the offence shall deserve.

And if any Magistrate or other member of any court shall use any reproachfull, or un-beseeming speeches, or behaviour towards any Magistrate, Judge, or member of the Court in the face of the said Court he shall be sharply reprov'd, by the Governour, or other principal Judge of the same Court for the time being. And if the qualitie of the offence be such as shall deserve a farther censure, or if the person so reprov'd shall reply again without leave, the same Court may proceed to punish any such offender by Fine, or Imprisonment, or it shall be presented to, and censured at the next superiour Court.

2. If in a General Court any miscarriage shall be amongst the Magistrates when they are by themselves, it shall be examined, and sentenced amongst themselves. If amongst the Deputies when they are by themselves, it shall be examined, and sentenced amongst themselves. If it be when the whole Court is together, it shall be judged by the whole Court, and not severall as before. [1637 1641]

3. And it is ordered by the Authoritie of this Court that the Governour, Deputie Governour, or greater part of the Assistants may upon urgent occasion call a General Court at any time. [1647]

4. And wheras there may arise some difference of judgement in doubtfull cases, it is therefore farther ordered;

That no Law, Order, or Sentence shall passe as an Act of the Court without the consent of the greater part of the Magistrates on the one partie, and the greater number of the Deputies on the other part.

5. And for preventing all occasions of partial and undue proceeding in Courts of justice, and avoyding of jealousies which may be taken up against Judges in that kinde, it is farther ordered,

That in everie Case of civil nature between partie and partie where there shall fall out so neer relation between any Judge and any of the parties as between Father and Son, either by nature or marriage, Brother and Brother; in like kinde Uncle and Nephew, Land-lord and Tenent in matter of considerable value, such Judge though he may have libertie to be present in the Court at the time of the tryall, and give reasonable advice in the Case, yet shall have no power to vote or give sentence therein, neither shall Sit as Judge, but beneath the Bench when he shall so plead or give advice in the Case. [1635]

MONOPOLIES.

It is ordered, decreed and by this Court declared; that there shall be no Monopolies graunted or allowed amongst us, but of such new inventions that are profitable for the Countrie, and that for a short time. [1641]

OATHS, SUBSCRIPTION

It is ordered and decreed, and by this Court declared; that no man shall be urged to take any oath, or subscribe any Articles, Covenants, or remonstrance of publick and civil nature but such as the General Court hath considered, allowed and required. And that no oath of Magistrate, counceller or any other Officer shall binde him any farther, or longer then he is resident, or reputed an Inhabitant of this Jurisdiction [1641]

OPPRESSION

For avoyding such mischeifs as may follow by such illdisposed persons as may take libertie to oppresse and wrong their neighbours, by taking excessive wages for work, or unreasonable prizes for such necessarie merchandizes or other commodities as shall passe from man to man, it is ordered, That if any man shall offend in any of the said cases he shall be punished by Fine, or Imprisonment according to the qualitie of the offence, as the Court to which he is presented upon lawfull tryall & conviction shall adjudge. [1635] ...

PROFANE SWEARING.

It is ordered, and by this Court decreed, that if any person within this Jurisdiction shall swear rashly and vainly either by the holy Name of God, or any other oath, he shall forfeit to the common Treasurie for everie such severall offence ten shillings. And it shall be in the power of any Magistrate by Warrant to the Constable to call such person before him, and upon sufficient proof to passe sentence, and levie the said penaltie according to the usuall order of Justice. And if such person be not able, or shall utterly refuse to pay the aforesaid Fine, he shall be committed to the Stocks there to continue, not exceeding three hours, and not lesse then one hour. [1646] ...

PUNISHMENT

It is ordered, decreed, and by this Court declared; that no man shall be twice sentenced by civil Justice for one and the same Crime, offence or Trespasse. And for bodily punishments, wee allow amongst us none that are in-humane, barbarous or cruel. [1641]

SCHOOLS.

It being one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures, as in former times keeping them in an unknown tongue, so in these later times by perswading from the use of Tongues, that so at least the true sense and meaning of the Original might be clouded with false glosses of Saint-seeming-deceivers; and that Learning may not be buried in the graves of our fore-fathers in Church and Commonwealth, the Lord assisting our indeavours: it is therfore ordered by this Court and Authoritie therof;

That everie Township in this Jurisdiction, after the Lord hath increased them to the number of fifty Householders shall then forthwith appoint one within their Town to teach all such children as shall resort to him to write and read, whose wages shall be paid either by the Parents or Masters of such children, or by the Inhabitants in general by way of supply, as the major part of those that order the prudentials of the Town shall appoint. Provided that those which send their children be not oppressed by paying much more then they can have them taught for in other Towns.

2. And it is farther ordered, that where any Town shall increase to the number of one hundred Families or Householders they shall set upon a Grammar-School, the Masters thereof being able to instruct youth so far as they may be fitted for the Universitie. And if any Town neglect the performance heerof above one year then everie such town shall pay five pounds per annum to the next such School, till they shall perform this Order. [1647] ...

STRANGERS.

It is ordered by this Court and the Authoritie thereof; that no Town or person shal receive any stranger resorting hither with intent to reside in this Jurisdiction, nor shall allow any Lot or Habitation to any, or entertain any such above three weeks, except such person shall have allowance under the hand of some one Magistrate, upon pain of everie Town that shall give, or sell any Lot or Habitation to any not so licenced such Fine to the Countrie as the County Court shall impose, not exceeding fifty pounds, nor lesse then ten pounds. And of everie person receiving any such for longer time then is heer expressed or allowed, in some special cases as before, or in case of entertainment of friends resorting from other parts of this Country in amitie with us, shall forfeit as aforesaid, not exceeding twenty pounds, nor lesse then four pounds: and for everie month after so offending, shal forfeit, as aforesaid not exceeding ten pounds, nor lesse then fourty shillings. Also, that all Constables shall inform the Courts of new commers which they know to be admitted without licence, from time to time. [1637 1638 1647]

SUMMONS.

It is ordered, and by this Court declared; that no Summons, Pleading, Judgement or any kinde of proceeding in Court or course of justice shall be abated, arested or reversed upon any kinde of circumstantial errors or mistakes, if the person and the Cause be rightly understood and intended by the Court.

2. And that in all cases where the first Summons are not served six dayes before the Court, and the Case briefly specified in the Warrant where appearance is to be made by the partie summoned; it shall be at his libertie whether he will appear, or not, except all Cases that are to be handled in Courts suddenly called upon extraordinarie occasions. And that in all cases where there appears present and urgent cause any Assistant or Officer appointed shall have power to make out Attachments for the first Summons. Also, it is declared that the day of Summons or Attachment served, and the day of appearance shall be taken inclusively as part of the six dayes. [1641 1647]

SUITS, VEXATIOUS SUITS.

It is ordered and decreed, and by this Court declared; that in all Cases where it appears to the Court that the Plaintiffe hath willingly & wittingly done wrong to the Defendant in commencing and prosecuting any Action, Suit, Complaint or Indictment in his own name or in the name of others, he shall pay treble damages to the partie greived, and be fined fourty shillings to the Common Treasurie. [1641 1646] ...

TOBACCO.

This Court finding that since the repealing of the former Laws against Tobacco, the same is more abused then before doth therefore order,

That no man shall take any tobacco within twenty poles of any house, or so neer as may indanger the same, or neer any Barn, corn, or hay-cock as may occasion the fying therof, upon pain of ten shillings for everie such offence, besides full recompence of all damages done by means therof. Nor shall any take tobacco in any Inne or common Victualing-house, except in a private room there, so as neither the Master of the said house nor any other Guests there shall take offence therat, which if any doe, then such person shall forthwith forbear, upon pain of two shillings sixpence for everie such offence. And for all Fines incurred by this Law, one half part shall be to the Informer the other to the poor of the town where the offence is done. [1638 1647]

TORTURE.

