

LAW AND RELIGION IN PLYMOUTH COLONY

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ABSTRACT

2020 marks the 400th anniversary of the planting of Plymouth Colony. Although the literature about Plymouth is voluminous, the discussion about law and religion has been inappropriately superficial to date. This article addresses the Pilgrims' conception of law on matters of religion and the new insights into the Pilgrims' story that can be ascertained by focusing on law.

"Law" has been defined in many different ways by many different people throughout history. Aristotle, Cicero, Thomas Aquinas, and other proponents of natural law argued that law is the exercise of reason to deduce binding rules of moral behavior from nature's or God's creation. The renowned English positivist John Austin, in contrast, maintained that law is the command of the sovereign. To Karl von Savigny and other proponents of the so-called historical school, law is the unconscious embodiment of the common will of the people. To the philosophical school, law is the expression of idealized ethical custom. The dominant contemporary view seems to be that law is the reflection of social, political, and economic interests.

For the Pilgrims of Plymouth Colony, law was both the memorialization of their commitment to the Word of God and an instrument for exercising social control so as to effectuate that commitment. The Pilgrims, of course, used law to regulate the more mundane aspects of life as well. Indeed, quantitatively speaking, more laws were enacted by the Pilgrims that addressed the day-to-day activities of life in Plymouth Colony than memorialized the Pilgrims' commitment to eternal glory in the afterlife, but the latter was unquestionably more important, qualitatively speaking, than the former. In the oft-quoted words of a young William Bradford, "to keep a good conscience, and walk in such a way as God has prescribed in his Word, is a thing which I must prefer before you all, and above life itself."

KEYWORDS

Plymouth Colony, law, religion, colonial America

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“It hath bine our Indeaver in the framing of our lawes ... to promote the comon good both of church and State, both att pesent and for future; and therefore so fare as we have aimed att the Glory of God; and common good, and acted according to God; Bee not found a Resister but Obedient, lest therby thou resist the Ordinance of God, and soe incurr the displeasure of God unto Damnation. Rom. 13. 2.”

—By order of the General Court of New-Plymouth

Nathaneel Morton, clarke, September 29, 1658

I. INTRODUCTION

2020 marks the 400th anniversary of the planting of Plymouth Colony by a group of strict Calvinists commonly known as “Pilgrims.”¹ The Pilgrims fled England as Separatists: they denied the validity of the Church of England and wished to practice their faith in their own way.² This article explores the role *law* played in effectuating the Pilgrims’ project prior to Plymouth being absorbed by Massachusetts Bay in 1692. Although the literature about Plymouth Colony is voluminous, the discussion about law and religion has been inappropriately superficial to date.³ To make the point more directly, law is shaped by many factors. But law also shapes other concerns—be they economic, political, social, or religious—and no disquisition

¹ The appellation “Pilgrims” traces to an observation by the most famous of their community, William Bradford. See NATHANIEL PHILBRICK, *MAYFLOWER: A STORY OF COURAGE, COMMUNITY, AND WAR* 7 (2006) (quoting Bradford’s remark, “they knew they were pilgrims”). Bradford, in turn, was referencing *Hebrews* 11:13 (“These all died in faith, not having received the promises, but having seen them afar off, and were persuaded of them, and embraced them, and confessed that they were strangers and pilgrims on the earth.”).

² The “Puritans,” in contrast, immigrated to Massachusetts Bay in 1630 as members of the Church of England who desired to reform, rather than abandon, that church. See, e.g., J. W. Bumstead, *A Well-Bounded Toleration: Church and State in the Plymouth Colony*, 10 J. OF CHURCH & STATE 265, 265-66 (1968). Some scholars no longer capitalize terms such as “Puritan” and “Separatist” in order to avoid the impression—mistaken, in their view—that practitioners had coherent programs. See, e.g., MICHAEL P. WINSHIP, *GODLY REPUBLICANISM: PURITANS, PILGRIMS, AND A CITY ON A HILL* 111, 119 (2012).

³ Nathaniel Philbrick’s *Mayflower* is a recent contribution of note to the literature about Plymouth Colony. See PHILBRICK, *supra* note 1. For the first full-length scholarly study of Plymouth, see GEORGE D. LANGDON, JR., *PILGRIM COLONY: A HISTORY OF NEW PLYMOUTH, 1620-1691* (1966). For a more recent revisionist account that concentrates on the lives of the Pilgrims before they planted Plymouth Colony, see JEREMY DUPERTUIS BANGS, *STRANGERS AND PILGRIMS, TRAVELLERS AND SOJOURNERS: LEIDEN AND THE FOUNDATIONS OF PLYMOUTH PLANTATION* (2009). George L. Haskins published an article about Plymouth’s legal heritage almost six decades ago, but that article had very little to say about law and religion and spoke in only general terms about law itself. See George L. Haskins, *The Legal Heritage of Plymouth Colony*, 110 U. PA. L. REV. 847 (1962); see also George L. Haskins, *Law and Colonial Society*, 9 AM. Q. 354 (1957) (discussing law and society in colonial America writ large). Haskins’s major work was about the first two decades of Massachusetts Bay Colony. See GEORGE LEE HASKINS, *LAW AND AUTHORITY IN EARLY MASSACHUSETTS: A STUDY IN TRADITION AND DESIGN* (1960).

about the history of Plymouth Colony would be complete without acknowledging how large a role the law itself played in the Pilgrims' design. In short, this article is not about the economic, political, or social history of Plymouth Colony. Other scholars have written books and articles about those topics. This article is about the Pilgrims' conception of law on matters of religion and the new insights into the Pilgrims' story that can be ascertained by focusing on law.⁴

A complete accounting of the Pilgrims' travails prior to their arrival at Plymouth is unnecessary for the legal history of Plymouth Colony in religious matters that this article endeavors to present.⁵ Suffice it to say that, after troubles in England during the reign of King James I—who, upon ascending to the throne in 1603, had pledged to put an end to church reform movements in England and to punish critics of the Church of England—the Pilgrims sojourned among the Dutch beginning in or about 1607. But as merely one tolerated sect among many in the Netherlands, the Pilgrims not only began to fear they would lose their identity, they came to resent “ye great licentiousnes of youth in that countrie and ye manifold temptations of ye place.”⁶ The lighthearted Dutch maintained Sunday as a holy day, and thus as a day for celebration: “simply laughing and tossing off another pot of beer when told it should be endured grimly as penance.”⁷

Theological and ecclesiastical considerations made matters worse. The Pilgrims supported a “Brownist”, or Congregational, ecclesiastical polity of independent congregations, whereas the Dutch church maintained a hierarchical structure with synods, assemblies, and other central governing bodies.⁸ John Robinson, one of the founders (along with Robert Browne) of the Congregational Church and the pastor of the Pilgrim church in the Netherlands, criticized the Dutch church for a number of their practices. He thought that ministers in the Dutch church were pretentious and had too much power. He rejected the idea that only ministers could preach because “preaching was a lay function” and “it was the province of the entire eldership to teach as well as govern.”⁹ According to Robinson, the “administration of sacred rites was the pastor’s only distinctive function.”¹⁰ He also criticized the Dutch church’s use of set prayers, even the Lord’s Prayer: “Anybody could read a

⁴ To state the obvious, this article is also not about Massachusetts Bay Colony and it is not a comparison of Plymouth with Massachusetts Bay (or with any other colony or country ... or with the First Amendment of the U.S. Constitution). I offer those sorts of comparisons in a book I am currently writing. This article is not that book. *See generally* Peter Onuf, *Reflections on the Founding: Constitutional Historiography in Bicentennial Perspective*, 46 WM. & MARY Q. 341 (1989) (arguing that historians’ criticism of the largely text-centered methodology of academic lawyers is often unfair and sometimes misleading); Richard J. Ross, *The Legal Past of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History*, 50 WM. & MARY Q. 28 (1993) (commending the work of previous scholars of colonial America, yet emphasizing the need for new approaches).

⁵ For that accounting, *see* BANGS, *supra* note 3.

⁶ As quoted in GEORGE F. WILLISON, *SAINTS AND STRANGERS* 103 (1945).

⁷ WILLISON, *supra* note 6, at 103. Willison apparently embraced a Nathaniel Hawthorne-like view of Puritanism. *See generally* NATHANIEL HAWTHORNE, *THE SCARLET LETTER: A ROMANCE* (1850).

⁸ WILLISON, *supra* note 6, at 104.

