Parading through the streets of London just moments after his coronation, Shakespeare’s Henry V is accosted by his old friend and drinking buddy, Falstaff, who, together with hordes of other onlookers, hopes to get a glimpse of—perhaps even a smile from—the new King and his train. But calling to Henry in terms that are reminiscent of their former intimacy—“God save thee, my sweet boy”—Falstaff is at first ignored, then rebuffed, harshly. “Reply not to me with a fool-born jest,” the king says when finally forced to acknowledge Falstaff. “Presume not that I am the thing I was/For God doth know, so shall the world perceive/that I have turned away my former self. So will I those that kept me company. . . . I banish thee, on pain of death.”1

His first act as king, Henry’s banishment of Falstaff has been read as a statement about his understanding of sovereignty. Now that he is king, his action implies, he will not hesitate to be ruthless or to exercise absolute power of the kind that signals an autocratic regime.2 But his treatment of Falstaff also suggests a curious and yet overlooked proximity between banishment as an act of sovereignty and the construction of his sovereign self, for in the act of banishing Falstaff he “turned away his former self” and, needless to say, turned toward a new one. “When thou dost hear I am as I have
been” the king continues, “Approach me and thou shalt be as thou wast, the tutor and feeder of my riots.”

In what follows, I use Shakespeare’s articulation of the relationship between banishment and selfhood as a touchstone for exploring banishment in the real world—not in Henry V’s time, but toward the end of Shakespeare’s and for a number of decades after his death. Specifically, I argue that in their own writings about banishment, many of the outcasts of the seventeenth century began experimenting with a way of understanding and talking about themselves that departed from the dominant mode of expression made available by religious discourse and practice. In place of prayers, confessions, and conversions—the mainstay of most religious narratives at the time—the stories written by the banished about their banishments reveal an approach to the self based less on faith and more on law or, more accurately, on the grounds of legal jurisdiction at the heart of banishment.

Defined as the power and authority of the court to hear and determine judicial proceedings, jurisdiction may depend on any one of a number of factors, including what type of case is involved—for example, civil or criminal--what type of person the defendant is—for example, resident or non-resident—and, most commonly, whether the issue in question—the crime or civil injury—occurred in the geographic area over which the court can rule. Needless to say, given these various and capacious parameters, the history of the law is in large part the history of jurisdictional disputes, ranging from the competing claims of different courts over specific cases to more unsettling investigations into whether certain issues or areas continue to be coherent in the face of changing historical and material conditions. Of this latter type of dispute, there are no cases that
reveal more about what is at stake in jurisdiction than those concerning banishment. In banishment, in which the criminal is forcibly removed from a jurisdiction, the punishment coincides with and thus legitimates the court’s authority, providing questions about the sentence and the authority to issue that sentence with many overlapping concerns.

This overlapping or coincidence of concerns helps to explain in general terms why banishment narratives became sites for wrestling with notions of place, but if we are to understand why the banishment narratives of so many seventeenth-century outlaws were such particularly contested sites, we must look to the transformation the concept of jurisdiction was undergoing in the period in question. As a result of changes in local manufacturing procedures, increased trade routes within and between countries, and the establishment of colonies, like that of Massachusetts Bay, in places far from their metropolitan centers, the prevailing notion of jurisdiction as confined to a specific land mass and ruled over unambiguously by the judicial powers of that land mass was rapidly becoming inadequate. Thus the idea of jurisdictions as necessarily contiguous and as containing uniform populations was eroding. In relatively isolated areas, cut off geographically and socially from others, a population homogeneous in terms of worldview and behavior might safely be assumed. But with the increased geographical reach and the concomitant interactions and crossings it encouraged came an increased diversity of inhabitants whose difference from each other upended older notions of jurisdictional sameness, from the parish to the precinct to the kingdom and the nation.

In such a context, banishment—a punishment intended to reinforce social sameness by casting out those who differed from the norm—became a locus of
considerable controversy. Not surprisingly, it was particularly controversial in New England where the Puritans, who considered themselves God’s chosen people and who saw New England as their promised land, resorted to it on an unprecedented level. In 1630 to 1631, for example, the first year of the establishment of the Massachusetts Bay Colony, out of an estimated three hundred settlers, fourteen were banished. Nor did the percentage dwindle much in subsequent years as the theocracy continued to draw new members, not all of whom conformed to their godly ways. Of these there were many who were banished for the kind of criminal conduct, including adultery, bestiality, and drunkenness, that would have posed a threat anywhere, and of this group, not surprisingly, most are now forgotten. But there were also those who deliberately flouted the religious tenets of the Puritan church-state and within this group there were many—including Anne Hutchinson, Thomas Morton, Samuel Gorton, John Wheelwright, and Roger Williams—whose names have become synonymous with Puritan history.

In large part because the controversies stirred up by these people shed so much light on Puritan practices and beliefs, they have been the subject of attention from scholars interested in religion. Thus many valuable studies have helped us understand their uses of religious typology, their views of the controversy over works versus grace, and their positions on the standards for conversion. But too often these and other religious positions have been seen as existing apart from and independent of the secular, specifically legal, world in which they also developed. What is missing from the scholarly literature on these narratives is a discussion of their religious content in the context of developments in the law—of the King, the Parliament, and the common law courts—whose models of self and place, themselves in transition at the time, interacted
with those provided by religion and altered the notions of jurisdiction and jurisdictional homogeneity that had prevailed to date.

In the following essay, then, I widen the disciplinary lens through which banishment and jurisdiction are normally viewed to include not just the religious, but the legal as well. When legal developments are added to the mix, as we shall see, the terms of homogeneity and heterogeneity--of both place and person—are rewritten. So too are the fundamentals of interpretation itself. If religion produces a fixed subject, in short, whose relationship to place appears to be isomorphic, it is in part because the hermeneutics of religion teaches readers to tease out meanings from relatively fixed texts. The hermeneutical project of the law, by contrast (and here I refer specifically to the Anglo-American common law of the seventeenth century), taught the acquisition of meaning through the accretion of texts—a method in which a given text, in the form of case law, for example, rewrote the ones that came before, if only ever so slightly. In contrasting these two ways of thinking, therefore, we gain insight not only into how historical conditions—wars, trade, and the like—altered the terms of banishment, but how legal hermeneutics did as well. At stake in the legal understanding and expression of banishment was a different kind of person and a different kind of place than was specified by religious readers and inculcated in religious texts.

By taking note of these contrasting hermeneutical traditions, moreover, we open our analysis of jurisdiction and banishment up to a more inclusive sense of culture, and here the hope is to do more than many previous scholars to respect the way early modern writers understood these disciplinary spheres. Religion and law were famously intertwined in the seventeenth century, and yet the tendency in scholarship of this period
The Case of Roger Williams

has been to treat them either as indistinguishable or as wholly autonomous spheres. (This last is a habit of scholars who read back into the early modern period from the nineteenth and twentieth centuries.) Thus, while elsewhere I focus more exclusively on the religious or legal aspects of banishments, in this essay I look at their intersection. To do this, I take up the banishment writings of Roger Williams and those of his banisher (also erstwhile friend and lifelong interlocutor), John Cotton, because their narratives, more than any others in the period deal most directly with the conflicting ideas of religious and legal jurisdiction. Cotton, Puritan minister and outspoken defender of the faith, writes of banishment from within the institution of religion. Williams, on the other hand, who was equally outspoken on Puritanism but who served as apprentice to and Court recorder for Sir Edward Coke when he was chief justice of common pleas, writes from within the institution of the law.

Partly because of his involvement with Coke early in his life, but also because of his interactions with the legal system later in life, Williams became fluent in matters of the common law and privy to much of the debate on jurisdiction in his day. But his writings do more than reflect his knowledge of common law notions of jurisdiction; they also suggest the ways in which the common law mode of thinking and writing more generally made possible a new way of understanding the self. Like his mentor, Sir Edward Coke, Williams takes a historicist view of the world in which the customs of “the people”—an emergent category that proved crucial to the common law—are considered to be the source of law and are held in higher regard than the King. Looking back to what Coke called “time immemorial,” law, defined as custom, becomes a matter not of telling but of retelling, for each case, in the system of precedent that Coke and
other common lawyers prized, was a revision of the one that came before. Not even in

his *Institutes*—his monumental project to modernize the system of English laws—did Coke

veer from the written record, but rather began by rewriting the work of the medieval

lawyer, Thomas de Littleton, which is why, even in his own day, the first volume of his

groundbreaking *Institutes* came to be known as *Coke on Littleton*.⁸

From the system of precedent came persons who incorporated their own

experience into that of others, adding and adjusting older narratives to remake themselves

and, more specifically in Williams’s case, re-litigate their crimes. “... [I]n the concept of use,” writes, J.G.A. Pocock, “... may be found the beginnings of the historicist

documentary doctrine that we become what we do and so make ourselves.”⁹ Absent from most

religious narratives—which used others as models but did little to alter them—this kind of

historicism describes Williams’s method in his banishment narrative perfectly. In fact, what I am calling Williams’s banishment narrative is actually a series of narratives by

both Williams and Cotton, with whom he engaged in a debate over his punishment that

lasted for over fifteen years. They include Cotton’s “The Letter of Mr. John Cotton”

(1643), Williams’s “Mr. Cotton’s Letter Examined and Answered” (1644), “John

Cotton’s Answer to Roger Williams” (1647), Williams’s *Bloody Tenet of Persecution*

(1644), Cotton’s *Bloody Tenet Washed and Made White in the Blood of the Lamb* (1647),

and Williams’s *The Bloody Tenet Yet More Bloody* (1652), and taken together, as I argue

they must be, they represent a running dialogue between the two men that covers more

than 1500 pages, and that turns banishment into nothing less than an occasion for a

debate between religion and the common law.
To better situate and thereby understand these texts, I begin this essay with a discussion of the history of banishment that focuses on its legal complexities in the England and New England of the early modern period. In part II, I turn to Roger Williams’s banishment in particular to demonstrate the uncertainties about jurisdiction that were peculiar to his case and to examine the ways in which his own self became defined by his status as an outsider. Part III takes up the ways both Cotton and Williams viewed the law and religion, while part IV applies those visions to the differing opinions of both men on the subject of jurisdiction and self. Finally, part V illustrates the consequences for the idea of jurisdiction and of the self of their differing sense of expression and narrative style.

I. Banishment and Jurisdiction: A Brief History

A. General

Defined in *Black’s Law Dictionary* as “a punishment inflicted upon criminals, by compelling them to quit a city, place, or country for a specified period of time, or for life,” banishment has been strangely neglected by most scholars, legal or otherwise. Even in most histories of New England, where it was in constant use for a period of over forty years, it rarely receives more than a cursory mention. In fact, where it figures at any length at all is in histories of the ancient world, a coincidence which has contributed to the popular perception that banishment was in use only by civilizations that are now extinct. To be sure, the ancient world did often have recourse to banishment. It was, for example, a recognized punishment for incest in the Code of Hammurabi, for political dissent in ancient Roman codes, and for unintentional homicide in ancient Israel. But a closer look at the history of the modern world reveals that banishment played a
significant part in the legal systems of medieval and early modern Europe as well. In England, for example, where our focus lies, banishment was invoked at the local and federal levels from the twelfth through the nineteenth centuries.