It is ordered, decreed, and by this Court declared; that no man shall be forced by torture to confesse any crime against himselfe or any other, unles it be in some Capital where he is first fully convicted by clear and sufficient evidence to be guilty. After which, if the Case be of that nature that it is very apparent there be other Conspirators or Confoederates with him; then he may be tortured, yet not with such tortures as be barbarous and inhumane.

2. And that no man shall be beaten with above fourty stripes for one Fact at one time. Nor shall any man be punished with whipping, except he have not otherwise to answer the Law, unles his crime be very shamefull, and his course of life vitious and profligate. [1641]

TOWNSHIPS.

It is ordered, decreed, and by this Court declared, that if any man shall behave himselfe offensively at any Town-meeting, the rest then present shall have power to sentence him for such offence, so be it the mulct or penalty exceed not twenty shillings.

2. And that the Freemen of everie Township, and others authorized by law, shall have power to make such Laws and Constitutions as may concern the welfare of their Town. Provided they be not repugnant to the publick Laws and Orders of the Countrie. And if any Inhabitant shall neglect or refuse to observe them, they shall have power to levie the appointed penalties by distresse.

3. Also that the Freemen of everie town or Township, with such other the Inhabitats as have taken the Oath of fidelitie shall have full power to choos yearly, or for lesse time, within

each Township a convenient number of fit men to order the planting and prudential occasions of that Town, according to instructions given them in writing.

Provided, nothing be done by them contrary to the publick Laws and Orders of the Countrie. Provided also that the number of such Select persons be not above nine.

4. Farther, it is ordered by the Authoritie aforesayd, that all Towns shall take care from time to time to order and dispose of all single persons, and In-mates within their Towns to service, or otherwise. And if any be greived at such order or dispose, they have libertie to appeal to the next County Court.

5. This Court taking into considerattion the usefull Parts and abilities of divers Inhabitants amongst us, which are not Freemen, which if improved to publick use, the affairs of this Common-wealth may be the easier caried an end in the severall Towns of this Jurisdiction doth order, and heerby declare;

That henceforth it shall may be lawfull for the Freemen within any of the said Towns, to make choice of such Inhabitants (though non-Freemen) who have taken, or shall take the Oath of fidelitie to this Government to be Jurie-men, and to have their Vote in the choice of the Select-men for the town Affairs, Assesments of Rates, and other Prudentials proper to the Select-men of the several Towns. Provided still that the major part of all companyes of Select-men be Freemen from time to time that shall make any valid Act. As also, where no Select-men are, to have their Vote in ordering of Schools, hearing of cattle, laying out of High-wayes and distributing of Lands; any Law, Use or Custom to the contrary notwithstanding. Provided also that no non-Freeman shall have his Vote, untill he have attained the age of twenty one years. [1636 1641 1647]

TRYALLS.

Wheras this Court is often taken up in hearing and deciding particular Cases, between partie and partie, which more properly belong to other inferiour Court. And that if the partie against whom the Judgment shall have any new evidence, or other new matter to plead, he may desire a new Tryall in the same Court upon a Bill or review. And if justice shall not be done him upon that Tryall he may then come to this Court for releif. [1642]

2. it is ordered, and by this Court declared, that in all Actions of Law it shall be the libertie of the Plaintiffe and Defendant by mutuall consent to choos whether they will be tryed by the Bench or a Jurie, unles it be where the Law upon just reason hath otherwise determined. The like libertie shall be graunted to all persons in any criminal Cases.

3. Also it shall be in the libertie both of Plaintiffe and Defendant, & likewise everie delinquent to be judged by a Jurie, to challenge any of the Jurors, & if the challenge be found just and reasonable, by the Bench or the rest of the Jurie as the Challenger shall choos, it shall be allowed him, & impannelled in their room.

4. Also, children, Ideots, distracted persons and all that are strangers or new comers to our Plantation shall have such allowances, and dispensations in any Case, whether criminal or others, as Religion and reason require. [1641]

VOTES.

It is ordered, decreed and by this Court declared; that all, and everie Freeman, and others authorized by Law, called to give any Advice, Vote, Verdict or Sentence in any Court, Council or civil Assemblie, shall have full freedom to doe it according to their true judgements and consciences, so it be done orderly and inoffensively, for the manner. And that in all cases wherin any Freeman or other is to give his Vote be it in point of Election, making Constitutions and Orders or passing Sentence in any case of Judicature or the like, if he cannot see light or reason to give it positively, one way or other, he shall have libertie to be silent, and not pressed to a determinate vote. And farther that whensoever any thing is to be put to vote, and Sentence to be pronounced or any other matter to be proposed, or read in any Court or Assemblie, if the President or Moderator shall refuse to perform it, the major part of the members of that Court or Assemblie shall have power to appoint any other meet man of them to doe it. And if there be just cause, to punish him that should, and would not. [1641]

USERIE.

It is ordered, decreed & by this Court declared, that no man shall be adjudged for the meer forbearance of any debt, above eight pounds in the hundred for one year, and not above that rate proportionably for all sums whatsoever, Bills of Exchange excepted, neither shall this be a colour or countenance to allow any usurie amongst us contrary to the Law of God. [1641 1643]

...

WITNESSES.

It is ordered, decreed, and by this Court declared, that no man shall be put to death without the testimonie of two or three witnesses, or that which is equivalent therunto. [1641]

2. And it is ordered by this Court and the Authoritie therof, that any one Magistrate, or Commissioner authorized therunto by the General Court may take the Testimonie of any person of fourteen years of age, or above, of sound understanding and reputation, in any Case civil or criminal; and shall keep the same in his own hands till the Court, or deliver it to the Recorder, publick Notarie or Clerk of the writs to be recorded, that so nothing may be altered in it. Provided, that where any such witsesse shall have his abode within ten miles of the Court, and there living and not disabled by sicknes, or other infirmitie, the said Testimonie so taken out of court shall not be received, or made use of in the Court, except the witnes be also present to be farther examined about it. Provided also, that in all capital cases all witnesses shall be present wheresoever they dwell.

3. And it is farther ordered by the Authoritie aforesaid, that any person summoned to appear as a witses in any civil Court between partie and partie, shall not be compellable to travell to any Court or place where he is to give his Testimonie, except he who shall so summon him

shall lay down or give him satisfaction for his travell and expences, out-ward and home-ward; and for such time as he shall spend in attendance in such case when he is at such Court or place, the Court shall award due recompence. And it is ordered that two shillings a day shall be accounted due satisfaction to any Witnes for travell and expences: and that when the Witnes dwelleth within three miles, and is not at charge to passe over any other Ferrie than betwixt Charlstown and Boston then one shilling six pence per diem shall be accounted sufficient. And if any Witnes after such payment or satisfaction shall fail to appear to give his Testimonie he shall be lyable to pay the parties damages upon an action of the Case. And all Witnesses in criminal cases shall have suitable satisfaction, payd by the Treasurer upon Warrant from the Court or Judge before whom the case is tryed. And for a general rule to be observed in all criminal causes, both where the Fines are put in certain, and also where they are otherwise, it is farther ordered by the Authoritie aforesayd, that the charges of Witnesses in all such cases shall be borne by the parties delinquent, and shall be added to the Fines imposed; that so the Treasurer having upon Warrant from the Court or other Judge satisfied such Witnesses, it may be repayd him with the Fine: that so the Witness may be timely satisfied, and the countrie not damnified. [1647] ...

