

The Writings of Reverend Nathaniel Ward (1578-1653)

REVEREND NATHANIEL WARD was a famous Clergyman and Pamphleteer born in Haverhill, Suffolk, England and the son of the famous Puritan Minister, Rev. JOHN MORDAUNT WARD. Known for his caustic temperament and fervent espousal of theocratic politics, NATHANIEL was a key player in the PURITAN movement. He graduated from Emmanuel College, Cambridge in 1603, studied law and became a Barrister and later entered the Ministry. He emigrated to New England in 1634 and resided at Ipswich, Massachusetts. Already in his 60s, he served for two years as the first Minister in Ipswich. His home in Ipswich was near the South Green, not to be confused with the Nathaniel Wade house, on County Road.



While living in Ipswich, Reverend Ward wrote *THE BODY OF LIBERTIES* for the General Court of the Massachusetts Bay Colony, the first Code of Laws established in New England.

Due to ill-health, he returned to England in 1647 and died there in October, 1653. The book is believed to have been a fundamental resource in writing the UNITED STATES CONSTITUTION.

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Massachusetts Body of Liberties

Synopsis of the History of the Massachusetts Body of Liberties

The **BODY OF LIBERTIES**, a document originally published in 1641, is the first Legal Code established by European Colonists in New England and was composed of a list of liberties, rather than restrictions, and intended for use as guidance for the GENERAL COURT of the time.

This document is considered by many as the precursor to the General Laws of Massachusetts and the Massachusetts Constitution. It incorporates rights that were later judged to be ahead of their time, with some of these rights eventually appearing in the Bill of Rights. Scholars do not agree as to whether these liberties were ever adopted, adopted provisionally or approved of by the General Court.

On October 27, 1648, the **GENERAL COURT OF MASSACHUSETTS** would take what began as the *Body of Liberties* and create the first printed laws in *The Book of the General Laws and Liberties Concerning the Inhabitants of Massachusetts* which would serve as the model for Statutory Law in Massachusetts and other New England Colonies.

May 6, 1635

The first COMMITTEE FOR THE LAWS comprised of Governor John Haynes, Deputy-Governor Richard Bellingham, John Winthrop, and Thomas Dudley was formed to "frame a body of grounds of laws, in resemblance to a Magna Carta" (as recorded in John Winthrop's journal)

May 25, 1636

Another GENERAL COURT assembled and Governor Henry Vane, Deputy-Governor John Winthrop, Thomas Dudley, John Haynes, Richard Bellingham, John Cotton, Hugh Peter, and Thomas Shepard were entreated 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."

March 12, 1638

The GENERAL COURT "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 "headings" of such necessary and fundamental laws as may be suitable.

A third GENERAL COURT COMMITTEE consisting of Governor John Winthrop, together with the rest of the Standing Council, and Richard Bellingham, Peter Bulkley, George Phillips, Hugh Peter, and Thomas Shepard, Elders of several Churches, Reverend Nathaniel Ward, William Spencer, and William Hathorne, or the major part of them, may, upon the survey of such headings of Laws, make a compendious abridgement of the same by the General Court ... 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 General Court shall adjudge."

JOHN COTTON and REVEREND NATHANIEL WARD were the two members who submitted separate drafts of laws to the General Court. Reverend Ward's draft seemed to be the preferred model (according to what Governor John Winthrop writes in his journal). However, the criminal provisions of the revised and combined versions of both Ward's and Cotton's proposals set forth by yet a fourth General Court Committee "owed their form and most of their content to Cotton's proposals contained in his *An Abstract of the Laws of New-England, as They are Now Established.*"

Before putting this consolidated version to a vote, the General Court sent it to the Towns for further discussion and recommendations, which would end up being a year-long process.

December 10, 1641

The General Court established the hundred laws which were called the *Body of Liberties*. They had been revised and altered by the General Court, and sent forth into every Town to be further considered of, and now again in this General Court they were revised, amended, and presented.

THE LIBERTIES OF THE MASSACHUSETTS COLONY NEW ENGLAND, 1641.

The free fruition of such Liberties, Immunities and Privilege as humanity, civility, and Christianity call for as due to every man in his place and proportion without impeachment and Infringement hath ever been and ever will be the Tranquility and Stability of Churches and Commonwealths. The denial or deprival thereof, is the disturbance, if not the ruin, of both.