Associated in its earliest stages with the practice of giving religious sanctuary to criminals who would, if they then agreed to confess their guilt, be sent out of the kingdom, banishment is related to but distinct from the strictly ecclesiastical practice known as excommunication. Excommunication, a form of censure imposed only on church members who committed a spiritual offense, could only be invoked by the church and typically excluded the excommunicate from taking the sacraments or from mingling with the Christian community. In New England, it should be noted, the excommunicate was often allowed to continue to attend church services in the hope that repentance might be forthcoming.12

Banishment, by contrast, was used to punish a wide variety of offenses and was invoked by local courts outside of a religious context from the middle of the fifteenth century on. Unlike excommunication, banishment also varied by degree, ranging from extremely punitive—which might mean exile from an entire country—to very local—which might mean forced exclusion from a parish or town square. Interestingly, the local variant was far more widespread and common. In fact, banishment “from the realm” was prohibited by both the Magna Charta and the earliest Habeas Corpus Act (in either the twelfth or thirteenth century) except by an act of Parliament.13 William Blackstone reports that banishment on the federal level was enacted for the first time in 1596-1597, the thirty-ninth year of Queen Elizabeth’s reign.14 That it was invoked most often as an alternative to other sentences, including imprisonment, corporal punishment (like
whipping), and shaming rituals (like the stocks and pillory), also contributed to its reputation as a lesser punishment or form of local police control. In fact, it may surprise us to note that it was this kind of banishment that Henry imposed on Falstaff, which though it may have sounded dire to Falstaff’s ears, merely prohibited him from coming anywhere “within ten miles of Henry’s person.”

But if banishments in the period were not particularly severe, they were fairly common and had imitators. Closely related to banishment, for example, was the colonial practice of “warning out,” which imposed a limit on the amount of time a new resident could stay within a town or village. Based on the ancient ritual of frankpledge in which every member of the community was required to help every other member in the event of hardship, warnings were given to newcomers whose presence threatened to tax the community’s financial well being. In many cases, warned out individuals were obvious troublemakers, jobless vagrants, or loiterers. But in others, they might be upstanding individuals whom the town council had decided for one reason or another it did not want to support. If warned out, of course, the individual in question could try to gain residence in the next town with impunity. This was not the case with a more extensive version of warning out that prevented newcomers from taking up residence anywhere in the colony. Rarely used, this decision was made not by the town but by the colonial government as a whole. In his Journal, for example, Governor John Winthrop notes that on 11-21 November, 1630, the ship Handmaid arrived in Boston with “[C]aptain Standish and two gentlemen passengers, who came to plant here, but having no testimony, we would not receive them.”
Similar efforts to “purge the land of undesirable inhabitants,” as the New England historian, Charles Andrews, put it, continued throughout the colonial era, including in one of the stranger instantiations of banishment, one that called for the expulsion of those individuals whose spouses had returned to England for prolonged periods of time in order to prevent what the authorities predicted would be their penchant for “loose living.”

By the time the colonial charter of the Massachusetts Bay Colony was revoked in 1688, however, and a royal governor installed, the number of colonial banishments had slowed to a crawl, only to be taken up again with a vengeance on the other side of the Atlantic in the practice known as transportation. Criminals who were sentenced to transportation, for crimes ranging from petty thefts to felonies, were sent to the colonies as laborers—a practice which irked the patriots, who saw it as yet another English abuse, and thus, not surprisingly, came to an abrupt halt with the revolution. Although still on the books in England and in many American states, it is fair to say that in the wake of criminal transportation, policy turned permanently against banishment, and the era of its frenzied use had come to an end.

B. Jurisdictional Complications

To imply that banishment came under its most serious scrutiny in the late eighteenth century as a result of the adverse consequences of transportation, however, is not to suggest that it was went unnoticed in the two centuries before. Long before the American Revolution--in the late sixteenth and early seventeenth centuries--the uses of banishment in both England and the colonies were the subject of doubt and concern. The impetus for this concern came largely from reforms in the theory and practice of jurisdiction, an area of the law that concerned itself, like banishment, with the recognition
of judicially authorized boundaries. In the England in which Williams served as law
clerk to Edward Coke, for example, the court system was extremely disorganized and
jurisdictional conflicts were rampant. With no fewer than five types of courts—common law courts, civil law courts, ecclesiastical courts, chancery or equity courts, and provincial councils established by the king—jurisdictions often overlapped and fights broke out over which court had the right to hear and decide a case.

Although seemingly minor and fact-driven in any given case—a typical dispute might concern the issue of whether a contact, for example, was sealed on the high seas and thus appropriate for Admiralty Court jurisdiction or on dry land and thus more suited to the courts of common law—the competition over jurisdiction had the power to affect the courts’ place in the judicial hierarchy, the reputation of their judges, and the fees they collected from the parties to a suit from which they drew a part of their salaries and sustained their operations. Taken together, however, and considered more systemically, the jurisdictional disputes between courts involved no less an issue than the future of English law and government as a whole. It was through jurisdictional debates, for instance, that the common lawyers hoped to oust the King from his role as supreme maker and arbiter of the law. To this end, starting in the 1590s and continuing through the first half of the seventeenth century, common lawyers, led by Sir Edward Coke, waged a war against the civil lawyers who plied their trade in the King’s courts, including the ecclesiastical courts, the Admiralty courts, and the Chivalry courts, among others. Through the use of a legal tool known as the writ of prohibition, judges of the common law courts ordered judges of the civil law or prerogative courts to, in the words of one legal historian, “desist in the hearing of certain cases which did not fall within their
With the scope of his own power hanging in the balance, King James himself intervened in the jurisdictional crisis, admonishing judges, in his Star Chamber address of June 1616, to “keepe your selves within your owne Benches, not to invade other jurisdictions, which is unfit and an unlawful thing.”

Notwithstanding this royal order, however, jurisdictional disputes continue to rage throughout the first half of the century. Complicating matters was a poorly conceived set of rules for determining jurisdiction, providing obstacles even to those who might have wanted to obey the king; some courts claimed jurisdiction based on the type of conflict at the heart of a case; for instance, church courts claimed authority to adjudicate cases involving marriage, tithing, and heresy, while the court of common please claimed cases involving debts and contract disputes. These claims were based on what has come to be known as subject matter jurisdiction. Other courts argued for jurisdiction on the basis of the residence of the injured party or, when relevant, the location of the property in dispute. These claims were based on what has come to be known as jurisdiction in personam and jurisdiction in rem, respectively. But by far the most common category under which the authority of a court was challenged concerned its territorial jurisdiction—the power ascribed to a given court based on its geographical reach in the form, for example, of a parish, a county, or other specifically designated judicial district.

Local courts with territorial jurisdiction argued strenuously for their right to maintain decision-making power over their residents, with some courts going so far as to impose fines for people who removed their disputes from regional tribunals. The strength of territorial jurisdiction, of course, in contrast to subject matter or personal jurisdiction, was its claim to community coherence. The connections provided by kin in a period
when extended families still lived in relatively close proximity were often enough to shape the sameness of a community, as did the sheer passage of time and longstanding relations. But there was often more. A parish church, for example, whose membership was coincident with the jurisdiction, often induced a sense of sameness among residents. In his treatise on the lower branches of the legal profession in early modern England, C.W. Brooks quotes a contemporary commentator who touts the virtues of local courts for the homogenous venue they offer. They “doe serve rather for men that can be content to be ordered by their neighbors,” he writes, “and which love their quiet and profit in their husbandrie, more than to be busie in the lawe.”

Still, for all its traditional coherence, the older concept of territorial jurisdiction became increasingly destabilized as a result of changes in the organization of communities from the middles ages through the early modern period. Thus there was competition between courts from a growing number of land based groups, including the shire, the county, the hundred, the vill, the township, the manor, and the borough. With competition among new communal organizations, moreover, came a certain amount of interaction between them in the form of business relations and an extended sense of neighborliness, which led to the gradual disintegration of older, territorially based claims. Moreover, as families began to spread out due in part to trade and the rise of business opportunities far afield, social links began to deepen across parish boundaries while, at the same time, the influx of strangers into established communities produced social cleavages. When these internal changes in community composition combined with changes in England’s external relations with other countries in this period, the pressure on the notion of territorial jurisdiction came to a head. Increased intercontinental trade
and war—by 1585, England was engaged in military campaigns with France, the Netherlands, and Ireland; in 1624, England entered the Thirty Years’ War, in 1638 the war with Scotland, and in 1641, the Irish rebellion—created an urgent need for a law that could mediate territorially between England and other countries. English jurisdiction thus needed to be reconceived not only on an internal level but on an international one as well.

Many political theorists addressed themselves to the field of international relations in this period, but no one spoke more directly to the concerns of England’s legal relations with foreign jurisdictions than Hugo Grotius. In his *On the Law of War and Peace* (1625), Grotius reasoned that the warfare that raged throughout the Europe in his day had less to do with overarching or global differences between countries than with local conflicts that stemmed from different systems of customary or national law. For Grotius, war might be resolved through an appeal to a higher law—in essence a natural or moral law—derived not from the habits of a country’s population or from the singular conditions of its climate or resources, but from the theoretical principles that brought all nations together.\(^{27}\) Natural law, agreed on as such, could then serve as the basis for an international or supranational law, as Grotius called it, which would acknowledge the autonomy of sovereign empires but simultaneously bind them to each other. Jane Newman describes this theory of Grotius’s as creating a bridge between countries through a recognition of “abstract principles of sameness and realities of difference.”\(^{28}\)

But if Grotius helped to resolve some of the disputes between sovereign jurisdictions, he did not address the thornier jurisdictional issues brought on by colonialism. Alongside its protracted wars and expanded trade routes, the Stuart regime
also saw an increase in its colonial possessions, including those in America, the West Indies, and in Ireland, where tensions between the colony and mother country drove jurisdictional reform. When it came to England’s colonies, moreover, Grotius’s solution was clearly inapplicable. In Grotius’s model, people living in different countries were recognizably different; people in Spain behaved differently from people in England. Not only did they abide by different local or customary laws, but they also served different monarchs and called themselves by a different name. Needless to say, underlying Grotius’s theory of international difference was the assumption of self-similarity between people that had guided the notion of territorial jurisdiction from the start, only for Grotius the homogeneity previously attributed to local communities now extended across an entire country. Of course, such a theory was by no means peculiar to Grotius; it was at the heart of nation-state formation from at least the middle of the sixteenth century on. But Grotius’s theories, which make the underlying premise more salient than it otherwise might be, provide a useful touchstone for understanding how the self, which was largely defined territorially, was defined and redefined by jurisdiction in this period.

In particular, when confronted with colonialism, Grotius’s theory of sameness within a jurisdiction and difference outside it had to be revised. If for Grotius, for example, people within a given jurisdiction could be characterized as relatively self-similar, what, we must ask, about people like the colonists in New England who, though physically removed from the seat of England’s authority, shared the customary law of all Englishmen, and yet had also developed a different set of laws to handle their very different territorial needs.²⁹ Put another way, what kind of jurisdictional power did England’s courts have if their colonists in the Bay Colony, or elsewhere, retained their
liberties as subjects of the crown (as their charters claimed they could), and yet were free to alter English laws or to choose between English law and some colonial version of it? In short, who were these colonists and what role did the legal understanding of jurisdiction play in shaping and expressing their identities?

This question was asked and answered many times over in the law courts and in the halls of Parliament throughout the late sixteenth and early seventeenth centuries, but we can look to one landmark case, decided by Sir Edward Coke, as a point of departure for most of the jurisdictional theories that followed. In *Calvin’s Case* (1608), the jurisdictional issue posed itself as a question about sovereign authority in general but also, more specifically, about how far beyond the immediate borders of the sovereign’s authority one territorial jurisdiction could go. *Calvin’s Case* was a jumble of strange taxonomies whose immediate purpose was to grant English subject status, along with its accompanying property rights, to Scots born after the accession of James VI and to disinherit Scots born before. Needles to say, although it was ostensibly confined to Scottish residents, the decision had implications for determining the identity of people in the English colonies.