Appendix G. The Fundamental Orders of Government, 1639 [Connecticut]

[These “Orders” were adopted by a popular convention of the three towns of Windsor, Hartford, and Wethersfield, on January 14, 1639. They form, according to historians, “the first written constitution, in the modern sense of the term, as a permanent limitation on governmental power, known in history, and certainly the first American constitution of government to embody the democratic idea.”]¹³⁵

FORASMUCH as it hath pleased the Almighty God by the wise disposition of his divine providence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Harteford and Wethersfield are now cohabiting and dwelling in and upon the River of Connecticut and the Lands thereunto adjoining; And well knowing where a people are gathered together the word of God requires that to maintain the peace and union of such a people there should be an orderly and decent Government established according to God, to order and dispose of the affrays of the people at all seasons as occasion shall require; do therefore associate and connive ourselves to be as one Public State or Commonwealth; and do, for ourselves and our Successors and such as shall be adjoined to us at any time hereafter, enter into Combination and Confederation to gather, to maintain and pressure the liberty and purity of the gospel of our Lord Jesus which we now profess, as also the discipline of the Churches, which according to the truth of the said gospel is now practised amongst vs; As also in our Civil Affairs to be guided and governed according to such Laws, Rules, Orders and decrees as shall be made, ordered & decreed, as followeth:—

1. It is Ordered, sentenced and decreed, that there shall be yearly two general Assemblies or Courts, the on the second thursday in April, the other the second thursday in September, following; the first shall be called the Court of Election, wherein shall be yearly Chosen from time to time so many Magistrates and other public Officers as shall be found requisite: Whereof one to be chosen Governor for the year ensuing and until another be chosen, and no other Magistrate to be chosen for more than one year; provided always there be six chosen besides the Governor; which being chosen and sworn according to an Oath recorded for that purpose shall have power to administer justice according to the Laws here established, and for want thereof according to the rule of the word of God; which chose shall be made by all that are admitted freemen and have taken the Oath of Fidelity, and doe cohabit within this Jurisdiction, (having been admitted Inhabitants by the major part of the Town wherein

¹³⁵ <https://www.bartleby.com/43/7.html>

they lieu,) or the mayor party of such as shall be then present.

2. It is Ordered, sentenced and decreed, that the Election of the aforesaid Magistrate shall be on this manner: every person present and qualified for choose shall bring in (to the persons deputed to receive them) one single paper with the name of him written in at whom he desires to have Governor, and he that hath the greatest number of papers shall be Governor for that year. And the rest of the Magistrates or public Officers to be chosen in this manner: The Secretary for the time being shall first read the names of all that are to be put to choose and then shall severally nominate them distinctly, and every one that would have the person nominated to be chosen shall bring in one single paper written upon, and he that would not have him chosen shall bring in a blank: and every one that hath more written papers then blanks shall be a Magistrate for that year; which papers shall be received and told by one or more that shall be then chosen by the court and sworn to be faithful therein; but in case there should not be six chosen as aforesaid, besides the Governor, out of those which are nominated, then he or they which have the most written papers shall be a Magistrate or Magistrates for the ensuing year, to make up the foresaid number. 2

3. It is Ordered, sentenced and decreed, that the Secretary shall not nominate any person, nor shall any person be chosen newly into the Magistracy which was not propounded in some General Court before, to be nominated the next Election; and to that end at shall be lawful for each of the Towns aforesaid by their deputies to nominate any two whom they conceive fitte to be put to election; and the Court may ad so many more as they judge requisite. 3

4. It is Ordered, sentenced and decreed that no person be chosen Governor above once in two years, and that the Governor be always a member of some approved congregation, and formerly of the Magistracy within this Jurisdiction; and all the Magistrates Freemen of this Commonwealth: and that no Magistrate or other public officer shall execute any party of his or their Office before they are severally sworn, which shall be done in the face of the Court if they be present, and in case of absence by some deputed for that purpose. 4

5. It is Ordered, sentenced and decreed, that to the aforesaid Court of Election the several Towns shall send their deputies, and when the Elections are ended they may proceed in any public service as at other Courts. Also the other General Court in September shall be for making of laws, and any other public occasion, which concerns the good of the Commonwealth. 5

6. It is Ordered, sentenced and decreed, that the Governor shall, ether by himself or by 6

the secretary, send out summons to the Constables of every Town for the calling of these two standing Courts, on month at lest before their several times: And also if the Governor and the greatest party of the Magistrates see cause upon any special occasion to call a general Court, they may give order to the secretary so to do within fourteen days warning; and if urgent necessity so require, upon a shorter notice, giving sufficient grounds for at to the deputies when they meet, or else be questioned for the same; And if the Governor and Mayor party of Magistrates shall ether neglect or refuse to call the two General standing Courts or ether of them, as also at other times when the occasions of the Commonwealth require, the Freemen thereof, or the Mayor party of them, shall petition to them so to do: if then at be ether denied or neglected the said Freemen or the Mayor party of them shall have power to give order to the Constables of the several Towns to doe the same, and so may meet to gather, and chose to themselves a Moderator, and may proceed to do any Act of power, which any other General Court may.

7. It is Ordered, sentenced and decreed that after there are warrants given out for any of the said General Courts, the Constable or Constables of each Town shall forthwith give notice distinctly to the inhabitants of the same, in some Public Assembly or by going or sending from house to house, that at a place and time by him or them limited and set, they meet and assemble themselves to gather to elect and chose certain deputies to be at the General Court then following to agitate the affrays of the commonwealth; which said Deputies shall be chosen by all that are admitted Inhabitants in the several Towns and have taken the oath of fidelity; provided that non be chosen a Deputy for any General Court which is not a Freeman of this Commonwealth. 7

The foresaid deputies shall be chosen in manner following: every person that is present and qualified as before expressed, shall bring the names of such, written in several papers, as they desire to have chosen for that Employment, and these 3 or 4, more or less, being the number agreed on to be chosen for that time, that have greatest number of papers written for them shall be deputies for that Court; whose names shall be endorsed on the back side of the warrant and returned into the Court, with the Constable or Constables hand unto the same. 8

8. It is Ordered, sentenced and decreed, that Wyndsor, Hartford and Wethersfield shall have power each Town, to send power of their freemen as deputies to every General Court; and whatsoever other Towns shall be hereafter added to this Jurisdiction, they shall send so many deputies as the Court shall judge meet, a reasonable proportion to the number of Freemen that are in the said Towns being to be attended therein; which deputies shall have the power of the whole Town to give their boats and allowance to all such laws and orders as may be for the public good, and unto which the said Towns 9

are to be bound.

9. It is ordered and decreed, that the deputies thus chosen shall have power and liberty 10
to appoint a time and a place of meeting to gather before any General Court to advise
and consult of all such things as may concern the good of the public, as also to examine
their own Elections, whether according to the order, and if they or the greatest party of
them find any election to be illegal they may seclude such for present from their
meeting, and return the same and their reasons to the Court; and if at prove true, the
Court may fine the party or parties so intruding and the Town, if they see cause, and
give out a warrant to go to a new election in a legal way, either in party or in whole.
Also the said deputies shall have power to fine any that shall be disorderly at their
meetings, or for not coming in due time or place according to appointment; and they
may return the said fines into the Court if at be refused to be paid, and the treasurer to
take notice of at, and to estreet or levy the same as he doth other fines.

