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Fundamental Orders of 1639

For as much as it hath pleased 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, Hartford and Wethersfield are now cohobiting and dwelling in and upon the River of Connectecotte 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 affairs of the people at all seasons as occasion shall require; **do therefore associate and conjoin 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 together, to maintain and preserve 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 practiced amongst us; as also in our civil affairs to be guided and governed according to such Laws, Rules, Orders and Decrees as shall be made, ordered, and decreed as followeth:**

1. It is Ordered, sentenced, and decreed, that there shall be yearly two General Assemblies or Courts, the one 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 the power to administer justice according to the Laws here established, and for want thereof, according to the Rule of the Word of God; which choice shall be made by all that are admitted freemen and have taken the Oath of Fidelity, and do cohabit within this Jurisdiction having been admitted Inhabitants by the major part of the Town wherein they live or the major part of such as shall be then present.

2. It is Ordered, sentenced, and decreed, that the election of the aforesaid Magistrates shall be in this manner: every person present and qualified for choice shall bring in (to the person deputed to receive them) one single paper with the name of him written in it whom he desires to have Governor, and that 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 choice 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 than 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, than he or they which have the most written papers shall be a Magistrate or Magistrates for the ensuing year, to make up the aforesaid number.

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 it shall be lawful for each of the Towns aforesaid by their deputies to nominate any two whom they conceive fit to be put to election; and the Court may add so many more as they judge requisite.

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 that all the Magistrates, Freemen of this Commonwealth; and that no Magistrate or other public officer shall execute any part 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.

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.

6. It is Ordered, sentenced, and decreed, that the Governor shall, either by himself or by the Secretary, send out summons to the Constables of every Town for the calling of these two standing Courts one month at least before their several times: And also if the Governor and the greatest part 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 required, upon a shorter notice, giving sufficient grounds for it to the deputies when they meet, or else be questioned for the same; And if the Governor and major part of Magistrates shall either neglect or refuse to call the two General standing Courts or either of them, as also at other times when the occasions of the Commonwealth require, the Freemen thereof, or the major part of them, shall petition to them so to do; if then it be either denied or neglected, the said Freemen, or the major part of them, shall have the power to give order to the Constables of the several Towns to do the same, and so may meet together, and choose to themselves a Moderator, and may proceed to do any act of power which any other General Courts 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 together to elect and choose certain deputies to be at the

General Court then following to agitate the affairs 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 none be chosen a Deputy for any General Court which is not a Freeman of this Commonwealth.

The aforesaid 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 three or four, more or less, being the number agreed on to be chosen for that time, that have the 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. It is Ordered, sentenced, and decreed, that Windsor, Hartford, and Wethersfield shall have power, each Town, to send four of their Freemen as their deputies to every General Court; and Whatsoever other Town 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 votes and allowance to all such laws and orders as may be for the public good, and unto which the said Towns are to be bound.

9. It is Ordered, sentenced, and decreed, that the deputies thus chosen shall have power and liberty to appoint atime and a place of meeting together 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 part 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 it be proved 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 part 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 it be refused to be paid, and the Treasurer to take notice of it, and to escheat or levy the same as he does other fines.

10. It is Ordered, sentenced, and decreed, that every General Court, except such as through neglect of the Governor and the greatest part of the Magistrates the Freemen themselves do call, shall consist of the Governor, or some one chosen to moderate the Court, and four other Magistrates at least, with the major part of the deputies of the several Towns legally chosen; and in case the Freemen, or major part of them, through neglect or refusal of the Governor and major part of the Magistrates, shall call a Court, it shall consist of the major part 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 levies, to admit of Freemen, dispose of lands undisposed of, to several Towns or persons, and also shall have power to call either 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 offense; 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 liberty of speech, and silence unseasonable and disorderly speakings, to put all things to vote, and in case the vote be equal to have the casting voice. But none of these Courts shall be adjourned or dissolved without the consent of the major part of the Court.

11. It is Ordered, sentenced, and decreed, that when any General Court upon the occasions of the Commonwealth have agreed upon any sum, or sums 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 committee be made up of an equal number out of each Town.

14th January 1639 the 11 Orders above said are voted.

Source:

The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America Compiled and Edited Under the Act of Congress of June 30, 1906 by Francis Newton Thorpe
Washington, DC : Government Printing Office, 1909.

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Fundamental Agreement, or Original Constitution of the Colony of New Haven, June 4, 1639

THE 4th day of the 4th month, called June, 1639, all the free planters assembled together in a general meeting, to consult about settling civil government, according to GOD, and the nomination of persons that might be found, by consent of all, fittest in all respects for the foundation work of a church, which was intended to be gathered in Quinipiack. **After solemn invocation of the name of GOD, in prayer for the presence and help of his spirit and grace,** in those weighty businesses, they were reminded of the business whereabout they met, (viz.) for the establishment of such civil order as might be most pleasing unto GOD, and for the choosing the fittest men for the foundation work of a church to be gathered. **For the better enabling them to discern the mind of GOD,** and to agree accordingly concerning the establishment of civil order, Mr. John Davenport propounded divers queries to them publicly, **praying them to consider seriously in the presence and fear of GOD, the weight of the business they met about, and not to be rash or slight in giving their votes to things they understood not; but to digest fully and thoroughly what should be propounded to them, and without respect to men, as they should be satisfied and persuaded in their own minds, to give their answers in such sort as they would be willing should stand upon record for posterity.**

This being earnestly pressed by Mr. Davenport, Mr. Robert Newman was intreated to write, in characters, and to read distinctly and audibly in the hearing of all the people, what was propounded and accorded on, that it might appear, that all consented to matters propounded, according to words written by him.

Query I. WHETHER the scriptures do hold forth a perfect rule for the direction and government of all men in all duties which they are to perform to GOD and men, as well in families and commonwealth, as in matters of the church ? This was assented unto by all, no man dissenting, as was expressed by holding up of hands. Afterwards it was read over to them, that they might see in what words their vote was expressed. They again expressed their consent by holding up their hands, no man dissenting.

Query II. WHEREAS there was a covenant solemnly made by the whole assembly of free planters of this plantation, the first day of extraordinary humiliation, which we had after we came together, that as in matters that concern the gathering and ordering of a church, so likewise in all public officers which concern civil order, as choice of magistrates and officers, making and repealing laws, dividing allotments of inheritance, and all things of like nature, **we would all of us be ordered by those rules which the scripture holds forth to US; this covenant was called a plantation covenant, to distinguish it from a church covenant, which could not at that time be made a church not being then gathered,** but was deferred till a church might be gathered, according to GOD. It was demanded whether all the **free planters do hold themselves bound by that covenant, in all businesses of that nature** which are expressed in the covenant, to submit themselves **to be ordered by the rules held forth in the scripture** t

THIS also was assented unto by all, and no man gainsayed it; and they did testify the same by holding up their hands, both when it was first propounded, and confirmed the same by holding up their hands when it was read unto them in public. John Clark being absent, when the covenant was made, doth now manifest his consent to it. Also Richard Beach, Andrew Law, Goodman Banister, Arthur Halbridge, John Potter, Robert Hill, John Brocket, and John Johnson, these persons, being not admitted planters when the covenant was made, do now express their consent to it.

Query III. THOSE who have desired to be received as free planters, and are settled in the plantation, with a purpose, resolution and desire, that they may be admitted into church fellowship, according to CHRIST, as soon as GOD shall fit them "hereunto, were desired to express it by holding up hands. According all did express this to be their desire and purpose by holding up their hands twice (viz.) at the proposal of it, and after when these written words were read unto them.

Query IV. All the free planters were called upon to express, whether they held themselves bound to establish such civil order as might best conduce to the securing of the purity and peace of the ordinance to themselves and their posterity according to GOD In answer hereunto they expressed by holding up their hands twice as before, that they held themselves bound to establish such civil order as might best conduce to the ends aforesaid.

THEN Mr. Davenport declared unto them, by the scripture, what kind of persons might best be trusted with matters of government; and by sundry arguments from scripture proved that such men as were described in Exod. xviii. 2, Dent. 1. 13, with Dent. xvii. A, and 1 Cor. vi. 1, 6, 7, ought to be intrusted by them, seeing they were free to cast themselves into that mould and form of commonwealth which appeared best for them in reference to the securing. the peace and peaceable improvement of all CHRIST his ordinances in the church according to GOD, whereunto they have bound themselves, as hath been acknowledged.