The significance of *Calvin’s Case* from the point of view of jurisdictional reform was its disarticulation of geography and subject status. For the first time, in other words, it was decided that the allegiance the subject owed to the sovereign and, by extension, to the laws of the jurisdiction over which he ruled, could not be determined by geography. The judges in *Calvin’s Case* wrote that “ligence and faith and truth, are qualities of the mind and soul of man and cannot be circumscribed within the predicam of ubi.” The immediate consequence of the separation between who a person was—“the qualities of the
mind and soul of man”--and where he was--“the predicament of ubi”--was a recognition that the colonists of Massachusetts Bay or other English colonies could live in diverse circumstances, according to diverse laws, and still call themselves subjects of the same king and nation. This notion was at the heart of a reconceptualization of the law that went from an insistence on the homogeneity of the law’s subjects to an acceptance of their diversity, which, in turn, held important consequences for how banishment was applied and understood.33

C. Jurisdictions in Old and New England

The first step in this reconceptualization was the recognition that the legal requisites for ordering life might differ from place to place. In recognition of the differences that could be expected to arise between the colonies and England--having largely to do with climate, crop conditions, and the presence of indigenous peoples--England specified that the colonies’ founders could make laws that would be suitable to the colony “as long as they were not contrary or repugnant to the laws and statutes of England.”34 This language, found in almost every colonial charter, amounted, as Mary Sarah Bilder explains, to the development of a “transatlantic constitution” in which English subjects of the crown living in the colonies might choose, depending on their circumstances and the expected outcome of their case, to be judged by the rules and regulations of colonial law or by the law as practiced and understood in England.35 In several instances, Bilder notes, even people who had already been tried and convicted in colonial courts made use of this transatlantic constitution by taking their appeals directly to the King.36 So varied were the options for colonial defendants in fact that the
individual judges of a given colonial court might disagree over whether to uphold colonial or English practices.37

But if establishing a transatlantic constitution was a practical necessity for dealing with the colonies, it took on a heightened theoretical importance in New England as a result of complications brought on by the Puritans’ faith, the political structure of their communities and churches, and their particular relationship with England as it went from being a hostile environment, under James I and Charles I, to a welcoming one, under Cromwell, and back to a hostile one again, following the restoration of Charles II. Puritanism itself, that is to say, exerted its own pressure on the traditional link between person and place causing it, in a way that interacted with the law, to weaken even further. At the heart of these religious complications was the struggle between the dictates of Puritan theology, which were in keeping with the kind of homogeneity once associated with the older theory of territorial jurisdiction, and the realities of Puritan politics, which were, though it has rarely been acknowledged, diverse in the extreme.38

From a strictly theological point of view, Puritan church formation, in contrast, say, to that of the Presbyterians, was premised on the homogeneity of a church’s parishioners. The principle underlying this formation was congregationalism, which required that the Puritan churches be gathered voluntarily, that is to say, constituted solely by their own godly members. In fashioning a church that was rooted in a communion that required a profession of faith from its members, the congregational church departed from more traditional forms of church worship, which relied on residency within parish boundaries and welcomed a variety of parishioners. As one scholar puts it, “it was not the geographical accident of a parish boundary, nor the
deliberations of a church court, but the ‘inward freeness, willingness and readiness of the spirits of the confessors’, their voluntary commitment, which constituted such churches.”

But if the impetus behind such congregations was to assemble a uniformly religious group for like-minded devotion, the reality was often otherwise. It soon became clear, for example, that gathered churches might gather for different reasons. Even if one could achieve a kind of homogeneity within a given church, there were bound to be differences between them. What might, from a contemporary point of view, be considered minor differences in religious doctrine between preachers often led to major schisms within the Puritan church and spawned a variety of warring Protestant sects, including the Familists, the Anabaptists, and the Quakers, to name just a few. In addition, try as they might to create particular and pure places of worship outside the parish structure, the parish church remained the central place of worship for most Puritans. Under the Act of Uniformity of 1559—so-called because it hoped to encourage a uniformity of worship among Protestants in general—all Englishmen were required to attend church once a week in their own parish. Of course, it was not uncommon for Puritans who were dissatisfied with their own ministers to seek out preachers in other towns whose sermons they found compelling, but such visits did not relieve them of the obligation to attend regular meetings at their parish assemblies. In recognition of this fact, Roger Williams who, like many others had hoped for a greater purity among churches in New England than could be expected in Old England, urged a separation of practice in the colonies that was stricter than most of his fellow Puritans were willing to accept. “Yet since there are no Parish Churches in England, but what are made up of the
Parish bounds within such and such a compasse of houses,” he wrote, “and that such churches have beene and are in constant dependence on, and subordination to the National Church, how can the New-English particular Churches joyne with the Old English Parish Churches in so many Ordinances of Word, Prayer, Singing, Contribution, &c. . . .”

Thus despite the traditional, even mythical view, of the uniformity of Puritan worship—a view perpetrated in part if not in whole by the triumph of Puritanism in the civil war—the English Puritans were used to dealing with a good deal of diversity in their churches and villages. In terms of numbers alone, of course, Puritans were few and far between. Admittedly, there were Puritan strongholds—among them Essex and Northamptonshire—but in most counties, the Puritan presence was sparse. We know from countless reports of their efforts to pray together that when they did seek out preachers outside their parishes, they had to walk many miles to find a place where a sufficient number of them could gather. Nor is there any evidence to suggest that they expected anything less. They were used to living among people of different faiths. In fact, it was the separating kind of Puritans—that is, those who wanted nothing to do with the Anglican church and were more inclined to see their faith as set apart from Protestantism as a whole—who agreed that living in the world was precisely a matter of not separating. In a famous Puritan tract, “The Communion of Saincts,” printed in Amsterdam in 1607, Henry Ainsworth wrote “but though we may have no communion with the wicked in their religion, nor any other evil action, against either table of Gods Law: yet in civill affayres we are taught of God to converse with them in space. As to eat and drink with
them, buy and sell, make convenants of peace, shew kindness to them, put their estate,
love them, relieve their wants, and receive from them for our own relief."43

As surprising as it may be to learn that the Puritans were relatively tolerant of
their fellow Protestants, however, it may be even more surprising to learn that their non-
Puritan neighbors were fairly tolerant of them. Though they were, as traditional
depictions suggest, a dissident sect with often fiery opinions, they were far less estranged
from the social norms of their communities than has typically been thought. And as long
as they didn’t bother others in the practice of their religion, their non-Puritan and
typically less fervent neighbors usually left them alone. Persecuted often mercilessly by
Archbishop Laud and others in the royal government, they were tolerated locally.44 In
the first decades of emigration, in fact, as David Cressy has shown, social conditions
were often better for the Puritans in England than they were in the new world, a paradox
that led to what Cressy calls a reverse migration. During the 1630s and 1640s alone,
several thousand people left the new world for the old, including 200 from Governor
Winthrop’s original fleet.45 And even though there were attempts by the New England
leadership to portray those who did return to England as defectors, Andrew Delbanco
notes that “the reverse emigration was much more than a winnowing of chaff, and
everyone in New England knew it.”46

Adding to the diversity of the Puritans’ spiritual and ecumenical lives as they
experienced them in England were the jurisdictional complexities associated with
establishing boundaries and acquiring land in the new world. The land grab that
characterized much of the relationship between the Puritans and the Indians, for example,
extended to the Puritans’ inter-colonial relations, with Massachusetts Bay Colony leading
the pack in its absorption of land from Maine and New Hampshire. Not surprisingly, many of these transactions led to heated jurisdictional disputes. Nor was it the case, as is so often reported, that having once acquired land, the Puritans were vigilant about its boundaries. According to David Konig and others, land in colonial New England was decentralized and jurisdictional lines between towns and colonies were often unclear.47

The ambiguity between borders brought on by neglect of, uncertainty about, and in some cases, direct violation of the rules about land acquisition, was exacerbated by the movement of people between villages and colonies. For all the scholarship that points to the stability of the Puritan population, even down to the level of transporting entire populations from English jurisdictions to New England towns, there was, recent historians have shown, considerable movement.48 Some of this movement was inadvertent and resulted from the shifting of jurisdictional boundaries over time; thus, without even knowing it, a person who thought he lived in one village might suddenly find that he was part of another. But even more movement came about as the result of people’s deliberate decisions to look for more land or for better job opportunities. John Cotton himself who touted the virtues of permanent settlement and derided those he called “outlivers,” at one point considered moving from his home in the Bay Colony to New Haven to take up a new ministerial position. It was not unusual, in fact, for someone to have lived in 5 to 20 different places in a lifetime, moving because of cramped quarters, inequitable land policies, or because a different village or colony was more conducive to his or her occupation or craft.49 Needless to say, the more mobile the population, the more diverse their communities.
The political realities of Puritan church organization and land conditions had a substantial impact on the uses of banishment, for here was a punishment that could give the Puritans the illusion at least of creating relatively uniform jurisdictions with relatively homogenous populations. Tables compiled by legal historians of Puritan America indicate that of all the colonies, the Massachusetts Bay Colony, where theory most often came into conflict with practice, had a particular affinity for the practice of banishment. At one of the first sessions of the Court of Assistants, from 28 September to 8 October 1639, Thomas Gray was ordered “to remove himself out the lymetts of this patent before the end of March nexte.” The next spring, six people were told to leave as “persons unmeete to inhabit here.” In May, Thomas Walford and his wife were ordered to “departe . . . under pain of condiscacion of his goods, for his contempt of authoritie & confrontinge officres, etc.” Moreover, banishments continued in the Bay Colony over the next two or three decades with a ferocity that surpassed their use anywhere else in New England.

Given the sheer number of banishments, however, it will not be surprising to learn that there were countless procedural and substantive inconsistencies that belied the Colony’s certainty about its jurisdictional authority. A quick glance at the records of the Court reveals at least four different categories of crimes for which people were regularly banished, including drunken and profane behavior, dishonesty toward the Indians, treasonous speech, and malicious misrepresentations of the affairs of the Colony. In addition, the records reveal that while most people were ordered out of the colony as a whole, their destinations differed. In some cases, people were banished directly to England, in others to the West Indies, and in still others the sentencing order was silent.
on the issue, leaving the banished person to go where he or she liked. This turned out to be the case for Roger Williams, who not only chose his own destination—Rhode Island—but turned that destination into a successful colony in its own right, a fact which only added to the confusion over how banishment and jurisdiction were linked.

II. The Banishment of Roger Williams

The establishment of a colony that became a refuge for many people, including the Quakers and the Anabaptists, who had been banished by the Bay Colony authorities because of their religious views, was only one of the unique and controversial aspects of Roger Williams’s banishment. That Roger Williams was banished from the Massachusetts Bay Colony on October 19, 1635 has long been known, but why he was forced out and the circumstances under which he left have been matters of some debate since the day the sentence was issued. General jurisdictional anxieties were displayed in Williams’s case, as they were in many others, as we have seen. For one thing, there was some doubt about his personal status; he had, for religious reasons, refused to take the oath of residency and therefore was not a freeholder of the Bay Colony, but no one knew whether this alone might exempt him from an order of banishment. There was also an uncertainty about when the banishment would take place. The order that accompanied the original sentence gave Williams six weeks to get his affairs in order before he was cast out, but on hearing that he had fallen ill toward the end of that period, the Court readily agreed to give him more time. During this temporary reprieve, however, Williams, who was under strict orders “not to goe about to drawe others to his opinions,” was more outspoken than ever, which led the court to reverse itself once again and “agree to send him into England by a shippe then readye to depart.” That this order
specified a destination for his banishment, when the original order had remained silent, only further revealed how seemingly random banishment orders could be. Further tinkering with Williams’s sentence came about as a result of a secret message—some say it was from Governor Winthrop himself—sent to him just before he was to be apprehended, which allowed him to flee in the night for the wilderness and avoid what might have been even stiffer penalties in England under Charles I. Even after he was gone, moreover, doubts about the validity of his banishment continued to surface. In 1676, more than thirty years after his banishment, the Colony officially entertained the possibility of rescinding his sentence in deference to the valiant service he performed for the Colony during King Philip’s war. Despite the public clamor in his favor, however, the court in the end decided against it.

