

### III

## *Foundations of Power*

ALMOST the first task that faced the colony leaders upon their arrival in Massachusetts was the adaptation of the machinery of a simple business organism to the requirements of a body politic. As they viewed the task, it involved the institution of legal and political arrangements which would most effectually control and shape the social and religious life of the colonists in accordance with the purposes for which the enterprise had been undertaken. That those purposes were primarily social and religious, rather than commercial, is clear not only from the creeds in which their hopes were sown but from the courses of action upon which they immediately embarked.

From the outset, for example, the new government adopted land and trading policies which were entirely different from those usual in trading companies of the day. By the time of Winthrop's arrival, the company had ceased to act as an organization seeking profit from its landholdings. It began at once to grant land to the various communities as they were established, and these in turn distributed allotments to individual colonists.<sup>1</sup> Trade, likewise, was encouraged on a private and individual, rather than on a corporate, basis, so that by the close of 1630 the commercial element in the enterprise had virtually disappeared. Moreover, within a matter of months the admission of new freemen into the company came to be based on religious qualifications rather than on a capacity and willingness to pay for shares in the enterprise.<sup>2</sup> These radical departures from

normal trading-company practice demonstrate that the leaders viewed the enterprise as anything but commercial in character. Above all, however, the organization of the colony government, developed in association with the churches, provides objective proof that the chief aim of the undertaking, as declared by Winthrop, was to build "a Citty vpon a Hill" where it would be possible not only to worship and live as Christians but to set the world an example of godliness.<sup>3</sup>

The most striking feature of the organization of Massachusetts government during the first two decades of its history was the "concentration of influence, power, offices, functions of every kind, in a small and compact group of leaders."<sup>4</sup> As stated earlier, the charter had placed the general management of the company in the hands of the General Court, consisting of the freemen, or stockholders, and of the officers and assistants. However, it appears that although the company consisted of something over a hundred freemen, practically none of them who was not also an assistant or an officer emigrated to the colony,<sup>5</sup> and of these there were no more than ten or eleven in Massachusetts in 1630.<sup>6</sup> From the standpoint of composition, therefore, the General Court and the Court of Assistants were virtually identical at this date, and hence from that standpoint it made little practical difference by which body the affairs of the company were managed. However, since seven of the assistants constituted a quorum under the charter, and since a majority of those seven were empowered to act, it was obviously advantageous that the governing body should be the Court of Assistants rather than the General Court, in which the concurrence of the governor and at least six assistants was essential to action.<sup>7</sup>

It may be inferred with some confidence that it was partly for this reason that the General Court, at its first meeting of only eight members in October, 1630, gave to the assistants the power to select the governor and deputy-governor from among themselves, to make laws and to select officers for carrying them out.<sup>8</sup> A more compelling reason was the likelihood that a number of the colonists would, in due course, be admitted as freemen, and that, consequently, the assistants would be in a better position to control the life of the colony if the power of legislation were entirely in their hands. To this first meeting of the General Court the assistants, as

the constituent members, invited a large number of the colonists. Although none of the latter was a freeman and entitled to participate in the proceedings, Winthrop and his colleagues undoubtedly perceived that their power would be strengthened if existing as well as future arrangements had the approval of those who were to be governed thereunder. Probably this consideration explains why so many of the inhabitants were invited to the meeting. In any event, the advisability of the transfer of the General Court's functions was put to the assemblage, which assented thereto by "erection of hands."<sup>9</sup>

At the first meeting of the Court of Assistants, held two months before, that body had conferred upon six of its members the powers of English justices of the peace.<sup>10</sup> Hence, the effect of the October meeting of the General Court was to concentrate in the hands of the "magistrates" (as all members of the Court of Assistants were hereafter referred to) all legislative, judicial, and executive powers of the government. It seems not to have concerned these few men that the assumption of the powers of the General Court was a clear violation of the charter. If pressed, they might have agreed with Milton that "Men of most renowned virtue have sometimes by transgressing most truly kept the law."<sup>11</sup>

Among the powers which the charter had conferred on the General Court was the power:

from tyme to tyme to make, ordeine, and establishe all manner of wholesome and reasonable orders, lawes, statutes, and ordinances, direccions, and instruccions not contrarie to the lawes of this our realme of England, aswell for setling of the formes and ceremonies of government and magistracy fitt and necessary for the said plantacion and the inhabitantes there, and for nameing and stiling of all sortes of officers, both superior and inferior, which they shall finde needefull for that government and plantacion, and the distinguishing and setting forth of the severall duties, powers, and lymttes of every such office and place, . . . and for impositions of lawfull fynes, mulctes, imprisonment, or other lawfull correccion, according to the course of other corporacions in this our realme of England. . . .<sup>12</sup>

Pursuant to these powers, now transferred to the Court of Assistants, the latter proceeded to grant lands, establish town boundaries,

vote taxes, appoint officers, and issue orders designed to supervise and control the social, political, and religious life of the settlers. In September, 1630, they ordered that no one should settle within the limits of the patent without their consent.<sup>13</sup> In the following March, six persons were sent back to England as "vnmeete to inhabit here";<sup>14</sup> and before the autumn of 1636 as many as twenty persons were reportedly banished from the colony.<sup>15</sup> Contempt of authority was summarily punished. One Phillip Ratcliffe, for uttering "scandalous speeches" against the government and the church of Salem, was ordered whipped, to have his ears cut off, to be fined £40, and banished.<sup>16</sup> Another colonist was sentenced to the bilboes for threatening to take an appeal to the English courts.<sup>17</sup> The assistants also proceeded to regulate trade and industry by fixing prices and wages, as well as to deal judicially with such matters as manslaughter, theft, fraud, breach of contract, and the administration of estates.<sup>18</sup> Orders reflecting typically Puritan concern about personal conduct were issued to punish idleness, to exact fines for drunkenness, and to proscribe tobacco, dice, and cards.<sup>19</sup>