10. It is Ordered, sentenced and decreed, that every General Court, except such as 11
through neglect of the Governor and the greatest party of Magistrates the Freemen
themselves doe call, shall consist of the Governor, or some one chosen to moderate the
Court, and 4 other Magistrates at least, with the mayor part of the deputies of the
several Towns legally chosen; and in case the Freemen or mayor party of them, through
neglect or refusal of the Governor and major party of the magistrates, shall call a Court,
at shall consist of the mayor party of Freemen that are present or their deputies, with a
Moderator chosen by them: In which said General Courts shall consist the supreme
power of the Commonwealth, and they only shall have power to make laws or repeal
them, to grant levys, to admit of Freemen, dispose of lands undisposed of, to several
Towns or persons, and also shall have power to call ether Court or Magistrate or any
other person whatsoever into question for any misdemeanor, and may for just causes
displace or deal otherwise according to the nature of the offence; and also may deal in
any other matter that concerns the good of this commonwealth, except election of
Magistrates, which shall be done by the whole body of Freemen.

In which Court the Governor or Moderator shall have power to order the Court to give 12
liberty of speech, and silence unreasonable and disorderly speakings, to put all things to
vote, and in case the vote be equal to have the casting voice. But non of these Courts
shall be adorned or dissolved without the consent of the mayor party of the Court.

11. It is ordered, sentenced and decreed, that when any General Court upon the 13
occasions of the Commonwealth have agreed upon any some or somes of money to be
levied upon the several Towns within this Jurisdiction, that a Committee be chosen to
set out and appoint what shall be the proportion of every Town to pay of the said levy,

provided the Committees be made up of an equal number out of each Town.

14th January, 1638, 1 the 11 Orders abovesaid are voted. 14

The Oath of the Governor, for the [Present.] 15

I, N.W. being now chosen to be Governor within this Jurisdiction, for the year ensuing, and until a new be chosen, do swear by the great and dreadful name of the everliving God, to promote the public good and peace of the same, according to the best of my skill; as also will maintain all lawful privileges of this Commonwealth; as also that all wholesome laws that are or shall be made by lawful authority here established, be duly executed; and will further the execution of Justice according to the rule of Gods word; so help me God, in the name of the Lo: Jesus Christ.

The Oath of a Magistrate, for the present. 16

I, N.W. being chosen a Magistrate within this Jurisdiction for the year ensuing, do swear by the great and dreadful name of the everliving God, to promote the public good and peace of the same, according to the best of my skill, and that I will maintain all the lawful privileges thereof, according to my understanding, as also assist in the execution of all such wholesome laws as are made or shall be made by lawful authority here established, and will further the execution of Justice for the time aforesaid according to the righteous rule of Gods word; so help me God, etc.

Note 1. 1638, old style; 1639, new style.

Appendix H. Agreement of the Settlers at Exeter in New Hampshire, 1639

Whereas it hath pleased the Lord to move the Heart of our dread Sovereigns Charles by the Grace of God King &c. to grant Licence and Libertye to sundry of his subjects to plant themselves in the Westerlle parts of America. We his loyal Subjects Brethern of the Church in Exeter situate and lying upon the River Pascataqua with other Inhabitants there, considering with ourselves the holy Will of God and o'er own Necessity that we should not live without wholesomne Lawes and Civil Government among us of which we are altogether destitute; do in the name of Christ and in the sight of God combine ourselves together to erect and set up among us such Government as shall be to our best discerning agreeable to the Will of God professing ourselves Subjects to our Sovereign Lord King Charles according to the Libertyes of our English Colony of Massachusetts, and binding of ourselves solemnly by the Grace and Help of Christ and in His Name and fear to submit ourselves to such Godly and Christian Lawes as are established in the realm of England to our best Knowledge, and to all other such Lawes which shall upon good grounds be made and enacted among us according to God that we may live quietly and peaceably together in all godliness and honesty. Mo. 8. D. 4. 1639 as attests our Hands.

[35 signatures follow.]

Appendix I

Patent for Providence Plantations, 1643 [Rhode Island]

WHEREAS by an Ordinance of the Lords and Commons, now assembled in Parliament, bearing Date the Second Day of November, Anno Domini 1643, Robert Earl of Warwick, is constituted, and ordained Governor in Chief, and Lord High Admiral of all those Islands and other Plantations inhabited or planted by, or belonging to any His Majesty the King of England's subjects, (or which hereafter may be inhabited and planted by, or belonging to them,) within the Bounds, and upon the Coasts of America. And whereas the said Lords have thought fit, and thereby ordained, that Philip Earl of Pembroke, Edward Earl of Manchester, William Viscount Say and Seal, Philip Lord Wharton, John Lord Rolle, Members of the House of Peers. Sir Gilbert Gerrard, Baronet, Sir Arthur Haslerig, Baronet, Sir Henry Vane, jun. Knight, Sir Benjamin Rudyard, Knight, John Pim, Oliver Cromwell, Dennis Bond, Miles Corbet, Cornelius Holland, Samuel Vassal, John Rolle, and William Spurstow, Esqrs, Members of the House of Commons, should be Commissioners, to join in Aid and Assistance with the said Earl. And whereas for the better Government and Defence, it is thereby ordained, that the aforesaid Governor and Commissioners, or the greater Number of them, shall have Power and Authority from Time to Time to nominate, appoint, and constitute all such subordinate Governors, Counsellors, Commanders, Officers, and Agents, as they shall judge to be best affected, and most fit and serviceable for the said Islands and Plantations; and to provide for, order and dispose all Things, which they shall, from Time to Time, find most advantageous for the said Plantations; and for the better Security of the Owners and Inhabitants thereof, to assign, ratify, and confirm, so much of their afore-mentioned Authority and Power, and in such Manner, and to such Persons as they shall judge to be fit for the better governing and preserving of the said Plantations and Islands, from open Violences and Private Disturbances and Distractions. And whereas there is a Tract of Land in the Continent of America aforesaid, called by the Name of the Narraganset-Bay; bordering Northward and Northeast on the Patent of the Massachusetts, East and Southeast on Plymouth Patent, South on the Ocean, and on the West and Northwest by the Indians called Nahigganneucks, alias Narragansets; the whole Tract extending about Twenty-five English Miles unto the Pequot River and Country.

And whereas divers well affected and industrious English Inhabitants, of the Towns of Providence, Portsmouth, and Newport in the tract aforesaid, have adventured to make a nearer neighborhood and Society with the great Body of the Narragansets, which may in time by the blessing of God upon their Endeavours, lay a sure foundation of Happiness to all America. And have also purchased, and are purchasing of and amongst the said Natives, some other Places, which may be convenient both for Plantations, and also for building of Ships Supply of Pipe Staves and other Merchandize. And whereas the said English, have represented their Desire to the said Earl, and Commissioners, to have their hopeful beginnings approved and confirmed, by

granting unto them a free Charter of Civil Incorporation and Government; that they may order and govern their Plantation in such a Manner as to maintain Justice and peace, both among themselves, and towards all Men with whom they shall have to do. In due Consideration of the said Premises, the said Robert Earl of Warwick, Governor in Chief, and Lord High Admiral of the said Plantations, and the greater Number of the said Commissioners, whose Names and Seals are here under-written and subjoined, out of a Desire to encourage the good Beginnings of the said Planters, Do, by the Authority of the aforesaid Ordinance of the Lords and Commons, give, grant' and confirm, to the aforesaid Inhabitants of the Towns of Providence, Portsmouth, and Newport, a free and absolute Charter of Incorporation, to be known by the Name of the Incorporation of Providence Plantations, in the Narraganset-Bay, in New-England.-Together with full Power and Authority to rule themselves, and such others as shall hereafter inhabit within any Part of the said Tract of land, by such a Form of Civil Government, as by voluntary consent of all, or the greater Part of them, they shall find most suitable to their Estate and Condition; and, for that End, to make and ordain such Civil Laws and Constitutions, and to inflict such punishments upon Transgressors, and for Execution thereof, so to place, and displace Officers of Justice, as they, or the greater Part of them, shall by free Consent agree unto. Provided nevertheless, that the said Laws, Constitutions, and Punishments, for the Civil Government of the said Plantations, be conformable to the Laws of England, so far as the Nature and Constitution of the place will admit. And always reserving to the said Earl, and Commissioners, and their successors, Power and Authority for to dispose the general Government of that, as it stands in Relation to the rest of the Plantations in America as they shall conceive from Time to Time, Inost conducing to the general Good of the said Plantations, the Honour of his Majesty, and the Service of the State.