In addition to these general uncertainties about banishment on the part of the authorities that enforced it, Williams’s case became the site of many more specific and unusual jurisdictional anxieties, most of which revolved around his so-called crime. Most accounts of Williams’s banishment, both popular and scholarly, agree that he was banished for insisting on practicing his brand of Puritanism in his own way which, as it happens, was not the New England way championed by his colleague and former friend, John Cotton. For Williams, famously, this insistence was driven by his conscience—a place of inner knowledge that was not only crucial to the process of Puritan self-examination, but was a private zone to be regulated not by the state but by the individual in relation to God. “Conscience,” he wrote, “will not be restrained from its own worship, nor constrained to another” (Williams, Vol.3, 63).
Interestingly enough, on this point Cotton agreed: conscience was not to be viewed as subject to juridical regulation. “[N]o man is to be persecuted at all (much lesse for Conscience Sake) . . . ,” he wrote. But for Cotton there was a loophole that brought not the conscience but some of its dictates under the church’s purview. “I professe further that none is to be punished for his Conscience sake, though Erroneous, unless his Errors be Fundamental . . . .”

Fundamental errors, Cotton went on to explain, are to be distinguished from others by their crucial impact on a person’s spiritual destiny. Fundamental errors, he wrote, “. . . are . . . without right beliefe, whereof a man cannot be saved: others are circumstantial, and less Principall, wherein one man may differ from another in judgement, without prejudice of Salvation on either part” (Cotton, *Lamb*, 5).

Following Cotton’s lead, scholars have spent much fruitful time identifying fundamental errors with aspects of Puritan religious doctrine—investigating why fundamental errors affected an individual’s salvation while other errors did not—but even for the theologically minded Cotton, religion was not the only factor involved in determining such errors. Fundamental error, it turns out, from Cotton’s perspective, was error that resonated not only in an individual’s conscience according to his or her religious beliefs, but in the social and civil sphere as well. “We approve no persecution for conscience,” he wrote, “neither conscience rightly informed . . . nor conscience misinformed with errour, unless the errour be pernicious and unless the conscience be convinced of the errour and perniciousness therefore, as that so it may appear, the erroneous party suffereth, not for his conscience, but for his sinning against his conscience” (Cotton, *Lamb*, 22). Restating his view of persecution for conscience in this way, Cotton begins to identify the secular components of his creed, for if the person who
commits fundamental error is one who persists in his belief despite a warning against it, then the definition of what was previously seen as an explicitly private conscience has taken a decidedly public turn. For Cotton, in short, sinning against conscience was another way of saying that individuals with “rightly informed” consciences adhered to the same, governing principles, while people with wrongly informed consciences did not.

In appealing to a shared and necessarily public understanding of conscience—a kind of uber-conscience, as it were—Cotton turned conscience into a jurisdiction, making it subject to a determination and judgment by a juridical authority. That the church might have reasonably assumed this authority over Williams and the dictates of his conscience is not in question. If Williams had been excommunicated, in other words, we can assume that he would have advanced his argument about the illegitimacy of church jurisdiction—based on his theory of church purity—and been done with it, leaving a record of his banishment far smaller than the one we have. But excommunication was an option the ministers pointedly did not pursue, and the jurisdiction to which Cotton relegated Williams’s conscience was not ecclesiastical, but civil. “... And though I grant, that in subverting such Fundamentall Points, and persisting therein after once or twice Admonition, a man sinneth against his owne Conscience, and is therefore censurable by the Church,” wrote Cotton, “[he is censurable] by the Civill Magistrate also, if after Conviction, he continue to seduce others unto his Damnable Heresies” (Cotton, Lamb, 10). The seduction to which Cotton refers provides the bridge he needs to cross from church to civil jurisdiction, for in bruiting about his opinions in “an Arrogant and Impetuous way,” the sinner against conscience, he goes on to explain, “disturbs the civil
peace” and thus implicates himself in the violation not only of religious but also of the secular law.

To refute this logic at this point in their debate, Williams realizes that he must do more than prove that in his “manner of his holding forth and divulging,” he was not arrogant but meek. He must prove instead that no matter how arrogant he was, his decision to pray in his own fashion, because it belonged exclusively to the religious sphere, could not destabilize the civil order. For Williams, in other words, the two jurisdictions ran parallel to each other but were not co-extensive. “Hence it is,” he wrote, “that so many glorious and flourishing Cities of the World maintaine their Civill peace, yea the very Americans & wildest Pagans keep the peace of the Towns or Cities; though neither in one nor the other can any man prove a true Church of God in those places” (Williams, Vol.3, 72). For Cotton, by contrast, the church existed both within and alongside the civil sphere and disturbances within it affected the whole. “The world,” he wrote, “would not subsist but for the Church, nor any Countrey in the world, but for the Service of the Church. And can the Church then breake up into pieces and dissolve into nothing, and yet the Peace and welfare of the citty, not in the least measure impaired or disturbed?” (Cotton, Lamb, 12).

And thus we arrive at the two men’s most famous and yet most misunderstood conclusion: for Williams, church and state were not to mix, for Cotton they were inextricably united.57 Perhaps the biggest misunderstanding inherent in these conclusions involves the one first formulated in the nineteenth century in which Williams was hailed as a founder of American liberal democracy, while Cotton, when he was read at all, was seen as a throwback to a feudal order.58 While it remains a popular view of Williams to
this day, this political and profoundly anachronistic reading suffered a setback in the mid-
twentieth century in the scholarship of Perry Miller in which Williams’s thought was
reread in the context not only of his own pre-democratic time, but exclusively in the
religious sphere to which Miller thought it belonged. For Miller, notably, Williams
advocated a freedom of conscience and a separation of religious and civil authority
strictly for religious ends, not political ones. In fact for Williams, Miller explained, the
purpose of keeping state and church apart was to keep the church, the New Jerusalem of
Christ, from being tainted by the state’s inevitable corruption. The church, he insisted,
was to remain pure.

Scholars after Miller have followed him in maintaining a theological focus on the
Williams-Cotton divide. Edmund Morgan links Williams’s insistence on a pure church
to his belief that the church in his own time had been taken over by the Anti-Christ and
notes that this belief led him to the “ultimate absurdity, that there could no church at
all.” Sacvan Bercovitch, although providing a necessary corrective to Miller’s
suggestion that Williams had in some ways abandoned the view of New England as the
New Jerusalem, rereads Williams in the context of post-Reformation uses of religious
typology to conclude that while he may have differed from Cotton’s version of typology,
he was no less devoutly Puritan. More recent scholars have also weighed in on the
issue of Williams’s church-state separation. For Jesper Rosenmeier, for example,
Williams’s view of the separate and pure church was a result of his understanding of
Christ’s incarnation, while for Philip Gura, Williams’s insistent separatism had less to do
with doctrine than with disputes about church discipline. Teresa Toulouse, while not
focused on the Cotton-Williams debate per se, stresses Williams’s refusal to tolerate a
visibly impure church—where saints and hypocrites would inevitably pray together—as a counterpart to the genuinely pure spiritual realm. Thus Williams, she writes, believed that “the tares and wheat should be entirely separated on this earth.” Viewing Williams through a similarly critical lens, Andrew Delbanco pinpoints his “overwhelming sense of sin,” as the cause of his downfall, leading him to see the world as a “dung-heap,” and preventing him from making the “compromise” required by the New England Way.

But if his insistence on church purity led Williams to assume an uncompromising position, as Delbanco and other critics seem to suggest, we need to bear in mind that it was uncompromising only with respect to the church. What is overlooked in these scholarly opinions on Williams, in other words, are the implications of his views on purity for the civil sphere. Thus contrary to one’s expectations, his demand for a church that was, in the end, purer than was humanly possible, did not drive him to reject impurity in the secular sphere. On the contrary, because he, like his mentor Coke, believed that civil jurisdictions could no longer be coherent in the way they had been before internationalism and colonialism, he saw their impurity as natural. Using the terms of one of his favorite Biblical parables, he insisted that “the tares” and “wheat” should mix on earth, even if he did not believe they should do so in heaven. Thus if a theological perspective reads his insistence on the purity of the visible church as “absurd,” as Morgan puts it, a secular and legal perspective begins to uncover its sanity, for in holding fast to the inevitable impurity of the church, Williams took his cue from the courts in which the impossibility of pure, that is to say, homogenously populated and geographically contiguous, secular jurisdictions was gradually being acknowledged and integrated into a new, real-world understanding.
In fact, if the story of Williams’s banishment was devoted, in part, to his struggle to convince the Puritans of the need to maintain a pure and homogenous church, it was equally a struggle to convince them of the need to acknowledge diversity in the civil sphere. The first salvo fired in this direction was a treatise Williams wrote that directly questioned the legitimacy of the boundaries of the Bay Colony.\textsuperscript{64} Williams’s treatise on the Bay Colony’s civil jurisdiction, which was written “at the request of Gov Bradford for his private satisfaction,” has been lost, but the reasons he advanced in it have been preserved in a number of his other writings, as well as in those of his contemporaries.\textsuperscript{65} In brief, Williams was said to have denied the right of the Massachusetts Bay Colony to hold its lands by patent from the king.\textsuperscript{66} To this end, he was charged with three violations of the law: 1. “that he said that the king told a lie because in the patent he blessed god that was the first Christian prince that had discovered this land”; 2. “that he had said that the king had blasphemed for calling Europe Christendom or the Christian world”; and 3. “that he [Williams] said everyone who inhabits New England is under a sin of unjust usurpation on others’ possession.”\textsuperscript{67}

Williams’s challenge to the king’s patent has been taken by most scholars to have stemmed from his antipathy for the idea of ownership through conquest and has thus been seen as evidence of his sympathy for native rights.\textsuperscript{68} There can be no doubt of course that due largely to the friendships he developed with the Indians during his winter in Plymouth, Williams opposed the English practice of seizing ostensibly unclaimed Indian land. His \textit{Key into the Language America} (1643), which includes an extensive Narragansett-to-English lexicon as well as many favorable views of Indian society is sufficient proof of that. But the challenge Williams posed to the King’s patent was also
crucially part of his opposition to the mainstream Puritan view of the law of jurisdiction and should be seen in the light of Williams’s participation in these jurisdictional debates.

In addition to the questions raised about the law of jurisdiction in the face of plural legal systems, questions also arose about the nature of jurisdictions acquired by purchase or seizure. Land acquired in this way, as opposed to by inheritance or royal marriage, for example, constituted a new legal entity, and if it was unclear what kind of law would prevail within these territories, it was equally unclear what kind of law would determine the way the boundaries of the colonial territories were drawn and enforced.

Before the Protestant Reformation, papal bulls had typically authorized the possession by Christians of non-Christian lands; after the Reformation, however, charters took their place and were intended to usher in a new era in which the law of land acquisition would be defined as more suitably modern and secular. As James Muldoon points out, however, the charters often failed to live up to their reputation.69 The charter from James I that allowed the founders of the Massachusetts Bay Company to acquire the land that was to become the Bay Colony, for example, specified that they take only lands that were empty (which many of the Indians lands seemed to be) and not already claimed by “another Christian power.”70 One could hardly imagine that the language of such a qualification would go unnoticed by someone like Williams who was well versed in the controversies surrounding sovereignty and jurisdiction of his day and felt that far from creating a legitimate civil law jurisdiction, the King had authorized the English to take new world lands by virtue of his own understanding of divine right and Christian universalism.