HAVING thus said he sat down praying the company freely to consider, whether they would have it voted at this time or not. After some space of silence, Mr. Theophilus Eaton answered it might be voted, and some others also spake to the same purpose, none at all opposing it. Then it was propounded to vote.

Query V. WHETHER free burgesses shall be chosen out of the church members, they that are in the foundation work of the church being actually free burgesses, and to choose to themselves out of the like estate of church fellowship, and the power of choosing magistrates and officers from among themselves, and the power of making and repealing laws, according to the word, and the dividing of inheritances, and deciding of differences that may

arise, and all the businesses of like nature are to be transacted by those free burgesses. This was put to vote and agreed unto by lifting up of hands twice, as in the former it was done. Then one man stood up and expressed his dissenting from the rest in part; yet granting, 1. That magistrates should be men fearing GOD. 2. That the church is the company where, ordinarily, such men may be expected. 3. That they that choose them ought to be men fearing GOD; only at this he stuck, that free planters ought not to give this power out of their hands. Another stood up and answered, that nothing was done, but with their consent. The former answered, that all the free planters ought to resume this power into their own hands again, if things were not orderly carried. Mr. Theophilus Eaton answered, that in all places they choose committees in like manner. The companies in London choose the liveries by whom the public magistrates are chosen. In this the rest are not wronged, because they expect, in time, to be of the livery themselves, and to have the same power. Some others intreated the former to give his arguments and reasons whereupon he dissented. He refused to do it, and said, they might not rationally demand it, seeing he let the vote pass on freely and did not speak till after it was past, because he would not hinder what they agreed upon. Then Mr. Davenport, after a short relation of some former passages between them two about this question, prayed the company that nothing might be concluded by them on this weighty question, but what themselves were persuaded to be agreeing with the mind of GOD, and they had heard what had been said since the voting; he intreated them again to consider of it, and put it again to vote as before. Again all of them, by holding up their hands, did show their consent as before. **And some of them confessed that, whereas they did waver before they came to the assembly, they were now fully convinced, that it is the mind of GOD. One of them said that in the morning before he came reading Deut. xvii. 15, he was convinced at home. Another said, that he came doubting to the assembly, but he blessed GOD, by what had been said, he was now fully satisfied, that the choice of burgesses out of church members and to intrust those with the power before spoken of is according to the mind of GOD revealed in the scriptures.** All having spoken their apprehensions it was agreed upon, and Mr. Robert Newman was desired to write it as an order whereunto every one, that hereafter should be admitted here as planters, should submit, and testify the same by subscribing their names to the order: **Namely, that church members only shall be free burgesses, and that they only shall choose magistrates and officers among themselves, to have power of transacting all the public civil affairs of this plantation; of making and repealing laws, dividing of inheritances, deciding of differences that may arise, and doing all things and businesses of like nature.**

THIS being thus settled, as a fundamental agreement concerning civil government, Mr. Davenport proceeded to propound something to consideration about the gathering of a church' and to prevent the blemishing of the first beginnings of the church work, Mr. Davenport advised, that the names of such as were to be admitted might be publicly propounded, to the end that they who were most approved might be chosen; for the town being cast into several private meetings, wherein they that lived nearest together gave their accounts one to another of GOD'S gracious world upon them, and prayed together and conferred to their mutual edification, sundry of them had knowledge one of another, and in every meeting some one was more approved of all than any other; for this reason and to prevent scandals, the whole company was intreated to consider whom they found fittest to nominate for this work.

Query VI. WHETHER are you all willing and do agree in this, that twelve men be chosen, that their fitness for the foundation work may be tried; however there may be more named yet it may be in their power who are chosen to reduce them to twelve, and that it be in the power of those twelve to choose out of themselves seven, that shall be most approved of by the major part, to begin the church.

THIS was agreed upon by consent of all, as was expressed by holding up of hands, and that so many as should be thought fit for the foundation work of the church, shall be propounded by the plantation, and written down and pass without exception, unless they had given public scandal or offence. Yet so as in case of public scandal or offense, every one should have liberty to propound their exception, at that time, publicly against any man, that should be nominated, when all their names should be writ down. But if the offence were private, that mens names might be tendered, so many as were offended were intreated to deal with the offender privately, and if he gave not satisfaction to bring the matter to the twelve, that they might consider of it impartially and in the fear of GOD.

Source:
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The Massachusetts Body of Liberties (1641)

Old South Leaflets (Boston: Directors of the Old South Work), 7: 261-267

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Editor's Notes: [History of the Manuscript](#) and [Background to the Creation of The Body of Liberties](#)

THE LIBERTIES OF THE MASSACHUSETS COLONIE IN NEW ENGLAND, 1641.

[Page 261] 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 colour of law or Countenance of Authoritie, unlesse it be by vertue or equitie of some expresse law of the Country waranting the same, established by a generall Court and sufficiently published, or in case of the defect of a law in any particuler case by the word of God. And in Capitall cases, or in cases concerning **[Page 262]** dismembring or banishment according to that word to be judged by the Generall Court.

2. Every person within this 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 providence 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 publique 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 Comonwealth 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 Cattel or goods of what kinde soever shall be pressed or taken for any publique 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 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.

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10. All our lands and heritages shall be free from all fines and licenses upon Alienations, and from all harrlots, wardships, Liveries, Primer-seisins, 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 there 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 publique Court, Councel, or Towne meeting, and either by speech or writeing to move any lawfull, 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 partes 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 heriditaments, 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 fraudulently 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

dwel, unlesse the free men 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 others proprietic without there leave.

17. Every man of or within this Jurisdiction shall have free libertie, notwithstanding 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.

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Rites Rules and Liberties concerning Juditiall proceedings.

18. No mans person shall be restrained or imprisoned by any authority whatsoever, 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 general 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 together, 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 breifly 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 no, 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 appointed shal have power to make out attachments 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 Creditor 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 **[Page 265]** in Court or course of Justice shall be abated, arested or reversed upon any kinde of circumstantiall 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 plantife 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 plantife 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 plantife and defendant by mutual consent to choose whether they will be tryed by the Bensch 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 plantife 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 circumstantibus impaneled in their room.

31. In all cases where evidences 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 verdict, 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 suffer at any time about their verdict that either of them cannot proceede with peace of conscience the case shall be referred to the Generall Court, who shall take the question from both and determine it.

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32. Every man shall have libertie to replevy his Cattell or goods impounded, distreined, seised, or extended, unlesse 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 plantife'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 commen 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 feild 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 plantife hath wilingly and wittingly done wronge to the defendant in commenceing and prosecuting an 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 given upon oath in the same Court, or before two Assistants, or any deede or evidence legally [Page 267] 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 whatsoever shall be of validitie, If it be gotten by Illegal violence, imprisonment, threatening, 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, unles 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 suffitient 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 cruel.

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

48. Every Inhabitant of the Countrie shall have free libertie to search and veewe any Rooles, Records, or Registers of any Court or office except the Councill, 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.

[Page 268] 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 comers to our plantation, shall have such allowances and dispensations in any cause whether Criminal or other as religion and reason require.

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

54. Whensoever any thing 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 answere 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 exceede not twentie shilings.

57. Whensoever 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 peculiarie 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 **[Page 269]** 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 Magestrate, 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 necessarie tye of conscience binds him to secresie 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

Generall Court. So be it they be free men, and have taken there oath of fealtie, and Inhabiting in this Jurisdiction.

63. No Governor, Deputy 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 on 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 be morrallie sinfull by the word of god.

66. The Freemen of every 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 prudential nature, And that their penalties exceede not 20 sh. for one offence. And that they be not repugnant to the publike 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 free men of this plantation to choose yearly at the Court of Election out of the freemen all the General officers of this Jurisdiction. If they please to dischardge 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 [Page 270] proved. By Generall officers we meane, our Governor, Deputy Governor, Assistants, Treasurer, Generall of our warres. And our Admirall 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 wellfare 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 Judgements 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 in the Court of Assistants, or generall assembly, So shall the presedent or moderator have in all Civill Courts or Assemblies.

72. The Governor and Deputy 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 this 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 Township, 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 prudentiall 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 **[Page 271]** 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 respectfully for the manner. And their dissent onely be entered without the reasons thereof, for the avoiding of tediousnes.