And the said Earl and Commissioners, do further authorize, that the aforesaid Inhabitants, for the better transacting of their public Affairs to make and use a public Seal as the known Seal of Providence-Plantations, in the Narraganset-Bay, in New-England. In Testimony whereof, the said Robert Earl of Warwick, and Commissioners, have hereunto set their Hands and Seals, the Fourteenth Day of March, in the Nineteenth Year of the Reign of our Sovereign-Lord King Charles, and in the Year of our Lord God, 1643.

ROBERT WARWICK,
PHILIP PEMBROKE,
SAY and SEAL,
P. WHARTON,
ARTHUR HASEERIG,
COR. HOLLAND,
H. VANE,
SAM VASSAL,

JOHN ROME,
MILES CORBET
W. SPURSTOW.

“The Rhode Island charter is a fairly lengthy document written without any paragraphs or divisions, making it very difficult to find themes and phrases in it. The following is a transcript from the Rhode Island Secretary of State's website, but each sentence has been turned into a paragraph for ease of reading, and sub-headers are added where appropriate.”¹³⁶

Opening

Charles the Second, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith etc.

To All to whom these presents shall come, greeting. Whereas, we have been informed, by the humble petition of our trusty and well-beloved subject, John Clarke, on the behalf of Benjamin Arnold, William Brenton, William Codington, Nicholas Easton, William Boulston, John Porter, John Smith, Samuel Gorton, John Weekes, Roger Williams, Thomas Olney, Gregory Dexter, John Cogeshall, Joseph Clarke, Randall Holden, John Greene, John Roome, Samuel Wildbore, William Field, James Barker, Richard Tew, Thomas Harris, and William Dyre, and the rest of the purchasers and free inhabitants of our island, called Rhode Island, and the rest of the colony of Providence Plantations, in the Narragansett Bay, in New England, in America, that they, pursuing, with peaceable and loyal minds, their sober, serious, and religious intentions, of godly edifying themselves, and one another, in the holy Christian faith and worship, as they were persuaded;...

Dealings with Indians

...together with the gaining over and conversion of the poor ignorant Indian natives, in those parts of America, to the sincere profession and obedience of the same faith and worship, did, not only by the consent and good encouragement of our royal progenitors, transport themselves out of this kingdom of England into America, but also, since their arrival there, after their first settlement amongst other our subjects in those parts, for the avoiding of discord, and those many evils which were likely to ensue upon some of those our subjects not being able to bear, in these remote parts, their different apprehensions in religious concernments, and in pursuance of the aforesaid ends, did once again leave their desirable stations and habitations, and with excessive labor and travel, hazard and charge did transplant themselves into the midst of the Indian natives, who as we are informed, are the most potent princes and people of all that country where; by the good Providence of God, from whom the Plantations have taken their name, upon their labor and industry, they have not only been preserved to admiration, but have increased and prospered, and are seized and possessed, by purchase and consent of the said natives, to their full content, of such lands, islands, rivers, harbors and roads, as are very convenient, both for plantations, and also for building of ships, supply of pipe-staves, and other merchandize and which lies very commodious, in many respects, for commerce, and to

¹³⁶ https://en.wikipedia.org/wiki/Rhode_Island_Royal_Charter

accommodate our southern plantations, and may much advance the trade of this our realm, and greatly enlarge the territories thereof they having by near neighborhood to and friendly society with the great body of the Narragansett Indians, given them encouragement of their own accord, to subject themselves, their people and lands, unto us whereby, as is hoped, there may, in time, by the blessing of God upon their endeavors be laid a sure foundation of happiness to all America.

Religious freedoms

And whereas, in their humble address, they have freely declared, that it is much on their hearts (if they may be permitted) to hold forth a lively experiment, that a most flourishing civil state may stand and best be maintained, and that among our English subjects, with a full liberty in religious concernments and that true piety rightly grounded upon gospel principles, will give the best and greatest security to sovereignty, and will lay in the hearts of men the strongest obligations to true loyalty.

Now, know ye, that we, being willing to encourage the hopeful undertaking of our said loyal and loving subjects, and to secure them in the free exercise and enjoyment of all their civil and religious rights, appertaining to them, as our loving subjects and to preserve unto them that liberty, in the true Christian faith and worship of God, which they have sought with so much travail, and with peaceable minds, and loyal subjection to our royal progenitors and ourselves, to enjoy; and because some of the people and inhabitants of the same colony cannot, in their private opinions, conform to the public exercise of religion, according to the liturgy, forms and ceremonies of the Church of England, or take or subscribe the oaths and articles made and established in that behalf; and for that the same, by reason of the remote distances of those places, will (as we hope) be no breach of the unity and uniformity established in this nation: Have therefore thought fit, and do hereby publish, grant, ordain and declare, that our royal will and pleasure is, that no person within the said colony, at any time hereafter shall be any wise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion, and do not actually disturb the civil peace of our said colony; but that all and every person and persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his and their own judgments and consciences, in matters of religious concernments, throughout the tract of land hereafter mentioned, they behaving themselves peaceably and quietly, and not using this liberty to licentiousness and profaneness, nor to the civil injury or outward disturbance of others, any law, statute, or clause therein contained, or to be contained, usage or custom of this realm, to the contrary hereof, in any wise notwithstanding.

And that they may be in the better capacity to defend themselves, in their just rights and liberties, against all the enemies of the Christian faith, and others, in all respects, we have further thought fit, and at the humble petition of the persons aforesaid are graciously pleased to declare, That they shall have and enjoy the benefit of our late act of indemnity and free pardon, as the rest of our subjects in other our dominions and territories have; and to create and make them a body politic or corporate, with the powers and privileges hereinafter mentioned.

Formation of civil government

And accordingly our will and pleasure is, and of our especial grace, certain knowledge, and mere motion, we have ordained, constituted and declared, and by these presents, for us, our heirs and successors, do ordain, constitute and declare: That they the said William Brenton,

William Codrington, Nicholas Easton, Benedict Arnold, William Boulston, John Porter, Samuel Gorton, John Smith, John Weekes, Roger Williams, Thomas Olney, Gregory Dexter, John Cogeshall, Joseph Clarke, Randall Holden, John Greene, John Roome, William Dyre, Samuel Wildbore, Richard Tew, William Field, Thomas Harris, James Barker, (missing) Rainsborrow, (missing) Williams, and John Nickson, and all such others as now are, or hereafter shall be, admitted and made free of the company and society of our colony of Providence Plantations, in the Narragansett Bay, in New England, shall be, from time to time, and forever hereafter, a body corporate and politic, in fact and name, by the name of the Governor and Company of the English Colony of Rhode Island and Providence Plantations, in New England, in America; and that, by the same name, they and their successors shall and may have perpetual succession, and shall and may be persons able and capable, in the law, to sue and be sued, to plead and be impleaded, to answer, and be answered unto, to defend and to be defended, in all and singular suits, causes, quarrels, matters, actions and things, of what kind or nature so ever; and also to have, take, possess, acquire, and purchase lands, tenements or hereditaments, or any goods or chattels, and the same to lease, grant, demise, aliene, bargain, sell and dispose of, at their own will and pleasure, as other our liege people of this our realm of England, or any corporation or body politic, within the same, may lawfully do.