⁹ *Id.*

¹⁰ *Id.*

prayer. It was altogether as puerile a performance as for a child ‘to read of a book or a payer (saying), Father, I prey you give me bread, or fish, or an egg.’”¹¹ The Dutch could not be true Christians, Robinson maintained, so long as they continued “benightedly celebrating Easter and Christmas, for which there was no warrant in Scripture.”¹²

In addition, the Pilgrims appeared to adhere to millenarian ideas, believing that the end of the world was near and that repentance was needed.¹³ Pilgrims, like most Protestants of the day, held Catholics in particular in contempt. William Bradford, who would become the longest-tenured governor of Plymouth Colony and the person whose journal would help to mythologize Plymouth’s history,¹⁴ referred to the Roman Church’s history as a story of “pontifical lasciviousness” where “libidinous beasts” such as John XIII satisfied their “fleshy lusts” by preying upon the youth until Rome was nothing more than “an abominable warehouse of all spiritual and corporal fornications,” where “deflowering, ravishing, incests, and adulteries are but a sport.”¹⁵

Bradford also complained about “Episcopacy,” or the Church of England. Although the English Reformation had released England from Rome’s hold, Bradford insisted that, in retaining a hierarchy of bishops with coercive powers, it did not go far enough. Bradford did consider Presbyterian churches to be true churches, but he felt they likewise erred in maintaining a centralized hierarchy.¹⁶ For Bradford, only Congregational churches such as those of the Pilgrims, which had no ecclesiastical hierarchy and which consisted solely of groups of voluntary believers, were entirely in line with the spirit of the Gospel.¹⁷ Bradford wrote in his history of Plymouth Colony that the Pilgrims sought

y^e right worship of God & discipline of Christ established in y^e church, according to y^e simplicitie of the gospell, without the mixture of mens inventions, and to have & to be ruled by y^e laws of Gods word, dispensed in those offices, & by those officers of Pastors, Teachers, & Elders, &c. according to y^e Scripturs.¹⁸

As will be seen, Bradford’s position was reflected in Plymouth Colony’s laws: the Pilgrims did not seek to coerce residents in their settlement into worshipping as they

¹¹ *Id.*

¹² *Id.* Some revisionist historians of Plymouth Colony are critical of Willison’s book, in large part because it is “old.” See, e.g., BANGS, *supra* note 3, at 614. In my view, scholars need to resist the temptation of suggesting that anything written about a subject before they turned their attention to it is poorly done.

¹³ See, e.g., PHILBRICK, *supra* note 1, at 6.

¹⁴ See WILLIAM BRADFORD, HISTORY OF PLYMOUTH PLANTATION (1856). Many editions of Bradford’s history have been published over the years.

¹⁵ As quoted in BERNARD BAILYN, THE BARBAROUS YEARS: THE PEOPLING OF BRITISH NORTH AMERICA: THE CONFLICT OF CIVILIZATIONS, 1600–1675 at 363 (2012). Bradford spent a portion of his later years learning Hebrew and writing dialogues, including the one from which the above quotation draws. *Id.* at 357–64.

¹⁶ See *id.* at 357–64. Bradford’s complaints about Presbyterianism were similar to those Robinson had offered against the Dutch church.

¹⁷ See *id.* at 363–64.

¹⁸ BRADFORD, *supra* note 14, at 4.

did; instead, they “warned away” those who did not practice Christianity in a pure fashion.¹⁹

II. THE MAYFLOWER COMPACT OF 1620

No longer comfortable with the situation in the Netherlands, and having begun to irritate the generally amenable Dutch, the Pilgrims prepared for a voyage to the New World. They had nowhere to settle legally unless either the Virginia Company of London or the Virginia Company of Plymouth (England)—with the latter soon to be reorganized as the Council for New England—authorized it.²⁰ The Pilgrims’ Separatist orientation made their quest for a patent difficult. In 1619 the Virginia Company of London finally issued a patent to John Wyncop, a minister in the household of the Countess of Lincoln (patents and compacts were granted in a personal name). Wyncop soon died, however, and the process commenced anew.

The next patent secured for the Pilgrims’ voyage to America was one for a particular plantation—in other words, a franchise under the jurisdiction of an official governing body (in this case, Jamestown) that possessed some independent rights—granted by the Virginia Company of London to John Peirce and associates on February 2, 1619/20.²¹ The text of the first Peirce Patent has not survived, but like other patents for particular plantations it probably granted permission to attempt a settlement within the jurisdiction of the official governing body under whom it was franchised (again, Jamestown).

The Pilgrims who voyaged to America in 1620 expected to settle near the mouth of the Hudson River but, “whether by accident or design,”²² they landed near Cape Cod instead, which was outside the area where the Peirce Patent allowed them to plant and which made their settlement illegal. Because the Pilgrims had no legal document authorizing them to settle where they landed, they fashioned the Mayflower Compact, which has been characterized by historians as “the first

¹⁹ WILLISON, *supra* note 6, at 318. Tocqueville famously noted that never was there an institution more like a medieval village than an American township because both were highly regulated as to who could reside in them. For example, the Salic Law mandated that no one could remain in a settlement without the unanimous consent of the inhabitants, and that the person would be required to remain a year and a day before he could live there permanently. *See, e.g.*, SUSAN REYNOLDS, KINGDOMS AND COMMUNITIES IN WESTERN EUROPE, 900-1300 at 114 (2d ed., 1997).

²⁰ The background details of the planting of Plymouth Colony have been widely chronicled. *See, e.g.*, LANGDON, *supra* note 3; PHILBRICK, *supra* note 1. The Virginia Company of London had jurisdiction over an area from the Carolinas to northern New Jersey. The Virginia Company of Plymouth had jurisdiction over the area from southern New Jersey to Maine. Some overlap existed.

²¹ The English American colonies did not adopt the Gregorian calendar until 1752, and citations in this article to pre-1752 Julian calendar dates between January 1 and March 25 reference both the Gregorian and Julian years.

²² THE LAWS OF THE PILGRIMS (A FACSIMILE EDITION OF THE BOOK OF THE GENERAL LAWS OF THE INHABITANTS OF THE JURISDICTION OF NEW-PLYMOUTH, 1672 & 1685) viii (editor’s introduction) (John D. Cushing ed., 1977); *See generally* Samuel Eliot Morison, *The Mayflower’s Destination, and the Pilgrim Fathers’ Patents*, 37 PUB’S OF THE COL. SOC’Y OF MASS. 387 (1959).

voluntary constitutional instrument to be framed in North America”²³ and “a document that ranks with the Declaration of Independence and the United States Constitution as a seminal American text.”²⁴ But it had no legal force as recognized by any outside authority. That said, the Mayflower Compact illuminates that Congregationalism in the “pure” form the Pilgrims envisioned was the animating principle of Plymouth Colony and that the Pilgrims planned to use law to effectuate that animating principle.²⁵ The Mayflower Compact proclaimed, in pertinent part, that the Pilgrims had “undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of *Virginia*” and “by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony.”²⁶

The settlers who voyaged on the *Mayflower* numbered 132: 102 passengers and 30 crew. Forty-four were “committed” Pilgrims; and of those 44, 18 were men, 11 were women, and 15 were children.²⁷ Forty-one persons signed the Mayflower Compact. When the *Mayflower* returned to England in April of 1621, the Pilgrims sent back a request for a patent to remain where they were. Their request was granted later that same year by the Council for New England in what has become known as the “Second Peirce Patent,” which was valid for seven years.²⁸ If at the end of those seven years the Pilgrims’ settlement was successful, then a new permanent patent would be issued. The settlers were empowered to make laws and govern themselves, as long as they did so in accordance with English custom and usage.

In 1628, after satisfying the seven-year requirement, the Pilgrims applied for a permanent patent from the Council for New England. That patent, commonly known as the “Warwick Patent,” was granted in 1629/30 to “William Bradford and his associates.”²⁹ Bradford initially had tried, but failed, to secure a royal charter for Plymouth.³⁰ The Warwick Patent repeated the animating principle of the colony: “that they may bee encouraged the better to proceed in soe pious a worke which may

²³ Cushing, *supra* note 22, at ix (editor’s introduction).

²⁴ PHILBRICK, *supra* note 1, at 42.

²⁵ Montesquieu famously argued that each form of government has an animating principle—a set of “human passions that set it in motion”—and that each form can be corrupted if its animating principle is undermined. CHARLES DE MONTESQUIEU, *THE SPIRIT OF THE LAWS* 21, 30 [1748] (Anne M. Cohler et al. ed. & trans., 1989).

²⁶ The Mayflower Compact of 1620, http://avalon.law.yale.edu/17th_century/mayflower.asp. The Mayflower Compact is reprinted in many other places. *See, e.g.*, *THE COMPACT WITH THE CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH: TOGETHER WITH THE CHARTER OF THE COUNCIL AT PLYMOUTH, AND AN APPENDIX, CONTAINING THE ARTICLES OF CONFEDERATION OF THE UNITED COLONIES OF NEW ENGLAND, AND OTHER VALUABLE DOCUMENTS 19-20* (William Brigham ed., 1836) (hereinafter cited as “PLYMOUTH COLONY LAWS”). The original has been long lost. The reprinted language is from Bradford’s manuscript.

²⁷ *See, e.g.*, BAILYN, *supra* note 15, at 329.

²⁸ The Second Peirce Patent is reprinted at, among other places, <http://www.histarch.illinois.edu/plymouth/piercepat.html>.

