

American Legal History – Russell

William Bradford, Of Plimoth Plantation 459-66, 473-75 (Wright & Potter Printing Co. 1900).

[*459] *Anno Dom: 1642.*

Marvilous it may be to see and consider how some kind of wickednes did grow & breake forth here, in a land wher the same was so much witnesed against, and so narrowly looked unto, & severly punished when it was knowne; as in no place more, or so much, that I have known or heard of; insomuch as they have been somewhat censured, even by moderate and good men, for their severitie in punishments. And yet all this could not suppress y^e breaking out of sundrie notorious sins, (as this year, besids other, gives us too many sad presidents and instances,) espetially drunkennes and unclainnes; not only incontinenie betweene persons unmarried, for which many both men & women have been punished sharply enough, but some married persons allso. But that which is worse, even sodomie and bugerie, (things fearfull to name,) have broak forth in this land, oftener then once. I say it may justly be marveled at, and cause us to fear & tremble at the consideration of our corrupte natures, which are so hardly bridled, subdued, & mortified; nay, cannot by any other means but y^e powerfull worke & grace of Gods spirite. But (besids this) one reason may be, that y^e Divell may carrie a greater spite against the churches of Christ and y^e gospell hear, by how much y^e more they indeaour to preserve holynes and puritie amongst them, and strictly punisheth the contrary when it ariseth either in church or comone wealth; that he might cast a [242] blemishe & staine upon them in y^e eyes of [y^e] world, who use to be rash in judgmente. I would rather thinke thus, then that Satane hath more power in these heathen lands, as som have thought, then in more Christian nations, espetially over Gods servants in them.

2. An other reason may be, that it may be in this case as it is with waters when their streames are stopped or damed up, when they gett passage they flow with more violence, and make more noys and disturbance, then when they are suffered to rune quietly in their owne chanel. So wikednes being here more stopped by strict laws, and y^e same more nerly looked unto, so as it cannot [*460] rune in a comone road

of liberty as it would, and is inclined, it searches every wher, and at last breaks out wher it getts vente.

3. A third reason may be, hear (as I am verily perswaded) is not more evils in this kind, nor nothing nere so many by proportion, as in other places; but they are here more discoverd and seen, and made publick by due serch, inquisition, and due punishment; for y^e churches looke narrowly to their members, and y^e magistrats over all, more strictly then in other places. Besids, here the people are but few in comparison of other places, which are full & populous, and lye hid, as it were, in a wood or thickett, and many horrible evils by y^t means are never seen nor knowne; wheras hear, they are, as it were, brought into y^e light, and set in y^e plaine feeld, or rather on a hill, made conspicuous to y^e veiw of all.

But to proceede; there came a letter from y^e Gov^r in y^e Bay to them here, touching matters of y^e fore-mentioned nature which because it may be usefull I shall hear relate it, and y^e passages ther aboute.

S^r: Having an opportunitie to signifie y^e desires of our Generall Court in toow things of spetiall importance, I willingly take this occasion to imparte them to you, y^t you may imparte them to y^e rest of your magistrats, and also to your Elders, for counsell; and give us your advise in them. The first is concerning heinous offences in point of uncleannes; the perticuler cases, with y^e circomstances, and y^e questions ther upon, you have hear inclosed. The 2. thing is concerning y^e Ilanders at Aquidnett; y^t seeing the cheefest of them are gone from us, in offences, either to churches, or comone welth, or both; others are dependants on them, and y^e best sorte are such as close with them in all their rejections of us. Neither is it only in a faction y^t they are devided from us, but in very deed they rend them selves from all y^e true churches of Christ, and, many of them, from all y^e powers of majestracie. We have had some [*461] experience hereof by some of their underworkers, or emissaries, who have latly come amongst us, and have made publick defiance against magistracie, ministrie, churches, & church covenants, &c. As antichristian; secretly also sowing y^e seeds of Familisme, and Anabaptistrie, to y^e infection of some, and danger of others; so that we are not willing to joyne with them in any league or confederacie at all, but rather that you would consider & advise with us how we may avoyd them, and keep ours from being infected by them. Another thing I should mention to you, for y^e maintenance of y^e trad of beaver; if ther be not a company to order it in every jurisdiction among y^e English, which companies should agree in generall of their way in trade, I suppose that y^e trade will be overthrowne, and y^e Indeans will abuse us. For this cause we have latly put it into order amongst us, hoping of encouragmente from you (as we have had) y^t we may