This concentration of all governmental power in the hands of a dozen or less men substantially endured until 1634. Prior thereto, several efforts on the part of some of the colonists to limit that power and to obtain a share in the government made little headway, largely because of the keen political insight of Governor Winthrop, who, like the other magistrates, had no wish to see the colony's objectives jeopardized by allowing its management to fall into the hands of those who might not be sympathetic with the leaders' views. However, at the October, 1630, meeting of the General Court above referred to, about a hundred colonists expressed a desire (whether by invitation or otherwise is not clear) to be admitted as freemen, presumably in order to obtain some voice in the conduct of colony affairs.<sup>20</sup> Inevitably, complete exclusion from a share in the government was bound, sooner or later, to arouse resentment, at least on the part of the earlier settlers. Prior to Winthrop's arrival, the colonists under Endecott had had the express right to choose two members of the governor's council.<sup>21</sup> Whether a formal demand, political expediency, or even the Puritan conception of the social compact<sup>22</sup> explains the step, Winthrop and his colleagues nevertheless decided to admit as freemen a substantial

number of colonists in the spring of 1631.<sup>23</sup> As a result, the membership of the General Court and the Court of Assistants ceased to be substantially identical.

At the same session in 1631, an order of far-reaching implications provided that thereafter no one should be admitted as a freeman unless a member of one of the colony churches.<sup>24</sup> Since only a portion even of those who were devout Puritans could qualify for church membership,<sup>25</sup> the order imposed a drastic limitation on the franchise and constituted another flagrant violation of the charter, which neither authorized nor contemplated any religious or political qualification for membership in the General Court. The significance of the order becomes clear when it is realized that between 1631 and 1641 only about thirteen hundred adult males are listed as having become freemen.<sup>26</sup> Assuming that the total population by 1641 was about fifteen thousand,<sup>27</sup> the proportion of those who had any voice in the colony government cannot, even by that date, have been much more than 7 or 8 per cent. The effect of the 1631 order was thus to put the colony government on a narrow religious basis and to ensure that the composition of the General Court, as now enlarged, should be limited to those "visible saints" who were members of the churches and shared the views of their leaders as to the dominantly religious purposes of the enterprise. Since the General Court began forthwith to elect the assistants<sup>28</sup> and, after 1632, the governor and deputy-governor as well,<sup>29</sup> and since in 1634 it also assumed from the latter their legislative functions,<sup>30</sup> it is plain that the order was one of the foundation stones upon which the new commonwealth was built. Yet, narrow and oligarchical as the basis of the government may appear, it was hardly more so than the government of an English chartered borough in which, typically, only a small, although differently selected, portion of the inhabitants participated.<sup>31</sup>

The movement on the part of the colonists to obtain a stronger voice in the government, and to restrict the power of the governor and assistants, continued to express itself in various ways and with varying degrees of success throughout most of the first twenty years of the colony's existence. In 1632 the levy of a tax by the Court of Assistants met with resistance when the minister of the church at Watertown assembled his flock and warned them that

it was not safe to pay taxes to which they had not consented, lest they bring themselves and posterity into bondage.<sup>32</sup> It may be observed that the charter had no more given to the Court of Assistants power to levy taxes and assessments on nonfreemen than it had given the General Court power to delegate legislation to the assistants. Yet the protestants were summoned before Winthrop for admonishment, and they confessed their error, and submitted. Winthrop counseled that the government of the colony was not like that of a corporation but was "in the nature of a parliament" in which the assistants, now the elected representatives of the freemen, had full power both to legislate and to levy taxes.<sup>33</sup> Nevertheless, the government apparently felt obliged to concede that thereafter two from every town should be appointed "to advise with the governor and assistants about the raising of a public stock, so as what they should agree upon should bind all, etc."<sup>34</sup>

The Watertown protest thus had an important result in that it led to the institution of representative government for the limited purpose of taxation. Two years later, however, the principle was extended, and brought about what amounted to a constitutional revolution.<sup>35</sup> In the spring of 1634, the freemen appointed two deputies from each town to consider what matters might be brought before the May meeting of the General Court. An important result of their discussions was a request to see the charter, from which they learned that all laws were to be made in the General Court. Forthwith they repaired to Winthrop, who had no choice but to concede that this was so. However, he told them, the freemen were now so numerous that "it was not possible for them to make or execute laws, but they must choose others for that purpose."<sup>36</sup> Accordingly, deputies from the towns appeared at the May meeting of the court, but they proceeded to pass resolutions which went far beyond the limited purposes envisaged by Winthrop in his conference and voted that only the General Court should have the power to admit freemen, the power to make laws, and the power to dispose of lands.<sup>37</sup> At the same session the establishment of a general representative system was ordered: those in each town who had become freemen were empowered to choose two or three representatives to prepare business for the General Court and to act therein on behalf of all the freemen in the making of laws, the

granting of lands, and in dealing with "all other affaires of the commonwealth wherein the freemen haue to doe," elections excepted.<sup>38</sup> The General Court thereby became a wholly elective body, which thereafter consisted typically of some twenty or so deputies in addition to the governor and the deputy-governor and the assistants.<sup>39</sup> The order applied to only three of the four yearly sessions of the General Court. At the fourth, or election, session every freeman was expected to be present and to "gyve his owne voyce."<sup>40</sup>