²⁹ *See* Charter of the Colony of New Plymouth Granted to William Bradford and His Associates, http://avalon.law.yale.edu/17th_century/mass02.asp. The Warwick Patent is also reprinted in, among other places, *PLYMOUTH COLONY LAWS*, *supra* note 26, at 21-27.

³⁰ *See, e.g.*, Cushing, *supra* note 22, at x (editor’s introduction).

especially tend to the propagation of religion.”³¹ In 1640/1 Bradford relinquished full interest in the Warwick Patent to “the Freeman of this Corporacon of New Plymouth.”³²

III. THE CODE OF 1636

In 1636 Plymouth’s general court appointed a committee of eight men to prepare, in conjunction with the governor and the assistants, a code of laws for Plymouth.³³ The committee’s charge was “to peruse all the laws, orders and constitučons of the plantačons within this government that so those that are still fitting might be established; those that time hath made unnecessary might be rejected; and others that were wanting might be prepared, that so the next court they might be established.”³⁴ Prior to the committee’s formation Plymouth’s laws tended to be improvised: “A few scattered enactments had been placed on the books, but for the most part the Pilgrims used the Scriptures, the Mosaic Code in particular, as legal writ.”³⁵ For example, on December 17, 1623 the first law enacted in the colony decreed that “all criminal facts, and also all matters of trespasses and debts between man and man,” should be tried by a jury.³⁶ Other early laws, such as March 29, 1626 laws against exporting timber, “corne, beans, or pease” and prohibiting local craftsmen from working for strangers, were adopted to help ensure the preservation of the fledgling colony.³⁷ Religious references were strewn throughout the early laws. A 1632/3 law about the need to fortify the fort, for instance, was justified on the basis that “christian wisdom teacheth us to depend upon God in the use of all good meanes for our safety.”³⁸

A leading historian of Plymouth’s legal heritage called the code of laws that was enacted in Plymouth on November 15, 1636 “the first American constitution”³⁹ because that code was more than a mere compilation and revision of existing laws: it articulated the powers and form of the colony’s government and contained a bill of rights. As such, “the 1636 code established a constitution of the type that was to become familiar in America after the Revolution.”⁴⁰

The 1636 code addressed basic problems common to all communities: crime, inheritance, marriage, the regulation of livestock, and the like. But Plymouth’s religious foundations were also apparent in the code. Not only was

³¹ Charter of the Colony of New Plymouth Granted to William Bradford and His Associates, *supra* note 29.

³² William Bradford, &c. Surrender of the Patent of Plymouth Colony to the Freeman, http://avalon.law.yale.edu/17th_century/mass05.asp.

³³ See PLYMOUTH COLONY LAWS, *supra* note 26, at 35-36.

³⁴ *Id.* at 36.

³⁵ WILLISON, *supra* note 6, at 317.

³⁶ PLYMOUTH COLONY LAWS, *supra* note 26, at 28.

³⁷ See *id.* at 28-29.

³⁸ *Id.* at 31.

³⁹ Haskins, *The Legal Heritage of Plymouth Colony*, *supra* note 3, at 848.

⁴⁰ *Id.* at 849. Some scholars disagree with Haskins about the primacy of Plymouth Colony’s laws. For example, Edgar J. McManus insists that Massachusetts Bay Colony’s laws were more influential. See EDGAR J. McMANUS, LAW AND LIBERTY IN EARLY NEW ENGLAND: CRIMINAL JUSTICE AND DUE PROCESS, 1620-1692 at 16-17 (1993).

seemingly everyone in the colony—from the governor to “any residing within the government”⁴¹—expected to swear an oath that concluded with “So help you God who is the God of truth and punisher of falsehood,”⁴² government officials (assistants and constables, in particular) who were required to make decisions involving individual persons were instructed to exercise the “wisdom” and “discretion” with which God had endowed them.⁴³ “Holy days” were to be designated periodically by the governor and the assistants for purposes of “humiliation” and “thanksgiving.”⁴⁴

The 1636 code’s use of the Bible in crafting provisions related to crime illustrated “the continuing importance of the religious ideals which had inspired the founding of the colony.”⁴⁵ The code likewise reflected the Pilgrims’ concern about the regulation of personal behavior as a manifestation of living a Godly life. Detailed provisions were included in the 1636 code and subsequent laws about drinking, gaming, idleness, lying, swearing, and related vices. Drunkenness, for example, was defined in a 1646 law with particular specificity: “And by drunkennesse is understood a person that either lisp or falters in his speech by reason of over much drink, or that staggers in his going or that vomitts by reason of excessive drinking, or cannot follow his calling.”⁴⁶ The 1636 code itself included a catch-all provision authorizing grand juries to inquire “into the abuses & breaches of such wholesome lawes & ordinances as tend to the preservaçon of the peace and good of the subject.”⁴⁷

The “rudimentary” declaration of rights contained in the code of 1636 was “the first enactment of its kind in America.”⁴⁸ The preamble guaranteed to Plymouth’s inhabitants the rights and liberties of Englishmen.⁴⁹ The following provisions were then interspersed throughout the code:

[N]o imposiçon law or ordnance be made or imposed upon or by ourselves or others at present or to come but such as shall be made or imposed by consent according to the free liberties of the state and Kingdome of Engl. and no otherwise.⁵⁰

That all trialls whether capitall or between man & man be tryed by Jewryes according to the presidents of the law of Engl. as neer as may be.⁵¹

That the lawes and ordnances of the Colony & for the government of the same be made onely by the freemen of the Corporaçon and no other, provided that in such rates & taxaçons as are or shall be laid upon the

⁴¹ PLYMOUTH COLONY LAWS, *supra* note 26, at 40.

⁴² *See, e.g., id.* at 40.

⁴³ *Id.*

⁴⁴ *Id.* at 48.

⁴⁵ Haskins, *The Legal Heritage of Plymouth Colony*, *supra* note 3, at 851.

⁴⁶ PLYMOUTH COLONY LAWS, *supra* note 26, at 84.

⁴⁷ *Id.* at 41.

⁴⁸ Haskins, *The Legal Heritage of Plymouth Colony*, *supra* note 3, at 854.

⁴⁹ *See id.*

⁵⁰ PLYMOUTH COLONY LAWS, *supra* note 26, at 36.

⁵¹ *Id.* at 42.

whole they be without partiality so as the freeman be not spared for his freedome, but the levy be equall. And in case any man finde himselfe aggrieved, that his complaint may be heard & redressed if there be due cause.⁵²

Notably, religious freedom in the modern conception of that ideal was not among the identified liberties because the Pilgrims were committed to the perfection of their religious faith rather than to toleration of different faiths. Concisely put, the Pilgrims believed that the inhabitants of Plymouth Colony should be free to worship *as God ordained*. Numerous laws enacted after the 1636 code went into effect made this fact abundantly clear. For example, a March 3, 1638/9 law forbade “p’fane swearing and cursing,”⁵³ while a law enacted at the June 10, 1650 general court session demonstrated that the Pilgrims’ Separatist orientation was the only acceptable religious perspective in the colony. That law decreed:

That forasmuch as there risen up amongst us many scandalus practices which are likely to prove destructive to our churches and common peace; That whosoever shall heerfter set up any churches or publicke meetings diverse from those allreddy set up and approved, without the consent and approbacion of the government or shall continew any otherwise set up without concent as aforesaid shalbe suspended from having any voyce in towne meetings and presented to the next generall Court to receive such punishment as the Court shall think meet to inflict.⁵⁴

Laws were also enacted in the June 10, 1650 general court session against “villifying the ministry” and profaning the Lord’s Day.⁵⁵

The June 6, 1651 general court session opened with an additional law enforcing Plymouth’s animating principle that took the form of imposing a ten shillings fine on any person who failed to attend church or who “doe assemble themselves upon any pretence whatsoever in any way contrary to God and the allowance of the Government.”⁵⁶ Persons who violated that law in “any lazey slothfull or profane way” were subject to an additional ten shillings fine and to being “whipte.”⁵⁷

The first law passed during the June 5, 1655 legislative session reinforced Plymouth’s animating principle: “That such as shall deney the Scriptures to bee a rule of life shall receive Corporall punishment according to the discretion of the Majestrate soe it shall not extend to life or limb.”⁵⁸ This same legislative session saw laws enacted that forbade a minister from vacating his congregation for lack of pay unless and until the magistrates permitted it and that authorized the magistrates to compel the congregation to pay the minister, if necessary.⁵⁹

⁵² *Id.*

⁵³ *Id.* at 65.

⁵⁴ *Id.* at 92.

⁵⁵ PLYMOUTH COLONY LAWS, *supra* note 26, at 92.

⁵⁶ *Id.* at 93.

⁵⁷ *Id.*

⁵⁸ *Id.* at 99.

