

PERHAPS no other writing from the Puritan Era had so far-reaching an effect as this document, which laid the foundations of Massachusetts liberties, for which New Englishmen fought against the Empire in the 1680's and during the American Revolution, and which became a pattern of the United States Constitution. It is remarkable as a code of law, in that it lays out a structure of jurisprudence in terms of liberties rather than restrictions. In this it echoes the Magna Charta, and foreshadows our Bill of Rights. Drawing upon the Magna Charta and English Common Law, it was largely the work of one man, the remarkable Puritan thinker and writer, Nathaniel Ward.¹

The Massachusetts Body of Liberties

*adopted as law by the General Court
of the Commonwealth of Massachusetts Bay
December, 1641*

1. No man's life shall be taken away, no man's honor or good name shall be stained, no man's person shall be arrested, restrained, banished, dismembered, nor any ways punished, no man shall be deprived of his wife or children, no man's goods or estate shall be taken away from him, nor in any way damaged under color of law, or countenance of authority, unless it be by virtue or equity of some express 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 (the laws of the Bible). And in capital 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 general 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 or 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 into any office, work, wars, or other public service, who 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.

¹ From The Winthrop Society, <http://www.winthropsociety.org/liberties.php>.

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 on the behalf of our friends, and confederates as shall be enterprised by the Council and consent of a General Court, or by authority derived from the same.

8. No man's 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. And 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 harriotts, wardships, liveries, primerseisens, year-day and wast, escheats and forfeitures, upon the death of parents or ancestors, be they natural, casual or judicial.

11. All persons which are of the age 21 years and of right understanding and memory, whether excommunicate or condemned, shall have full power 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 by writing, 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 respective manner.

13. No man shall be rated (taxed) here for any estate or revenue he hath in England, or foreign parts, till it be transported hither.

14. Any conveyance or alienation of land or other estate whatsoever, made by a 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 covenous (conspired) or fraudulent alienations or conveyances of lands, tenements, or any hereditaments, shall be of no validity to defeat (free) any man from due debts or legacies, or from any just title, claim or possession of that which is thus fraudulently conveyed.

16. Every inhabitant that is a householder 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 Freemen 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 civil power, to remove both himself and his family at their pleasure out of the same, provided there be no legal impediment to the contrary.

Rites and Rules 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 mainprise, for his appearance and good behavior in the meantime, unless it be in capital crimes, and contempts in open Court, and in such cases where some express act of Court doth allow it.

22. No man in any suit or action against another shall falsely pretend great debts or damages to vex his adversary. If it appear that any doth do 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 (8% simple interest), and not above that rate proportionable for all sums whatsoever, neither shall this be a color or countenance to allow any usury amongst us contrary to the law of God.

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

26. Any man that findeth himself unfit to plead his own cause in any Court, shall have the 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 except the party himself from answering such questions in person as the Court shall think meet to demand of him.

29. In all actions at law it shall be the liberty of the plaintiff and defendant by mutual consent to chose 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.

33. No man's person shall be arrested or imprisoned upon execution or judgment for any debt or fine, if the law can find any 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 be judged a common Barrator vexing others with unjust and frequent suits, it shall be in the power of the Courts both to deny him the benefit of the law, and punish him for his barratry.

35. No man's corn or hay that is in the field or upon the cart, or his garden stuff, nor anything subject to present decay, shall be taken in any distress, unless he that takes it shall 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.

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, offense, 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 a whipping, unless his crime be very shameful, and his course of life vicious and profligate.

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 that 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.

50. All jurors shall be chosen continually by the Freemen of the town where they dwell.

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 hereditments, or for giving votes, verdicts or sentence in any civil Courts or causes, shall be one and twenty years.

Liberties more particularly concerning the Freemen

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. Civil authority hath power and liberty to deal 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.

66. The Freemen of every township shall have power to make such bylaws and constitutions as shall 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 offense, and that they be

not repugnant to public laws and orders of the Country. And if any inhabitant neglect or refuse to observe them, they (the townships) shall have power to levy the appointed penalties by distress.

69. No General Court shall be dissolved or adjourned without the consent of the major part thereof.

71. The Governor shall have a casting vote whensoever an equal vote shall fall out of the Court of Assistants, or general assembly; so shall the president or moderator have in all civil Courts or assemblies.

78. The general or public treasury or any part thereof shall never be expended but by the appointment of a General Court; nor any Shire treasury, 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 (whipping) by her husband, unless it be in his own defense upon her assault. If there be any just cause of correction, complaint shall be made to authority assembled in some Court, from which 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 die intestate, having no heirs male 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 willfully 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 authority for redress.

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 off for above a year to any other (masters) neither in the lifetime 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 mere casualty (accident), he shall let them go free from his service. And (the servant) shall have such further recompense as the Court shall allow him.

88. Servants that have served diligently and faithfully to the benefit of their masters seven years, shall not be sent away empty. And if any have been 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, villainage 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.

94. Capital Laws

1. If any man after legal conviction shall have or worship any other god, but the Lord God, he shall be put to death.
2. If any man or woman be a witch (that is, hath or consulteth with a familiar spirit), they shall be put to death.
3. 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. If any person commit any willful murder, which is manslaughter committed upon premeditated malice, hatred, or cruelty, and not in a man's necessary and just defense, nor by mere casualty against his will, he shall be put to death.
5. If any person slayeth another suddenly in his anger or cruelty of passion, he shall be put to death.
6. If any person shall slay another through guile, either by poisoning or other such devilish practice, he shall be put to death.
7. If any man or woman shall lie with any beast or brute creature by carnal copulation, they shall surely be put to death. And the beast shall be slain, and buried and not eaten.
8. If any man lyeth with mankind (with another man in homosexual intercourse) as he lyeth with a woman, both of them have committed abomination, and they both shall surely be put to death.

9. If any person committeth adultery with a married or espoused wife, the adulterer and adulteress shall surely be put to death.

10. If any man stealeth a man or mankind (i.e.: kidnapping), he shall surely be put to death.

11. If any man rise up by false witness, wittingly and of purpose to take away any man's 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 indeavour 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.

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.