And further, that they the said Governor and Company, and their successors, shall and may, forever hereafter have a common seal, to serve and use for all matters, causes, things, and affairs, whatsoever, of them, and their successors; and the same seal to alter, change, break, and make new, from time to time, at their will and pleasure, as they shall think fit.

And further, we will and ordain, and by these presents, for us, our heirs, and successors, do declare and appoint that, for the better ordering and managing of the affairs and business of the said Company, and their successors, there shall be one Governor, one Deputy-Governor and ten Assistants, to be from time to time, constituted, elected and chosen, out of the freemen of the said Company, for the time being, in such manner and form as is hereafter in these presents expressed, which said officers shall apply themselves to take care for the best disposing and ordering of the general business and affairs of and concerning the lands, and hereditaments hereinafter mentioned to be granted, and the plantation thereof, and the government of the people there.

Assignment of governor, deputy-governor, and assistants

And, for the better execution of our royal pleasure herein, We do, for us, our heirs and successors, assign, name, constitute, and appoint the aforesaid Benedict Arnold to be the first and present Governor of the said Company and the said William Brenton to be the Deputy-Governor, and the said William Boulston, John Porter, Roger Williams, Thomas Olney, John Smith, John Greene, John Cogeshall, James Barker, William Field and Joseph Clarke, to be the ten present Assistants of the said Company, to continue in the said several offices, respectively, until the first Wednesday which shall be in the month of May now next coming.

And further, we will, and by these presents, for us, our heirs, and successors, do ordain and grant that the Governor of the said Company, for the time being, or, in his absence, by occasion of sickness or otherwise, by his leave and permission, the Deputy-Governor, for the time being, shall and may, from time to time, upon all occasions, give order for the assembling

of the said Company, and calling them together, to consult and advise of the business and affairs of the said Company.

Assignment of deputies, dates of assemblies

And that forever hereafter, twice in every year, that is to say, on every first Wednesday in the month of May, and on every last Wednesday in October, or oftener, in case it shall be requisite, the Assistants and such of the freemen of the said Company, not exceeding six persons for Newport, four persons for each of the respective towns of Providence, Portsmouth and Warwick, and two persons for each other place, town or city, who shall be from time to time, thereunto elected or deputed by the major part of the freemen of the respective towns or places for which they shall be so elected or deputed, shall have a general meeting or assembly, then and there to consult, advise and determine in and about the affairs and business of the said Company and Plantations.

And, further, we do, of our especial grace, certain knowledge, and mere motion, give and grant unto the said Governor and Company of the English colony of Rhode Island and Providence Plantations, in New England, in America, and their successors that the Governor, or, in his absence, or, by his permission the Deputy-Governor of the said Company, for the time being the Assistants, and such of the freemen of the said Company as shall be so as aforesaid elected or deputed, or so many of them as shall be present at such meeting or assembly, as aforesaid, shall be called the General Assembly and that they, or the greatest part of them present, whereof the Governor or Deputy-Governor, and six of the Assistants, at least to be seven shall have, and have hereby given and granted unto them, full power and authority, from time to time, and at all times here-after, to appoint, alter and change such days, times and places of meeting and General Assembly, as they shall think fit ; and to choose, nominate and appoint, such and so many other persons as they shall think fit, and shall be willing to accept the same, to be free of the said Company and body politic, and them into the same to admit; and to elect and constitute such offices and officers, and to grant such needful commissions, as they shall think fit and requisite, for the ordering, managing, and dispatching of the affairs of the said Governor and Company, and their successors; and from time to time, to make, ordain, constitute or repeal, such laws, statutes, orders and ordinances, forms and ceremonies of government and magistracy, as to them shall seem meet, for the good and welfare of the said Company, and for the government and ordering of the lands and hereditaments, hereinafter mentioned to be granted, and of the people that do, or at any time hereafter shall, inhabit or be within the same; so as such laws, ordinances and constitutions, so made, be not contrary and repugnant unto, but as near as may be, agreeable to the laws of this our realm of England, considering the nature and constitution of the place and people there; and also to appoint, order and direct, erect and settle, such places and courts of jurisdiction, for the hearing and determining of all actions, cases, matters and things, happening within the said colony and plantation, and which shall be in dispute, and depending there, as they shall think fit; and also to distinguish and set forth the several names and titles, duties, powers and limits, of each court, office and officer, superior and inferior; and also to contrive and appoint such forms of oaths and attestations, not repugnant, but as near as may be agreeable, as aforesaid, to the laws and statutes of this our realm, as are convenient and requisite with respect to the due administration of justice, and due execution and discharge of all offices and places of trust by the persons that shall be therein concerned, and also to regulate and order the way and manner of all elections to offices and places of trust, and to prescribe, limit and distinguish the numbers and bounds of all places, towns or cities, within the limits and bounds

hereinafter mentioned, and not herein particularly named, who have, or shall have, the power of electing and sending of freemen to the said General Assembly; and also to order, direct and authorize the imposing of lawful and reasonable fines, mulcts, imprisonments, and executing other punishments, pecuniary and corporal, upon offenders and delinquents, according to the course of other corporations within this our kingdom of England; and again to alter revoke, annul or pardon, under their common seal, or otherwise, such fines, mulcts, imprisonments, sentences, judgments and condemnations, as shall be thought fit; and to direct, rule, order and dispose of, all other matters and things, and particularly that which relates to the making of purchases of the native Indians, as to them shall seem meet; whereby our said people and inhabitants in the said Plantations, may be so religiously, peaceably and civilly governed, as that by their good life and orderly conversation, they may win and invite the native Indians of the country to the knowledge and obedience of the only true God and Saviour of mankind; willing, commanding and requiring and by these presents for us, our heirs and successors, ordaining and appointing, that all such laws, statutes, orders and ordinances, instructions, impositions and directions, as shall be so made by the Governor, Deputy-Governor, Assistants and freemen, or such number of them as aforesaid, and published in writing, under their common seal, shall be carefully and duly observed, kept, performed and put in execution, according to the true intent and meaning of the same.

And these our letters patent, or the duplicate or exemplification thereof, shall be to all and every such officer, superior or inferior, from time to time, for the putting of the same orders, laws, statutes, ordinances, instructions and directions in due execution, against us, our heirs and successors, a sufficient warrant and discharge.