⁵⁹ *See id.*

A law was enacted during the June 6, 1656 legislative session prohibiting “Indian[s] from firing guns on the Sabbath or answere it at their prill.”⁶⁰ The initial law enacted in the June 3, 1657 session required each town in the colony to select four men to assess taxes to support “an able Godly Teaching Minister which is approved by this Government.”⁶¹ The 1657 session also forbade any inhabitant of Plymouth from bringing “any quaker rantor or other notorious heritiques” into the colony.⁶² A related law barred any inhabitant of “this Gov’tment” from “entertain[ing]” a Quaker because, the law asserted, Quaker “doctrine and practices manifestly tends to the subversion of the fundamentalls of Christian Religion Church order and the civill peace of this Gov’tment.”⁶³ The penalty was five pounds per violation or “bee whipt.”⁶⁴ The “rantor or quaker” was to be jailed until he reimbursed the costs of his imprisonment and extradition.⁶⁵ The anti-Quaker law concluded by decreeing that no Quaker meetings were permitted anywhere in Plymouth “under the penaltie of forty shillings a time for every speaker and forty shillings a time for the owner of the place that pmits them soe to meete together.”⁶⁶ The “object” of Plymouth’s general court was clear: “the glory of God” and “the free exercise of the leave and liberty of our consciences”—but, again, not liberty of conscience for those holding different religious beliefs—“in the publick worship & service of God wherever we should settle.”⁶⁷

IV. THE REVISED CODE OF 1658

On September 29, 1658 Plymouth’s general court published a “revised” code of laws.⁶⁸ The revised code is more accurately characterized as a “collection” of laws “scattered through voluminous records” with “such amendments as the community demanded.”⁶⁹ The following epigraph appeared at the bottom of the revised code’s title page: “Bee subject to every Ordinance of Man for the Lords sake. 1 Peter 2cond 13th.”⁷⁰

The revised code opened with an “Address” by the general court to the inhabitants of Plymouth Colony that reaffirmed the government’s commitment to Plymouth’s animating principle and to the use of law to effectuate the animating principle: “God gave them right judgements and true Lawes ... grounded on Principles of Morall Equitie, as that all men Christians espetially, ought alwaies to have an eye therunto, in the framing of theire Politique Constitutions ... which hath its Originall from the Law of God.”⁷¹ The general court’s Address reminded the

⁶⁰ PLYMOUTH COLONY LAWS, *supra* note 26, at 100.

⁶¹ *Id.* at 101-02.

⁶² *Id.* at 102-03.

⁶³ *Id.* at 103.

⁶⁴ *Id.*

⁶⁵ PLYMOUTH COLONY LAWS, *supra* note 26, at 103.

⁶⁶ *Id.* at 104.

⁶⁷ *Id.* at 49, 50.

⁶⁸ *Id.* at 105.

⁶⁹ *Id.* at ix. That part of the PLYMOUTH COLONY LAWS compiling the 1658 revised code included only new laws and existing laws that were materially altered. *See id.* at 121.

⁷⁰ PLYMOUTH COLONY LAWS, *supra* note 26, at 105.

⁷¹ *Id.* at 106.

inhabitants that “the Magistrate hath his power from God.”⁷² The Address closed with the passage that served as the epigraph that opened this article.

The revised laws themselves continued to reflect the general court’s commitment to the perfection of Plymouth Colony’s Christian faith. For example, persons convicted of adultery were to be “severely punished” by being whipped on two separate occasions: once in front of the convicting judicial body and a second time as “the Court shal order.”⁷³ The adulterer also was required to “weare two Capitall letters viz. A D. cut out in cloth and sowed on their uper most Garments on their arme and backe.”⁷⁴ Persons caught traveling on the “Lords day” were subject to a twenty-shilling fine or four hours in the stocks.⁷⁵

Harsh treatment against Quakers continued, in large part because of their perceived desire to “destroy” the existing religious order.⁷⁶ The general court decreed that October 21, 1658 was to be a day of fasting and humiliation to appease “Gods displeasure” that was manifested in, among ways, the “leting loose as a scourage vpon vs those freeing gangreinlike doctrines and psons commonly called Quakers.”⁷⁷ No “Quaker Rantor or any such corrupt pson” could be admitted as a freeman in the colony or vote in elections.⁷⁸ Persons who opposed “the good and wholsome laws” of the colony or who were “manifest opposers of the true worship of God” were also prohibited from being freemen.⁷⁹

Lastly, the importance of law in Plymouth Colony was manifested by the final enactment in the 1658 revised code: every town in the colony was required to possess a book of laws that would be read “openly” every year.⁸⁰

Laws continued to be enacted after the publication of the 1658 revised code reflecting Plymouth’s commitment to the Word of God rightly understood. For example, the June 7, 1659 general court session pressed ahead with the colony’s harsh treatment of Quakers by mandating the seizure of “Quakers bookes epistles or writings” found in the colony.⁸¹ The desire to rid the colony of Quakers was so great that the general court authorized the government to pay Quakers’ moving expenses, and any fines a Quaker incurred while residing in Plymouth would be forgiven if the Quaker left.⁸² Further, a law was passed that named specific freemen who were empowered to attend Quaker meetings for a short time “to endeavor to

⁷² *Id.* at 107.

⁷³ *Id.* at 113. Unlike in Massachusetts Bay Colony, adultery was never a capital crime in Plymouth Colony.

⁷⁴ *Id.*

⁷⁵ PLYMOUTH COLONY LAWS, *supra* note 26, at 113.

⁷⁶ MCMANUS, *supra* note 40, at 184.

⁷⁷ 3 RECORDS OF THE COLONY OF NEW PLYMOUTH IN NEW ENGLAND 151 (Nathaniel B. Shurtleff ed., 1855) (hereinafter cited as “PCR”). Shurtleff edited volumes 1-8. David Pulsifer edited volumes 9-12.

⁷⁸ PLYMOUTH COLONY LAWS, *supra* note 26, at 113-14; *see also id.* at 120 (calling for the erection of a “work-house” for Quakers and others who endeavored to “subvert civill state” and “pull downe all churches and ordinances of God to thrust us out of the ways of God”).

⁷⁹ *Id.* at 113-14.

⁸⁰ *Id.* at 121.

⁸¹ *Id.* at 122.

⁸² *See id.*

reduce them from the error of their ways.”⁸³ Interestingly, the 1651 law punishing absence from church on Sunday was replaced in 1659 with a less severe law that omitted the possibility of whipping the offender.⁸⁴

The legislative assault on Quakers continued in the June 10, 1660 general court session. That session opened by reiterating that Quaker “doctrine and practices manifestly tends to the subversion of the fundamentals of Christian religion Church order and the Civill peace of this Government.”⁸⁵ Laws were enacted during the session that prohibited any inhabitant from “entertain[ing]” a Quaker under penalty of a five pound fine and whipping, that required Quakers apprehended in the colony to be committed to “Jayle” and then to be “publicly whipt” if they refused to leave, that fined anyone who hosted or permitted a Quaker meeting, that authorized inhabitants to apprehend Quakers, and that forbade inhabitants from furnishing a horse to a Quaker because a horse allowed a Quaker “the more speedy passage from place to place to the poisoning of the Inhabitants with their cursed Tenetts” and a horse also helped a Quaker avoid apprehension.⁸⁶ Bringing a Quaker into Plymouth was likewise prohibited.⁸⁷

The focus on Quakers continued in the June 4, 1661 general court session. Marshals and constables were instructed to whip Quakers, “or cause them to be whipt with rodde; soe it exceed not fifteen stripes.”⁸⁸ Quaker meetings continued to be forbidden, with the penalty increased to forty shilling or a whipping for anyone who permitted one.⁸⁹ The owner of a house that hosted a Quaker meeting was subject to a five pound fine and to being “publicly whipt.”⁹⁰ Specific freemen were again authorized to attend Quaker meetings to try to persuade Quakers of the errors of their ways and “Marshall Gorge Barlow” was empowered to arrest Quakers “in any pte of this Jurisdiction.”⁹¹

The 1662 general court session was silent about Quakers. Protecting the colony’s religious foundation remained the primary purpose of the law, however. Laws were enacted that recommended that a part of every whale “cast” on shore be appropriated for the support of the ministry and “ordinary keepers” were prohibited from selling wine or liquor on the “Lords day.”⁹² Alleged violations of previously enacted laws about public worship were to be “carefully looked into and pvented.”⁹³

This pattern continued in the 1663 general court session. For example, a law was passed that declared that no new settlement could be established in Plymouth

⁸³ PLYMOUTH COLONY LAWS, *supra* note 26, at 125.

⁸⁴ *See id.* at 123.

⁸⁵ *Id.* at 125-26.

⁸⁶ *Id.* at 126-27. The laws about entertaining Quakers and hosting Quaker meetings were repealed in 1661. Another law imposed a fine if the “overseer” of any military squadron in the colony failed to present a list of soldiers who did not bring their “armes” to church on Sunday. *Id.* at 128.

⁸⁷ *See id.* at 127.

