

man will inferre from thence that m̄ns should haue Sermons & prayers prescribed them for every occasion: for that would destroye the Ordinance of the ministry, i.e. a Readinge Priest might serve in that office, without any learninge or other gifts of the Spirit. So if all penaltys were prescribed, the Iurye should state the case, & the booke holde forthe the sentence & any Schoolboye might pronounce it: then what need were there of any speciall wisdom, learninge, Courage, zeale, or faithfulness in a Iudge?

This beinge so great a question now on foote, about prescript penaltys [*much erased matter here*] it wilbe of use to search as deepe into it as we may by the light of Scripture, approued patternes & other Rationall Arguments: not tyeinge our discourse to methode, but layinge downe thinges as they come to hande.

England in the right constitution, is not an Arbitrary Governm^t, nor is ours of the Massachusetts: yet Iuries, both there & heer, give damages, which (in vulgar sence) are Arbitrary, in most cases: as in Actions of Slander, Trespasse, Batterye, Breach of Covenant, &c: all which concerne the Peoples Lib^{ties}, no lesse than ffines & other penaltys: And if 12: men, who haue no Callinge to Office, may (in expectation of Gods Assistance) be trusted with mens estates in a way of distributive Iustice without a prescript Rule etc. why may not those whose callinge & Office hathe promise of Assistance, have like trust reposed in them, in vindictive Iustice?

In the Libties enacted heere of purpose to prevent Arbitrary Governm^t, there are neer 40: Lawes, to the violation whereof no penaltye is prescribed: nor was ever moved.

God may pronounce Sentence against an Offender, before the offence be committed, bothe by his absolute Soveraintye, & allso because he foreseeeth all ffacts, with all their Circumstances: & besides the least degree of the same offence deserves more then that full punishment before his Iustice: but man must proceede accordinge to his Commission: by which he cannot sentence another before he hathe offended, & the offence examined, proved, layd to the Rule, and weighed by all considerable circumstances, & Lib^{tye} given to the partye to answeare for himselfe: nor is there anythinge more preiudiciall to a subjects Lib^{tye}, then to be sentenced before his cause be hearde.

England is a State of long standing, yet we haue had more positive & more holesome Lawes enacted in our shorte tyme, than they had in many hundred yeares. They haue indeed some Lawes with prescribed penaltys annexed, but they are for the most parte so small as doe