As a result of this session, the General Court resumed the powers granted to it under the charter and displaced the Court of Assistants as the chief organ of the governmental system. Its activities were not limited to legislation, but included judicial and administrative functions as well; indeed, in conformity with ideas then current, little distinction was perceived between those functions.<sup>41</sup> Much business came before it through petitions, many of which were of a public character and resulted in legislative or executive orders.<sup>42</sup> Others were of a private nature—requests for licenses, for grants of land, for remission of fines—so that the action required was essentially judicial or administrative.<sup>43</sup>

The task of dealing with these various matters was now shared in the General Court by the deputies and assistants, but the latter still retained extensive powers when meeting separately either as the Court of Assistants or as an executive board during the recess of the General Court. In 1636 there was created an elite standing council for life which was to have certain nonjudicial powers, including direction of military affairs.<sup>44</sup> Winthrop and Dudley were named to the council initially, later Endecott.<sup>45</sup> Soon afterward, the principle of life tenure came under fire from the deputies and was repudiated, but the council itself, with an enlarged membership of magistrates, continued to perform important functions in directing public affairs.<sup>46</sup> Thus, throughout the early period, the magistrates not only continued to play a major role in the enactment of laws and in the decision of cases but performed most of the administrative and directive work of the government. Indeed, as Osgood says, the "continuous executive work of the colony was done as fully by the governor and assistants . . . as it was by the king and council in England."<sup>47</sup>

The judicial powers of the governor and the assistants were in many ways more extensive than the legislative and other functions which they exercised. Not only did they have, individually, wide summary jurisdiction, but they sat in, or controlled appointments to, every court in the colony. Thus, most of the cases that arose during the early years of the colony's existence were decided by them, in one capacity or another. Sitting singly, they had, under the early order of August, 1630, the "like power that justices of peace hath in England for reformation of abuses and punishing of offenders." Under an act of 1638 a single magistrate was further authorized to decide in his discretion and without a jury, in the town where he lived, all suits in which the debt or damage was twenty shillings or less.<sup>49</sup> He might also punish for drunkenness, profane swearing, lying, and petty theft, as well as for such offenses as contempt toward ministers and absence from church.<sup>50</sup> Sitting together as the Court of Assistants, the magistrates exercised judicial powers which initially were as broad as those of the three great English common-law courts, as well as of Chancery, the High Commission, and the Court of Star Chamber.<sup>51</sup> Subsequently, the jurisdiction of the Court of Assistants was narrowed as a result of the creation of new courts of first instance.

These new courts were established in 1636. In March of that year it was ordered that the assistants should hold four judicial sessions annually at Boston.<sup>52</sup> This provision was made necessary partly by the pressure of judicial business consequent on the increase in population and partly by a recognition that the General Court, which by then included deputies of the towns, was ill suited in composition to determine judicial matters. These new judicial sessions of the assistants were known as Great Quarter Courts. The concurrent establishment of four Inferior Courts for Ipswich, Salem, New Towne (Cambridge), and Boston, which were likewise to be held every quarter, also reflected the increase in the number of suits and at the same time presaged the division of the colony into counties.<sup>53</sup> That division was accomplished in 1643,<sup>54</sup> and shortly thereafter it became customary to refer to the Inferior Quarter Courts as the County Courts. The establishment of these lower courts had the effect of limiting the number of cases heard in the first instance by the Court of Assistants, whose original juris-

diction thereafter was limited to civil suits involving more than £10,<sup>55</sup> to cases of divorce,<sup>56</sup> and to all capital and criminal cases extending to life, member, or banishment.<sup>57</sup> The Court of Assistants also heard appeals from the County Courts,<sup>58</sup> and concurrent jurisdiction of the two courts was authorized in certain types of suits.<sup>59</sup> In 1649 it was expressly ordered that the Court of Assistants should take cognizance of no case triable in the County Court except by appeal.<sup>60</sup>

Under the act of 1636 it was provided that the Inferior Quarter (or County) Courts should be held by the assistants who resided in or near the particular towns named,<sup>61</sup> or by any other magistrate who could attend them, or by any whom the General Court should designate to be joined as associates to the magistrates. Five were to sit, but three constituted a quorum, provided that at least one was a magistrate. The records disclose that prominent freemen regularly sat with the magistrates.<sup>62</sup>

The jurisdiction of the County Courts at the end of the period under consideration extended to all civil and criminal causes not expressly reserved to the Court of Assistants or to some other inferior court or to a single magistrate.<sup>63</sup> Assault, battery, debt, defamation, drunkenness, fornication, Sabbath-breaking, theft, and trespass were among the most frequent types of suits that came before them.<sup>64</sup> Like the Court of Assistants, the County Courts normally employed jury trial for questions of fact. They also had extensive administrative jurisdiction, broadly summarized as follows:

... They appointed . . . persons to lay out highways, . . . searchers of money, and viewers of fish. They confirmed the nomination of military officers, apportioned charges for the repair of bridges; they licensed innkeepers, and packers of sturgeon, and punished violation of licenses; they ordered the removal of obstructions on highways, punished idle persons, punished excess of apparel, compelled restitution of overcharge by merchants, determined rates of wages in case of dispute, provided for the poor; . . . fixed ministers' allowances, saw that they were paid, inquired into the publication of heretical doctrines, . . . saw that Indians were civilized and received religious instruction, did all varieties of probate business, punished those who carried on unlicensed trade with the Indians.<sup>65</sup>