We hold it, therefore, our duty and safety whilst we are about the further establishing of this Government, to collect and express all such freedoms as for present we foresee may concern us, and our posterity after us, And to ratify them with our solemn consent.

We do, therefore this day, religiously and unanimously decree and confirm these following RIGHTS, LIBERTIES and PRIVILEGES concerning our CHURCHES, and CIVIL STATE to be respectively impartially and inviolably enjoyed and observed throughout our Jurisdiction for ever.

1. No man's life shall be taken away, no man's honour or good name shall be stained, no man's person shall be arrested, restrained, banished, dismembered, nor in any way punished, no man shall be deprived of his wife or children, no man's goods or estate shall be taken away from him, nor any way damaged under colour of law or Countenance of Authority, unless it be by vertue or equity of some expressed Law of the Country warranting the same, established by a General Court and sufficiently published, or in case of the defect of a law in any particular case, by the Word of God. In Capital Punishment cases, or in cases concerning dismembering or banishment according to that Word to be judged by the General Court.

2. Every person within this Jurisdiction, whether Inhabitant or foreigner shall enjoy the same Justice and Law, that is generally for the Plantation, which we constitute and execute one towards another without partiality or delay.

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

4. No man shall be punished for not appearing at or before any Civil Assembly, Court, Council, Magistrate, or Officer, nor for the omission of any office or service, if he shall be necessarily hindered 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 civil action.

5. No man shall be compelled to any public work or service unless the press be grounded upon some act of the General Court, and have reasonable allowance therefore.

6. No man shall be pressed in person to any office, work, wars or other public service, that is necessarily and sufficiently exempted by any natural or personal impediment, as by want of years, greatness of age, defect of mind, failing of senses, or impotence of Limbs.

7. No man shall be compelled to go out of the limits of this Plantation upon any offensive wars which this Commonwealth or any of our friends or confederates shall voluntarily undertake. But only upon such vindictive and defensive wars in our own behalf or the behalf of our friends and confederates as shall be enterprises by the Counsel and consent of a General Court, or by authority derived from the same.

8. No mans Cattle or Goods of what kind soever shall be pressed or taken for any public use or service, unless it be by warrant grounded upon some act of the General Court, nor without such reasonable prices and hire as the ordinary rates of the Country do afford. If his Cattle or goods shall perish or suffer damage in such service, the owner shall be sufficiently recompensed.

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

10. All our Lands and Heritages shall be free from all fines and licenses upon Alienations, and from all harlots, wardships, Liveries, **Primer-seisins**, Escheats, and forfeitures, upon the deaths of Parents or Ancestors, be they natural, casual or Judicial.

PRIMER-SEISIN: A Right of the Crown to exact from the heir of a tenant in capite seised of a knight's fee one year's profits of the land in addition to the ordinary relief if the lands were in immediate possession or half a year's profits if the lands were in reversion expectant on a life estate.

11. All persons which are of the age of 21 years, and of right understanding and memories, whether excommunicate or condemned shall have full power and liberty to make their Wills and Testaments, and other lawful alienations of their lands and estates.

12. Every man whether Inhabitant or Foreigner, free or not free shall have liberty to come to any Public Court, Council, or Town meeting, and either by speech or writing to move any lawful, seasonable, and material 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 respectful manner.

13. No man shall be rated here for any Estate or Revenue he hath in England, or in any foreign parts till it be transported hither.

14. Any Conveyance or Alienation of land or other estate what so ever, made by any woman that is married, any child under age, idiot or distracted person, shall be good if it be passed and ratified by the consent of a General Court.

15. All Covetous or fraudulent Alienations or Conveyances of lands, tenements, or any hereditaments, shall be of no validity to defeat any man from due debts or legacies, or from any just title, claim or possession, of that which is so fraudulently conveyed.

16. Every Inhabitant that is a house holder shall have free fishing and fowling in any great ponds and Bays, Coves and Rivers, so far as the sea ebbs and flows within the precincts of the Town where they dwell, unless the free men of the same Town or the General Court have otherwise appropriated them, provided that this shall not be extended to give leave to any man to come upon others property without their leave.

17. Every man of or within this Jurisdiction shall have free liberty, notwithstanding any Civill power to remove both himself, and his family at their pleasure out of the same, provided there be no legal impediment to the contrary.

Rights, Rules and Liberties concerning JUDICIAL PROCEEDINGS.