⁸⁸ PLYMOUTH COLONY LAWS, *supra* note 26, at 130.

⁸⁹ *See id.*

⁹⁰ *Id.* at 130-31.

⁹¹ *Id.* at 130. As hostile to Quakers as Plymouth’s laws plainly were, no Quakers were sentenced to death in the colony. *See* EDWIN POWERS, CRIME AND PUNISHMENT IN EARLY MASSACHUSETTS, 1620-1692: A DOCUMENTARY HISTORY 330 (1966).

⁹² PLYMOUTH COLONY LAWS, *supra* note 26, at 135, 137.

⁹³ *Id.* at 138.

Colony “without a competent companie or number of Inhabitants as the Court shall judge meet to begin a societie as may in a measure carry on thinges in a satisfactory way both to Civill and Religious respects.”⁹⁴ Existing settlements such as “Saconeesett” and “Acushenett” that had already been established without a sufficient number of inhabitants were required to raise funds to “procure an able Godly man for the dispensing of Gods word amongst them.”⁹⁵ The general court expressed a willingness to assist any “plantation” in the colony in raising funds to ensure “the minnistry of the word of God amongst them.”⁹⁶

The June 8, 1664 general court session focused on trying to convince the crown to confirm Plymouth’s patent and on a boundary dispute with Rhode Island.⁹⁷ Effectuating the Pilgrims’ founding purpose returned to the general court’s agenda in 1665: anyone who failed to attend church on Sunday by “jesting sleeping or the like” was to be “sett” in the “stockes.”⁹⁸ The June 7, 1666 session saw the general court taking “notice of great neglect of frequenting the publicke worship of God upon the Lords day” and empowering the “Celectmen in each Towneship” to require “an account of them” and “returne their names to the Court” if they failed to provide a satisfactory explanation.⁹⁹

The July 2, 1667 general court session enacted laws establishing a procedure for distressed estates of ministers and encouraging Plymouth’s townships to appropriate funds “towards defraying of the charge of the History of Gods dispensations towards N.E. in generall in speciall towards this collonie.”¹⁰⁰ No laws about religion were enacted in 1668. The 1669 general court session reiterated the requirement that constables were to “take notice” of persons who “sleep or play about the meeting house in times of the publicke worship of God on the Lords day.”¹⁰¹ Persons who rode in an “unesessary violent” fashion were to have their names presented to the general court.¹⁰²

The animating principle was again the dominant concern during the 1670 general court session. The 1657 law that had been dedicated to raising ministers’ salaries was amended to permit the general court to appoint two people in each town to raise funds for “their minnisters maintainance.”¹⁰³ A related law specified that in towns where there was no resident minister, the general court could levy a tax “for building of a meeting house or for incurragement of a minnester to labour amongst them or other such pious uses as the Court may improve it in their good.”¹⁰⁴ Another law mandated that the names of any persons who “slothfully doe lurke att hom or gett together in companie to neglect the publicke worship of

⁹⁴ *Id.* at 142.

⁹⁵ *Id.* at 142-43.

⁹⁶ *Id.* at 143.

⁹⁷ *See, e.g.,* PLYMOUTH COLONY LAWS, *supra* note 26, at 144-45.

⁹⁸ *Id.* at 147.

⁹⁹ *Id.* at 150. The 1666 session also repealed the magistrates’ exemption from taxes. *See id.* at 151.

¹⁰⁰ *Id.* at 152, 153.

¹⁰¹ *Id.* at 158.

¹⁰² PLYMOUTH COLONY LAWS, *supra* note 26, at 158. Another law specified that recourse to the laws of England was appropriate when “there is noe other law provided by this Court more suitable to our Condition.” *Id.* at 159.

¹⁰³ *Id.* at 159.

¹⁰⁴ *Id.* at 160.

God or prophane the Lords day” be submitted to the general court.¹⁰⁵ The 1670 session also found the general court appointing a committee to once again revise Plymouth’s laws.¹⁰⁶

V. THE REVISED CODE OF 1671

The 1671 general court session provided a succession plan if “God should take away the Gov^r by death or otherwise deprive of us his healp”: the eldest magistrate was to complete the governor’s one year term.¹⁰⁷ In addition, the revised code authorized in 1670 was completed and printed. The epigraph on the title page once again read: “Be subject to every Ordinance of Man for the Lord’s sake. 1 PET. 2. 13.”¹⁰⁸ Chapter I of the 1671 revised code contained nine “Generall Fundamentals” that were declared “inviolable.”¹⁰⁹ Fundamental 4 specified that no inhabitant of the colony could be made to suffer other than through “some express Law of the General Court of this Colony, the known Law of God, or the good and equitable Laws of our Nation suitable for us.”¹¹⁰ Fundamental 8 was an ode to the animating principle itself:

8. That whereas the great known end of the first comers, in the year of our Lord, 1620, leaving their Native Country, and all that was dear to them there; transporting themselves over the vast Ocean into this remote waste Wilderness, and therein willingly conflicting with Dangers, Losses, Hardships and Distresses sore and not a few; WAS, that without offence, they under the protection of their Native Prince, together with the enlargements of his Majesties Dominions, might with the liberty of a good conscience, enjoy the pure Scriptural Worship of God, without the mixture of Humane Inventions and Impositions: And that there children after them might walk in the Holy wayes of the Lord. ... And whereas by the good Hand of our God upon us, many others since the first comers are for the same pious end come unto us, and sundry others rise up amongst us, desirous with all good conscience to walk in the Faith and order of the Gospel; whereby there are many churches gathered amongst us walking according thereunto. ... It is therefore for the Honour of God and the propagation of Religion, and the continued welfare of the Colony Ordered by this Court and the Authority thereof, That the said Churches already gathered, or that shall hereafter be orderly gathered, may and shall from time to time by this Government be protected and encouraged, in their peaceable and orderly walking, and the Faithful, Able, Orthodox, Teaching Ministry thereof, duely encouraged and provided for; together with such other Orthodox able Dispensers of the Gospel, which shall or

¹⁰⁵ *Id.* at 161.

¹⁰⁶ *See id.* at 163.

¹⁰⁷ PLYMOUTH COLONY LAWS, *supra* note 26, at 164.

¹⁰⁸ *Id.* at 239.

¹⁰⁹ *Id.* at 241, 243.

¹¹⁰ *Id.* at 241.

may be placed in any Township in this Government, where there is or may be defect of Church Order.¹¹¹

Chapter II of the 1671 revised code memorialized the capital laws. Many traced directly to the laws of God. The first two capital laws, idolatry and blasphemy, cited Bible verses to justify the imposition of the death penalty.¹¹² The other capital offenses, many of which also found support in the Bible, were treason, conspiring against the government of the colony or a particular town, willful murder, manslaughter, murder by guile or poisoning, witchcraft, bestiality, sodomy, bearing false witness, man-stealing, cursing or smiting one's father or mother, disobedience by a child, rape, and willful burning of a house or ship.¹¹³

Chapter III covered criminal laws. Because the revised code was a compilation of existing laws, many of the criminal laws that were intertwined with the animating principle were mentioned above: adultery, fornication, carnal copulation after contract, profane swearing, profanation of the Lord's day, missing church services, speaking contemptuously about the Bible or a minister, heresy, and smoking on Sunday.¹¹⁴ Robbery on the Sabbath was to be punished by branding the offender on the forehead.¹¹⁵ A person committing a "dangerous Error or Heresie" about the "Christian Faith or Religion" could be banished.¹¹⁶ Plymouth's inhabitants also had a "duty to restrain or provide against such as may bring in dangerous Errors or Heresies, tending to corrupt or destroy the souls of men."¹¹⁷

Chapter IV catalogued actions at law,¹¹⁸ Chapter V canvassed the various courts in Plymouth Colony,¹¹⁹ and specified that an inhabitant needed to be "Orthodox in the Fundamentals of Religion" to be admitted as a "freeman" of the colony and to vote in town meetings. "Apostates from the Fundamentals of Religion" were to be disenfranchised.¹²⁰

Chapter VI addressed presentments, indictments, jurors, and juries;¹²¹ and Chapter VII covered constables.¹²² Both chapters touched upon the animating principle. For example, inhabitants were reminded in Chapter VI that law-breaking "tend to the hurt and detriment of Religion, Civility, Peace, society or neighborhood,"¹²³ while Chapter VII empowered constables to "Apprehend without Warrant" inhabitants engaged in "Sabbath-breaking," among other offenses,¹²⁴ and concluded by requiring both constables and town selectmen to "diligently look after such as sleep or play about the Meeting house, in times of the public Worship

¹¹¹ *Id.* at 242-43.

¹¹² *See* PLYMOUTH COLONY LAWS, *supra* note 26, at 243-44.

¹¹³ *See id.* at 244-45.

¹¹⁴ *See id.* at 245-52.

¹¹⁵ *See id.* at 246.

¹¹⁶ *Id.* at 248.