Williams found the idea of Christian universalism, which included the absorption by the church of territories not previously claimed by a Christian monarch, abhorrent.
For one thing, it prefigured a purely Christian universe full of Christian nations, and nationalism, he believed, was not a property of the church. It followed, then, that he also loathed the concept of Christendom, a subsidiary of Christian universalism, which held that wherever Christians lived was by definition a Christian place and, conversely, that everyone living in a Christian place was or should be a Christian. In “Christenings Make Not Christians” (1645), an essay he wrote two years after the Key, Williams argues that Christianity was to be found in people, and in the very small places—like the gathered churches of the Puritans—where they might congregate. “Civil alters according to the constitutions of peoples and nations,” he wrote, “spiritual he hath engaged from the national in one figurative land of Canaan, to particular and congregational churches all the world over” (Williams, Vol. 4, 80). The significance of this assertion coincided with Williams’s belief that nations and other civil jurisdictions not only were but ought to be populated not by Christians alone but by diverse groups of people.

The consequences of this belief for Williams’s understanding of the Indians’ rights to the land were enormous, for it followed that if the aim of Christianity was not to propagate Christian nations, then the ownership of land acquired under this rubric were not necessarily legitimate or clear. “I answer, that all nations now called Protestants,” Williams wrote, “were at first part of the whole Earth, or main (Antichristian) Continent, that wondered after, worshipped the Beast, & c.” (Williams, Vol. 7, 34). Williams’s use of the word “earth” in this statement is telling. In the chapter, “Of the Earth and the fruits thereof, & c.,” in his Key, he refers to the earth and land as synonyms—“Aûke, & Sanaukamúck” are translated as “Earth or Land”—implying a semblance between the earth, the product of God’s creation, and the area the Indians inhabited (Williams, Vol. 1,
By “earth,” most Puritans meant those parts of the Western world where Puritans were allowed to live. But for Williams, the “earth” was the “whole terrestrial Globe,” and Christendom an insidious and fictional entity.

Williams’s understanding of how Christianity figured in terms of the nation had implications not only for the acquisition of Indian land but also for his sense of where the English and Indian self stood in relation to the land and to the jurisdictional powers that were exercised over it. The region, as we have seen, was far more heterogeneous than has typically been recognized, but no subject threw more of a wrench into the jurisdictional works than the Indian. The status of the Indians, as Jenny Hale Pulsipher has recently shown, was often contradictory; they were simultaneously held to be ruthless barbarians who lived in a lawless wilderness and subjects of the King. This, Williams liked to observe, made a mockery of the Puritans’ belief about uniform jurisdictions. In fact, in a moment of great irony in his ongoing debate with Cotton, Williams suggests that Cotton, who was no friend to the Indians, must actually like them better than he liked Williams himself or else be caught in a contradiction of his own. “I reply, first, who sees not herein unchristian partiality that pagan, Barbarians (who happily might more easily be brought from their natural religion to a new forme, then any other) I say, that they should be tolerated in their hideous worshipes of creatures and devilism while civil people (his [Cotton’s] countrymen yea it may be the precious sons and daughters of the most high God) shall be courted, fined, whipt, banished & c. for matters of their conscience and worship to the true and living God?” (Williams, Vol. 4, 85). Why, in other words, if the Indians were subject to the laws of the Colony’s jurisdiction, were their diverse practices condoned in ways that those of dissident Christians like himself were not?
III. Theories of Law, Theories of Religion

One way to understand the apparent paradox to which Williams points in Cotton’s thoughts about the Indians is to realize that in many ways, Williams and Cotton were talking not to but rather past each other. Indeed, the two most important terms in their debate—law and religion—held very different meanings for each man. For Williams, as we have seen, the law was a distinct and emergent category with the ability to influence his understanding of religion’s place in the world. For Cotton, however, law, no matter how secular, the law had religious origins and was impervious to change. For Williams, the law adapted to its subjects; for Cotton, subjects adapted to the law. On the basis of this belief, of course, it followed that there could, for Cotton, be only one law and that if the inhabitants of that jurisdiction were not already sufficiently homogenous, they would—and this included the Indians—soon become so, if not spiritually then at least temporally, as a result of abiding by the law.

To be sure, early in his career, John Cotton contributed as much if not more than Williams to the growing diversity of, or as he later came to see it, the lack of uniformity between, Puritan congregations. From the time he was a minister of St. Botolph’s church in Boston, Lincolnshire, he was an ardent devotee of the gathered church, organizing prayer groups within his own existing parish of more than three thousand people that were comprised of godly members alone. Teresa Toulouse reports that he even went so far as to leave the church, along with those members deemed most godly, when the “more Romish rituals were being performed.” Indeed, many of his writings about the church—pre-eminently “The Way of Congregational Churches Cleared”—have long been taken to be the standard articulations of what came to be known as the New England
Way. It wasn’t long, however, before he realized that the creation of smaller and smaller congregations in an effort to find a pure community of saints could be politically divisive; even in Lincolnshire his efforts had proved troublesome, leaving him with two distinct audiences within his own parish church and the impossibility of being able to preach to both at the same time. Of course, to identify Cotton as a kind of instigator of the growing factionalism between the Puritans and non-Puritans within his parish is not to say that he didn’t also try to heal the divide. The sermons he delivered at St. Botolph’s during the height of the schism in 1620-1621 were, as Jesper Rosenmeier suggests, peppered with references to the oneness of the congregation, a sign of his characteristic view of the homogeneity of all Christians. By the time he reached New England, however, where congregational politics were arguably even more heated than in England, he seemed to recognize a need to do more than remind his parishioners intermittently of their fundamental likeness. Thus in 1636, not long after the banishments of both Williams and Cotton’s former protégée, Anne Hutchinson, he began to modify his position. The result was a draft of his first attempt—all of which were ultimately rejected—to codify the laws in the Bay Colony, in which, among other things, he specifies that the formation of any new church in New England be subject to the consent and approval of all other churches or not be built at all.\footnote{73}

In drafting these laws, which came to be known as Moses His Judicials, Cotton revealed the extent to which his belief in the need for a uniform and univocal law went well beyond his desire for political conformity between the churches. Charged with the task of drafting laws that would bind all the inhabitants of the colony, Cotton turned to the Bible, which in his view offered a model of law by which all people should live.
Indeed, his *Moses His Judicia...s of a series of commandments patterned almost exactly on the Ten Commandments. It was, of course, not uncommon for Puritans to look to scripture for legal guidelines. The English Reformation, after all, had a profoundly legalistic basis, and scriptural law played a large part in the development of the Protestant movement as a whole. But if for most Puritans, the Bible served as a moral touchstone, it did not provide a template for law in their own day. Even the most devout Puritans were aware that the laws of the Bible, designed for the nomadic and early societies of Israelites, could not, at least in their particulars, be made to serve the very different needs of the Puritans. For this reason, wrote one Protestant divine, “we have nothing to do with Moses’ . . . judicial laws.”

But Cotton held firm to his devotion to scriptural law. To be sure, even Cotton saw the limitations of a life informed exclusively by law, even if it were Biblical; like all Puritans he understood the need for grace—that element of godly communion that was explicitly beyond the reach of law—to produce a truly spiritual understanding. But when it came to the law and the drafting of legal codes, he did not share his contemporaries’ sense that they might “add to [the Bible] or . . . take from it, or . . . alter and change it” to fit their own needs. Scriptural law, he wrote “is of universall and perpetuall equitie, in all Nations, in all Ages” (Williams, Vol. 2, 69). Not surprisingly, he followed it not only in its generalities—in its injunctions against crime, for example—but also in its details—in naming as those crimes warranting capital punishment the very same crimes the Bible did. Even the law providing for the creation of storehouses for foodstuffs in *His Judicia...s was grounded in a passage from Deuteronomy.
But if Biblical law was not to be altered to suit changing local conditions, neither was it to be altered through interpretation. Theologically, of course, Cotton believed in the word of God as supreme: “The greatest light that I expect,” he wrote, “is not above the Word, much lesse against it: or is it destructive to the Church, and Ordinances of Christ, established according to the Word, but instructive of them in the way of the Word” (Williams, Vol. 2, 28) What is striking, however, is that for Cotton the illuminating presence of the Word was not merely a theological affair; it was a fundamental principle of legalism. Along with a small group of Renaissance legal scholars, he believed that the word of God was the intention of legislators made visible, literally. The tautological quality of such a belief is best illustrated by one of his catechetical examples: “Quest: What is Sin? Answer. Sin is the transgression of the Law.” Here the law seemingly invites not knowledge or understanding but obedience. Moreover, the jurisdictional element of Cotton’s theory of law emerges clearly within this paradigm, since for Cotton spiritual peace and achievement is tantamount to obedience, which is in turn tantamount to staying within bounds. Lex, for Cotton, was profoundly tied to its etymological root: ligando, which means binding. The law that created jurisdictions, then, was not merely a part of the law for Cotton, but its very essence. “When God wraps us in with his Ordinances, and warms us with the life and power of them, as with wings, there is a Land of Promise,” he wrote.

Williams, not surprisingly, belonged to a very different school of legal hermeneutics and had a very different theory of the law. For Williams, written law was not to be taken literally but only insofar as it “embody[d] more or less directly and successfully the norms and force of the law.” The law, in other words, was for
Williams a composite of what was written or expressed verbally and what was done or expressed non-verbally. Restated in modern terms, the distinction between the legal hermeneutics of Cotton and Williams resembles the traditional divide between statutes and common law. In cultural terms, we might also say that for Williams written law was only one part of a legal nomos that included all kinds of collective customs, social patterns, and forms of human expression. The customs of Englishmen from time immemorial, after all, was the stuff on which English common law was built and what gave it its consensual basis. Writing the law to account for and conform to people’s customs, moreover, made the law organic, as opposed to abstract, and responsive to changing human needs. In fact, so central was this notion of responsiveness that it became the arbiter of the law’s validity. Thus, while Williams did not believe in the application of only one law for all the diverse people within a given jurisdiction, he did believe in applying the same law to everyone in the same or similar life circumstance. In the course of his writings about banishment, in fact, he chastised Cotton for punishing him for doing something—namely, practicing his religion as he saw fit—that he, Cotton, had done years earlier in England without suffering the same consequence. “In “persecuting of men,” Williams wrote, “. . . Cotton measures that to others, which himself when he lived in such practices, would not have had measured to himself” (Williams, Vol. 3, 71).

What this statement demonstrates, among other things, is that Williams believed not only that the law was responsive or mutable, but that what drove changes in the law were changes in human circumstance. Implicit in this theory of the law is a belief in human contingency. People in the same place may lead different lives, and people in
different places may lead similar ones. But for Williams, a belief in human contingency meant not only that a legal system should encompass different laws for different situations, but also that the law might change in new and unforeseen ways. In short, not all of human experience could be predicted, much less codified.

The issue of predictability brings us to the subject of typology and to the role it played in the legal theories of both Cotton and Williams. At its core, typology was a way of reading the Bible—not the law—but its implications for legal thought were enormous. Common among Puritans and Protestant readers in general, typological readings of the Bible held that the events and persons described in the Hebrew Bible were types or prefigurations of those in the New Testament. The New Testament, by this logic, was the antitype of the Hebrew Bible, in which events and figures paralleled the sacred history of the Jews but found their perfection in the life of Christ. As Sacvan Bercovitch explains, “Thus Nehemiah was a ‘personal type’ of Jesus, and the Israelites’ exodus from Babylon a ‘national type’ of His triumphant agon.”83 Both Williams and Cotton were typological readers, but to different degrees. For Williams, the Puritans, who saw themselves as the heirs to the Biblical Jews, existed in both sacred and secular time, experiencing trajectories within both spheres that were often at odds with each other.84 For Cotton, by contrast, whatever existence the Puritans had in secular time was governed exclusively by their existence in sacred time, which was in turn a perfect reiteration of the story of the Biblical Jews. For both men, sacred history was known because it had already unfolded. For Cotton, however, this was also true of secular history, whereas for Williams, secular history was full of the contingencies that shaped his notion of a changing, circumstantially informed law and the diverse jurisdictions it encompassed.
IV. Theories of Jurisdiction, Theories of Self

Even in the model provided by religious typology, however, jurisdiction played a significant part. After all, the defining typological event for seventeenth-century Puritans was their finding a place in America that would serve as their New Jerusalem. Settling in New England did for the Puritans what settling in England, Leiden, or Amsterdam had not; it brought them closer to realizing that perfect parallel between their lives and those of the Biblical Jews.