18. No man's person shall be restrained or imprisoned by any Authority whatsoever, before the Law hath sentenced him thereto, if he can put in sufficient security, bail or main-prise, for his appearance, and good behaviour in the meantime, unless it be in Crimes Capital, and Contempts in open Court, and in such cases where some express act of Court doth allow it.

19. If in a General Court any miscarriage shall be amongst the Assistants when they are by themselves that may deserve an Admonition or fine under 20 shillings 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 severally as before.

20. If any which are to sit as Judges in any other Court shall demean 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 days before the Court, and the cause briefly specified in the Warrant, where appearance is to be made by the party summoned, it shall be at his liberty whether he will appear or no, except all cases that are to be handled in Courts suddenly called, upon extraordinary occasions, In all cases where there appears present and urgent cause any Assistant or Officer appointed shall have power to make out attachments for the first Summons.

22. No man in any Suit or Action against another shall falsely pretend great debts or damages to vex his adversary, if it shall appear 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 year, And not above that rate proportionable for all sums whatsoever, neither shall this be a colour or countenance to allow any usury amongst us contrary 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 mere default of him or them to whom the trespass is done, It shall be judged no trespass, nor any damage given for it.

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

26. Every man that finds himself unfit to plead his own cause in any Court shall have Liberty to employ any man against whom the Court doth not except, to help him, Provided he give him no fee or reward for his pains. This shall not exempt the party him self from Answering such Questions in person as the Court shall think mete to demand of him.

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

28. The plaintiffs in all Actions brought in any Court shall have liberty to withdraw his Action, or to be nonsuited before the Jury hath given in their verdict, in which case he shall always pay full cost and charges 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 liberty of the plaintiff and defendant by mutual consent to choose whether they will be tried by the Bench or by a Jury, unless it be where the law upon just reason hath otherwise determined. The like liberty shall be granted to all persons in Criminal cases.

30. It shall be in the liberty both of plaintiff and defendant, and likewise every delinquent (to be judged by a Jury) to challenge any of the Jurors. And if his challenge be found just and reasonable by the Bench, or the rest of the Jury, 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 Jury cannot clearly and safely give a positive verdict, whether it be a Grand or Petty Jury, It shall have liberty to give a Non Licit, or a Special Verdict, in which last, that is in a Special Verdict, the Judgement of the cause shall be left to the Court.

All Jurors shall have liberty in matters of fact if they cannot find the main issue, yet to find 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 proceed with Peace of Conscience, the case shall be referred to the General Court, who shall take the question from both and determine it.

32. Every man shall have liberty to replevy his Cattle or goods impounded, distrained, seised, or extended, unless it be upon execution after Judgement, and in payment of fines. Provided he puts in good security to prosecute his replevin, and to satisfy such demands as his Adversary shall recover against him in Law.

33. No man's person shall be arrested, or imprisoned upon execution or judgment for any debt or fine, If the Law can find competent means of satisfaction otherwise from his estate, and if not his person may be arrested and imprisoned where he shall be kept at his own charge, not the plaintiff's till satisfaction be made, unless the Court that had cognizance of the cause or some superior Court shall otherwise provide.

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

Barrator: (noun Law, historical)

A person who engages in, or incites, litigation without sufficient grounds for winning, purely to cause annoyance: *that corruption of state and office that barrators and bribe-takers represent.*

35. No man's corn nor hay that is in the field or upon the Cart, nor his garden stuff, nor any thing subject to present decay, shall be taken in any distress, unless he that takes it doth presently bestow it where it may not be embezzled nor suffer spoil or decay, or give security to satisfy the worth thereof if it comes to any harm.

36. It shall be in the liberty of every man cast condemned or sentenced in any cause in any Inferior Court, to make their appeal to the Court of Assistants, provided they tender their appeal and put in security to prosecute it, before the Court be ended wherein they were condemned, And within six dayes next ensuing put in good security before some Assistant to satisfy what his Adversary shall recover against him; And if the cause be of a Criminal nature for his good behaviour, and appearance, And every man shall have liberty to complain to the General Court of any Injustice done him in any Court of Assistants or other.

37. In all cases where it appears to the Court that the Plaintiff hath willingly and wittingly done wrong to the Defendant in commencing 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 clamour.

38. Every man shall have liberty to Record in the public Rolles of any Court any Testimony given upon Oath in the same Court, or before two Assistants, or any deed or evidence legally confirmed there to remain *in perpetuam rei memoriam*, that is for perpetual memorial or evidence upon occasion.