continue y^e same. Thus not further to trouble you, I rest, with my loving remembrance to your selfe, &c.

Your loving friend,

Ri: Bellingham.

Boston, 28. (1.) 1642.

The note inclosed follows on y^e other side.

[244] Worthy & beloved S^r:

Your letter (with y^e questions inclosed) I have comunicated with our Assistants, and we have refered y^e answer of them to such Reve^d Elders as are amongst us, some of whose answers thertoo we have here sent you inclosed, under their owne hands; from y^e rest we have not received any. Our farr distance hath bene y^e reason of this long delay, as also y^t they could not conferr their counsells together. [*462]

For our selves, (you know our breedings & abillities,) we rather desire light from your selves, & others, whom God hath better inabled, then to presume to give our judgments in cases so difficulte and of so high a nature. Yet under correction, and submission to better judgments, we propose this one thing to your prudent considerations. As it seems to us, in y^e case even of willfull murder, that though a man did smite or wound an other, with a full pourpose or desire to kill him, (w^{ch} is murder in a high degree, before God,) yet if he did not dye, the magistrate was not to take away y^e others life. So by proportion in other grosse & foule sines, though high attempts & nere approaches to y^e same be made, and such as in the sight & account of God may be as ill as y^e accomplismente of y^e foulest acts of y^t sine, yet we doute whether it may be safe for y^e magistrate to proceed to death; we thinke, upon y^e former grounds, rather he may not. As, for instance, in y^e case of adultrie, (if it be admitted y^t it is to be punished wth death, which to some of us is not cleare,) if y^e body be not actually defiled, then death is not to be inflicted. So in sodomie, & bestialitie, if ther be not penetration. Yet we confess foulnes of circomstances, and frequencie in y^e same, doth make us remaine in y^e darke, and desire further light from you, or any, as God shall give.

As for y^e 2. thing, concerning y^e Ilanders? we have no conversing with them, nor desire to have, funder then necessitie or humanity may require.

And as for trade? we have as farr as we could ever therin held an orderly course, & have been sory to see y^e spoyle therof by others, and fear it will hardly be recovered. But in these, or any other things which may concerne y^e comone good, we shall be willing to advise & concure with you in what we may. Thus wth [*463] my love remembered to your selfe, and y^e rest of our worthy friends, your Assistants, I take leave, & rest,

Your loving friend,

W.B.

Plim: 17. 3. Month, 1642.

Now follows y^e ministers answers. And first M^r Reynors.

Qest: What sodmiticall acts are to be punished with death, & what very facte (ipso facto) is worthy of death, or, if y^e fact it selfe be not capitall, what circomstances concurring may make it capitall?

Ans: In y^e judiciall law (y^e moralitie wherof concerneth us) it is manyfest y^t carnall knowledg of man, or lying wth man, as with woman, cum penetracione corporis, was sodomie, to be punished with death; what els can be understood by Levit: 18. 22. & 20. 13. & Gen: 19. 5? 2^{ly}. It seems also y^t this foule sine might be capitall, though ther was not penetratio corporis, but only contactus & fricatio usq ad effusionem seminis, for these reasons: [245] 1. Because it was sin to be punished with death, Levit. 20. 13. In y^e man who was lyen withall, as well as in him y^t lyeth with him; now his sin is not mitigated wher ther is not penetration, nor augmented wher it is; wheras its charged upon y^e women, y^t they were guilty of this unnaturall sine, as well as men, Rom. 1. 26. 27. Y^e same thing doth funder apeare, 2. Because of y^t proportion betwexte this sin & bestialitie, wherin if a woman did stand before, or aproach to, a beast, for y^t end, to lye downe therto, (whether penetration was or not,) it was capitall, Levit: 18. 23. & 20. 16. 3^{ly}. Because something els might be equivalent to penetration wher it had not been, viz. y^e fore mentioned acts with frequencie and long continuance with a high hand, utterly extinguishing all light of nature; besids, full intention and bould attempting of y^e foulest acts may seeme to have been capitall here, as well as coming presumptuously to slay with guile was capitall. Exod: 21. 14. [*464]