¹¹⁷ PLYMOUTH COLONY LAWS, *supra* note 26, at 248.

¹¹⁸ *See id.* at 252-56.

¹¹⁹ *See id.* at 256-62.

¹²⁰ *Id.* at 258.

¹²¹ *See id.* at 262-63.

¹²² *See* PLYMOUTH COLONY LAWS, *supra* note 26, at 264-68.

¹²³ *Id.* at 263.

¹²⁴ *Id.* at 266.

of God on the Lords-day ... as also such as practise unnecessary violent Riding on the Lords-day.”¹²⁵

Chapter VIII concerned ministers’ maintenance; the education of children; the misspending of time; and the registration of marriages, births, and burials.¹²⁶ The section on the maintenance of ministers opened by noting “the great prejudice to the souls” of the inhabitants of any town that did not have a minister and decreed that “the whole, both Church and Town are mutually engaged to support the same.”¹²⁷ Taxes were to be levied in each town to pay the minister.¹²⁸ If a town failed to levy the tax, the general court would levy it for them.¹²⁹ The lack of religious liberty in the modern conception of that ideal was manifested again by the concluding paragraph of the section on minister maintenance where it was decreed that “no publick meeting” could be held without the general court’s approval in order to ensure orthodoxy in “the Fundamentals of Religion.”¹³⁰ The section on the education of children emphasized that children needed to be able to read so that they were “able duely to read the Scriptures” and “to understand the main Grounds and Principles of Christian Religion, necessary to Salvation.”¹³¹

Chapter IX was dedicated to the day-to-day operation of the towns,¹³² and Chapter X regulated lands, inheritance, and wills.¹³³ Chapter XI addressed fishing and fish,¹³⁴ Chapter XII covered military affairs, and included a provision providing for lifetime support of any soldier injured during military service.¹³⁵ Chapter XIII addressed ordinaries and forbade the selling of alcohol on the Sabbath.¹³⁶ Chapter XIV prohibited “Indians” from profaning the Sabbath by “Hunting, Fishing, Fowling, Travailing with burdens, or by doing any servile work thereupon.”¹³⁷ Chapter XV focused on horses.¹³⁸

Laws continued to be enacted after the publication of the 1671 revised code. In the 1672 legislative session the general court recommended that the towns contribute financially to Harvard College “from whence through the blessings of God issued many usefull persons for publique service in church and Comonwealth.”¹³⁹ The pattern of law reform persisted in 1673 with the general court recommending that a committee consolidate the colony’s laws into “one vollume.”¹⁴⁰ An additional law was enacted in 1674 once again prohibiting ordinary keepers from serving alcohol on the Sabbath.¹⁴¹ In 1675 the general court decreed that a church be erected in each

¹²⁵ *Id.* at 268.

¹²⁶ *See id.* at 268-73.

¹²⁷ PLYMOUTH COLONY LAWS, *supra* note 26, at 269.

¹²⁸ *See id.*

¹²⁹ *See id.* at 270.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *See* PLYMOUTH COLONY LAWS, *supra* note 26, at 273-78.

¹³³ *See id.* at 279-82.

¹³⁴ *See id.* at 282-84.

¹³⁵ *See id.* at 285, 286.

¹³⁶ *See id.* at 286, 287.

¹³⁷ PLYMOUTH COLONY LAWS, *supra* note 26 at 288.

¹³⁸ *See id.* at 291-93.

¹³⁹ *Id.* at 167.

¹⁴⁰ *Id.* at 170.

¹⁴¹ *See id.* at 171.

“Towne of this Gov^rment for the Towne comfortably to meet in to worship God.”¹⁴² If this was not done, the governor and magistrates were empowered to appoint a “pson or psons” to build the church and charge the inhabitants of the particular town for doing so.¹⁴³

The November 4, 1676 general court session—a session convened shortly after the March 12 attack on Plymouth by Native Americans during King Philip’s War (1675-1678)—devoted a lot of attention to protecting Plymouth from “Indians.” For example, selling or giving guns to Indians was punishable by death.¹⁴⁴ The June 5, 1677 session returned the focus to the animating principle. More specifically, the general court expressed concern about the continuing problem of “the raiseing of a comfortable and certaine maintenance for the minnesters of the Gospell in this Collonie” and centralized the compensation system as a way to try to solve the problem.¹⁴⁵ The 1678 session decreed that towns unable to financially support a minister were to be assisted by the general court.¹⁴⁶ A related law mandated that a church be “erected finished repaired and enlarged as there shalbe need” in every town in Plymouth.¹⁴⁷ Inhabitants who failed to take the oath of fidelity were prohibited from voting in town meetings because they “doth much obstruct the carrying on of religion in the publicke weale” and “intruders” in the colony were to be warned to leave so as to prevent “prophanes increasing in the Collonie which is soe provoakeing to God and threatening to bringe Judgment upon us.”¹⁴⁸

The 1679 and 1680 general court sessions enacted no legislation relating to the animating principle, and the 1681 session passed a minor law requiring that one-quarter of every military company bring their arms to meetings on Sunday.¹⁴⁹ The animating principle was front and center during the July 7, 1682 session: no one was allowed to “attend servile worke or labour or any sports” on days “appointed by the Court for humilliation by fasting and prayer or for publicke Thanksgivieng,” and no one was permitted to travel on Sunday without a “Tickett.”¹⁵⁰

The 1683 and 1684 general court sessions focused on non-religious matters such as military defense of the colony and the repair of roads.¹⁵¹ The general court in 1685 ordered the town of Dartmouth to raise twenty pounds “for the encouragem^t of som to preach the word of God among them.”¹⁵² In 1685 the laws were again revised and printed.¹⁵³ The 1685 revised code did not differ materially from the 1671 edition. Courts of selectmen were empowered to convict and punish persons for “Sabbath-breaking” and “Indians” were not allowed to “*Powwow* or perform outward Worship to the Devil or other false God” or “resort to any English house on the Lords day.”¹⁵⁴

¹⁴² PLYMOUTH COLONY LAWS, *supra* note 26, at 175.

¹⁴³ *Id.* at 175-76.

¹⁴⁴ *See id.* at 178.

¹⁴⁵ *Id.* at 186.

¹⁴⁶ *See id.* at 187.

¹⁴⁷ PLYMOUTH COLONY LAWS, *supra* note 26, at 187.

¹⁴⁸ *Id.* at 188.

¹⁴⁹ *See id.* at 188-93.

¹⁵⁰ *Id.* at 199.

¹⁵¹ *See id.* at 201-06.

¹⁵² PLYMOUTH COLONY LAWS, *supra* note 26, at 206.

¹⁵³ *See id.* at 293-301.

¹⁵⁴ *Id.* at 298-99.

The importance of law in Plymouth Colony was again highlighted in the very first law enacted in the June 1686 general court session: “the Lawes that have been lately printed and having been ordered sometime since to be published in the severall Towns shall be of force and put in execution having respect to such additions and alterations as shall be made by this Court.”¹⁵⁵

Plymouth was a part of the Dominion of New England from the second half of 1686 to 1689 and there were no general court records for that time period. The June 1689 general court session celebrated the end of the “Illegall arbitrary power of S^r Edmond Andros” and the resumption of the “said former way of Government according to such wholesome Constitutions rules and orders as were here in force in June 1686.”¹⁵⁶ A day of thanksgiving was called.¹⁵⁷ The May 20, 1690 session ordered a “heartly thanks” on behalf of the colony “to the Honorable Sir Henry Ashurst & the reverend M^r Increase Mather & y^e reverend M^r Ichabod Wiswall for their care & service for y^e good of this Colony.”¹⁵⁸ Among their contributions was helping to ensure “that the Gospel be preached in the severall Towns.”¹⁵⁹

VI. CONFEDERATION WITH PURITAN COLONIES AND MISCELLANEOUS LAWS

The animating principle was reflected in non-statutory laws too. On May 29, 1643, for example, Plymouth entered into a confederation with the Puritan colonies in New England—Massachusetts Bay, Connecticut, and New Haven—for the purpose of mutual defense.¹⁶⁰ The Articles of Confederation opened by proclaiming that the Gospel rightly understood was the animating principle of all four of the colonies: “Whereas wee all came into these parts of America with one and the same end and ayme namely to advaunce the Kingdome of our Lord Jesus Christ and to enjoy the liberties of the Gospell in puritie with peace.”¹⁶¹ The Articles went on to emphasize that, although the “firme and perpetuall league of Friendship” was established for defensive purposes, the survival of the colonies was essential “for preseruing and propagatinge the truth and liberties of the Gospell.”¹⁶²

The Articles of Confederation was re-authorized in 1672 to recognize that “Newhauen” colony had become “one with Conecticott.”¹⁶³ The commitment to protecting the animating principle remained the rationale for the confederation.¹⁶⁴

Miscellaneous orders and instructions reflected the animating principle as well. For example, orders promulgated by Plymouth’s general court regulating the

¹⁵⁵ *Id.* at 207.