39. In all actions both real and personal between Party and Party, the Court shall have power to respite execution for a convenient time, when in their prudence they see just cause so to do.

40. No Conveyance, Deed, or Promise whatsoever shall be of validity, If it be gotten by Illegal violence, imprisonment, threatening, or any kind of forcible compulsion called Duress.

41. Every man that is to Answer for any criminal cause, whether he be in prison or under bail, 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 Civil Justice for one and the same Crime, Offence, or Trespass.

43. No man shall be beaten with above 40 stripes, nor shall any true Gentleman, nor any man equal to a Gentleman be punished with whipping, unless his crime be very shameful, and his course of life vicious and profligate.

44. No man condemned to die shall be put to death within fewer days next after his condemnation, unless the Court see special cause to the contrary, or in case of Martial Law, nor shall the body of any man so put to death be unburied 12 hours unless it be in case of Anatomy.

45. No man shall be forced by Torture to confess any Crime against himself nor any other unless it be in some Capital case, where he is first fully convicted by clear and sufficient evidence to be guilty, After which if the cause be of that nature, That it is very apparent there be other conspirators, or confederates with him, Then he may be tortured, yet not with such Tortures as be Barbarous and inhumane.

46. For bodily 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 Country shall have free liberty to search and view any Roles, Records, or Registers of any Court or office except the Council, 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 year, except Grand Jury men, who shall hold two Courts together at the least.

50. All Jurors shall be chosen continually by the Freemen of the Town where they dwell.

51. All Associates selected at any time to Assist the Assistants in Inferior Courts, shall be nominated by the Towns 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 kind of hereditaments, or for giving, of votes, verdicts or Sentence in any Civil Courts or causes, shall be one and twenty years.

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

55. In all Suits or Actions in any Court, the plaintiff shall have liberty to make all the titles and claims to that he sues for he can. And the Defendant shall have liberty to plead all the pleas he can in ansvere to them, and the Court shall judge according to the entire evidence of all.

56. If any man shall behave himself offensively at any Town Meeting, the rest of the Freemen then present, shall have power to sentence him for his offence. So be it the mulct or penalty exceed not twenty shillings.

57. Whensoever any person shall come to any very sudden untimely and unnatural death, Some assistant, or the Constables of that Town shall forthwith summon 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 near Assistant, or the next Court to be held for that Town upon their oath.

Liberties more peculiarly concerning the Free Men.

58. Civil Authority hath power and liberty to see the PEACE, ORDINANCES AND RULES OF CHRIST observed in every Church according to His word, so it be done in a Civil and not in an Ecclesiastical way.

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

60. No Church censure shall degrade or depose any man from any Civil dignity, office, or Authority he shall have in the Commonwealth.

61. No Magistrate, Juror, Officer, or other man shall be bound to informe present or reveal any private crime or offence, wherein there is no peril or danger to this Plantation or any Member thereof, when any necessary tie of conscience binds him to secrecy grounded upon the word of God, unless it be in case of testimony lawfully required.

62. Any Shire or Town shall have liberty to choose their Deputies whom and where they please for the General Court. So be it they be Free Men, and have taken their oath of fealty, and Inhabiting in this Jurisdiction.

63. No Governor, Deputy Governor, Assistant, Associate, or Grand Jury Man at any Court, nor any Deputy for the General Court, shall at any time bear his own charges at any Court, but their necessary expenses shall be defrayed either by the Town or Shire on whose service they are, or by the Country in general.

64. Every Action between party and party, and proceedings against delinquents in Criminal causes shall be briefly and distinctly entered on the Rolles of every Court by the Recorder thereof. That such actions be not afterwards brought again to the vexation of any man.

65. No custom or prescription shall ever prevail amongst us in any moral cause, our meaning is maintain anything that can be proved to be morally sinful by the Word of God.

66. The Freemen of every Township shall have power to make such bylaws and constitutions as may concern the welfare of their Town, provided they be not of a Criminal, but only of a prudential nature, And that their penalties exceed not 20 shillings for one offence. And that they be not repugnant to the public laws and orders of the Country. And if any Inhabitant shall neglect or refuse to observe them, they shall have power to levy the appointed penalties by distress.