76. Whensoever 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 the freemen of that Township.

Liberties of Women.

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.

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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 marriage, or shall exercise any unnaturall severitie towards them, such children shall have free libertie to complaine 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, freind, Executor, Township, 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 maisters 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 time of their maister 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 deligentlie and faithfully to the benefitt 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 **[Page 273]** 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 selle 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

man's 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 competant time, in any open place that is not Corne, meadow, or inclosed for some peculiar use.

94. *Capitall Laws.*

1.

(Deut. 13. 6, 10. Deut. 17. 2, 6. Ex. 22.20)

If any man after legall conviction shall have or worship any other god, but the lord god, he shall be put to death.

2.

(Ex. 22. 18. Lev. 20. 27. Dut. 18. 10.)

If any man or woeman be a witch, (that is hath or consulteth with a familiar spirit,) They shall be put to death.

3.

(Lev. 24. 15,16.)

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.

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4.

(Ex. 21. 12. Numb. 35. 13, 14, 30, 31.)

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

5.

(Numb. 25. 20, 21. Lev. 24. 17)

If any person slayeth an other suddaienly in his anger or Crueltie of passion, he shall be put to death.

6.

(Ex. 21. 14.)

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

7.

(Lev. 20. 15,16.)

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

8.

(Lev. 20. 13.)

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

9.

Lev. 20. 19. and 18, 20. Dut. 22. 23, 24.)

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

10.

(Ex. 21. 16.)

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

11.

(Deut. 19. 16, 18, 19.)

If any man rise up by false witnes, wittingly and of purpose to take away any mans life, he shall be put to death.

12.

If any man shall conspire and attempt any invasion, insurrection, or publique rebellion against our commonwealth, or shall [Page 275] 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 circumstance besides the Institutions of the lord.

6.

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

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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 deale with any magestrate, 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 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 themselves, 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 year (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 breetheren 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 publique 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 Breetheren [Page 277] of that church, will 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 mans conscience in the sight of god according his worde. And because such an Assembly and the worke thereof 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 that weeke shall be forborne. That so the publique service of Christ in this more solemne Assembly may be transacted with greater deligence and attention.

96. Howsoever these above specified rites, freedoms Immunities, Authorites and priveledges, both Civill and Ecclesiastical 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 denyed 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 every 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 Generall Court within these next thre yeares shall faile or forget to reade and consider them as abovesaid. The Governor and Deputy Governor for the time being, and every Assistant present at such Courts, shall forfeite 20sh. a man, and everie Deputie 10sh. a man for each neglect, which shall be paid [Page 278] out of their proper estate, and not by the Country or the Townes which choose them, and whensoever 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.

History of the Manuscript

A MS. copy of "The Body of Liberties" of the Massachusetts Colony, the first code of laws established in New England, and therefore in a very real sense our "Magna Charta," was discovered in the Boston

Athenaeum by Francis C. Gray, and published in the Collections of the Massachusetts Historical Society, Third Series, vol. viii., in 1843; and the student should read Gray's valuable essay on the Early Laws of Massachusetts accompanying it. He shows the absurdity of prevalent notions that the first Massachusetts code was deduced almost literally from the Books of Moses. On the contrary, the code evinces not only the fathers' "acknowledged love of liberty," but a noteworthy degree of "practical good sense in legislation and liberality of sentiment." The code was far in advance of the time.

In 1889 William H. Whitmore printed the MS. discovered by Mr. Gray in facsimile in the introduction to his reprint of the "Colonial Laws of the Massachusetts Colony," and again with his "Bibliographical Sketch" of those laws, which is worthy of careful study.

A significant defence of the early Massachusetts laws, prepared by a committee including Winthrop, Dudley, and Bellingham, was embodied in a declaration of the General Court in 1646 concerning a remonstrance of Robert Child, Thomas Fowle, Samuel Maverick, and others against certain features of this legislation. This Declaration, which includes parallels between "The Body of Liberties" and Magna Charta and the Common Law of England, is printed in Hutchinson's "Original Papers relative to Massachusetts," 1760, pp. 196-218, following the remonstrance. There is much concerning this in Winthrop's History (vol. ii.), the section covering 1646. See Barry's History of Mass., i. 275, Palfrey, etc.

Nathaniel Ward, the compiler of "The Body of Liberties," was born about 1578 at Haverhill in England, and was the son of Rev. John Ward, an eminent Puritan minister. He was graduated at Emmanuel College, Cambridge, in 1603, studied law, and became a barrister. Travelling extensively on the Continent, he met at Heidelberg the celebrated writer, David Pareus, who induced him to enter the ministry. He served as a clergyman for a time at Elbing in Prussia, then returning to England, lecturing in London, and then settling in Essex, where he became a Puritan leader, and in 1631 was brought before Laud. In 1634 he came to New England, and became the colleague of Rev. Thomas Parker at Ipswich. After two years, owing to feeble health, he resigned his pastorate, but continued to reside at Ipswich. Here he compiled "The Body of Liberties," which was adopted by the General Court of Massachusetts in December, 1641. In 1646 he published "The simple Cobbler of Agawam," which at once became so famous. See the review of it and of Ward's general work by Professor Moses Coit Tyler in his "History of American Literature"; also by Rev. T. Franklin Waters in his edition of "The Simple Cobbler." Returning to England in 1647, Ward became minister of the church at Shenfield in Essex, where he remained until his death in 1652. His sermon before the House of Commons in 1647 and various writings relating to the conflicts of that stormy time in England were published. Probably few of his associates in New England had legal abilities and training superior to his. "I have read almost all the common Law of England," he says in his "simple Cobbler"; and this was clearly the main source of the Massachusetts "Body of Liberties." In the defence of the Massachusetts laws by the authorized committee of the colony in 1646, referred to above, these laws are compared only with Magna Charta and the Common Law of England.

---Palfrey

Background to the Creation of the Body of Liberties

[Page 278] In the first year that Deputies from the towns took their place in the General Court, "John Winthrop and Richard Bellingham, Esq. [March 4, 1635] were desired by the Court to take a view of all orders already made and to inform the next General Court which of them they judged meet to be altered, abbreviated, repealed, corrected, enlarged, or explained, &c. (Mass. Rec., I. 137.) The General Court came together May 6, and the business remaining undone, the Governor [Haynes], Deputy Governor [Bellingham], John Winthrop, and Thomas Dudley, Esq., were deputed by the Court to make a draft of such laws as they should judge needful for the well-ordering of this plantation, and to present the same to the Court." (Ibid., 147; comp. Winthrop, I. 160.)

A year passed. Another General Court assembled; and "the Governor [Vane], Deputy-Governor [Winthrop], Thomas Dudley, John Haynes, Richard Bellingham, Esq., Mr. Cotton, Mr. Peter, and Mr. Shepard were entreated [May 25, 1636] to make a draft of laws agreeable to the word of God, which might be the fundamentals of this Commonwealth, and to present the same to the next General Court." (Mass. Rec., I. 174.) Provisionally "the Magistrates and their associates" were to "proceed in the Courts to hear and determine all causes according to the laws now established; and where there is no law, then as near the law of God as they can. The public attention was distracted by the Pequot war and the Antinomian controversy. Haynes was just going away; the young Governor had already enough upon his hands; and others of the commission had no heart for the business. Cotton held a ready pen, and loved a various activity. At the time appointed he was all prepared, and "did present a copy of Moses his judicials, compiled in an exact method, which were taken into further consideration till the next General Court." (Winthrop, I. 202.) It was probably easy for the quietists to persuade the Court that it would be scarcely decorous for them to act when one only of their committee had given his advice.

Two years had followed since their last action, and the freemen, . . . patient, but tenacious of their purpose, tried the virtue of a more formal method (March 12, 1638), and "ordered that the freemen of every town (or some part thereof chosen by the rest) within this jurisdiction shall assemble together in their several towns, and collect the heads of such necessary and fundamental laws as may be suitable to the times and places where God by his providence hath cast us, and the heads of such laws to deliver in writing to the Governor for the time being before the 5th day of the 4th month, called June, next, to the intent that the same Governor, together with the rest of the Standing Council, and Richard Bellingham, Esq., Mr. Bulkley, Mr. Phillips, Mr. Peter, and Mr. Shepard, elders of several churches, Mr. Nathaniel Ward, Mr. William Spencer, and Mr. William Hathorne, or the major part of them, may, upon the survey of such heads of laws, make a compendious abridgment of the same by the **[Page 279]** General Court in autumn next, adding yet to the same or detracting therefrom what in their wisdoms shall seem meet, so that, the whole work being perfected to the best of their skill, it may be presented to the General Court for confirmation or rejection, as the Court shall adjudge."