Two other sets of courts supplemented the work of these courts of first jurisdiction—Commissioners' Courts and Strangers' Courts.<sup>66</sup> In 1638 it was enacted that in towns where no magistrate lived, the General Court might appoint three freemen to hear and determine suits in which the debt or damage involved did not exceed twenty shillings.<sup>67</sup> Later, the County Courts and the Court of Assistants were given this appointive power.<sup>68</sup> Commissioners were empowered to send for parties and witnesses by summons or attachment and to administer oaths; but they had no power to commit to prison, and, when a party refused to give bond for satisfaction and had no property in the town, the case was remitted to a magistrate or to the County Court.<sup>69</sup> The jurisdiction of the Commissioners' Courts was therefore less extensive, particularly in criminal matters, than that of the single magistrate. The several towns had no courts of their own other than the Commissioners' Courts, but the town selectmen usually had power to punish offenses against the town by-laws, and under specified circumstances they were required to determine "small causes" and to enforce certain of the colony laws.<sup>70</sup>

Strangers' Courts were instituted by an act of 1639.<sup>71</sup> Strangers who could not conveniently await the next session of the County Court were entitled to have summoned a special court consisting of the governor or deputy-governor, together with any two magistrates, who were empowered to try any civil or criminal cause triable in the County Court by jury or otherwise.<sup>72</sup>

As already indicated, important judicial functions were also exercised by the General Court, which in due course became the supreme court of judicature in the colony. Initially, that Court was seldom convened, so that during the first four years the entire judicial administration was conducted by the Court of Assistants.<sup>73</sup> After the General Court was resuscitated in 1634 and enlarged by the inclusion of deputies from the towns, numerous suits began to come before it. However, its size and composition was not suited to the trial of ordinary suits, and these were discouraged,<sup>74</sup> particularly after the institution of the Inferior Quarter Courts in 1636.<sup>75</sup> In 1642 a law declared that all causes between parties should first be tried in an inferior court.<sup>76</sup> Thereafter, although a few suits continued to come before the General Court as a court of first in-

stance,<sup>77</sup> its principal judicial function became one of hearing appeals from the Court of Assistants.<sup>78</sup> Since, as will be explained, the assistants successfully insisted in 1644 that they had the final or "negative vote" in both judicial and legislative matters before the General Court, they had the power for several years to defeat appeals from their own decisions.<sup>79</sup> In 1649 that practice was altered insofar as judicial matters were concerned, and thereafter cases in the General Court were decided by majority vote.<sup>80</sup>

For a supposedly simple frontier community, the colony's judicial system was both elaborate and comprehensive. The numerous courts made justice conveniently accessible to litigants. Procedures were simple compared with those of the English courts of common law, but they afforded the parties involved adequate notice, hearing, trial, and appeal. Although the magistrates controlled the judicial process, several were legally trained or had had experience as justices of the peace in the English quarter sessions. The judicial system, like the political system, was thus developed largely out of traditional ideas and practices.

Notwithstanding the union of the deputies and assistants in the General Court, the embers of earlier discontent flared up from time to time into open conflicts between those component parts. Essentially, the cause of these conflicts was the determination of the magistrates to retain in their hands a maximum amount of governmental power in order to promote and ensure the success of the colony mission as they conceived it. Three of those conflicts deserve special emphasis: the question of the magistrates' exercise of discretionary justice, the question of their final or "negative" vote in the General Court, and the question of the extent of their executive powers.

An early and persistent source of complaint against the magistrates was the wide discretion which they exercised in the courts in the imposition of punishments. The freemen were dissatisfied with the manner in which penalties for similar crimes varied from case to case, and they did not believe that the magistrates could be counted upon to do justice in particular situations unless penalties were openly fixed by law. Both the magistrates and the clergy were, as a group, opposed to having penalties so fixed. "I would knowe," asked Winthrop, "by what Rule we may take vpon vs to

prescribe penalties, where God prescribes none."<sup>81</sup> Nevertheless, objections to discretionary justice were voiced with increasing insistence, and they not only brought about the prescription of clearly defined punishments for certain types of crime,<sup>82</sup> but, more importantly, they stimulated a movement to reduce the colony laws to writing.<sup>83</sup>

As early as 1635 Winthrop noted that the deputies were fearful of the dangers which could result from the "want of positive laws" whereby the magistrates "in many cases, might proceed according to their discretions," and he went on to say that it was therefore agreed by the General Court that "some men should be appointed to frame a body of grounds of laws, in resemblance to a Magna Charta, which . . . should be received for fundamental laws."<sup>84</sup> In the following year the court "intreated" Winthrop, Dudley, and others "to make a draught of lawes agreeable to the word of God, which may be the Fundamentalls of this commonwealth. . . . And . . . in the meane tyme the magistrates & their assosiates shall proceede in the courts to heare & determine all causes according to the lawes now established, & where there is noe law, then as neere the law of God as they can."<sup>85</sup> These excerpts clearly attest the deputies' desire to limit the magistrates' judicial powers through a written constitution, but they also bring out the standards to which the magistrates were expected to adhere: on the one hand, the traditional and fundamental rights of Englishmen, as embodied in Magna Carta and the common law; on the other hand, the clear and unamendable word of God as embodied in the Bible.