Elections

And further, our will and pleasure is, and we do hereby, for us, our heirs and successors, establish and ordain, that yearly, once in the year, forever hereafter, namely, the aforesaid Wednesday in May, and at the town of Newport, or elsewhere, if urgent occasion do require, the Governor, Deputy-Governor and Assistants of the said Company, and other officers of the said Company, or such of them as the General Assembly shall think fit, shall be, in the said General Court or Assembly to be held from that day or time, newly chosen for the year ensuing, by such greater part of the said Company, for the time being, as shall be then and there present; and if it shall happen that the present Governor, Deputy-Governor and Assistants, by these presents appointed, or any such as shall hereafter be newly chosen into their rooms, or any of them, or any other the officers of the said Company, shall die or be removed from his or their several offices or places before the said general day of election, whom we do hereby declare, for any misdemeanor or default, to be removable by the Governor, Assistants and Company, or such greater part of them, in any of the said public courts, to be assembled as aforesaid, that then, and in every such case, it shall and may be lawful to and for the said Governor, Deputy-Governor, Assistants and Company aforesaid, or such greater part of them, so to be assembled as is aforesaid, in any their assemblies, to proceed to a new election of one or more of their Company, in the room or place, rooms or places, of such officer or officers, so dying or removed, according to their discretions; and immediately upon and after such election or elections made of such Governor, Deputy-Governor, Assistant or Assistants, or any other officer of the said Company, in manner and form aforesaid, the authority, office and power, before given to the former Governor, Deputy-Governor, and other officer and officers so removed, in whose stead and place

new shall be chosen, shall, as to him and them, and every of them, respectively, cease and determine. Provided always, and our will and pleasure is, that as well such as are by these presents appointed to be the present Governor, Deputy-Governor and Assistants of the said Company, as those that shall succeed them, and all other officers to be appointed and chosen as aforesaid, shall, before the undertaking the execution of the said offices and places respectively, give their solemn engagement, by oath or otherwise, for the due and faithful performance of their duties in their several offices and places, before such person or persons as are by these presents hereafter appointed to take and receive the same, that is to say: the said Benedict Arnold, who is hereinbefore nominated and appointed the present Governor of the said Company, shall give the aforesaid engagement before William Brenton, or any two of the said Assistants of the said Company; unto whom we do by these presents give full power and authority to require and receive the same; and the said William Brenton, who is hereby before nominated and appointed the present Deputy-Governor of the said Company, shall give the aforesaid engagement before the said Benedict Arnold, or any two of the Assistants of the said Company; unto whom we do by these presents give full power and authority to require and receive the same; and the said William Boulston, John Porter, Roger Williams, Thomas Olney, John Smith, John Greene, John Cogeshall, James Barker, William Field, and Joseph Clarke, who are hereinbefore nominated and appointed the present Assistants of the said Company, shall give the said engagement to their offices and places respectively belonging before the said Benedict Arnold and William Brenton, or one of them; to whom respectively we do hereby give full power and authority to require, administer, or receive the same; and further, our will and pleasure is, that all and every other future Governor or Deputy-Governor, to be elected and chosen by virtue of these presents, shall give the said engagement before two or more of the said Assistants of the said Company for the time being; unto whom we do by these presents give full power and authority to require, administer or receive the same; and the said Assistants, and every of them, and all and every other officer or officers to be hereafter elected and chosen by virtue of these presents from time to time, shall give the like engagements, to their offices and places respectively belonging, before the Governor or Deputy-Governor, for the time being; unto which said Governor, or Deputy-Governor, we do by these presents give full power and authority to require, administer or receive the same accordingly.

Making laws

And we do likewise, for us, our heirs and successors, give and grant unto the said Governor and Company, and their successors, by these presents, that for the more peaceable and orderly government of the said Plantations, it shall and may be lawful for the Governor, Deputy-Governor, Assistants and all other officers and ministers of the said Company, in the administration of justice, and exercise of government, in the said Plantations, to use, exercise, and put in execution, such methods, rules, orders and directions, not being contrary or repugnant to the laws and statutes of this our realm, as have been heretofore given, used and accustomed, in such cases respectively, to be put in practice, until at the next or some other General Assembly, special provision shall be made and ordained in the cases aforesaid.

Military affairs and defense

And we do further, for us, our heirs, and successors, give and grant unto the said Governor and Company, and their successors, by these presents; that it shall and may be lawful to and for the said Governor, or, in his absence, the Deputy-Governor, and major part of the said Assistants, for the time being, at any time when the said General Assembly is not sitting, to nominate, appoint and constitute, such and so many commanders, governors, and military officers, as to them shall seem requisite, for the leading, conducting and training up the inhabitants of the said Plantations in martial affairs, and for the defense and safeguard of the said Plantations; and that it shall and may be lawful to and for all and every such commander, governor, and military officer, that shall be so as aforesaid, or by the Governor, or in his absence, the Deputy-Governor, and six of the said Assistants, and major part of the freemen of the said Company present at any General Assemblies, nominated, appointed and constituted, according to the tenor of his and their respective commissions and directions to assemble, exercise in arms, martial array, and put in warlike posture, the inhabitants of the said colony, for their special defense and safety; and to lead and conduct the said inhabitants, and to encounter, expulse, expel and resist, by force of arms, as well by sea as by land, and also to kill, slay and destroy, by all fitting ways, enterprizes and means, whatsoever, all and every such person or persons as shall, at any time hereafter, attempt or enterprise the destruction, invasion, detriment or annoyance of the said inhabitants or Plantations; and to use and exercise the law martial in such cases only as occasion shall necessarily require; and to take or surprise, by all ways and means whatsoever, all and every such person and persons, with their ship or ships, armor, ammunition or other goods of such persons, as shall, in hostile manner, invade or attempt the defeating of the said Plantations, or the hurt of the said Company and inhabitants; and upon just causes, to invade and destroy the native Indians, or other enemies of the said Colony.

Guidelines on attacking Indians in other colonies

Nevertheless, our will and pleasure is, and we do hereby declare to the rest of our Colonies in New England, that it shall not be lawful for this our said Colony of Rhode Island and Providence Plantations, in America, in New England, to invade the natives inhabiting within the bounds and limits of their said Colonies, without the knowledge and consent of the said other Colonies.

And it is hereby declared, that it shall not be lawful to or for the rest of the Colonies to invade or molest the native Indians or any other inhabitants inhabiting within the bounds and limits hereafter mentioned, they having subjected themselves unto us, and being by us taken into our special protection, without the knowledge and consent of the Governor and Company of our Colony of Rhode Island and Providence Plantations.

Robbery, fishing, agriculture, and commerce

Also our will and pleasure is, and we do hereby declare unto all Christian Kings, Princes and States, that if any person, which shall hereafter be of the said Company or Plantations, or any other, by appointment of the said Governor and Company for the time being, shall at any time or times hereafter, rob or spoil, by sea or land, or do any hurt, or unlawful hostility to any of the subjects of us, our heirs or successors, or any of the subjects of any Prince or State, being then in league with us, our heirs or successors, upon complaint of such injury done to any such Prince or

State, or their subjects, we, our heirs and successors, will make open proclamation within any parts of our realm of England, fit for that purpose, that the person or persons committing any such robbery or spoil shall, within the time limited by such proclamation, make full restitution, or satisfaction of all such injuries, done or committed, so as the said Prince, or others so complaining, may be fully satisfied, and contented; and if the said person or persons who shall commit any such robbery or spoil shall not make satisfaction, accordingly, within such time, so to be limited, that then we, our heirs and successors, will put such person or persons, out of our allegiance and protection; and that then it shall and may be lawful and free for all Princes or others to prosecute with hostility, such offenders, and every of them, their and every of their procurers, aiders, abettors, and counsellors, in that behalf: Provided also, and our express will and pleasure is, and we do, by these presents, for us, our heirs and successors, ordain and appoint that these presents, shall not, in any manner, hinder any of our loving subjects, whatsoever, from using and exercising the trade of fishing upon the coast of New England, in America; but that they, and every or any of them, shall have full and free power and liberty to continue and use the trade of fishing upon the said coast, in any of the seas thereunto adjoining, or any arms of the seas, or salt water, rivers and creeks, where they have been accustomed to fish; and to build and set upon the waste land belonging to the said Colony and Plantations, such wharves, stages and workhouses as shall be necessary for the salting, drying and keeping of their fish, to be taken or gotten upon that coast.