In “God’s Promise to his Plantations,” a farewell sermon Cotton gave to Winthrop’s company as they left for the new world in 1630, we see how intimately connected Israel and New England were for him. He begins with a quote from 2 Samuel 7, 10: “Moreover, I will appoint a place for my people Israel, and I will plant them, that they may dwell in a place of their own, and move no more.” Having moved to New England, in other words, God’s newly chosen people would have need to go no further because New England was “appointed,” a place not only from which to escape persecution—like the Netherlands—but also a destination, a place invested with the sacral qualities of Israel. To speak of New England as a destination, however, is not to suggest that settling in New England, and only New England, was the Puritans’ destiny. To do so would be, as many scholars have pointed out, to implicate the Puritans in a trajectory of American imperialism and manifest destiny that took hold centuries after their arrival. Arguing against such an association, Delbanco reads the appointment of America in “God’s Promise” as random. “The land of promise” he writes, “was a place of intimacy with God,” that initially included a variety of appointed places, including Providence Island off the coast of Nicaragua. But from my perspective, it matters little whether the
Puritans ended up in New England or Nicaragua. The important element from the point of view of jurisdiction is that Cotton associated people with place. He wrote, “[the true church] is a flocke of saints called by god into the fellowship of Christ meeting together in one place to call upon the name of the lord and to edifye themselves . . . .” So important was the association between people and place, moreover, that having found a place, Cotton believed, God’s people would never be required to move.

And you shall never finde that God ever rooted out a people that had the Ordinances planted amongst them, and themselves planted into the Ordinances: never did God suffer such plants to be plucked up.

In this rooting of people to place through ordinance, Cotton found the link between church and commonwealth. If the ordinances were with the people, they could be anywhere, but that anywhere would then be their spiritual and temporal home. “It is better,” Cotton wrote, “that the commonwealth be fashioned to the setting forth of God’s house, which is his church [than to] accommodate the church frame to the civil state.”

Where Cotton merges spiritual and temporal jurisdictions, however, Williams, true to his historicist reading of the Bible, maintains a separation between the two. He agreed with Cotton that the historical land of Israel, as constituted and represented in the Hebrew Bible, was a mixed jurisdiction, spiritual and secular, but on the subject of its relevance to the Christian commonwealth, he and Cotton parted ways. After Canaan, Williams explained, God broke the mold. “Doubtless that Canaan Land was not a patterne for all lands,” he wrote. “It was a none-such, unparalleled and unmatchable” (Williams, Vol. 3, 232). Having set Canaan aside for the Jews and seen it fail, as the Christians believed it had, God seemed to have reconsidered not only the people he
would choose to favor—this time it was to be the Christians, not the Jews—but also the model of state he had given them. Thus the land that was Israel—a unique instance of the overlay of geographical and spiritual jurisdictions—was transformed with the coming of Christ into a church without geographical coordinates. For Williams this meant that the Church, which continued to rule over the kingdom of God, had no earthly counterpart.

“Let Master Cotton now produce any such nation in the whole world whom God in the New Testament hath literally and miraculously brought forth of Egypt, or from one land into another,” Williams wrote, “to the truth and purity of his worship &c, then far be it, but I should acknowledge that the seducer is fire to be put to death” (Williams, Vol. 4, 181).

In suggesting that Israel, a nation full of pure believers, could not be reproduced, Williams put yet another dent into Cotton’s argument over jurisdiction and its relation to banishment. Based on the idea of maintaining a social and religious purity, banishment could be effective only if those within the jurisdiction from which one was banished could stake a reasonable claim to purity in the first place. For Cotton, who acknowledged the corruption of the Puritan church in England, that purity had been achieved when the Puritans came to the New World. After all, hadn’t the Bible enjoined the Puritans to do just that when in Revelation 18:4 God’s angel exhorted, “Come out of Babylon my people, partake not of her sinnes, &c.” (Williams, Vol. 2, 145). And yet, as Williams was quick to point out, while Cotton seemed to think the physical separation from England was sufficient in itself to remove them from the taint of Anglicanism, he was, as we have seen, unwilling to effect a total separation of their churches. Wanting one without the other, Williams said, made Cotton’s position paradoxical. How, he asked, could the
Puritans in New England believe in the purity of their separation from England when they refused to separate from the English church? In the absence of such a separation, what they had done amounted to nothing more than a “local separation” which, in Williams’s mind, accomplished nothing. “God’s people,” he wrote, “(in their persons) are His, most dear and precious: yet in respect of the Christians Worship they are mingled amongst the Babylonians, from whence they are called to come out, not locally (as some have said) for that belonged to a material and local Babell, (and literal Babel and Jerusalem have now no difference, John 4.21) but spiritually and mystically to come out from her sins and Abominations” (Williams, Vol. 3, 66).

At the heart of the futility of local separation was Williams’s sense that, after the fall of Israel, all places were the same. Thus, in maintaining a difference between them then, according to Williams, Cotton had made a typological error. Leaving Babel was effective for the Israelites because it was a sinful place, literally, but in his own day, Williams believed, “literal Babel and Jerusalem have now no difference.” “The city on a hill,” the Biblical and jurisdictional metaphor used to convey the single-minded purpose of the Massachusetts Bay Colony, was neither ideologically nor politically as united as the metaphor would have it seem. In short, in a world in which the civil and the spiritual no longer coincided, all places were diverse and sinful, and if every place was diverse, there could be no spiritually meaningful jurisdictional differences. “The Lord Jesus,” Williams wrote, “. . . . clearly breaks down all difference of places . . . ” (Williams, Vol. 1, 76). Cotton agreed, in principle, but his devotion to the Word and its literal and typological applicability prevented his agreeing in fact. Cotton wrote: “It is true which he [Williams] saith, The Lord Jesus hath broken downe all difference of Places (John. 4).
but if he thinke, here is no difference between one Citie, or Countrey more then another in moral pollutions of Idolatry, & superstition, unrighteousness and uncleannesse, he maketh himselfe a greater stranger both to the Word and to the world, then I did thinke he had been” (Williams, Vol. 2, 145-146).

But just when the difference between Cotton and Williams on the issue of place and local separation appeared intractable, Williams approached it from a different angle. Just as all places after Israel were the same in their iniquity, he argued, so too were all people. Just as God “had broken down all difference” between places, so too had he broken down “all difference of persons (Acts 10).” The Jews could claim purity of place, he argued, because they alone could claim purity of birth. They had all descended from the seed of one man, Abraham. But after Christ, he explained, people were a “mixed seed, the people of England especially: the Britaines, Picts, Romanes, Saxons, Danes and Normans . . .” (Williams, Vol. 3, 323). Nor was the diversity of the inhabitants of the world a mere misfortune. On the contrary, for Williams, diversity or cohabitation among people was an essential ingredient for the ultimate triumph of the Christian church. And the injunction to maintain such diversity came straight from Matthew 13.30, 38. “[B]ecause Christ commandeth to let alone the Tares to grow up together with the Wheat, until the Harvest” (Williams, Vol. 3, 97). An immensely important Bible passage for the debate over banishment and jurisdiction, the tares referred to the undesirables and the harvest to the coming of the millennium. Influenced by theories of the imminent millennium, Williams believed that the Jews—now considered to be an impure people--would have to be converted before the new Christian order could be ushered in. Diversity was not only to be tolerated in Williams’s mind, but
also embraced, and if a diverse population were a virtue, then it followed that banishment was vice since it rid the polity of those who might contribute to that diversity.

But the inevitable diversity of a given population cast doubt for Williams not only on the validity of banishing certain people from a jurisdiction, but also on those who, like the magistrates and ministers, did the banishing. For Williams, in other words, ridding the state of undesirables through banishment would make sense only if those who were making those judgments were themselves pure. But who, after Israel, could claim to have achieved a state of purity, and who therefore could claim the power or right to deny another access to what was for Williams a jurisdictionless world? “I desire it may be seriously reviewed by all men, whether the Lord Jesus be well pleased that one, beloved in him, should (for no other cause than shall presently appeare) be denied the common aire to breath in, and a civil cohabitation upon the same common earth” (Williams, Vol. 1, 319). This question, which begins his letter to “Mr. Cotton Letter Examined and Answered,” is notable for several reasons. It invokes the use of the word earth which for Williams, as we have seen, signified a space that everyone, the world over, possessed. But it also, as if to reinforce the meaninglessness of jurisdictions, calls our attention not to the earth’s materiality but to its atmosphere—a genuinely uncontainable and jurisdictionless entity which the Bay Colony authorities, in their myopia, mistakenly assumed they could partition.

Perhaps the most notable implication of this passage, however, was the personal charge of arrogance and misjudgment it leveled against Cotton himself, for Cotton, according to Williams, had been the prime mover behind his banishment. Cotton, he wrote, was “the procurer of my sorrowes,” and he, Williams, was “afflicted and
persecuted by Himself” (Williams, Vol. 1, 44, 34). If, as Williams had argued, the banisher was no purer than the person he banished, then the question implicit in his appeal to Jesus was clear: who did Cotton think he was? Indeed, in the discourse that played out over the personal attacks Williams made on Cotton, we see another side of how the issue of selfhood was informed by the debate over jurisdiction.

