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Review of “The Laws and Liberties of Massachusetts,” By Max Farrand

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THE LAWS AND LIBERTIES OF MASSACHUSETTS (Reprinted from the copy of the 1648 edition in the Henry E. Huntington Library, with an Introduction by *Max Farrand*). Cambridge: Harvard University Press, 1929. Pp. ix, 59.

This book is a reprint of *The Book of Lawes and Libertyes Concerning the Inhabitants of the Massachusetts*, which was first published in Cambridge, Massachusetts, in 1648. Though the General Court of Massachusetts then ordered six hundred copies of the work to be printed, the only copy now known to exist reposes in the valuable collection of the Henry E. Huntington Library at San Marino, California. It is from this copy that the Book of Laws is here republished for the first time. Reprinted in a type that is similar to the original, the present work reproduces the first edition "line for line and word for word, even to misspelling and misnumbering."

The reprinting of the Book of Laws of 1648, with a scholarly introduction by Dr. Farrand, constitutes an important contribution to the legal history of the colony of Massachusetts Bay. Hitherto, the Body of Liberties of 1641 was believed to have been the first codification of law in that colony. Now, according to Dr. Farrand, it appears that "unless some further evidence is brought to light, doubt may exist as to whether the Liberties were ever formally made law." The epistle to the Book of Laws states clearly that the Body of Liberties was prepared "with intent to make use of them in composing our lawes, but not to have them published as the lawes of this Jurisdiction: nor were they voted in Court." In other words, the Body of Liberties, which was partly a declaration of general principles and partly a statement of positive law, was intended as a guide for the General Court in framing laws. The Book of Laws of 1648 therefore appears more important than its better-known predecessor, and stands as the basis of all Massachusetts legislation. It also influenced the legislation of other colonies, notably Connecticut and New Haven. It is, according to Dr. Farrand, the "first attempt at a comprehensive reduction into one form of a body of legislation of an English-speaking country."

The laws here published were enacted at different times between 1630 and 1648—the first eighteen years in the life of the colony. They dealt with a variety of subjects, among which were: Anabaptists, attachments, bond-slavery, burglary and theft, capital offenses, children, Harvard College, fraudulent conveyances, dowries, elections, ecclesiastical affairs, fairs and markets, forgery, heresy, highways, idleness, Jesuits, Indians, tippling and drunkenness, juries, lying, marriage, military affairs, monopolies, profane swearing, schools, strangers, wills, and wolves. There was no law regulating the observance of the Sabbath. There were seventeen capital offenses, which included idolatry, witchcraft, blasphemy, murder, adultery, treason, man-stealing, and rebellious sons.

A few extracts from the laws themselves will bring back to us the atmosphere of colonial life and the varied character of early colonial legislation. The law dealing with burglary and theft stipulated: "If any person shall commit Burglarie by breaking up any dwelling house, or shall rob any person in the field, or high wayes; such a person so offending shall for the first offence be branded on the forehead with the letter (B). If he shall offend in the same kinde the second time, he shall be branded as before and also be severally whipped: and if he shall fall into the like offence the third time

he shall be put to death, as being incorrigible" (p. 4). Gamblers were subject to the following penalty: "Nor shall any person at any time play or game for any monie, or mony-worth upon penalty of forfeiting treble the value thereof: one half to the partie informing, the other half to the Treasurie" (p. 24). Roman Catholics were not welcome in this Puritan community: "No Jesuit, or spiritual or ecclesiastical person [as they are termed] ordained by the authoritie of the Pope, or Sea of Rome shall henceforth at any time repair to, or come within this Jurisdiction" (p. 26). Tippling and drunkenness, not infrequent in rum-making New England, were regulated as follows: "And everie person found drunken viz: so that he be thereby bereaved or disabled in the use of his understanding, appearing in his speech or gesture in any the said houses [inns] or elsewhere shall forfeit ten shillings. And for excessive drinking three shilling four pence. And for continuing above half an hour tippling two shillings six pence. And for tippling at unseasonable times, or after nine a clock at night five shillings. . . And for want of payment such shall be imprisoned untill they pay: or be set in the Stocks one hour or more [in some open place] as the weather will permit not exceeding three hours at one time" (p. 30). Profanity was abhorrent to the Puritan: "If any person within this Jurisdiction shall swear rashly and vainly either by the holy Name of God, or any other oath, he shall forfeit to the common Treasurie for everie such severall offence ten shillings. . . And if such person be not able, or shall utterly refuse to pay the aforesaid Fine, he shal be committed to the Stocks there to continue, not exceeding three hours, and not lesse then one hour" (p. 45).

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CASES ON PLEADING AND PROCEDURE, Volume 1, by *Charles E. Clark*. St. Paul: West Publishing Company. 1930. Pp. 674.

This is the first volume, containing 674 pages, of a two volume work on Pleading and Procedure. The most striking feature of the volume is its extreme departure from the conventional casebook model of 30 years ago. Authorities other than cases are more numerous in the formal text of this book than cases. These other authorities are: comments by the editor, statutes, rules of court, forms of process and court orders both ancient and modern, extracts from standard textbooks and legal histories, extracts from legal essays, and short isolated extracts from judicial opinions. A second striking feature is the obvious intention on the part of the editor that the student using this book should regard pleading and procedure, not as a mere set of local rules, but as an evolved and evolving system in Anglo-American jurisprudence, with at least a moiety of uniformity, and having for its chief purpose the effective application of substantive law. A third feature is the emphasis placed upon the possibility of great and imminent improvement in the field of adjective law. A fourth and final feature is the importance attached to recent judicial decisions. Almost all the "cases" in this book, as distinguished from "other authorities," are twentieth century cases.

The arrangement of the book is novel. The first part relates to claims for personal injuries, although some of the topics treated, such as institution of suit and functions of judge and jury, are obviously intended to be