The magistrates, however, were opposed to having the laws reduced to writing, partly because they believed that to do so would call to the attention of the crown colonial divergences from English law, but more particularly because a written code would put a bridle upon their own power and discretionary authority, which they regarded as necessary for the accomplishment of their tasks and as belonging to them by virtue of their office.<sup>86</sup> Nevertheless, despite their opposition and continued resistance, the movement for written laws gradually made headway. By 1641 an extensive bill of rights, known as the Body of Liberties, had been prepared and published.<sup>87</sup> Its provisions contained important constitutional rules and standards, many of which were intended to inhibit the exercise

of arbitrary justice, but the deputies were not content. They wanted a complete codification of the colony laws, including, particularly, precise statements of punishments and penalties.<sup>88</sup> This the Body of Liberties had not accomplished for any but the capital crimes, and hence it failed to meet a primary ground of complaint against the magistrates. Accordingly, the preparation of a complete code was soon consigned to a series of committees,<sup>89</sup> and at the same time the whole problem of discretionary justice was again brought before the General Court as one of a number of broad issues relating to the powers of the magistrates in the colony.<sup>90</sup>

During the summer of 1644, and in anticipation of the differences which were certain to arise between the magistrates and the deputies at the autumn meeting of the General Court, Winthrop prepared a "Discourse on Arbitrary Government."<sup>91</sup> In it he argued for flexible penalties, partly on the basis of the discretion permitted English judges and juries in certain types of cases, but principally on the ground that the Bible prescribed few fixed penalties except for capital crimes. He also argued that, since the magistrates resorted to God's word as the guide for their decisions, the administration of justice could not be arbitrary. The issue of discretionary justice was submitted to the clergy, who substantially supported the magistrates' position but who nevertheless set forth with care and finality the circumstances under which latitude and discretion were properly to be exercised.<sup>92</sup> At the end of the session, it was resolved that certain penalties ought to be prescribed, and that such as were prescribed might not be departed from without the consent of the General Court.<sup>93</sup> In other situations, it must be presumed *a silentio* that the magistrates' discretion was to remain unimpaired. After this session of the Court, the work of codification again proceeded, and it was accompanied by extensive revision and elaboration of the existing laws, including those which prescribed penalties. By 1648 the long-awaited comprehensive code of laws had been completed and was approved by the General Court.<sup>94</sup>

The second phase of the controversy between the deputies and the magistrates related to the latter's right to exercise, through the standing council which had been established in 1636, executive and consultative powers when the General Court was not sitting.<sup>95</sup> In the spring of 1644, a bill was carried through the deputies empower-

ing a committee consisting of seven magistrates and three deputies to order the affairs of the colony during the approaching recess of the Court.<sup>96</sup> Essentially, it was the theory of the bill that the General Court was supreme in the colony and that when that Court was not in session the assistants had no power other than that given them by the Court. The assistants, on the other hand, took the position that, although the charter authorized the General Court to direct the exercise of their power, there was no authority therein to deprive them of it. The scheme was temporarily defeated by the refusal of the named magistrates to serve; but the question was again raised in the autumn meeting of the Court, the same session at which the question of discretionary justice was taken up.<sup>97</sup> In this matter, too, the clergy were called upon for advice, and struck hard at the assertion of the deputies that the General Court was by itself the supreme power in the colony.<sup>98</sup> Again, as in the resolution of the question of penalties, Winthrop's discourse on arbitrary government undoubtedly carried great weight.<sup>99</sup> In any event, as Osgood says, "the position of the assistants as an executive board was never again questioned."<sup>100</sup>

A third, though chronologically second, phase of the struggle between the magistrates and the deputies was the attack on the magistrates' asserted right to exercise a "negative vote" in assenting to or rejecting all matters—judicial as well as legislative—brought before the General Court. The controversy had its origin in a statute of 1636 enacted at the time of a dispute arising out of the emigration of Thomas Hooker and others to the banks of the Connecticut River.<sup>101</sup> The statute had apparently been intended to give the magistrates the prevailing voice in the settlement of disputed questions in the General Court, but the issue did not become crucial until 1642 as a result of *Sherman v. Keayne*, the celebrated case of the missing sow.<sup>102</sup> In 1640 a County Court had acquitted the defendant, Robert Keayne, of taking and killing a stray sow belonging to the plaintiff's husband. Two years later, the case came on original petition to the General Court, where a majority of the assistants voted for the defendant and a majority of the deputies for the plaintiff, who was thus defeated by the rule of the "negative vote." Thereupon, the constitutional issue involved in the rule became the subject of heated debate. Winthrop prepared the defense

of the magistrates' position and argued on the basis of English precedents that the assistants, as a distinct body within the General Court, had an original and fundamental authority to reject all matters brought before that Court.<sup>103</sup> This view prevailed, and the question was resolved, for a few years, by an act of 1644 providing for the separation of the assistants and the deputies into two bodies and for the concurrence of both in the adoption or resolution of any measure.<sup>104</sup> Although the issue at the time was that of ultimate judicial authority, the 1644 act had important consequences in other directions in that it resulted in establishing a bicameral legislature in Massachusetts.<sup>105</sup>