Fifteen months came and went, but "most of the magistrates and some of the elders were not forward in the matter" (Winthrop, I. 322); and the General Court. . . was fain to order (June 6, 1639) "that the Marshal shall give notice to the Committee about the body of laws, to send unto the next General Court such drafts of laws as they had prepared, for the Court to take order about them what to settle." (Mass. Rec., I. 262.)

Still the coveted object did but mock their hopes with the show of having been approached. The tactics of delay were inexhaustible. Some "drafts of laws" indeed came in (two only, as far as we know,---Cotton's and Ward's); but the best that their friends could get done for them was an order (November 5, 1639) that "the Governor [Winthrop], Deputy-Governor [Dudley], Treasurer [Bellingham], and Mr. Stoughton, or any three of them; with two or more of the Deputies of Boston, Charlestown, or Roxbury, shall peruse all those models which have been, or shall be, further presented to this Court, or themselves, concerning a form of government

and laws to be established, and shall draw them up into one body (altering, adding, or omitting what they shall think fit), and shall take order that the same shall be copied out and sent to the several towns, that the elders of the churches and the freemen may consider of them against the next General Court." (Ibid., 279.) And the case must have seemed to be getting well-nigh desperate, when, six months later yet (May 13, 1640), in consideration that "a breviat of laws was formerly sent forth to be considered by the elders of the churches and other freemen of this Commonwealth," it was "desired that they would endeavor to ripen their thoughts and counsels about the same by the General Court in the next eighth month." (Ibid., 292.) "The next eighth month" accomplished no more than its predecessors. The Court met, but the question was kept out of notice.

It came to be differently treated, when, on the one hand, from several years' experience, the characteristics of a useful jurisprudence had at length disclosed themselves, and, on the other, Parliament was crowding on the King, and in Massachusetts the fear of impending hostility from England was dying away. There had probably grown up a sincere disposition among the guides of public action to meet the popular wish for a legal code, when (June 2, 1641), in the place of an interminable consultation of the towns, the service of a learned lawyer was enlisted, and "the Governor [Bellingham] was appointed to peruse all the laws, and take notice of what may be fit to be repealed, what to be rectified, what to stand, and make return to the next General Court." (Ibid., 320.) And when, sufficient time having been allowed for this examination, "the Governor and Mr. Hathorne were desired [October 7] to speak to Mr. Ward for a copy of the Liberties and of the Capital Laws to be transcribed and sent to the several towns" (Ibid., 341), the order may be held to indicate a general desire in high quarters that the Deputies might next come together prepared for definitive action in favor of his code. The session of the General Court which adopted this vote was continued by adjournments more than two months. And that the project of a Statute-Book, and of Ward's in particular, was still gaining favor, may be inferred from the passage of an order (December 10) by which "Mr. Deputy Endicott, Mr. Downing, [Page 280] and Mr. Hathorne are authorized to get nineteen copies of the laws, liberties, and the forms of oaths transcribed and subscribed by their several hands, and none to be authentic but such as they subscribe, and to be paid for by the constable of each town, ten shillings apiece for each copy, and to be prepared within six weeks." (Ibid., 344.) At length, in a session which "continued three weeks" (in December), the General Court "established the hundred laws which were called The Body of Liberties. They . . . had been revised and altered by the Court, and sent forth into every town to be further considered of, and now again in this Court they were revised, amended, and presented." (Winthrop, II. 55.)

---Palfrey

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**The Results of the Disputations of the Synod or Assembly
at Cambridge, New-England Regarding**

The Power of the Civil Magistrate in Matters of the First Table

Edited By Peter Allison, July 2005

On July 1, 1646 a Synod met at Cambridge, Massachusetts to discuss the question:

Does the Civil Magistrate have power to

1. Command or forbid things respecting the outward man in matters of religion, or the first table, which are clearly commanded and forbidden in the word, and to
2. Inflict suitable punishments according to the nature of the transgression against the same [the first table transgressions], and all this with reference to godly peace?

Their answer was:

The want [lack] of a right stating of this question touching the civil magistrate's power in matters of religion has occasioned a world of errors, tending to infringe the just power of the magistrate. We shall therefore explain the terms of the questions and then confirm it in the affirmative.

Explanation of the Terms of the Question

By "*Commanding, forbidding, and punishing*" we mean the coercive power of the magistrate.

By "*Matters of religion commanded or forbidden in the word regarding the outward man*" we understand indefinitely, whether those matters be of doctrine, discipline, faith or practice. The magistrates power is not limited only to such matters of religion which are against the either the light of Nature, the laws of Nature, or the fundamentals of religion. All these are matters of religion which may be expressed by the outward man, but these are not the only matters that may be expressed outwardly by men. Therefore, we add "*in matters of religion*" to "*in matters of the first table*" to remove all ambiguity that we mean to include under the authority of the civil magistrate purely evangelical matters to the extent that these matters can be expressed by the outward man.

By "*Commanded or forbidden in the word*" we mean of the whole word, both of the Old and New Testaments; exception being only made of such things which were merely ceremonial or otherwise peculiar to the Jewish polity and clearly to be abolished in the New Testament. By limiting the magistrate's power to things commanded or forbidden in the word we exclude any power of the magistrate to command any new doctrine or discipline or any matter of religion which is beside or against the word, or to forbid anything which is according to the word.

1. Hence he is not to establish or impose whatever Erastian form of Church policy he pleases. There is but one form commanded now of God, he cannot therefore command what form he will.
2. Hence he is not to force all persons into the Church [i.e. membership, not attendance], or to participation of the seals [sacraments] because he is not thus commanded.

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- Hence he is not to pass laws on things indifferent, which are neither commanded nor forbidden in the word, without apparent expediency or in expediency of attending the same. By that expression "*clearly commanded or forbidden in the word*, we understand that which is clear, either by express words or necessary consequence from the scripture. And we say "*clearly commanded or forbidden*," not simply that which the magistrate or others think to be clearly commanded or forbidden. For they may think things commanded, to be forbidden, and things forbidden to be commanded. But that which is in itself clear in the word, *de jure*, the civil magistrate, in these days since Christ's ascension, may and ought to command and forbid such things so cleared in the word.

"Suitably inflicting punishment according to the nature of the transgressions" This clause does not need much explanation, being so plain of itself. Some things commanded and forbidden in the Law of God are of smaller nature in respect of the Law of man ..., but other things commanded or forbidden in God's law are momentous and of a high nature, and, though small in themselves, are weighty in consequence or circumstance. If the civil magistrate inflicts a slight paper punishment when the offence is of a high nature, or contrariwise, if he inflicts capital punishment when the offense is of an inferior nature, he does not punish suitably.

There are sundry rules in the word in matters of this sort, touching the punishment of Blasphemy, Idolatry, Heresy, profanation of the Lord's Day, and sundry other like matters of religion, which Magistrates of old have followed. If magistrates are now guided by these laws in making and executing other particular laws in matters of religion having proportionate sanctions or punishments, they inflict suitable punishment. Only let it be remembered that though we grant the civil magistrate the power to thus command, forbid, and punish in matters of religion clearly revealed in the word, yet it is one thing when he may and must do, and another thing when and how he must exercise his power to all persons under his jurisdiction. For some such persons may not be at all acquainted with the true God or have any knowledge at all of Christ or his word, but as yet are pagans. Now touching such, the magistrate should take care that the best means be seasonably and wisely used with them, according to their capacities, to bring them first to the knowledge of the true God and of his word and to convince them of the falsehood and vanity of their gods, whom they worship; and afterwards, as there is cause, to utilize his coercive power towards them according to Scriptural rules and examples.

Others though they are Christians, are not clearly instructed or enlightened in matters clearly set down in the Word. In this case the civil magistrate is to inform and convince and not to proceed suddenly till all just means are used to leave him convinced; of which is it more meet for the civil magistrate than for the offending person to judge, who, it may be, will never say he is convinced. We live in times wherein many men are perversely carried and, rather than confess the truth when convinced of it, will go full against the light of reason common sense. Such a fool is not to be answered according to his folly by any further reasoning. A whip is better for such a back, says Solomon.