67. It is the constant liberty 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 discharge them at the day of Election by way of vote, They may do it without shewing cause. But if at any other General Court, we hold it due Justice, that the reasons thereof be alleged and proved. By General Officers we mean, our Governor, Deputy Governor, Assistants, Treasurer, General of our Wars. And our Admiral at Sea, and such as are, or hereafter may be, of the like general nature.

68. It is the liberty of the Freemen to choose such Deputies for the General Court out of themselves, either in their own Towns or elsewhere as they judge fittest. And because we cannot foresee what variety and weight of occasions may fall into future consideration, And what Counsels we may stand in neede of, we decree. That the Deputies (to attend the General Court in the behalf of the Country) shall not any time be stated or enacted, but from Court to Court, or at the most but for one year, that the Country may have an Annual liberty to do in that case what is most behovefull for the best welfare thereof.

69. No GENERAL COURT shall be devolved or adjourned without the consent of the Major part thereof.

70. All Freemen called to give any advice, vote, verdict, or sentence in any Court, Council, or Civil Assembly, shall have full freedom to do it according to their true Judgements and Consciences, So it be done orderly and inoffensively for the manner.

71. The Governor shall have a casting voice whensoever an Equal Vote shall fall out in the Court of Assistants, or General Assembly; So shall the President or Moderator have in all Civil Courts or Assemblies.

72. The Governor and Deputy Governor Jointly consenting or any three Assistants concurring in consent shall have power out of Court to **reprieve** a condemned malefactor, till the next Quarter or General Court. The General Court only shall have power to Pardon a condemned malefactor.

73. The General Court hath liberty and Authority to send out any Member of this Commonwealth of what quality, condition or office whatsoever into foreign parts about any public message or Negotiation. Provided the party sent be acquainted with the affaire he goeth about, and be willing to undertake the service.

74. The Freemen of every Town or Township, shall have full power to choose yearly or for less time out of themselves a convenient number of fit men to order the planting or prudential occasions of that Town, according to Instructions given them in writing, Provided nothing be done by them contrary to the public laws and orders of the Country, provided also the number of such select persons be not above nine.

75. It is and shall be the liberty of any Member or Members of any Court, Council or Civil Assembly in cases of making or executing any order or law, that properly concerns religion, or any Capital cause, or wars, or Subscription to any Public 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 writing, and upon request to have their dissent recorded in the Rolles of that Court. So it be done Christianly and respectfully for the manner.

And their dissent only be entered without the reasons thereof, for the avoiding of tediousness.

76. Whensoever any Jury of trials or Jurors are not clear in their Judgments or consciences concerning any cause wherein they are to give their verdict, They shall have liberty in open Court to advise with any man they think fit 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, making 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 liberty to be silent, and not pressed to a determined vote.

78. The General or Public Treasure or any part thereof shall never be expended but by the appointment of a General Court, nor any Shire Treasure, but by the appointment of the Freemen thereof, nor any Town Treasury 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 estate, upon just complaint made to the General Court she shall be relieved.

80. Every married woman shall be free from bodily correction or stripes by her husband, unless it be in his own defence upon her assault. If there be any just cause of correction complaint shall be made to Authority assembled in some Court, from which only she shall receive it.

Liberties of Children.

81. When parents die intestate, the Elder son shall have a double portion of his whole estate real and personal, unless the General Court upon just cause alleged shall judge otherwise.

82. When parents dye intestate, having no male heirs of their bodies, their Daughters shall inherit as Co-partners, unless the General Court upon just reason shall judge otherwise.

83. If any parents shall wilfully and unreasonably deny any child timely or convenient marriage, or shall exercise any unnatural severity towards them, such children shall have free liberty to complain to Authorities for redress.

84. No Orphan during their minority which was not committed to tuition or service by the parents in their life time, shall afterwards be absolutely disposed of by any kindred, friend, Executor, 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 Tyranny and cruelty of their masters to the house of any freeman of the same Town, they shall be there protected and sustained till due order be taken for their relief. Provided due notice thereof be speedily given to their masters from whom they fled. And the next Assistant or Constable where the party flying is harboured.

86. No servant shall be put of for above a year to any other neither in the life time of their master nor after their death by their Executors or Administrators unless it be by consent of Authority 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 maim or much disfigure him, unless it be by meere casualty, he shall let them go free from his service. And shall have such further recompense as the Court shall allow him.

88. Servants that have served diligently and faithfully to the benefitt of their masters seven years, shall not be sent away empty. And if any have bene unfaithful, negligent or unprofitable in their service, notwithstanding the good usage of their

masters, they shall not be dismissed till they have made satisfaction according to the Judgement of Authority.