¹⁵⁶ *Id.* at 209. Edmund Andros was an English colonial administrator in North America. He served as governor of the Dominion of New England during most of its three-year existence. *See, e.g.*, MARY LOU LUSTIG, *THE IMPERIAL EXECUTIVE IN AMERICA: SIR EDMUND ANDROS, 1637–1714* (2002).

¹⁵⁷ *See* PLYMOUTH COLONY LAWS, *supra* note 26, at 211.

¹⁵⁸ *Id.* at 234.

¹⁵⁹ *Id.* at 235.

¹⁶⁰ *See, e.g., id.* at 307.

¹⁶¹ *Id.* at 308.

¹⁶² PLYMOUTH COLONY LAWS, *supra* note 26, at 309.

¹⁶³ *Id.* at 319.

¹⁶⁴ *See id.* at 314, 315.

remote plantation of “Kennebeck” included a list of capital crimes rooted in the Bible.¹⁶⁵ In 1643, the general court issued orders for the establishment of a military company in the “Towns of Plimouth Duxburrow and Marshfield” that mandated that military exercises were “alwayes begun and ended with prayer” and that there be “one procured to preach them a sermon once a yeare.”¹⁶⁶ On February 22, 1664/5 four propositions were presented to the general court of Plymouth Colony by “his Majesty’s Commissioners” on behalf of an increasingly skeptical king. Proposition 3 asked whether men and women of “orthodox opinions” could be “admitted to the Sacrament of the Lord’s supper, and their children to baptism.”¹⁶⁷ The general court’s carefully worded answer was yet another indication of the importance of effectuating Plymouth’s animating principle:

3. To the third we cannot but acknowledge it to be a high favour from God and from our sovereign, that we may enjoy our consciences in point of God’s worship; the main end of transplanting ourselves into these remote corners of the earth, and should most heartily rejoice, that all our neighbours so qualified as in that proposition, would adjoin themselves to our societies according to the order of the gospel, for enjoyment of the sacraments to themselves and theirs, but if, through different persuasions respecting church government, it cannot be obtained, we would not deny a liberty to any according the proposition, that are truly conscientious, although differing from us, especially where his majesty commands it, they maintaining an able preaching ministry for the carrying on of public sabbath worship, which, we do not doubt, is his Majesty’s intent, and withdraw not from paying their due proportions of maintenance of such ministers, as are orderly settled in the places where they live, until they have one of their own, and that in such places, as are capable of maintaining the worship of God in two distinct congregations. We being greatly encouraged by his Majesty’s gracious expressions in his letter to us, and your honour’s further assurance of his Royal purpose, to continue our liberties, that where places, by reason of our paucity and poverty, are incapable of two, it is not intended, that such congregations as are already in being should be rooted out, but their liberties preserved, there being other places to accommodate men of different persuasions in societies by themselves, which, by our known experience, tends most to the preservation of peace and charity.¹⁶⁸

¹⁶⁵ See, e.g., *id.* at 322, 324 (“Sollem Conversing or compacting with the Devil by way of Conjurecon or the like”; “Wilfull Prophaning of the Lords day”).

¹⁶⁶ *Id.* at 325.

¹⁶⁷ PLYMOUTH COLONY LAWS, *supra* note 26, at 327.

¹⁶⁸ *Id.* at 327-28. The Act of Surrender of the Great Charter of New England to His Majesty of 1635 also had noted that the purpose for founding the New England colonies was “the propagation and establishing of true Religion in those parts.” *Id.* at 333, 334.

In what is best referred to as a “legality” rather than a law, Plymouth, like other New England colonies, opened each year’s general court session with an annual election sermon.¹⁶⁹ The religious foundations of the colony were typically referenced.¹⁷⁰

VII. JUDICIAL DECISIONS

Plymouth Colony’s courts frequently punished sinful behavior.¹⁷¹ The available records suggest that sexual misconduct was the most common offense.¹⁷² Four cases involved sodomy. On August 6, 1637 John Allexander and Thomas Roberts were convicted of homosexual sodomy. Allexander, who had a prior conviction, was “censured by the Court to be seuerely whipped, and burnt in the shoulder wth a hot iron, and to be p[er]petually banished the gouernment of New Plymouth, and if he be at any tyme found wthin the same, to bee whipped out againe by the appoyntment of the next justič, &c, and so as oft as he shall be found wthin this gouernment.”¹⁷³ Roberts “was censured to be severely whipt” and enjoined from owning land.¹⁷⁴ On March 1, 1641/2 Governor Bradford, sitting as a magistrate, sentenced Edward Michell for one count of sodomy upon a man and for one upon a woman to be “presently whipt at Plymouth, at the publike place, and once more at Barnestable, in conveyent tyme, in the presence of Mr. Freeman and the committees of the said towne.”¹⁷⁵ Edward Preston, who was the man with whom Edward Michell had engaged in sodomy, was sentenced to the same punishment for the same offense and also for trying to sodomize a third man.¹⁷⁶ John Keene, the man who “resisted the temptation,” was “appoynted to stand by whilst Michell and Preston are whipt, though in some thing he was faulty.”¹⁷⁷

The Plymouth Colony records document two rape trials. In the first, Ambrose Fish was convicted by the court of magistrates in 1677 of raping Lydia Fish. His punishment was not the statutorily-decreed penalty of death, however. Instead, the court of magistrates “centansed” him to “suffer corporall punishment by being

¹⁶⁹ A “legality” is a “law” produced outside of a formal governmental setting that was generated from a widely-accepted repetitive social practice “within a specific locale, call the result rule, custom, tradition, folkway or pastime, popular belief or protest.” Christopher Tomlins, *Introduction to THE MANY LEGALITIES OF EARLY AMERICA* 1, 2-3 (Christopher L. Tomlins & Bruce H. Mann eds., 2001).

¹⁷⁰ See, e.g., R. W. G. Vail, *A Checklist of New England Election Sermons*, AM. ANTIQ. Soc’y 233, 259 (1936).

¹⁷¹ The organizational history of Plymouth’s courts is discussed in SCOTT DOUGLAS GERBER, *A DISTINCT JUDICIAL POWER: THE ORIGINS OF AN INDEPENDENT JUDICIARY, 1606-1787* at 69-72 (2011). Plymouth’s colonial court records are not complete, but they are nevertheless plentiful. See Powers, *supra* note 91, at 400. Powers describes Plymouth’s criminal justice records.

¹⁷² The Plymouth Colony records about sexual misconduct are collected at <http://www.histarch.illinois.edu/plymouth/Lauria2.html>. The Pilgrims believed that sex was to be enjoyed only in marriage to fulfill God’s plan for procreation.

¹⁷³ PCR, *supra* note 77, at 1:64.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 2:35.

¹⁷⁶ See *id.* at 2:35-36.

¹⁷⁷ *Id.* at 2:36.

publicly whipt att the post.”¹⁷⁸ Capital punishment was not imposed in the second of the rape cases, either. The court of magistrates noted in that 1682 case that the defendant was “but an Indian, and therefore in an incapacity to know the horribleness of the wickednes of this abominable act, with other cercomstances considered, hee was centanced by the Court to be seuerly whipt att the post and sent out of country.”¹⁷⁹

Four reported cases of buggery are memorialized in the Plymouth Colony records. In 1642 Thomas Graunger was sentenced to death by Governor Bradford for “buggery with a mare, a cowe, two goats, diuers sheepe, two calues, and a turkey.”¹⁸⁰ The next year John Walker was ordered by the governor to appear before the governor and assistants to answer the charge against him of “lying with a bitch,”¹⁸¹ and in 1665/6 William Honeywell was acquitted by the general court of the charge of “buggery with a beast.”¹⁸² The case that tied the charge most explicitly to the animating principle involved Thomas Saddeler. The 1681 indictment read as follows:

Thomas Saddeler, thou art indited by the name of Thomas Saddeler, of Portsmouth, on Road Iland, in the jurisdiction of Prouidence Plantations, in New England, in America, labourer, for that thou, haueing not the feare of God before, nor carrying with thee the dignity of humaine nature, but being seduced by the instigation of the diuill, on the third of September in this psent year, 1681, by force and armes, att Mount Hope, in the jurisdiction of New Plymouth, a certaine mare of a blackish couller then and therre being in a certaine obscure and woodey place, on Mount Hope aforesaid, neare the ferrey, then and there thou didst tye her head vnto a bush, and then and there, wickedly and most abominably, against thy humaine nature, with the same mare then and there being feloniously and carnally didest attempt, and the detestable sin of buggery then and there feloniously thou didest comitt and doe, to the great dishonor and contempt of Almighty God and of all mankind, and against the peace of our soû lord the Kinge, his crowne, and dignity, and against the lawes of God, his Ma^{tie}, and this jurisdiction.¹⁸³

Saddeler was convicted by a jury and sentenced to be whipped, sit in the gallows with a rope around his neck, and banished from the colony.¹⁸⁴

In 1641, Thomas Bray, a single man, and Anne Linceford, the wife of Thomas Linceford, were convicted of adultery and “vnclennesse,” for which they were publicly whipped and required to “weare (whilst they remayne in the goûment) two letters, viz[;] an AD for Adulterers, dāly, vpon the outeside of their vppermost garment, in a most emenet place thereof.”¹⁸⁵ Scores of additional adultery,

¹⁷⁸ PCR, *supra* note 77, at 5:245-46.