Cotton’s strategy took the form of denying agency in the affair. In his first letter to Williams after his banishment he wrote: “... I indevour to shew you the sandinesse of those grounds, out of which you have banished yours from the fellowship of all the Churces in these Countries.”89 In this we see the denial of general agency: he could not have banished Williams since Williams banished himself. At the root of this claim was Cotton’s belief that in insisting on the absolute separation of the churches, Williams had removed himself from community with others in prayer, making it unnecessary for anyone else to remove him.90 But when Williams pointed out that while he had voluntarily “withdraw[n] from the Churches,” he had not opted to leave the Colony—once again making the claim that religion and the law were not the same--Cotton sought refuge from responsibility by claiming that in administering the secular punishment he was not alone. “I told him, I had not hasted forward the sentence of civill banishment: and that what was done by the Magistrates in that kinde, was neither done by my Counsell, nor consent” (Williams, Vol. 2, 58). But the process of denial, which tended toward self-effacement, went even further. Not only had Cotton not offered his “counsel nor consent” to aid in the banishment, but he had interceded to prevent it, to no avail. “Truly (said I) I pitie the man, and have already interceded for him, whilst there was any hope of doing good . . . . But now . . . you know they are generally so incensed against
his course, that it is not your voyce, nor the voyces of two, or three more, that can suspend the Sentence” (Williams, Vol. 2, 64). The banishment, in short, according to Cotton, was a product of consensus, a conclusion, not surprisingly, that coincided with his view “that God’s people, and godly persons are all one” (Williams, Vol. 2, 116). In the face of unanimity—a natural product of Cotton’s sense of the homogenous community—a single voice of protest, such as his own, would naturally be meaningless. But if Cotton absolved himself of responsibility by eliding his self and his opinions with those of the majority, Williams looked to the legislative history to prove that, contrary to Cotton’s impression, the consensus was forced and that not all people, not even all legislators, spoke with one voice. Williams reported, “That some gentlemen that did consent to his Sentence, have solemnly testified, and with teares since confessed to himselfe, that they could not in their soules have been brought to have consented to the Sentence of his Banishment, had not Mr. Cotton in private given them advice, and counsell, proving it just, and warrantable to their consciences” (Williams, Vol. 2, 61). In personal conversations with several of the magistrates, it seemed, Williams got all the evidence he needed to refute Cotton’s assumption that a true consensus had been reached, proving once again that the population of a given jurisdiction, even a jurisdiction composed exclusively of saints, was inevitably diverse. The jurisdiction’s social diversity made banishment meaningless in other ways as well. For one thing, there was no telling how many people might require banishing. If the world, Williams wrote, was “divided into 30 parts, 25 of that 30 have never yet heard of the name of Christ” (Williams, Vol. 3, 414). The implications of this calculus were clear: to purify the earth’s jurisdictions would require banishments on a scale never seen
before, for if every evil doer was to be punished for his sins and those without Christ were the greatest evildoers of them all, then “how many thousands and millions of men and women in the severall Kingdomes and governments of the World must be cut off from their Lands, and destroyed from the Cities . . .” (Williams, Vol. 3, 282). And then, with the bar for banishment set so low, how could one be sure that the right people had been banished? Even the Scriptures acknowledged that errors in banishment had been made. As a case in point, Williams referred Cotton to the story of Jonah and the whale which for him embodied a lesson about how imprecise a tool banishment could be. If Jonah, who was banished from his ship by being thrown overboard, was cast out for his sins, then, Williams argued, that alone would be “sufficient ground for Magistrates . . . to throw overboard, put to death, not only heretics, Blasphemers, and Seducers &c. but the best of Gods Prophets or Servants for neglect of their duty, Ministry &c. which was Jonah’s case” (Williams, Vol. 4, 87). For, as Williams explained, although Jonah had neglected his duty at first, he turned out to a great man and one of God’s chosen. That Williams, like Jonah, turned the affliction of his banishment around to create a new and thriving colony in Rhode Island must have given Cotton pause as time went on.

V. Law, Self, and Narrative

Drawing on examples from the Bible, law, and history, Williams devoted hundreds of pages to trying to prove to Cotton and to the rest of the world that banishment—his in particular—was wrong and useless. His main argument, as we have seen, was that banishment was premised on an outdated and inappropriately religious understanding of jurisdictions and that it tried to distinguish among people who were different on the mistaken assumption that some number of them could be gathered into a
community of self-similar “saints,” living together in a saintly place. To each of his
examples, however, as we have also seen, Cotton offered a counter-example—also drawn
from the Bible, history, and the law—and despite Williams’s efforts to win him over, he
remained unconvinced.

But if scriptural reference, law, and history failed to influence Cotton, there was
one tool that may in the end have served Williams better than any other—his ability to
state his opinions, sustain them, and have them disseminated in print. In his narratives of
banishment, in other words, Williams seems to have achieved in form what he could not
literally achieve by being reinstated in the Bay Colony. Through his use of the printed
word, in particular, Williams proved that individuals were not by definition tied to their
place of residence or origin, but were, like texts themselves, moveable and materially
unlocatable. In addition, in his extensive retelling and recirculating of his banishment
through narrative, Williams, like Coke before him, demonstrated that the law itself, seen
by Cotton as uniform, was itself subject to alteration. In recasting his case in narrative
form, in short, Williams did nothing less than re-adjudicate it, moving it from one
jurisdiction—the Bay Colony’s courts—to another—the world at large.

The first and most obvious end to which Williams put his narrative was in making
a mockery of the gag order that accompanied his banishment. Far from setting limits on
the voicing of his opinions in an “arrogant and impetuous way,” the seventeen year long
correspondence between Cotton and Williams gave his ideas a new airing. To be sure,
the fact that Williams used his banishment as a kind of bully pulpit to redefine his crime
and his sense of self in his own terms came as something of a surprise to Cotton who
assumed that he, like the Apostle John--banished by the Emperor Domitian to the Island
of Patmos for advocating Jesus’s gospel—would not complain. “Where by the way,”
Cotton wrote, “[one] may easily discerne the vast difference between the spirit of Mr.
Williams, and of John the Apostle, in relating their sufferings by way of banishment:
John was a beloved Disciple . . . yet he maketh no expresse mention of his Banishment,
not of the howling Wildernesse, nor of frost, and snow, and such winter miseries: But
(saith he) I was in the Isle of Patmos for the testimony of Jesus.” Unlike the reticent John,
Cotton wrote, “Mr. Williams . . . he aggravateth the banishment of such an one as
himself, by all the sad exaggerations, which wit and words could well paint it out withal .
. . . So deeply affected the sonnes of men can be in describing their own sufferings for
themselves, and their own wayes, above what the children of God be in their farre greater
sufferings for the Testimony of Jesus” (Williams, Vol. 2, 17-18).

Cotton objected strenuously not only to the impropriety of the way Williams
expressed himself—which was contrary to the model offered by the Apostle John—but
also to the actual publication of his (Cotton’s) own opinions by Williams for which he
had not given his permission. Throughout the controversy between the two men, Cotton
repeatedly claimed that what he had said previously to Williams either in person or in a
letter was intended for his ears alone. The letter that has come to be known as the “Letter
of Mr. Cotton” was a case in point; he had sent it to Williams privately after reading a
copy of his *Bloody Tenent*, so when several years later, he saw it in print, in the body of
Williams’s reply, retitled “Mr. Cotton’s Letter Examined and Answered,” he naturally
complained. “How it came to be put in print I cannot imagine,” he wrote. “Sure I am it
was without my privity” (Williams, Vol. 1, 292).
This ability of words to make their way into print without prior authorization is literalized in two crucial scenes of writing depicted in Williams’s work, both of which suggest how words could be made to defy jurisdictional boundaries. The first concerns the fiction with which Williams begins his *Bloody Tenent of Persecution* in which he attributes his arguments to a prisoner of Newgate who, like Williams, was punished for following the dictates of his conscience. That Williams found it necessary to attempt to obscure his own authorship of the volume—his true identity was nevertheless revealed almost as soon as the book came out—invites interesting speculation, but it is the story of how the prisoner’s letter came to be written that is of interest here because it shows again how words escaped jurisdictions. “The Author of these arguments,” Williams explains, “(against persecution) (as I have been informed) being committed by some then in power, close prisoner to Newgate, for the witnesse of some truths of Jesus, and having not the use of Pen and Inke, wrote these arguments in Milke, in sheets of Paper, brought to him by the Woman his keeper, from a friend in London, as the stopples of his Milk bottle” (Williams, Vol. 3, 61). As Ann Myles points out, the medium of milk stands in stark contrast to the blood with which Cotton is said to write, but the significance goes much further, for the ink made out of milk is invisible.92 “In such Paper written with Milk,” Williams goes on to explain, “nothing will appear, but the way of reading it by fire being knowne to his friend who received the papers, he transcribed and kept together the Papers, although the Author himselfe could not correct, nor view what himselfe had written” (Williams, Vol. 3, 61). Not only did the author have to conceal his writing—writing on the sly, as it were—but the very thing he wrote was imperceptible as writing
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until it reached his friend—an undeniable embodiment of the power of words to recreate themselves anew with each new reader, no matter where that reader was situated.

The extraordinary scene of this writing, where the words of the prisoner not only make it out of his prison cell to find a larger audience but also transcend the need for pen and ink, have their counterpart in the second demonstration of the extra-jurisdictional quality of words: Williams’s description of his own process of composition in the *Bloody Tenent Yet More Bloody*. “God is a most holy witness,” he wrote, “that these meditations were fitted for publike view in change of roomes and corners, yea sometimes upon occasion of travel in the country . . . in variety of strange houses, sometimes in the fields, in the midst of travel: where he hath been forced to gather and scatter his loose thoughts and papers” (Williams, Vol. 4, 105). In this passage Williams shows not only that words will out from even the most bounded of environments—like a prison--but also that they do not need the permanence of space or jurisdiction to be formed or disseminated.

The detachability of words from place referenced here in Williams’s printed prose reflect the overturning of old assumptions about print and orality in general. No longer could it be said, for example, that oral expression, which Cotton as a preacher naturally favored, was necessarily fleeting; in fact, as Cotton learned when he struggled to reconstitute his Boston, Lincolnshire parish in Boston, Massachusetts, orality catered to a specific audience, rooted in a specific place. The printed word, conversely, while bound within the covers of a given text and thus seemingly immutable, proved to be mobile and was, by virtue of its increasingly global circulation, rendered new by readers far from its original context. That texts printed in England provided the bulk of the colonists’ reading matter, for example, was proof positive that texts, like people, could speak to multiple
audiences at the same time. In fact, in response to an order of 1588 to search for and commit to prison the authors and printers of heretical material, presses themselves became moveable. It may be that Williams knew this better than most, having chosen the infamous printer, Gregory Dexter, to print both A Key into the Language and The Bloody Tenent, for Dexter was known for using a moveable press and had himself only narrowly escaped arrest several times for his publications.

But the printed word proved detachable from place in ways that transcended the physical site of the book or printing press. There also came into being through the model of the common law a sense of writing as rewriting—that gradual accretion of meaning over time through which the common law made sense of past, present, and future experience. As noted earlier, this system of writing—based on precedent—found its way into Williams’s narrative method. For Williams, as we have seen, the legal punishment of banishment was the occasion for a continuous retelling of the circumstances and motivations that had prompted it. And each time he told it, he appeared to find some new angle, some new articulation that redefined the crime as well as his own and his accuser’s identity. In his retelling, in fact, Cotton conspicuously went from being the accuser to being the “defender,” a designation Williams gives him and that he, Cotton, adopts in several of his texts.

Moreover, in writing by rewriting, Williams seized interpretive control of Cotton’s work in much the same way Coke had done with Littleton. Formally, the narratives Williams wrote and ultimately forced Cotton to write were restatements and re-characterizations of the two men’s original positions. For example, Williams’s lengthy “Mr. Cotton’s Letter Examined and Answered,” as its title suggests, reprints Cotton’s
original letter in its entirety and constitutes itself as new by replying to each and every point Cotton made. Cotton’s “Reply to Mr. Williams his Examination,” needless to say, also duplicates Cotton’s original letter but includes a copy of Williams’s response to it in addition to his own new commentary on that response, as is evident in chapter titles like “To his Chapter 1.” And while Williams’s *Bloody Tenent* departs from this rigid textual reciprocity in presenting itself as a dialogue between two allegorical figures, Truth and Peace, Cotton resumes the imitative structure with his *Bloody Tenent Washed*, which replicates Williams’s *Bloody Tenent* chapter by chapter. Given the form of their exchange, it will not surprise us to learn that fully half of each man’s texts is devoted to a reprinting of the other man’s words, albeit in a slightly different context. And although Cotton does not shrink from using this form of alternating restatement himself, as we have seen, the results are not always to his liking. He objects repeatedly to Williams’s reiteration of his words, claiming that even though he has restated them he has nevertheless misinterpreted him. We see phrases like “It was farre from my meaning,” “my words are plaine,” “suppose I had meant,” “such a point he reporteth is received from me,” “to this purpose was my speech to him,” and most unambiguously, “my words out of which he gathereth this observation are misreported” (Williams, Vol. 2, 56-57, 42, 57, 61, 65, 116). Cotton even goes so far as to note the narrative manipulation of which Williams was capable in not merely restating but in omitting several of his words. “He doth very well, and wisely to expresse the Grounds upon which I said he banished himself with an &c. for he knows that if he had related my whole sentences in my own words, he had cut himself from all opportunitie of pleading with me the cases of his Civill Banishment (Williams, Vol. 2, 42).
Cotton’s charge, however—that in Williams’s hands his words, though they were originally his, were nevertheless distorted—only confirms the genius of Williams’s narrative style since it proves once again that words, like people, are never the same. Moreover, not only do words change, depending on their context, but contexts—even those that appear to be identical—can never be described the same way twice. For Williams, of course, the preeminent example of this was the situation of the Puritans in the Bay Colony. Like-minded in their faith, or seemingly so, they nevertheless failed to constitute a homogenous community. In a final illustration of the inevitability of difference between Puritans, Williams reduces his argument to a personal level, pointing to the friendship he and Cotton had nurtured over the years and that had, ostensibly, despite all their theological differences, given them a reason to love each other. Invoking this sentiment, Williams chides Cotton for not being more sympathetic to him in his current plight. “Had his soul been in my soul’s case,” Williams writes of Cotton, “exposed to the miseries, poverties, necessities, wants, debts, hardships of sea and land, in a banished condition, he would, I presume, reach forth a more merciful cordial to the afflicted” (Williams, Vol. 3, xxiv).