Liberties of Foreigners and Strangers.

89. If any people of other Nations professing the true Christian Religion shall flee to us from the Tyranny or oppression of their persecutors, or from famine, wars, or the like necessary and compulsory cause, They shall be entertained and succoured amongst us, according to that power and prudence, God shall give us.

90. If any ships or other vessels, be it friend or enemy, shall suffer shipwreck 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 Authority may be certified thereof, and shall take further order therein.

91. There shall never be any bond slavery, villeinage or Captivity amongst us unless it be lawful Captives taken in just wars, and such strangers as willingly sell themselves or are sold to us. And these shall have all the liberties and Christian usages which the Law of God established in Israel concerning such persons doth morally require. This exempts none from servitude who shall be Judged thereto by Authority.

Of the Brute Creature.

92. No man shall exercise any Tyranny or Cruelty towards any brute Creature which are usually kept for Man's use.

93. If any man shall have occasion to lead or drive Cattle from place to place that is far off, so that they be weary, or hungry, or fall sick, or lame, It shall be lawful to rest or refresh them, for competent time, in any open place that is not Corn, meadow, or inclosed for some peculiar use.

Capital Laws.

94.

- 1.

(Deuteronomy. 13. 6, 10. Deuteronomy. 17. 2, 6. Exodus. 22.20)

If any man after legal conviction shall have or Worship any other God, but the Lord God, he shall be put to death.

- 2.

(Exodus. 22. 18. Leviticus. 20. 27. Deuteronomy. 18. 10.)

If any man or woman be a Witch, (that is hath or consults with a familiar Spirit,) They shall be put to death.

- 3.

(Leviticus. 24. 15,16.)

If any person shall Blaspheme the name of god, the father, Son or Holy Ghost, with direct, express, presumptuous or high handed blasphemy, or shall curse God in the like manner, he shall be put to death.

- 4.

(Exodus. 21. 12. Numbers. 35. 13, 14, 30, 31.)

If any person commit any wilful murder, which is manslaughter, committed upon premeditated malice, hatred, or Cruelty, not in a mans necessary and just defence, nor by meere casualty against his will, he shall be put to death.

- 5.

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

If any person slay another suddenly in his Anger or Cruelty of Passion, he shall be put to death.

- 6.

(Exodus. 21. 14.)

If any person shall slay another through guile, either by poisoning or other such devilish practice, he shall be put to death.

▪ 7.

(Leviticus 20. 15,16.)

If any man or woman shall lay with any beast or brute creature by Carnal Copulation, They shall surely be put to death. **The beast shall be slain, and buried and not eaten.**

▪ 8.

(Leviticus 20. 13.)

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

▪ 9.

Leviticus 20. 19. and 18, 20. Deuteronomy 22, 23, 24.)

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

▪ 10.

(Exodus 21. 16.)

If any man steals a man or mankind, he shall surely be put to death.

▪ 11.

(Deuteronomy 19. 16, 18, 19.)

If any man rise up by false witness, 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 public rebellion against our Commonwealth, or shall endeavour to surprise any Town or Towns, fort or forts therein, or shall treacherously and perfidiously attempt the alteration and subversion of our frame of polity or Government fundamentally, he shall be put to death.

The Liberties the Lord Jesus hath given to the Churches.

95.

- 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 liberty to gather themselves into a Church Estate. Provided they do it in a Christian way, with due observation of the rules of Christ revealed in His Word.

- 2.

Every Church hath full liberty to exercise all the ordinances of God, according to the Rules of Scripture.

- 3.

Every Church hath free liberty of Election and Ordination of all their Officers from time to time, provided they be Able, Pious and Orthodox.

- 4.

Every Church hath free liberty of Admission, Recommendation, Dismissing, and Expulsion, or deposal 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 freedom to celebrate Days of Fasting and Prayer, and of Thanksgiving according to the Word of God.

▪ 7.

The Elders of Churches have free liberty to meet Monthly, Quarterly, or otherwise, in convenient numbers and places, for Conferences, and Consultations about Christian and Church questions and occasions.

▪ 8.

All Churches have liberty to deal with any of their Members in a Church way that is in the hand of Justice. So it be not to retard or hinder the course thereof.

▪ 9

Every Church hath liberty to deale with any Magistrate, Deputy of Court or other Officer whatsoever 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.