The impertinency and invalidity of many objections to this power will be apparent by what has already been spoken touching the acts and rules of the magistrate's coercive power in matters of religion.

Objections

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1. That thereby the civil magistrate is made the Church's King and lawgiver. This would be true if he might command or forbid any thing which was not first commanded or forbidden of the Lord who is the churches' lawgiver. But we say he is not.

2. That thereby he is made to have dominion over men's faith. However by our position, he does but press them to that faith, which God, who indeed has dominion over the same, has prescribed.

3. That thereby tyranny is exercised over men's tender consciences, and true liberty of conscience is infringed. However, he *de jure* commands nothing but that which, if men have any tenderness of conscience, they are bound in conscience to submit thereto. Truest liberty of conscience is found in faithfully submitting to what God has commanded. The conscience being never in a truer or in a better estate of liberty here on earth than when most engaged to walk according to God's Commandments.

4. That thereby Christians become servants of men. However, the Magistrate only is to enjoin what his Master and theirs has commanded, or to forbid the contrary. Consequently in submitting they are but servants to Christ in man [i.e. rendering obedience to earthly rulers as unto the Lord].

5. That thereby men are made hypocrites and time-servers; as if to command men to walk according to the Word, and to forbid the contrary, were to make men so contrary to the Word as are time-servers and hypocrites.

6. That thereby a sluice is opened to let in all manner of false religions, and corrupt opinions into the church if the Magistrate were of any false religion, or corrupt in his judgment; yea, that were the way to set up a Pope in a Christian Commonwealth, for religion must turn as he turns. However, the magistrate's power of commanding or forbidding cannot be used in a pope-like way to command whatever he shall please, or what his own spirit shall like best, but only what God has commanded or forbidden in the Word. Our position subjects him to the Word as to the Supreme Law, and does not set him up Pope-like above the Scriptures, or allow him to make his sense of Scripture, or to make human traditional canons to be as much of force as Scripture to bind mens consciences. Rather we condemn any such power as irregular, usurped and not approved by God, which swerves from the rule of the exercise of his power in matters of religion, namely, the Scriptures. In fact, the contrary to that objected would rather follow. If there were no King or civil power among Gods professed Israel, coercively to restrain forbidden evils in religion, then every man would hold and do as he pleased, as if every one were a Pope; and then Micah's idolatry and any other abomination may be set up. [This does not displace church discipline, but rather complements it. Since church discipline [spiritual sword] does not carry the power of the physical sword to compel obedience, the civil magistrate's sword is needed to prevent people from ignoring church discipline and running away to continue their crimes unchecked. The sword of the civil magistrate is to execute God's wrath on sin so that God's vengeance is satisfied and the land does not incur God's judgement. The purpose of ecclesiastical discipline, on the other hand, is to bring people to repentance and to restore them to a right relationship to their Savior King. This provides the rehabilitation so many in our country are correctly desiring, but seeking in all the wrong places. It should be no contradiction for the civil magistrate to execute a murderer who through the means of church discipline has been brought to a state of repentance. -Ed]

7. That thereby the civil magistrate is put upon many intricate perplexities & hazards of conscience, how to judge in and of matters of religion.

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But this does not hinder the magistrate from that use of his coercive power, in matters commanded or forbidden in the first Table any more than it hinders him from the like powers in matters of the second table. There are just as many perplexing intricacies in the second table as there are in the first, as any conscientious magistrates knows from his daily experience. Yet such as object to his power in the first table don't deny his power in the latter. But if the existence of perplexing difficulties in discerning the mind of Christ was a valid argument for the civil magistrate not to exercise power over the first table, then it would also prevent Church officers from exercising that power in Churches, or parents and masters from enforcing the first table in their families. It does not follow that if it is difficult for a man in authority to know the utmost of his duty in his place, that therefore its not necessary for him to do his duty in his place.

Those who inaugurated Joash to be king in 2 Chronicles 23:11 put upon him the testimony (as the Hebrew word used to be expounded) to show that it was his duty as a King not only to know the testimony or book of Gods Law, but authoritatively to establish what was written in it.

8. That thereby persons are put upon acting with doubting consciences because the magistrates injunctions are oftentimes not clear to such as are to obey them, and so they are thereby compelled to sin.

When the position affirms this power *in matters clear in the Word*, which if not clear to this or that subject in a Christian Commonwealth, that his own fault. By his own ignorance of matters which he is bound to know, he brings such a snare upon his conscience. In such a case he may desire the magistrate to use the best means to clear up the matters enjoined or forbidden, to be commanded or forbidden in the Word; but neither of these hinder but that the magistrate is to command or forbid that which God has commanded or forbidden; even that which Christ has commanded or forbidden, should not then be urged upon mens consciences by Church Officers, or Church censures be executed against obstinate gain-sayers, because through error in judgment, and corruption in conscience, men will say then and after all means used for conviction, they may still affirm that they think otherwise, or at best that they still doubt of the manners is question, yea albeit the matters be fundamental.

9. That hereby Christians are discouraged from seeking more light or hindered from embracing or following such new light as the Saints expect in these latter days. When as it's evident that the commanding and forbidding things cleared in the Word, to be good or evil, does neither express what light men have from the Word, nor discourage them from more light in & from the same, as not in matters if the second Table, so neither in matters if the first.

10. That thereby conscientious men especially will come to suffer because magistrates may think things commanded or forbidden of God and accordingly ratify them by their authority, which God did never command or forbid, when as the question is not concerning Magistrates enjoining what they think, but what is the mind of God; nor can the pressing of the mind of God commanding what he requires, and forbidding the contrary, be any just or proper cause of suffering to men truly conscientious.

The magistrate may indeed through mistake command or forbid things respecting not only the first but the second table. But as this does not deprive the civil magistracy of coercive power in matters of the second, neither should it in matters of the first table. But in this case Christians must be content to suffer in either, albeit withal the magistrate do break his rule.

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11. That thereby we encourage and harden papists and Turks in their cruel persecutions of saints whereas for the magistrate to command or forbid according to God, as it is not persecution, so neither does it of itself tend to persecution. Power to press the Word of God and his truth, does not give warrant to suppress or oppress the same. The times are evil indeed when the pressing of obedience to the rule shall be counted persecution.

12. That thence are caused all the wars in Christendom at this day ; when it is evident that the pressing man to obey the will and word of God in matters either of the second or first table, is not of if self any cause of wars but the lusts rather of such as about their power contrary to the word.

By this already spoken we have seen the ruin of twelve of our opponents castles in the air, imaginably framed to withstand the civil Magistrate's coercive power in matters of Religion.

Let us now in the next place consider the object of this coercive power of the magistrate, which, in the stating of the question, we called the *outward man*. The things which the civil Magistrate commands or forbids, he commands or forbids with immediate respect to the outward man. The Magistrate as a Magistrate looks immediately at the external acts of the body, and not at the internal acts of the soul. It is his property as a civil Ruler to attend only the duties and sins which appear in the walk of the outward man. Thus [taught] Calvin, Beza, Chemnitius, Gerard and other protestants Divines generally.

Question 1

Hereby also other objections receive answer; as first, must the Magistrate punish any man for being of a corrupt judgment, or for a minor error in his judgment, or for having a corrupt heart, and sundry lusts in it?

We say no : because whilst his lusts are confined within his breast, he is to be left to the sword of the Spirit, and to the Word of God, thereby only to be convinced; the Magistrate's power only extending to the outward man, but if either his mental errors, or hearts lusts break out into open expression and view, and become scandalous and spreading, then they become breaches of rules by the outward man, yea, and tend to infringe that outward godly peace of which he is to be a preserver, and so in both respects he is to deal with the same.

Question 2

Must a Magistrate command men to believe with all their heart, to repent and mortify their sins and lusts?

We say no because these appertain to the inward man and soul of man, to attend so far as they are inward. But if we speak of any outward profession of these [actions, i.e. repent, believe], so far he may command [people] to profess the faith by coming to hear the Word, and to repent by public fasting and prayer. And if Princes have no power in such external things, then have they no power instrumentally to remove the wrath of God from their Kingdoms by general humiliations.