Yet it is not so manyfest y^t y^e same acts were to be punished with death in some other sines of uncleannes, wth yet by y^e law of God were capitall crimes; besids other reasons, (1.) because sodomie, & also bestialitie, is more against y^e light of

nature then some other capitall crimes of unclainnes, which reason is to be attended unto, as y^t which most of all made this sin capitall; (2.) because it might be comited with more secrecie & less suspition, & therefore needed y^e more to be restrained & suppressed by y^e law; (3^{ly}) because ther was not y^e like reason & degree of sining against family & posteritie in this sin as in some other capitall sines of uncleannes.

2. Quest: How farr a magistrate may extracte a confession from a delinquent, to acuse him selfe of a capitall crime, seeing Nemo tenetur prodere seipsum.

Ans: A majestrate cannot without sin neglecte diligente inquisition into y^e cause brought before him. Job 29. 16. Pro: 24. 11. 12. & 25. 2. (2^{ly}.) If it be manifest y^t a capitall crime is committed, & y^t comone reporte, or probabilitie, suspition, or some complainte, (or y^e like,) be of this or y^t person, a magistrate ought to require, and by all due means to procure from y^e person (so farr allready bewrayed) a naked confession of y^e fact, as apears by y^t which is morall & of perpetuall equitie, both in y^e case of uncertaine murder, Deut: 21. 1. 9. And slander, Deut: 22. 13. 21; for though nemo tenetur prodere seipsum, yet by that w^{ch} may be known to y^e magistrat by y^e forenamed means, he is bound thus to doe, or els he may betray his countrie & people to y^e heavie displeasure of God, Levit: 18. 24. 25. Jos: 22. 18. Psa: 106. 30; such as are inocente to y^e sinfull, base, cruell lusts of y^e profane, & such as are delinquents, and others with them, into y^e hands of y^e stronger temptations, & more bouldness, & hardnes of harte, to comite more & worse villany, besids all y^e guilt & hurt he will bring upon him selfe. (3^{ly}.) To inflict some punishmente meerly for this reason, to extracte a confession of a capitall crime, is contrary to y^e nature of vindictive justice, which always hath [*465] respecte to a know crime comited by y^e person punished; and it will therefore, for any thing which can before be knowne, be y^e

provocking and forcing of wrath, compared to y^e wringing of y^e nose, Pro: 30. 33. which is as well forbidden y^e fathers of y^e countrie as of y^e family, Ephe. 6. 4. as produsing many sad & dangerous effects. That an oath (ex officio) for such a purpose is no due means, hath been abundantly proved by y^e godly learned, & is well known.

Q. 3. In what cases of capitall crimes one witnes with other circomstances shall be sufficiente to convince? or is ther no conviction without 2. witnesses?

Ans: In taking away y^e life of man, one witnes alone will not suffice, ther must be tow, or y^t which is instar; y^e texts are manifest, Numb: 35. 30 Deut: 17. 6. & 19.

15. 2^{ly}. Ther may be conviction by one witnes, & some thing y^t hath y^e force of another, as y^e evidencie of y^e fact done by such an one, & not an other; unforced confession when ther was no fear or danger of suffering for y^e fact, hand writings acknowledged & confessed.