We allow Private Meetings for Edification in Religion amongst Christians of all sorts of people. So it be without just offence for number, time, place, and other circumstances.

▪ 11.

For the preventing and removing of error and offence that may grow and spread in any of the Churches in this Jurisdiction, And for the preserving of Truth and Peace in the several Churches within themselves, and for the maintenance and exercise of Brotherly Communion, amongst all the Churches in the Country, It is allowed and ratified, by the Authority of this General Court as a lawful liberty of the Churches of Christ, That once in every Month of the year (when the season will bear it) It shall be lawful for the Ministers and Elders, of the Churches near adjoining together, with any other of the brethren with the consent of the Churches to assemble by course in each several Church one after another.

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 public Christian Conference about the discussing and

resolving 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 Brethren of that Church, will leave also to any other Brother to propound his objections or answers for further satisfaction according to the Word of God.

Provided that, the whole action be guided and moderated by the Elders of the Church where the Assembly is held, or by such others as they shall appoint. And that no thing be concluded and imposed by way of Authority from one or more Churches upon an other, but only by way of Brotherly conference and consultations. That the truth may be searched out to the satisfying of every man's conscience in the sight of God according his Word. And because such an Assembly and the work thereof cannot be duly attended to if other Lectures be held in the same week.

It is, therefore, agreed with the consent of the Churches. That in that week when such an Assembly is held, All the Lectures in all the neighbouring Churches for that week shall be forborne. That so the public service of Christ in this more solemn Assembly may be transacted with greater diligence and attention.

96. Howsoever these above specified Rights, Freedoms, Immunities, Authorities and Privileges, both Civil and Ecclesiastical are expressed only under the name and title of **LIBERTIES**, and not in the exact form of LAWS or STATUTES, yet we do with one consent fully Authorize, and earnestly entreat all those who are, and shall be, in Authority to consider them as Laws, and **not to fail to inflict condign and proportionable punishments upon every man impartially, that shall infringe or violate any of them.**

Translated today in 2023: NO MAN OR WOMAN IS ABOVE THE LAW...!

97. We likewise give full power and liberty to any Person that shall at any time be denied or deprived of any of them, to commence and prosecute their Suit, Complaint or Action against any man that shall so do, in any Court that hath proper Cognizance or judicature thereof.

98. Lastly because our duty and desire is to do nothing suddenly which fundamentally concerns us, we decree that these Rights and Liberties, shall be Audibly read and deliberately weighed at every General Court that shall be held, within three yeares next ensuing, And such of them as shall not be altered or repealed they shall stand so ratified, **That no man shall infringe them without due punishment.**

And if any **GENERAL COURT** within these next three years shall fail or forget to read and consider them as abovesaid, then the **GOVERNOR** and **DEPUTY GOVERNOR** for the time being, and every ASSISTANT present at such Courts, shall forfeit 20-shillings a man, and every **DEPUTY** 10-shillings a man for each neglect, which shall be paid out of their proper estate, and not by the Country nor the Towns which choose them, and whensoever there shall arise any question in any Court amonge the Assistants and Associates thereof about the explanation of these Rights and Liberties, the **GENERAL COURT only** shall have power to interpret them.

[Editorial Note #1: *The Body of Liberties*]

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 need to be altered, abbreviated, repealed, corrected, enlarged, or explained, &c. (Mass. Rec., I. 137.)

The General Court came together May 6, 1635 and the business remaining undone, the Governor John Haynes, Deputy Governor Richard Bellingham, John Winthrop, and Thomas Dudley, Esq., were deputed by the Court to "frame a body of grounds of laws, in resemblance to a Magna Carta" (as recorded in John Winthrop's journal) 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 on May 25, 1636; and the Governor Henry Vane, Deputy-Governor John Winthrop, Thomas Dudley, John Haynes, Richard Bellingham, John Cotton, Hugh Peter, and Thomas Shepard were entreated 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's attention was distracted by the Pequot War and the Antinomian controversy. John 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. John 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. Peter Bulkley, Mr. Phillips, Mr. Hugh Peter, and Mr. Thomas Shepard, Elders of several Churches, Reverend 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 abridgement of the same by the 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,—JOHN COTTON'S and REV. NATHANIEL 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, Richard 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."