¹⁷⁹ *Id.* at 6:98.

¹⁸⁰ *Id.* at 2:44.

¹⁸¹ *Id.* at 2:57.

¹⁸² *Id.* at 4:116.

¹⁸³ PCR, *supra* note 77, at 6:74-75.

¹⁸⁴ *See id.*

¹⁸⁵ *Id.* at 2:28.

fornication, attempts and propositions, lascivious and suspicious conduct, and miscellaneous sex offenses are chronicled, albeit concisely, in the Plymouth Colony records.¹⁸⁶ The sentences imposed were sometimes barbaric (e.g., “burned in the face with a hott iron”).¹⁸⁷ Although the recorded case descriptions are brief, several unambiguously reflected a commitment to the animating principle. For example, in March 1685/6 Matthew Boomer Jr. was convicted of, among other offenses, “breaking the Sabbath by sufering his Indian seruants to hunt on the Saboth day,” for which he was fined twenty shillings.¹⁸⁸ On May 7, 1661 Ann Sauory was convicted by the court of assistants of “being att home on the Lords day with Thomas Lucas att vnseasonable time, namely, in the time of publicke exercise in the worship of God, and for being found drunke att the same time vnder an hedge, in vnciuell and beastly manor.”¹⁸⁹ She was sentenced to sit in the stocks.¹⁹⁰

Plymouth Colony’s courts tried individuals for non-sexual offenses against God too. At least eleven men and one woman were executed for murder. The first was John Billington, one of the original *Mayflower* passengers, who had been convicted of shooting a neighbor “with a gune, whereof he dyed.”¹⁹¹ After the leaders of Plymouth Colony had consulted with Governor John Winthrop of Massachusetts Bay Colony about whether Billington “ought to dye, and the land purged of blood” as the Bible had commanded, Billington was hanged.¹⁹² Significantly, at the time of Billington’s sentencing, murder had not yet been made a capital statutory crime and Billington was sentenced to death solely on the basis of Scripture.

With respect to examples of non-sex offenses that were not capital crimes, on July 5, 1635 Thomas Williams was charged with “speaking profane & blasphemous speeches against y^e majestie of God.”¹⁹³ Williams was acquitted, “though the Goue^r would haue had him punished wth bodily punishmente, as y^e case seemed to require.”¹⁹⁴ On December 1, 1640 Governor Bradford discharged the presentment against Mark Mendlowe for “drawing eel pott[s]” on the Sabbath because Mendlowe had done so out of “neccessyte.”¹⁹⁵ On March 2, 1640/1 Edward Hall was sentenced to the stocks for profane swearing.¹⁹⁶ On June 1, 1641 George Willerd was indicted for criticizing the churches in Plymouth and Massachusetts Bay for not baptizing infants.¹⁹⁷ On October 2, 1651 eight individuals were prosecuted for “the continewing of a meeting vppon the Lords day from house to house, contrary

¹⁸⁶ For example, on October 3, 1665 Sarah Ensigne was convicted of committing “whordom” and sentenced to be whipped “att the carstaile.” *Id.* at 4:106. Bradford expressed concern in his history of Plymouth Colony about the frequency of “unclainnes” among the inhabitants. BRADFORD, *supra* note 14, at 459. He also noted that alcohol abuse was a common problem. *See id.* at 459.

¹⁸⁷ PCR, *supra* note 77, at 1:132.

¹⁸⁸ *Id.* at 6:178.

¹⁸⁹ *Id.* at 3:212.

¹⁹⁰ *See id.* at 3:212.

¹⁹¹ As quoted in POWERS, *supra* note 91, at 301.

¹⁹² *Id.*

¹⁹³ PCR *supra* note 77, at 1:35.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 2:4.

¹⁹⁶ *See id.* at 2:9.

¹⁹⁷ *See id.* at 2:17.

to the order of this Court enacted June the 12th, 1650,”¹⁹⁸ while five days later Arthur Howland was convicted by Governor Bradford of “not frequenting the publicke assemblyes on the Lords daies” and admonished to “labore to walk inofensiue.”¹⁹⁹ On February 3, 1656/7 Sarah Kerbey was sentenced to be whipped for causing a disturbance during church for a second time.²⁰⁰

Plymouth’s court records report only one trial for witchcraft. In 1677 Mary Ingham was indicted for having “malliciously procured much hurt, mischeiffe, and paine unto the body of Mehittable Woodsworth ... causing her ... to fall into violent fitts” until she was “almost bereaued of her sences.”²⁰¹ The jury found her not guilty.²⁰²

VIII. CONCLUSION

“Law” has been defined in many different ways by many different people throughout history. Aristotle, Cicero, Thomas Aquinas, and other proponents of natural law argued that law is the exercise of reason to deduce binding rules of moral behavior from nature’s or God’s creation. The renowned English positivist John Austin, in contrast, maintained that law is the command of the sovereign. To Karl von Savigny and other proponents of the so-called historical school, law is the unconscious embodiment of the common will of the people. To the philosophical school, law is the expression of idealized ethical custom. The dominant contemporary view seems to be that law is the reflection of social, political, and economic interests.

For the Pilgrims of Plymouth Colony, law was both the memorialization of their commitment to the Word of God and an instrument for exercising social control so as to effectuate that commitment. The Pilgrims, of course, used law to regulate the more mundane aspects of life as well. For example, a law enacted on March 29, 1626 prohibiting houses in the colony from being covered with “any kind of thatche as straw reed &c.” was designed to reduce the risk of fire destroying the settlement,²⁰³ while a July 1, 1633 law forbade inhabitants from pulling up footpaths “for driving of cattle or the like” because residents needed functioning walkways.²⁰⁴ A 1637 law established “Ducksborrow” as a township,²⁰⁵ and a 1651 law required

¹⁹⁸ PCR, *supra* note 77, at 2:162.

¹⁹⁹ *Id.* at 2:174. For a ten-year period between 1633-1643, six cases involving violations of the Lord’s day in Plymouth Colony resulted in two fines, two whippings, one bond for good behavior, one sentencing to the stocks, and one banishment. *See* POWERS, *supra* note 91 at 406 (table 3). Between 1652-1661, three cases of blasphemy resulted in two fines or whippings and one badge of shame; four cases of Sabbath-breaking led to two fines and two other penalties; four cases for absence from church netted one fine and three admonitions; twenty-six cases of attending Quaker meetings, four cases of holding Quaker meetings, and two cases of harboring Quakers were each penalized by fine. *See* MCMANUS, *supra* note 40, at 206 (appendix C).

²⁰⁰ *See* PCR, *supra* note 77, at 3:111, 112. She was admonished the first time. *See id.* at 3:96 (March 5, 1655/6).

²⁰¹ *Id.* at 5:223.

²⁰² *See id.* at 5:224.

²⁰³ PLYMOUTH COLONY LAWS, *supra* note 26, at 29.

²⁰⁴ *Id.* at 34.

²⁰⁵ *Id.* at 57.

coopers to make full-sized casks.²⁰⁶ Many other examples could be cited. Indeed, quantitatively speaking, more laws were enacted by the Pilgrims that addressed the day-to-day activities of life in Plymouth Colony than memorialized the Pilgrims' commitment to eternal glory in the afterlife, but the latter was unquestionably more important, qualitatively speaking, than the former. In the oft-quoted words of a young William Bradford, "to keep a good conscience, and walk in such a way as God has prescribed in his Word, is a thing which I must prefer before you all, and above life itself."²⁰⁷

The Pilgrims were largely unsuccessful in using law to exercise social control on matters of religion. For example, as the above discussion makes clear, many towns failed to support their ministers, which was why the general court kept enacting laws to get them to do so. But the Pilgrims were successful in the symbolic use of law to memorialize their commitment to the Word of God rightly understood. In fact, they continued to use law in that fashion throughout the entirety of Plymouth's existence as a separate colony.

²⁰⁶ See *id.* at 94.

²⁰⁷ As quoted in COTTON MATHER, *MAGNALIA CHRISTI AMERICANA: OR, THE ECCLESIASTICAL HISTORY OF NEW-ENGLAND* (1702), available at <https://archive.org/details/magnaliachristia00math/page/n6>, p. 81. Bradford would later hold Plymouth Colony together by force of his personality. When he died, it began falling apart. See, e.g., Mark L. Sargent, *William Bradford's 'Dialogue' with History*, 65 *NEW ENGLAND Q.* 389 (1992).