These conflicts were all aspects of the same source of difference between the deputies and the magistrates, namely, the problem of the basis of political power and of the allocation of spheres of authority within the colony. Underlying the position of the deputies, and of the two or three assistants who from time to time sided with them,<sup>106</sup> was the belief that the composition of the General Court as a representative body made it supreme in the colony, whereas Winthrop and a majority of the magistrates took the position that under the charter, and in accordance with contemporary political thinking, the magistrates had final authority in all matters. The issue was raised in final and dramatic form in 1645 in a case involving the propriety of Winthrop's having committed and bound over for trial two defendants who had slighted the authority of the colony government in the course of a dispute over confirming the lieutenant of the militia at Hingham.<sup>107</sup> A majority of the deputies were of the opinion that the excessive power of the magistrates was jeopardizing the liberties of the freemen. The remainder of the deputies, along with the magistrates, saw in the issue the danger that, unless the authority of the magistrates was sustained, the government would fast degenerate into a popular democracy.<sup>108</sup> The deadlock lasted for several months, and the issue became primarily political. Those who had been thwarted in the issue of the "negative vote" and in their wish to see an early enactment of written laws, appear to have resolved to make an example of Winthrop. The latter was determined that the issue of censure or acquittal be squarely faced, and a majority of the magistrates thereupon decided to refer the matter to the arbitration of the clergy—always



their strong supporters. At that point, the opposing deputies, "finding themselves now at the wall," gave in and agreed that Winthrop should be publicly exculpated.<sup>109</sup> When the sentence of acquittal had been pronounced in the General Court, Winthrop delivered himself of a "little speech" which is one of the clearest and most concise statements ever made of the magistrates' position as to the foundations of power in the colony government:

The great questions that have troubled the country, are about the authority of the magistrates and the liberty of the people. It is yourselves who have called us to this office, and being called by you, we have our authority from God. . . . I entreat you to consider, that when you choose magistrates, you take them from among yourselves. . . . Therefore when you see infirmities in us, you should reflect upon your own . . . when you have continual experience of the like infirmities in yourselves and others. We account him a good servant, who breaks not his covenant. The covenant between you and us is the oath you have taken of us . . . that we shall govern you and judge your causes by the rules of God's laws and our own, according to our best skill . . . when you call one to be a magistrate . . . you must run the hazard of his skill and ability . . .

"Concerning liberty, . . . There is a twofold liberty, natural . . . and civil or federal. The first is common to man with beasts and other creatures. By this, man . . . hath liberty to do what he lists; it is a liberty to do evil as well as to good. This liberty is incompatible and inconsistent with authority, and cannot endure the least restraint of the most just authority. The exercise and maintaining of this liberty makes men grow more evil . . . The other kind of liberty I call civil or federal, it may also be termed moral. . . . This liberty is the proper end and object of authority, and cannot subsist without it; and it is a liberty to that only which is good, just, and honest. This liberty you are to stand for, with the hazard (not only of your goods, but) of your lives, if need be. Whatsoever crosseth this, is not authority, but a distemper thereof. This liberty is maintained and exercised in a way of subjection to authority; it is of the same kind of liberty wherewith Christ hath made us free. . . . [S]o shall your liberties be preserved, in upholding the honor and power of authority amongst you."<sup>110</sup>

Here Winthrop was going beyond the accepted seventeenth century doctrine that men must submit to their rulers because God

orders them to submit. He was making the further point that by joining in a covenant men renounce their liberty to do anything but that which has been agreed to, and, further, that the duty to do that which is "good, just and honest" extends beyond the field of moral law and is the basis of political authority in the state. In other words, none might have the benefit of the law except those who subject themselves to it, and none have the protection of authority except those who obey it.<sup>111</sup>

These conceptions of law and government were cornerstones upon which the political institutions of the colony had been built, and the freemen were continually reminded of them not only by the exhortations of the magistrates and the clergy but by the oath in which all freemen—including even the magistrates<sup>112</sup>—undertook to support the commonwealth and to submit themselves "to the wholesome lawes & orders made & established by the same."<sup>113</sup>

Thus, despite the broadening of the basis of government through the extension of the franchise, the management of the colony government remained, and in several respects became more strongly entrenched, in the governor, the deputy-governor, and the assistants. The right of the magistrates to exercise the broad powers which they had arrogated to themselves in 1630 and in the years immediately following had been effectively challenged and to some extent curtailed; but they had been successful in limiting the franchise to church members who subscribed to their own creeds and platforms. The magistrates had also succeeded in resolving the controversy over the "negative vote" in a way that made them supreme in legislative and, temporarily at least, judicial matters. When their executive and consultative powers had come under fire, they had again emerged triumphant.

For two decades, and more, the Massachusetts system worked, and it worked well. In the first place, the magistrates, to whom ultimate power was entrusted, were as a group united in their outlook and purpose and energetic in their leadership. Composed though that group was of men of strong personalities and differing temperaments, there was remarkably little dissension among them as to the policies to be pursued.<sup>114</sup> Another reason the system worked well was that the freemen who shared political power with the magistrates were essentially in agreement with them as to the

basic mission of the colony. Moreover, as will appear, many of the institutions of government established to carry out that mission were, to a substantial extent, reproductions or adaptations of what the colonists had known in England.<sup>118</sup> Hence the system also worked because little violence was done to their inherited sentiments and traditions.

#### IV

### *A Due Form of Government*

THE foundations of power in the government of Massachusetts Bay did not rest, and could not have rested, solely on its civil institutions and on the political arrangements which were established in the course of the first twenty years. Religious doctrine, political theory, church organization, social institutions, community sentiment and, above all, the substantive law were the principal strands which held together the web of government.