The case must have seemed to be getting well-nigh desperate, when, six months later yet (May 13, 1640), after a "BRIEF OF LAWS was formerly sent to be considered by the Elders of the Churches and other Freemen of this Commonwealth," it was "desired that they would endeavour to ripen their thoughts and Counsels about the same by the General Court in the next month (August, 1640)."

However, in August, 1640 the Elders accomplished no more than in many previous months. The General Court met, but the question was kept out of the public view.

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, Richard 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."

When, sufficient time having been allowed for this examination, Governor Bellingham and Mr. Hathorne were desired (October 7, 1641) to speak to REVEREND NATHANIEL WARD for a copy of the Liberties and of the Capital Laws to be transcribed and sent to the several Towns", 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 favour of his Code.

The session of the GENERAL COURT which adopted this vote was continued by adjournments more than two months. The project of a Statute-Book, and of Reverend NATHANIEL WARD'S in particular, was still gaining favour, may be inferred from the passage of an Order (December 10, 1641) by which Mr. Deputy Endecott, Mr. Downing, and Mr. Hathorne are authorized to get 19-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, 10-shillings apiece for each copy, and to be prepared within six weeks."

At length, in a session which "continued three weeks" (in **December, 1641**), 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 by the Elders, and now again in this Court they were revised, amended, and presented." (Winthrop, II. 55.)

[Editorial Note #2: The History of the Manuscript]

A Manuscript 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 Carta", 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 all Students should read Gray's valuable essay on the **EARLY LAWS OF MASSACHUSETTS** accompanying it. He shows the absurdity of prevailing 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 Manuscript 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 Fowler, Samuel Maverick, and others against certain features of this legislation. This Declaration, which includes parallels between "The Body of Liberties" and Magna Carta 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 Massachusetts, i. 275, Palfrey, etc.

Reverend NATHANIEL WARD, the compiler of "*The Body of Liberties*," was born about 1578 at Haverhill in England, and was the son of Rev. John Mordaunt Ward, an eminent Puritan Minister. He he was educated 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 Archbishop 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 very 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, Reverend Nathaniel Ward became Minister of the Church at Shenfield in Essex, where he remained until his death in 1653 at age 75.

His sermon before the **British 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 CARTA and the COMMON LAW OF ENGLAND.

From the **BODY OF LIBERTIES**:

- *“**AUTHORITY** must have power to make and keep **PEOPLE** honest; People, honesty to obey Authority; both, a joint-Counsel to keep both safe. Moral Laws, Royal Prerogatives, Popular Liberties, are not of Man’s making or giving, but God’s: Man is but to measure them out by God’s Rule: which if Man’s wisdom cannot reach, Man’s experience must mend: And these Essentials, must not be Aphorized or “Tribune-ed” by one or a few Mens’ discretion, but lineally sanctioned by Supreme Counsel....*
- *He is a good **KING** that undoes not his **SUBJECTS** by any one of his unlimited Prerogatives: and they are a good People, that undo not their Prince, by any one of their unbounded Liberties, be they the very least. I am sure either may, and I am sure neither would be trusted, how good soever. Stories tell us in effect, though not in terms, that over-risen Kings, have been the next evils to the world, unto fallen Angels; and that over-franchised people, are devils with smooth snaffles in their mouths.”*

The Simple Cobbler of Agawam in America

After the English Civil War ended the **REVEREND NATHANIEL WARD** was able to return to England, in 1648 where he died in 1653. His cryptic and eccentric book *The Simple Cobler of Aggawam in America* was published in England in 1647 under the alias Theodore de la Guard.

The Simple Cobler of Aggawam in America

Nathaniel Ward



The Perfect Library

In **THE SIMPLE COBLER OF AGGAWAM IN AMERICA**, Reverend Nathaniel Ward expressed his intolerance of any religious sect other than Puritanism: *“The Devil desires no better sport than to see lightheads handle their heels, and fetch their careers in a time, when the roof of liberty stands open. First, such as have given or taken any unfriendly reports of us New English should do well to recollect themselves. We have been reputed a effluviium of wild opinionists, swarmed into a remote wilderness to find elbowroom for our fanatic doctrines and practices. I trust our diligence past, and constant sedulity against such persons and courses, will plead better things for us. I dare take upon me, to be the herald of New England so far, as to proclaim to the world, in the name of the Colony, that all Familists, Antinomians, Anabaptists, and other enthusiasts shall have free liberty to keep away from us, and such as will come to be gone as fast as they can, the sooner the better.”*