This uncharacteristically emotional appeal undoes itself almost as soon as it is uttered, for the truth, as everyone would have known, was that Cotton had been in Williams’s shoes and had experienced the “hardships of sea and land in a banished condition.” For hadn’t he, like Williams, been banished from England? In fact, wasn’t banishment a universal experience for everyone in the Bay Colony? On a religious level, the answer, which Cotton had spilled much ink to maintain, was undeniable—they had all left England, voluntarily or forcibly, to take up a life in exile—and yet even this
universality, Williams implies, is not enough to make him and Cotton or any other two or
more banished Puritans sufficiently similar to create a homogenous jurisdiction out of
their living space. From a legal point of view, then, their similarities were an illusion
propped up by a religious framework that had no real world counterpart, not even the
universal experience of being banished. And what good was banishment, Williams
seems to ask in a final moment of irony, if after all else failed, even it could not provide
the homogeneity of identity or place that Cotton sought?

In exposing the inevitable differences between even those who were, like the
Puritans, living in the same place and exposed to the same deprivations, including
banishment, Williams brings us back to the parallels between Cotton’s banishment of
Williams and King Henry’s banishment of Falstaff, for Henry’s banishment of Falstaff
proves as useless as Cotton’s of Williams. In fact, by the time of Shakespeare’s Henry V,
as he leads his troops to a certain death, Henry proves that in banishing Falstaff, he has
only driven a deeper wedge between himself and his people, for he was the misleader of
men of men, not Falstaff astray. Needless to say, in Cotton’s hands banishment proves to
be just as blunt a tool, failing in its purpose to divert difference away from the Bay
Colony and failing to make his jurisdiction cohere. Cotton may not have conceded the
point, of course, but additional religious controversies, subsequent banishments, and the
ultimate collapse of the Puritan theocracy would soon prove that both Old England and
New England were places of inevitable diversity—jurisdictions, in other words, in the
modern sense.
Endnotes


2 The critical literature on sovereignty in *Henry IV, Part 2*, is too vast to cite in full, but for a general overview, see Laurie Shannon, *Sovereign Amity: Figures of Friendship in Shakespearean Contexts* (Chicago and London: University of Chicago Press, 2002).

3 The most complete list of banishment cases can be found in *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692*, 2 vols., ed. John Noble (Boston: County of Suffolk, 1904).


6 I refer here to my book manuscript in progress.


8 Littleton, who was a Justice of the Common Pleas in the second half of the fifteenth century, wrote a well known treatise on property law, which Coke took as his foundation.


60
in American History, 3 vols. (New Haven: Yale University Press, 1937, three of the most important legally informed histories of the period, for only brief mentions of banishment.


13 See Henry Martyn Dexter, As to Roger Williams, and his ‘Banishment’ from the Massachusetts Plantation; With a Few Further Words concerning the Baptists, the Quakers, and Religious Liberty (Boston: Congregationalist Publishing Society, 1876), 17.


26 Ibid., 34


32 Edward Coke, *Calvin’s Case* in *The Reports of Sir Edward Coke Kt., Late Lord Chief Justice of England . . . of divers Resolutions and Judgments given upon solemn arguments . . . and the reasons and causes of the said Resolutions and Judgments* (London, 1658). Admittedly, this is not a traditional reading of the case which tends to be seen as strictly enforcing the connection of the subject to the sovereign. The verdict held that the subject owes allegiance to the sovereign in his person or natural body and not merely to the political order he or she represents. And yet the logic of the case can be read as informing Williams’s views on the development of the subject irrespective of the
confines in which he lives. It’s worth noting as well that while the case did not circulate in print until the 1650s, but Williams would have known about it much earlier since he worked closely with Coke decades before.

33 Ken Macmillan explains that Coke was instrumental in fostering a climate in which different and competing laws coexisted and, as a result of his influence, people in early modern England were familiar with competing notions of sovereignty as well as with the notion of a subject with scattered and yet coherent loyalties. See Ken Macmillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576-1640* (Cambridge: Cambridge University Press, 2006), 18.

34 Bilder, 1.

35 The ability to choose between jurisdictions was also mixed with a prohibition against bringing colonists who had committed crimes in England back to England to be judged. Nehemiah Wallington, for example reports that his friend James Cole, who had distributed a dissident pamphlet and was wanted by the courts in England could no longer be arrested because he had emigrated to Connecticut. See Paul S. Seaver, *Wallington’s World: A Puritan Artisan in Seventeenth-Century London* (Stanford: Stanford University Press, 1985), 100.

36 See Bilder, 49 for how this often took the form of appeals to the king.

37 Ibid., 4

38 Swayed by Winthrop’s metaphor, perhaps, Perry Miller offered a view of the colonies as uniform, but more recent historians, like Janice Knight, have countered that view compellingly, especially in term of religious ideology.


Nor was this the habit only of those sectaries that were on the fringe. John Winthrop’s father contrived to hear 33 different preachers in a single year by going to his own parish on Sabbath and then to lectures of others during working days. See Patrick Collinson, *The Religion of Protestants: The Church in English Society, 1559-1625* (Oxford: Oxford University Press, 1982), 259.


Henry Ainsworth, “The Communion of Saincts a Treatise of the Fellowship, that the Faithfull haue with God, and His Angels, and One with an Other, in this Present Life,” Microform (Amsterdam: Printed by Richard Plater dwelling by the Long Bridge, 1628).

Collinson, 268.


For a reference that speaks to the stability of the population as opposed to its mobility, see David Grayson Alen, *In English Ways: The Movement of Societies and the Transferal of English Local Law and Custom to the Massachusetts Bay in the Seventeenth Century* (Chapel Hill: The University of North Carolina Press, 1981).


See Ibid., 19 and Noble, ed., *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692*, for cases ordering people “to depart out of the patent” (vol. 2, 14); preventing people from leaving the patent without permission (vol. 2, 15); banishing Philip Ratliffe (vol.2, 16); imprisoning Nicholas Frost for returning after banishment (vol. 2, 59); sending someone back to his master to be banished (vol. 2, 60); and banishing someone for speaking contemptuously of the magistrates, (vol. 2, 71). The Puritans were fond of other punishments, to be sure. Statistics indicate that whipping and pillory were among the most popular for crimes ranging from drunkenness to adultery, lascivious behavior, Sabbath breaking and attending Quaker meetings.

Williams argued that he was banished for four things: 1. violating the King’s patent, 2. refusing to take the oath of residency, 3. separating from the established church, and 4. mixing civil and spiritual matters. Governor Winthrop had a slightly different list and a slightly different order. He argued that Williams was banished for 1. mixing civil and
spiritual affairs, 2. refusing to take the oath, 3. separating from the church, and 4. not
giving thanks after the sacrament. See Williams, *The Complete Writings of Roger
Williams*, vol. 2, 40-41, fn 8. Some scholars have gone so far as to claim that the actual
reasons for the banishment are of no interest at all. See Parkes, “John Cotton and Roger

(Boston: Little, Brown, and Company, 1892), vol. 1, 413.


56 John Cotton, *Bloody Tenent Washed and Made White in the Blood of the Lamb*
(London: Printed by Matthew Symmons for Hannah Sllen, at the Corwne in Popes Head-

57 To the claim that he was being thrust out of the church as well as the civil jurisdiction,
Williams argued that unlike in Protestant England, where being thrust out of one was
tantamount to being thrust out of the other, there were several Puritan colonies, including
Connecticut and New Haven, to which he could go. Further proof of the conflation of
jurisdictions came not in the form of details about his case but in his argument that New
England had developed a strange practice of handing over the case of unrepentant
excommunicates to the civil magistrates if repentance didn’t occur within six months of
the sentence.

58 Vernon Louis Parrington arguably started this tradition. See *The Colonial Mind:*

38, No. 4 (Dec., 1965), 518.
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Toulouse, 190, fn. 22.

Williams deemed the churches of New England to be insufficiently separated from the Church of England, which was, in his view, a place of irremediable religious corruption.

Notes from a meeting between the Governor and the Assistants on January 7, 1634 suggest that treason “might lurk in the document.” See Rev. T. M. Merriman, *The Pilgrims, Puritans, and Roger Williams, Vindicated: And His Sentence of Banishment Ought to be Revoked* (Boston: C.J. Peters and Son, 1891), 82. See also, Williams, See vol. 2, 41, fn 8.

Merriman, 76.


Merriman, 82.

There’s a lively if somewhat obscure stain of Williams criticism whose aim it is to associate him with forward looking views (especially that of cultural relativism) and
Cotton with backward-looking, conservative views. See Andrews, *The Colonial Period in American History*, 472, for more on this.


73 See John Cotton, “An Abstract or the Lawes of New England, As They are Now Established” (London: Printed for F. Coules and W. Ley at Paules Chain, 1641), 3.

74 See Bozeman, 160 ff.

75 Ibid., 162.

76 Quoted in Ibid.,163.

77 Bozeman, 173.


John Cotton, “God’s Promise to His Plantations” (London: Printed by William Jones for John Bellamy, and are to be sold at the three Golden Lyons by the Royal Exchange, 1634), 6.

Maclean, 87.

Kelly, 169.


See ibid., 46 ff.


Cotton agreed that to come out locally was not a solution, but he thought it helped.

For Williams, not coincidentally, this statement had other meanings, and he was, as La Fantasie and others suggest, convinced that he had caught Cotton in a verbal slip. Why after all had Cotton said that he had banished himself from the fellowship of all the Churches? Even admitting that he had in fact banished himself, as a result of causing a civil disturbance, why did this mean that he had banished himself from all the churches as well? With these words, Williams argued, Cotton had admitted that “the frame or constitution of their churches is but implicitly national . . . for otherwise why as I am not yet permitted to live in the world, or Common-weale, except for this reason, that the Common-weale and Church is yet but one, and he that is banished from the one, must necessarily be banished from the other also.” Williams in Lafantasie ed., Vol. 1, 45.

At first Cotton blamed Williams for this violation, although Williams denied it in the preface to his reply “to the impiatall reader.” Here he writes that he’d found the letter “publike (by whose procurement I know not).” But if the letter circulated a little before Williams got a hold of it, we can assume Williams’s widely read “Reply” was what made it well known. In the end, of course, it mattered little who published it, but finding it widely known, Cotton finally accused “some other, unadvised christian, who, having gotten a copy of the letter, took more liberty than God alloweth, to draw forth a private admonition to public notice in a disorderly way.” Further problems arose in the publication of another discourse that Williams ascribed to Cotton, against set forms of prayer. On this matter another dispute ensued as to the source of the publication where once again Cotton accused Williams and Williams denied it. “The truth is,” Williams wrote, “I did not publish that discourse to the world, much lesse did I see cause to publish it upon the Grounds he speaketh of” (Williams, Vol. 2, 39).