The preceding sketch of the Massachusetts civil government during the first two decades of its history reveals that, despite the development of a system of representative government, the dominating influence which shaped the course of colonial life was that of the magistrates. More importantly, it discloses how religious doctrine was translated into action through political and legal institutions. That translation had been a primary purpose of the migration, and credit for its successful accomplishment belongs to the colony leaders who inspired and directed its course. Inevitably, the Puritan conception of the enterprise determined their political thinking and hence the form and structure of the government. However, as already explained, Puritanism itself had emerged from and built upon traditional English political ideas, and those ideas had not been forgotten. Among them were the beliefs that government exists to regulate man's corruption, that civil rulers must be obeyed, and that the welfare of the whole is more important than that of the individual.<sup>1</sup> Out of these older ideas there was evolved a new politi-

cal theory in which the conception of covenant was used to strengthen the authority of the state.<sup>2</sup> Under that conception, government was viewed as originating in a compact among the people, but the government which they had joined in creating was one to whose authority they must submit not only because of the terms of their compact but because it was a Christian government conforming to what God had decreed. Thus, in subjecting themselves to a state that was divinely approved, the people also subjected themselves to obedience to God.<sup>3</sup> Although they might choose their rulers, the office to which the latter were elected was ordained by God. Once chosen, the magistrates were thus the essence of lawfully and divinely constituted authority to which the people must submit in order that the covenant be kept. Hence Winthrop could state that magistrates "are Gods vpon earthe."<sup>4</sup>

Carried into practice in Massachusetts, these doctrines resulted in a government in which authority was jealously held by the magistrates, intent upon carrying out the holy purposes of God's word as expressed in the Bible. To that end, they determined that society must be regimented. Insistence upon religious orthodoxy and uniformity emerged from the realm of theological doctrine and was prescribed as a civil necessity. Concentration of power, and the freedom to use it, were axiomatic principles to the magistrates, who were convinced that the state should be "an active instrument of leadership, discipline, and, wherever necessary, of coercion."<sup>5</sup> Hence the colony government undertook not merely to regulate misconduct but "to inspire and direct all conduct."<sup>6</sup> Its leaders were not concerned that the major part of the colonists had no political rights, for not only were the latter outside the covenant and the engagements represented by the freeman's oath, but, as the Code of 1648 recites, those coming into the colony "doe tacitly submit to this Government and to all the wholesome lawes thereof."<sup>7</sup> Moreover, every nonfreeman was required to take a special oath acknowledging himself lawfully subject to the authority of the colony government and submitting his person, family, and estate to the laws, orders, sentences, and decrees published or to be published for the welfare of "this body polittique."<sup>8</sup> The government of Massachusetts was thus a dictatorship of a small minority

who were unhesitatingly prepared to coerce the unwilling to serve the purposes of society as they conceived it.

These ideas and practices can hardly be described as democratic in a modern sense, but Puritan doctrine, like that of the mediaeval Church from which it ultimately derived, was little concerned about the equality of men. Even Roger Williams, always a liberal in theological matters, believed that anarchy would result if all were politically equal.<sup>9</sup> In the eyes of the Massachusetts leaders, not only was the right to share in the government restricted to those few "visible saints" who were the proven elect, but the supreme power in that government belonged only to the magistrates. The latter accordingly objected to the concessions wrung from them by the "people," for they viewed them as evidence of an unfortunate "democraticall spirit." When Roger Ludlow was informed that the "people" intended to elect the assistants and the governor in 1632, he "grew into passion" and said that "then we should have no government, but . . . every man might do what he pleased."<sup>10</sup> Winthrop, who expressed this attitude in more general, even philosophical, terms, asserted that the best part of a community "is always the least, and of the best part the wiser part is always the lesser."<sup>11</sup> At the same time, he condemned democracy as "the meanest and worst of all formes of Government . . . and fullest of troubles."<sup>12</sup> This attitude was fully endorsed by such eminent ministers as John Cotton, who pointedly inquired: "If the people be governors, who shall be governed? As for monarchy, and aristocracy, they are both of them clearely approoved, and directed in scripture. . . ." <sup>13</sup>

Read literally, these expressions suggest that the leaders' conceptions about government were more authoritarian than in fact they were. To all of them, the term "democracy" had a different meaning from what it has today—largely perhaps, as a result of their familiarity with the political writers of antiquity. Thus, to Cotton, for instance, a government administered by the people is a democracy, whereas one in which the people choose those who administer the government he refers to as an aristocracy.<sup>14</sup> Interpreted in the light not only of what the word "democracy" then connoted but of the political system which had resulted from the participation of the deputies in the government, these expressions take on a dif-

ferent meaning. The magistrates conceded that political power must be shared yet they were determined that it should not be divided equally but on a basis appropriate to the superior and inferior condition, respectively, of the magistrates and the deputies. John Norton, writing in support of the magistrates, declared that it was "not an arithmetically equality but a Geometricall that is to be attended to that is, not the equality of number, but of vertue."<sup>15</sup>

When Winthrop and Cotton condemned democracy they were not ignoring the principles of the political system which had been evolved in Massachusetts, but supporting what they conceived to be constitutionalism against the extremes of popular government. "I see," wrote Nathaniel Ward, "the spirits of people runne high and what they gett they should."<sup>16</sup> In conformity with contemporary political thinking, the magistrates believed that they had an authority which belonged only to them and with which no one could interfere. Ward could therefore logically protest against submitting the colony laws to the freemen, and at the same time state that they could not be deprived of their lawful liberties.<sup>17</sup> In this connection it is worth observing that there is no inconsistency between present-day conceptions about the rule of law and Puritan insistence that officials, once elected, must be obeyed and that the laws, once made, must likewise be obeyed until changed.<sup>18</sup>