Whaling

And further, for the encouragement of the inhabitants of our said Colony of Providence Plantations to set upon the business of taking whales, it shall be lawful for them, or any of them, having struck whale, dubertus, or other great fish, it or them to pursue unto any part of that coast, and into any bay, river, cove, creek, or shore, belonging thereto, and it or them, upon the said coast, or in the said bay, river, cove, creek, or shore, belonging thereto, to kill and order for the best advantage, without molestation, they making no willful waste or spoil anything in these presents contained, or any other matter or thing, to the contrary, notwithstanding.

Vineyards and fishing banks

And further also, we are graciously pleased, and do hereby declare, that if any of the inhabitants of our said Colony do set upon the planting of vineyards, the soil and climate both seeming naturally to concur to the production of wines, or be industrious in the discovery of fishing banks, in or about the said Colony, we will, from time to time, give and allow all due and fitting encouragement therein, as to others, in cases of like nature.

Transportation and shipping

And further, of our more ample grace, certain knowledge, and mere motion, we have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said Governor and Company of the English Colony of Rhode Island and Providence Plantations, in the Narragansett Bay, in New England, in America, and to every inhabitant there; and to every person and persons, trading thither, and to every such person or persons as are or

shall be free of the said Colony, full power and authority, from time to time, and at all times hereafter to take, ship, transport and carry away, out of any of our realms and dominions, for and towards the plantation and defense of the said Colony, such and so many of our loving subjects and strangers as shall or will willingly accompany them in and to their said Colony and Plantation; except such person or persons as are or shall be therein restrained by us, our heirs and successors or any law or statute of this realm: and also to ship and transport all and all manner of goods, chattels, merchandizes and other things whatsoever, that are or shall be useful or necessary for the said Plantations, and defense thereof, and usually transported, and not prohibited by any law or statute of this our realm; yielding and paying unto us, our heirs and successors, such the duties, customs and subsidies, as are or ought to be paid or payable for the same.

Naturalized citizenship

And further, our will and pleasure is, and we do, for us, our heirs and successors, ordain, declare, and grant unto the said Governor and Company, and their successors, that all and every the subjects of us, our heirs and successors, which are already planted and settled within our said Colony of Providence Plantations, or which shall hereafter go to inhabit within the said Colony, and all and every of their children, which have been born there, or which shall happen hereafter to be born there, or on the sea, going thither, or returning from thence, shall have and enjoy all liberties and immunities of free and natural subjects within any the dominions of us, our heirs and successors, to all intents, constructions and purposes, whatsoever, as if they, and every of them, were born within the realm of England.

Rhode Island's boundaries

And further, know ye, that we, of our more abundant grace, certain knowledge, and mere motion, have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm, unto the said Governor and Company and their successors, all that part of our dominions in New England, in America, containing the Nahantick and Nanhygansett, alias Narragansett Bay, and countries and parts adjacent, bounded on the west or westerly, to the middle or channel of a river there, commonly called and known by the name of Pawcatuck, alias Pawcawtuck river; and so along the said river, as the greater or middle stream thereof reacheth or lies up into the north country, northward, unto the head thereof, and from thence, by a straight line drawn due north, until it meets with the south line of the Massachusetts Colony: and on the north, or northerly, by the aforesaid south or southerly line of the Massachusetts Colony or Plantation, and extending towards the east, or eastwardly, three English miles, to the east and northeast of the most eastern and northeastern parts of the aforesaid Narragansett Bay, as the said Bay lyeth or extendeth itself from the ocean on the south, or southwardly unto the mouth of the river which runneth towards the town of Providence, and from thence along the easterly side or bank of the said river higher called by the name of Seacunk river, up to the falls called Patuckett falls, being the most westwardly line of Plymouth Colony, and so from the said falls, in a straight line, due north until it meet with the aforesaid line of the Massachusetts Colony; and bounded on the south by the ocean; and, in particular, the lands belonging to the towns of Providence, Pawtuxet, Warwick, Misquamacot, alias Pawcatuck, and the rest upon the main land in the tract aforesaid, together with Rhode Island,

Block Island, and all the rest of the islands and banks in the Narragansett Bay, and bordering upon the coast of the tract aforesaid, Fisher's Island only excepted, together with all firm lands, soils, grounds, havens, ports, rivers, waters, fishings, mines royal, and all other mines, minerals, precious stones, quarries, woods, wood grounds, rocks, slates, and all and singular other commodities, jurisdictions, royalties, privileges, franchises, preeminances, and hereditaments, whatsoever, within the said tract, bounds, lands and islands aforesaid, or to them or any of them belonging, or in any wise appertaining; To have and to hold the same, unto the said Governor and Company, and their successors, forever, upon trust, for the use and benefit of themselves and their associates, freemen of the said Colony, their heirs and assigns, to be holden of us, our heirs and successors, as of the Manor of East Greenwich, in our county of Kent, in free and common soccage, and not in capite, nor by knight service; yielding and paying therefor, to us, our heirs and successors, only the fifth part of all the ore of gold and silver which, from time to time, and at all times hereafter, shall be there gotten, had or obtained, in lieu and satisfaction of all services, duties, fines, forfeitures, made or to be made, claims and demands whatsoever, to be to us, our heirs or successors, therefor or thereout rendered, made or paid; any grant, or clause, in a late grant, to the Governor and Company of Connecticut Colony, in America, to the contrary thereof in any wise notwithstanding; the aforesaid Pawcatuck river having been yielded, after much debate, for the fixed and certain bounds between these our said Colonies, by the Agents thereof; who have also agreed, that the said Pawcatuck river shall be also called alias Norrogansett or Narrogansett river; and, to prevent future disputes, that otherwise might arise thereby, forever hereafter shall be construed, deemed and taken to be the Narragansett river in our late grant to Connecticut Colony mentioned as the easterly bounds of that Colony.

Disputes and rights-of-way with other colonies

And further, our will and pleasure is, that in all matters of public controversy which may fall out between our Colony of Providence Plantations, and the rest of our Colonies in New England, it shall and may be lawful to and for the Governor and Company of the said Colony of Providence Plantations to make their appeals therein to us, our heirs and successors, for redress in such cases, within this our realm of England: and that it shall be lawful to and for the inhabitants of the said Colony of Providence Plantations, without let or molestation, to pass and repass, with freedom, into and through the rest of the English Colonies, upon their lawful and civil occasions, and to converse, and hold commerce and trade, with such of the inhabitants of our other English Colonies as shall be willing to admit them thereunto, they behaving themselves peaceably among them; any act, clause or sentence, in any of the said Colonies provided, or that shall be provided, to the contrary in any wise notwithstanding.

Conclusion

And lastly, we do, for us, our heirs and successors, ordain and grant unto the said Governor and Company, and their successors, by these presents, that these our letters patent shall be firm, good, effectual and available in all things in the law, to all intents, constructions and purposes whatsoever, according to our true intent and meaning hereinbefore declared; and shall be construed, reputed and adjudged in all cases most favorably on the behalf, and for the best benefit and behoof, of the said Governor and Company, and their successors; although express mention of the true yearly value or certainty of the premises, or any of them, or of any other gifts

or grants, by us, or by any of our progenitors or predecessors, heretofore made to the said Governor and Company of the English Colony of Rhode Island and Providence Plantations, in the Narragansett Bay, New England, in America, in these presents is not made or any statute, act, ordinance, provision, proclamation or restriction, heretofore had, made, enacted, ordained or provided, or any other matter, cause or thing whatsoever, to the contrary thereof in anywise notwithstanding.

In witness whereof, we have caused these our letters to be made patent. Witness ourself at Westminster, the eighth day of July, in the fifteenth year of our reign.

By the King