Briefly now of the manner and means of the exercise of this power, included in that phrase *civilly* we say not ecclesiastically, as if he might put forth his power in a Church way, & by Church weapons or censures, but civilly or in a civil way or by civil censures or punishments.

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Whence also other objections are answered, as that the weapons of our warfare are nor carnal but spiritual; and that Paul sheweth a way of redressing all offences, 1 Cor. 5: 5; 2 Tim. 2:25; and Faith comes by hearing, and not by whipping.

These places show a Church way of healing Church offences and do no more exclude a Political way of healing offences in a Christian Commonwealth, than an Economical way of redressing disorders in the Family. [In other words just as these passages do not prevent a father from using the rod of correction with his children, so they should not stop the civil magistrate from using the sword.] The other passages show a spiritual means of drawing men to the Faith, so that neither are pertinent to the case of the Civil power, acting civilly.

In an analogous manner, the assertion that the Magistrate is to be a terror to all evil works, (including evil works forbidden in the first Table) does not exclude the use of Church discipline for sins of the second table. For the Church may proceed in her way to censure Ecclesiastically one and the same thing, whether it be against the first or second Table, which the Magistrate punishes civilly.

The last thing to be explained in the statement of the question is touching the coercive power of the Magistrate, namely, godly peace. Now by Godly peace (to which the Magistrate immediately looks) we mean a peaceable living, as in all honesty, so in godliness, as the Apostle has it, in 1Tim 2:1-2. So far as any matters of Religion, coming under the Magistrates cognizance as a public Officer in the Commonwealth, do either further or hinder such a peace of a Christian Commonwealth, so far is he to put forth his coercive power accordingly.

Hereby also, with reference to things before explained, other Objections may receive answer, such as:

Objection 1

Will you have Magistrates put forth their coercive power to the full, in Laws, with Sanctions of punishments regarding how long or how often men shall pray in their Families or else suffer? That a Minister in preaching, if he exceed a just hour, he must suffer, and the like? We say, if either the matters be merely circumstantial, or if they be matters of less importance, and such as do not of themselves in any way infringe public peace or that they are not pretentiously & tumultuously maintained to the disturbance of public peace, in all such like cases, wherein the Civil Magistrate's end is not entrenched upon, he may not exercise the coercive power of his Authority, with sanction, or execution of punishments.

Objection 2

Will not this thesis arm and stir up the Civil power in Old England, against godly Orthodox ones of the Congregational way : or exasperate Civil power in New England, against godly, moderate, and Orthodox Presbyterians, if any such should desire their liberty here? We conceive no, except the civil disturbance of the more rigidly, un-peaceably, and corruptly minded, be very great. But between men godly and moderately minded on both sides, the difference upon true and diligent search is found so small, by judicious, Orthodox, godly, and moderate Divines, as that they may both stand together in peace and love. If liberty should be desired by either sort here or there, so exercising their liberty, the public peace will not be not infringed. The state of that Question in the explication thereof will quench rather than kindle any such coals against either; If persons professing either the Congregational or Presbyterian way, will shelter or close, either with other Blasphemous, Heretical, or Schismaticall Tenants, which tend to

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break the peace of the Congregational way there where a Presbyterian way is authorized to be the general way of the Churches, or the Presbyterian way here, where the Congregational way is authorized to be the general way of the Churches, there they may be strained by the power of the Civil Magistrate, as disturbers and breakers of godly peace, the conservation whereof is the Civil Magistrate's end [i.e. goal] and work, unto which he is to attend.

Having thus cleared the state of the question, we shall now come to some Arguments from Scripture, which confirm the Affirmative part of the question so stated. Some of the Arguments are taken from the old, and some from the New Testament. Of the former sort there are three.

Argument 1

1. The Rulers of old, and those Rulers in the Commonwealth of Israel, are commended in Scripture for the exercise of such power in the matters of the first Table; and therefore it is according to the mind of God that now civil Rulers do the like. Abraham, who was not an ordinary master of a family, but a Prince among them, (Gen. 23:6) is commended for laying the force of his command upon those under his power, in matters of Religion, Gen. 18:19. And it he had been considered as a Master, yet less would not be granted that way to a Ruler of a Common-wealth, than of a Family, but rather more. Job as a civil Ruler, as a King in an Army of persons under his command, did not leave each of them to chose out their own way of Religion or justice, but he chose it, he determinatively set it down for them. *I sat as King in an Army, I chose out their way, &c.* Job 29:25. The King of Niniveh, with his Princes, did not barely commend that duty of fasting and prayer, to his people, as very convenient to be attended, yet leaving them to their liberty to omit the same: but he positively commands the same, that the wrath of God might be prevented, Jonah 3 - 7. The word is used for a coercive command or decree, Ezra 4:21. & 6:11. Dan. 3:10,11 & 29. & 6:7, 8,9,13 and the act of the civil Authority of Niniveh, having so much influence into the peoples act, Jonah 3:5,6,7 verses compared, is implicitly commended by Christ, in his commendation of the repentance of the men of Niniveh; and too of the King and Princes of Niniveh; whose hearts were so thoroughly touched, as to improve their authority to further that civil work of Niniveh's repentance. The examples of Moses, Joshua, David, Solomon, Asa, Jehosaphat, Hezekiah, Josiah, Nehemiah, &c. are obvious to every ordinary eye, which looks into the Scripture.

Objection 1

They of old were Types, therefore their examples are not now of force for our imitation.

We suppose the Objection intends not by Type, and exemplar for imitation, as Type in a general sense is used, 1 Cor 10:6. compared with 11 for this were to overthrow the scope of the Objectors, but rather it means a type strictly taken, namely that they in that exercise of their power, did but shadow out Christ's Kingly power; but of this the opposite give only a barren assertion without proof, and that will not carry it. But we shall answer it more particularly.

1. Then such may as well say, those Rulers did shadow out Christ in the exercise of their power in matters of the second Table, and therefore are not therein imitable, which none will affirm. Solomon typed out Christ in the subduing of enemies, relieving the oppressed, procuring the peace of the state, Ps. 72. Must not Princes therefore do the like?

2 Those that make that Objection, they use to put it thus, The Kings of Israel were such Types; but such an one was not Abraham, nor Job nor Nehemiah, who by a Coercive Law enjoined the sanctifying of the Sabbath, Neh. 13. nor the King of Niniveh, nor was that wicked King of Israel, Ahab, a type of Christ,

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which should have put that blaspheming Benhadad to death whence that sharp reproof of him for not doing it, 1 Kings 20. To say nothing, of Darius & Nebuchadnezzars Decrees this way, which are recorded in way of commendation thereof, Ezra 6 and Dan 3:29.

3. Solomon himself (who if any were types of Christ therein, he was) sets it down by direction of the Spirit as a moral duty of each King indefinitely, that (howsoever de facto, many do otherwise, yet de jure) he scatters away all evil with his eye, Proverbs 20:8, meaning all public evil which cometh within his ken; as a King or public person, whether the evil be against the first or second Table; unless any make exception, and say, that either there are no sins against the first Table coming under the Magistrates view, or though they do, yet they are not evil:

4. It was a stated doctrine in the time of Job (who by the most judicious is thought to live before Moses) and it is attested and approved by the Holy Ghost, that sins against the first Table, as Idolatry, was iniquity to be punished by the Judges, Job 31. 26, 27, 28. as well as sins against the second Table, as Adultery, *ibid.* verse. 9 and 11

Objection 2

Those Rulers of old did thus as Members of the National Church of the Jews, the same persons being Members of Church and Common-wealth; but it is not always so now.

1. Then at least where Magistrates are Members of Churches, they may in these days exercise such power.

2. Though they were Members both of Church and State, yet they were to put forth their Coercive power civilly, not as Members of the Church, but of the State, else it had been to confound Church and State, yea, to make God (which directed to it) to be the author of that confusion.

3. They were to punish such to whom they stood in no Church relation at all, but merely Civil, for sins against the first Table. Hence Ahab was blamed for not punishing Benhadad blaspheming God, as if a God of the Hills, but not of the valleys: Hence Nehemiah's resolution to punish even any of those strangers which should profane the Sabbath, chap. 13.

4. Job, and those judges mentioned in his time, as bound to punish idolatry, were no Members of the Jewish Church.

Objection 3

If you make the example of the Princes of Israel acting Coercively in matters of Religion for Magistrates imitation, why due not you make the Levites a pattern also to Ministers now, to act as they did civilly, in civil censures?