John Reynor. *** [*473]

Besids y^e occation before mentioned in these writings (concerning the abuse of those 2. children,) they had aboute y^e same time a case of buggerie fell out amongst them, which occasioned these questions, to which these answers have been made.

And after y^e time of y^e writig of these things befell a very sadd accidente of the like foule nature in this govermente, this very year, which I shall now relate. Ther was a youth whose name was Thomas Granger; he was servant to an honest man of Duxbery, being aboute 16. Or 17. years of age. (His father & mother lived at the same time at Sityate.) He was this year detected of buggery (and indicted for y^e same) with a mare, a cowe, tow goats, five sheep, 2. calves and a turkey. Horrible [249] it is to mention, but y^e truth of y^e historie requires it. He was first discovered by one y^t accidentally saw his lewd practise towards the mare. (I forbear perticulers.) Being upon it examined and comitted, in y^e end he not only confest y^e fact with the beast at that time, but sundrie times before, and at severall times with all y^e rest of y^e forenamed in his indictmente; and this his free-confession was not only in private to y^e magistrats, [*474] (though at first he strived to deny it,) but to sundrie, both ministers & others, and afterwards, upon his indictmente, to y^e whole court & jury; and confirmed it at his execution. And wheras some of y^e sheep could not so well be knowne by his description of them, others with them were brought before him, and he declared which were they, and which were not.

And accordingly he was cast by y^e jury, and condemned, and after executed about y^e 8. Of Sept^r, 1642. A very sade spectakle it was; for first the mare, and the y^e cowe, and y^e rest of y^e lesser catle, were kild before his face, according to y^e law, Levit: 20. 15. and then he him selfe was executed. The catle were all cast into a great & large pitte that was digged of purposse for them, and no use made of any part of them.

Upon y^e examenation of this person, and also of a former that had made some sodomiticall attempts upon another, it being demanded of them how they came first to y^e knowledge and practice of such wickednes, the one confessed he had long used it in old England; and this youth last spoaken of said he was taught it by an other that had heard of such things from some in England when he was ther, and

they kept cattle together. By which it appears how one wicked person may infecte many; and what care all ought to have what servants they bring into their families.

But it may be demanded how came it to pass that so many wicked persons and profane people should so quickly come over into this land, & mixe them selves amongst them? seeing it was religious men y^t begane y^e work, and they came for religious sake. I confess this may be marvelled at, at least in time to come, when the reasons therof should not be knowne; and y^e more because here was so many hardships and wants mett withall. I shall therefore indeavor to give some answer hereunto. And first, according to y^t in y^e gospell, it is ever to be remembred that wher y^e [*475] Lord begins to sow good seed, ther y^e envious man will endeavore to sow tares. 2. Men being to come over into a wildernes, in which much labour & servise was to be done aboute building & planting, &c., such as wanted help in y^t respecte, when they could not have such as y^{ey} would, were glad to take such as they could; and so, many untoward servants, sundry of them proved, that were thus brought over, both men & women kind; who, when their times were expired, became families of them selves, which gave increase hereunto. 3. An other and a maine reason hearof was, that men, finding so many godly disposed persons willing to come into these parts, some begane to make a trade of it, to transeport passengers & their goods, and hired ships for that end; and then, then, to make up their freight and advance their profite, cared not who y^e persons were, so they had money to pay them. And by this means the cuntrie became pestered with many unworthy persons, who, being come over, crept into one place or other. 4. Againe, the Lords blessing usually following his people, as well in outward as spirituall things, (though afflictions be mixed with-all,) doe make many to adhear to y^e people of God, as many followed Christ, for y^e loaves sake, Iohn 6. 26. And a mixed multitud came into y^e willdernes with y^e people of God out of Eagipte of old, Exod. 12. 38; so allso ther were sente by their freinds some under hope y^t they would be made better; others that they might be easd of such burthens, and they kept from shame at home y^t would necessarily follow their dissolute courses. And thus, by one means or other, in 20. years time, it is a question whether y^e greater part be not growne y^e worsen.

EOD