1. It's not clear that the Levites did act any further than by council, or at most by some general consent to that which the Princes were formally to act

2. If the Levites did act in matters of the State by a peculiar liberty, it does not follow, that this can invalidate the Rulers power, then acting in matters of Religion; as if by a peculiar liberty also unless the Objection could be bottomed on the proportion betwixt the Levites then, and the Rulers then: Thus, that as the Levites which by special liberty (proper to those times, and so not imitable now) did intermeddle in matters peculiar to Magistrates, so the Magistrates then did intermeddle in matters

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peculiar to the priests - by a liberty proper to those times; and this would be cross to express Text, 2 Chronicles 26:16. where Uzziah meddling with priestly matters of offering Incense, is made a transgression against the Lord, for which he was afterward ruined.

3 We make the Levites intermeddling judicially in Civil matters, therefore nor imitable, because what they are supposed to do that way, was by a liberty peculiar to that times but we make the example of the civil Rulers acting their Coercive power in matters of Religion, imitable, because not peculiar to the Jewish Church, as appears, in that what power they that way exercised, the same in substance did Job, and other judges in his time, by Divine direction and approbation, put forth; yea the judicial act of Nebuchadnezzar in punishing Ahab and Zedekiah with death, not for their Adultery only (a sin against the second Table) but for their false doctrine (a matter of Religion) was of Gods appointment, Jeremiah 29:21. with 23 and hence by Gods appointment was this execution of Gods vengeance on them, made a proverbial Curse, verse 22.

Argument 2

A second Argument is, in that it's recorded as a most desperate and accursed estate of old, that they had no King or chief Ruler in Israel, to restrain, as Adultery, and Murder (sins against the second Table, cf. Judges 19:1 with Chap. 20.) so Idolatry (a sin against the first Table, chap 17:1, & 18:1 compared) but every man had his liberty, to do what was right in his own eyes.

Argument 3

The third Argument is, in that it is recorded as a matter of special guidance and direction of God, and acknowledged by Ezra, inspired by the Spirit, as a special mercy of God to his people, that Artaxerxes an Heathen King, had a heart to put forth his coercive power enjoining things commanded of God, and forbidding, with sanction of suitable punishments, the evils, whether against the Laws of the King, or against the Laws of God, whether concerning Religion or righteousness: whence we argue, that this use of the civil power was of God of old, and therefore the same is as well of God now. Artaxerxes was indeed an instrument in the hand of Christ but not therefore a Type of Christ: Nor was this of the nature of a mere Jewish judicial Law; because enjoining punishments, moral offences being punishable; and yet not therefore of a mere judicial nature, or merely against a judicial Law; besides this act of Artaxerxes respected civil matters, and matters of the second Table (which none will challenge as not imitable) as well as matters of Religion. And that which some object, that he did this for fear of wrath, rather confirmeth the morality of the use of such power, then otherwise. For what ground of fear in not putting forth of such coercive power, if the omission of it were not sinful? Yea, if the use of such a coercive power in matters of Religion, were not according to Gods mind (as, our opposites say) he might rather more groundedly have feared Gods wrath for such an high offence, as usurpation of a power which the Lord disliked, and forbade.

Thus much of the first head of Arguments from the Old Testament; those from the New follow, and they are four.

The first is taken from Romans 13. if God will have every soul in and of the Churches, and that of Rome, as well as others, to be subject to civil Magistrates, as being powers ordained of God, v. 1 an Ordinance of God, v. 2 a terror not to good works, but to evil v. 3 the ministry of God for their good, v. 4 and that for conscience sake, v. 5. Then Magistrates are to put forth coercive power in such matters of Religion, respecting the outward man. But the former is true, *ergo*, the latter.

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All this may be true, and yet verified only in Matters of the second Table, and is extended to matters of the first, yet only to such things as are against the Law of Nations, or the light of Nature, and so no proof of that for which it is urged. He is a terror to evil works, but it is not said he is so to all evil works.

1. If all this be restrained according to the intent of the Objection, then is none to have praise, approbation, encouragement from Civil Authority, by reason of matters of Faith, or of Religion, but for matters of righteousness one : or if for any matters of Religion, yea only for such as stand with the light of nature, and Law of Nations, as the third verse must be expounded. For if it be supposed that it is an act of Justice (whereof the magistrate is Minister) to distribute rewards in any matters of Religion, that appears in the walk of the outward man, and respect godly peace in way of encouragement, it must needs be an act of like justice, to distribute punishments to the contrary. The Magistrate being, according to the Apostles distribution, a minister of God, as well when he encourageth goods as when he represseth and punisheth evil.

2 The Objection would make only offences against the rules of the second Table, or at most, those that are against the law of nature and Nation (which come under the view of the Magistrate, as a public Minister of God) to be evil works, and not other sins of like public cognizance & concernment, respecting other matters of Religion. For if both sorts of offences are evil, he being a terror to evil works indefinitely, which come to his public cognizance, he is a terror ex officio, to both; and it is vain to say, he saith evil works, not all evil works; for to he saith, he is not a terror to good works, but saith not, to all good works, and therefore if that indefinite (good works) be not equivalent to that general (all good works) he may then it seems be a terror to some good works which come under his public cognizance.

3. We are yet to speak of that limitation, where the New Testament alloweth the civil Magistrate power, as in matters of righteousness, so in matters of Religion; so far namely as the light of nature, and Law of Nations extends in matters of the outward man, which come to his public view: but restraints him from meddling further in any matters of Religion, of like public cognizance and concernment. That Scripture ground of this distinction and restriction, would be produced.

1. When Paul wrote this Epistle to the Romans, their Rulers were Pagans, and what coercive power was it likely they would put forth in any matters of Religion, unless against the true Religion, as undermining their Paganism; Crying down the same as worship of Devils, and teaching them to cast off their heathen gods as no Gods? They did not look at Jesus Christ as their Supreme Lord, but as a new upstart God in comparison of their Roman Gods; and to make penal Laws against false doctrine or Religion, had been to Make Laws against themselves as well as others, and to make Laws against the present light of their own consciences.

This no way weakneth, but strengthens what we have said: For if even those Pagan Rulers in Paul's time, were (by their Office ministers of God) then bound to improve their Authority for the ratifying and establishing of his Laws, and for those of the first, as well as second Table, and then bound by their Office (as Ministers of God) to rule for him, and the exacting of his rule in and over their subjects. And that they did not know, and do thus, it was their sin. Many of them thought plurality of wives, fornication, rash divorces, incestuous marriages, usury, no sin, and it may be said, if they had made Laws against these, they had made Laws against themselves, and the light of their own consciences, as thinking in their seduced, blinded consciences, that these were lawful ; yet all will say, they were all Ministers of God, and bound to know and do otherwise. Nero is branded for a beastly person, a Lion, in that he abused that Authority of his, which of right should have been improved for encouragement of Paul in his Ministry and doctrine, to be a means to endeavor to destroy and devour him, 2 Tim 4:17.

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2 A second Argument is taken from 1 Tim: 2. 1, 2. We are to pray that we may have such Magistrates as may act Authoritatively in matters of Religion and piety, as well as of righteousness and honesty; therefore it is the mind of God, that civil Magistrates should put forth their power in, the one as well as in the other.

Yea but some have said, if you now allow civil Rulers power, in matters of Religion, they will persecute us.

The Apostle does not answer; pray therefore in these persecuting times of Romish Emperors, that they may not meddle at all coercively in matter of religion, as being to usurp power not belonging to them; but rather pray that they may use this power which they have aright, or as we may peaceably exercise acts of Religion, as well as honesty; nor does he say, pray that they may deal in matters of Religion negatively, that is, so as authoritatively to hinder any from disturbing any Christian in that which he taketh up for truth or piety; or in any opinion which he may hold, and yet be a godly man; no more then he saith, pray that they may deal so in matters of honesty, as to hinder any from disturbance in any supposed course of honesty, yea in any acts of dishonesty, which may be incident to one, that yet the main is godly, for that were to pray to be let alone in all ungodliness or dishonesty: Nor does he say, pray that every one may live according to his Conscience, or holdout any opinion, Tenant, or practice, suiting with his conscience, so it race not the foundation of godliness; but pray for them, that we may live in all godliness peaceably or that we may with quietness and encouragement so carry it, as will stand with godliness it self, yea with godliness in the highest degree of it, or any part of it, in all godliness.

A third Argument is taken from Isa 49:23 which though a Scripture of the Old, yet respecting the days of the New Testament, and the substances of the Argument Stands thus. It is the mind of God that civil Rulers in the days of the New Testament should Authoritatively act in spiritual things, Which are to the Church as milk; therefore its his mind that in these days they should act Authoritatively in matters of Religion, we say to act Authoritatively, because to act as Fathers and Mothers, and therefore not to act merely alluringly (as some say) or in a general way of countenance, but coercively: Fathers act fatherly in commanding, in forbidding, and in punishing as well as in Listening, and giving good words; in taking the rod, as giving an Apple; nor does he say, they should be Nurses, as if they were to take upon them to act officially in Preaching or in administration, whether of Church seals, or of Church censures,

The nature of the similitude forbids it. Nurse-fathers cannot give milk to the Child, but Nurse-fathers, and Nurse-mothers, to take Authoritative care, what milk either Church-Officer, or any others yield forth to the Church, to see that it be good, and accordingly to reward and encourage it, to look that it be not bad, but coercively to restrain it, at least from being milked forth to the Churches hurt: Albeit if kept within the breast that bred it, out of their cognizance; nor is this spoken of Heathen Rulers, as Pagans, not Christians, but of such which though as civil Rulers they command in matters of Religion, or righteousness, yet as Members of the Church they obey the Church, stooping to its doctrine and discipline so, they lick up the dust of the Churches feet

4 A fourth Argument is taken from Zech 13:2- 6 it is Prophetied of as an approved act, of the zealous Members of the purest Churches to be In the days of the Gospel, to make use of the coercive power of the civil Magistrate in matters of doctrine. (a matter of Religion) therefore it's the mind of God that in these days such coercive power in matters of Religion should be exercised; nor may any here restrain these words to Church-censures, is being not the use of the Holy Ghost to express Church-censures greater and lesser by taking away the life, wounds, and works in the hands, but rather proves that

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power of civil-Authority to inflict death in some cases of false doctrine, and some other reproachful corporal Punishments, in some cases of errors which are not of moment as the other.

Thus much for the Arguments proving the position we shall briefly now take off two or three general Objections and then come to a close of this question

The weapons of our warfare are not carnal, but spiritual: Therefore no such use now to the people of God of such carnal weapons as the penal Laws or censures of Civil Magistrates in matters of Religion.

Its the unhappiness of the most of the Arguments in the late Pamphlets and Pleas for Liberty, used against this Coercive power of the Magistrates in some cases which we plead for, that if they be forcible, they conclude universally, even against that coercive power which our opposites allow to him in matters of the second Table, and so far also of the first, as in things against the light of nature, and law of Nations: And of this we have a taste in this Argument; for besides the mistake of applying this, as if meant of other persons, then Church Officers (contrary to the very scope of the Text) the Argument concludes against the use of Civil Magistrate power by Civil Rulers in matters of the second Table as well as of the first, because spiritual weapons are as weighty to pull down strong hulls against the second Table, as well as against the first: Of life nature is that Objection Christ's Kingdom is not of this world, this (if of any force) excluding wholly, takes away the Magistrates power in both Tables

The Church has sufficient power to reach her end, in curbing or curing offences in any matters of Religion; therefore what need is there of such coercive power therein of the Civil Magistrate.

1. Suppose it were granted, that therefore the Church, as a Church, stood not in need thereof: yet the Church, considered as a Civil Society, stood in need thereof, and so far the state of the question were yielded. Or what if the Church had no need, yet in respect of other subjects enjoying the light of the Gospel, though not actually of the Church, as person not yet joined to any Church, or such as are actually cast out of the Church, that power might be most needful; else they might vent things as well against the light of nature, as Law of Nations, or deny things obstinately, which are fundamental, albeit not against the light of nature, or Law of Nations as for example, that Jesus Christ is the Redeemer and only Mediator; that the Scriptures are the word of God, etc. should yet nor be restrained: yea, that were to suppose some under the shining of the Gospel, left of the Lord in a lawless condition (in respect of any Authority to restrain them) in matters of Religion; the Civil power may meddle with them, and Ecclesiastical can not, as not being actually of the Church.

2 The Church has sufficient power to reach her ends, in curbing and curing offence of the second Table; yet none will thence conclude, that therefore no need no the Church therein, of the Coercive power of the Magistrate.

3 The Church aims at restraint from infection of others, as well as amending the parties themselves; now supposing the Church casting out a person for obstinate holding of Heretical Tenets, yet the Church cannot now restrain him any further in any Ecclesiastical way, but that he may now, do more mischief in spreading his Tenet then ever, unless the magistrate also exercise his Coercive power.

4. The Church may in case by clamorous noise, made in the Assembly, or otherwise by sanction, be hindered from the exercise of its power to tenure, and so although it have power enough to act yet it will need the Magistrates help to exercise that powers unless we dare plead as some (it seems do) that in this cafe the Elders may act by corporal force, to redress it, as Phineas the Priest did, in killing Zimri,

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and Cozri, disturbing the Congregation then humbling themselves before God; but we say, that was extraordinary, as was the act of Samuel in cutting Agag in pieces; of Elijah in putting Baal Priests to death; and Peter's act against the life of Ananias and Saphira; nor would we plead the Priests example, 2 Chronicles 26 in thrusting out Uzziah out of the Temple, or such like Arguments; supposing that the Priests of old, and the Levites might, by a dispensation peculiar to those times be allowed more liberty of acting in matters of a Civil nature, both in the great Synedrien, and other where, then any of us dare say is imitable by, or allowable to Churches, or Church Officers now.

Thirdly and lastly, the tares are commanded to be let alone, Mat. 13. 29,30. Therefore what Authority has the Magistrate to refrain or punish men now under the Gospel, but rather to leave Christians to the liberty of their own Consciences?

This is a Parable, and therefore to be taken in the scope and substance, and not according to the circumstances thereof, as Peter Martyr notes in this case. Now the scope of part of the Parable, is not to be a direction unto us, what we shall do in point of exercise of any power with us, but contains simply a doctrine of providence, what God will order to be the condition of his visible Church in this world, and therefore to show, that Christ intended not any rule of precept of our duty in this sentence of the Parable, verse 29,30 (Nay let both grow together) he does not in his after exposition of the several branches of the Parable, insist at all on the branch mentioned, to give any explication thereof; and if it were any direction it must either look to Civil or Church power; if to Civil power, then since the tares are expressly interpreted to be the Children of the devil, and such as offend, and do iniquity, and are as reprobates to be burned, or damned, verse 38. Then the worst wretches that live, Murderers, Sodomites, Traitors, etc. must be all let alone in their sins, and only left to Christ judgement at the last day.

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for a time, Mixtures of good and bad together, elect and reprobate; in his visible Church; nor are we to fret, or be discontented at his providence in it, or to think that by any course we can take, is will be other wise, whilst and where ever we are in this world; like to that speech of Paul, 1 Cor 5:10. Now in the close of all, let it be considered whose doctrine does most infringe true liberity of conscience; those Which would have every christian left to the libtrty of his own conscience, in matters of Religion, which at least are not against the light of nature, Law of Nations, or those that maintain the fore-named power of the Magistrate; for suppose the Magistrate be a Christian, he must be left to the libtrty of his Conscience too, as well as others: Now if left to the Lesoian warping rule, what if he in his own Conscience, through temptation and error, be in most things a Papist, which may stand which the Law of Nature and Nations, or suppose he in Conscience deny Jesus Christ to be the Mediator, or such and such Books in the Old and New Testaments to be the word of God, yea, or that there is any use of the Scriptures, but we must only depend on Revelations; and herein the Law of nature and Nations leaves him: Now he in Conscience thinks he is bound to establish this as a Rule to all others, which to him is the truth; and in conscience to oppose all contrary doctrine, what then will become of subjects liberty? The word is not made the rule to regulate this Rulers Conscience, according as we say it should; for if that were so his Rule, there were a remedy and way to bring him to the Rule; but his conscience, judgement, and fantasy, touching the Rule that is by this Tenent made his Rule, according to which he must be left freely to act with out restraint. The mischief necessarily following this, if once cried up, we leave to such of our opposites sadly and seriously to consider of.