The magistrates' views as to the ends and purposes of government were not merely siphoned out of arid political and theological tracts. They were living ideals, translated into viable political and legal institutions in the light of what were conceived to be the colony's needs. From the outset, Winthrop, who was a political realist, recognized the importance of patience and flexibility in the process. Repeatedly, when confronted with crises which threatened to tear the colony asunder, he dealt with them by negotiation and persuasion, always recognizing that harsher measures would have been self-defeating in terms of preserving community solidarity. Largely because of his personal influence, the colony authorities, with few exceptions, displayed a distinct and politic reluctance to make martyrs of the dissident.<sup>19</sup> They preferred to exact obedience and enforce standards of conduct by persuading the recalcitrant element not only that the course of the magistrates was right and honest in itself but that, by entering into the covenant, everyone

had voluntarily bound himself to accept their rule. Reform and regeneration were among the magistrates' chief objectives, but when neither appeared possible they did not hesitate to apply the most serious sanctions at their command.

Winthrop's instinctively pragmatic bent was encouraged by his personal success in dealing with various crises on an *ad hoc* basis, and his capability in this direction helps to explain why he consistently advocated that the magistrates be vested with wide discretionary powers. Although that position could be justified on the basis of expediency, it conformed, as has been pointed out, with Puritan beliefs about the social covenant, Christian calling, and divine providence. If God was pleased, through the agency of the social covenant, to call a man to rule over His people, He would afford him the judgment and insight needed to understand the divine purpose. Thus the magistrate, in Puritan thinking, could be assured of arriving by logical processes at the "matter of the scripture," which, in Winthrop's words, "be always a Rule to vs, yet not the phrase."<sup>20</sup>

The principal illustrations of the regimentation of society in accordance with God's revealed purposes are to be found in the government's insistence on religious orthodoxy and in its regulation of personal conduct. With respect to the first, it should be pointed out that, from the beginning, a chief source of danger to the new colony was the Separatist tendencies inherent in Puritanism, particularly in its Congregational form, which prescribed that the churches were not subject to external supervision and that each was wholly independent of the others. The danger was twofold. On the one hand, there was the possibility that the principle of independence would result in splintering the colony into a number of separate holy communities, each convinced of the sanctity of its own form of doctrine, so that the unity of the colony would be shattered. On the other hand, there was the related danger that even if the unity of the churches were maintained, the same principle could lead to an open separation of the Massachusetts churches from the Church of England and thus bring down upon the colony government the wrath of Archbishop Laud and the English crown.

As explained earlier, it was the intention of the Massachusetts leaders to find a middle way whereby doctrinal and other reforms

could be accomplished without open separation.<sup>21</sup> To this end, it was imperative that their own brand of religious orthodoxy be strictly enforced and maintained. Ordinarily, argument and admonition on the part of the magistrates and the ministers sufficed to cause errant strays to see the folly of their ways.<sup>22</sup> However, the celebrated cases of Roger Williams and Anne Hutchinson vividly illustrate not only the firmness with which the colonial government was prepared to meet departures from orthodoxy, when the situation required, but the rapidity with which the churches could be aroused by an attack on the civil power.

Williams was a stubborn man, but courageous. He was an avowed Separatist who believed, and taught, that the New England churches should separate completely from the English Church, defiled as it was with the corruption of "whores and drunkards."<sup>23</sup> He preached that a truly reformed group, such as the Massachusetts Puritans professed to be, should express repentance for ever having had connection with the Church of England, and he specifically counseled the Salem church to withdraw from the other Massachusetts churches. As Williams' zeal increased, he went even further and denied that the magistrates had any authority in religious matters. Earlier, he had been rash enough to question the legality of the land titles in Massachusetts and to pronounce that the king's authority to grant land to the company rested on "a solemn public lie." Present-day admiration for the proponent of religious toleration, which Williams later became, must not be permitted to obscure the fact that he presented an obvious and dangerous threat to the non-Separatist principles on which the colony churches were founded and consequently to the whole foundation of the colony's existence. The authorities therefore felt compelled to bring him to heel. Immune to persuasion, spurning all opportunities to recant, he was finally banished from the colony by the General Court in 1635.<sup>24</sup>

The Hutchinson affair was far more serious than that of Roger Williams because, although it began as a theological dispute, it developed into the political issue known as the Antinomian controversy, which came close to splitting the colony asunder.<sup>25</sup> Anne Hutchinson began her short and brilliant career in Boston by teaching the doctrines of Antinomianism, which not only fostered egalitarianism but embraced the belief that man's conduct in this world is no proof of what he may expect in the next.<sup>26</sup>

In proclaiming the truth of these doctrines, and in announcing to her disciples that most of the Massachusetts clergy were not under a "covenant of grace" and hence unable properly to interpret or expound the Bible, she struck a deep blow at principles upon which both the Massachusetts churches and the civil government were based. After prolonged debates among the magistrates and the clergy, she was charged before the General Court with "traduceing the ministers."<sup>27</sup> At the legislative hearing, she so handled her defense that, despite solicitous statements made on her behalf, she antagonized the entire Court, magistrates and deputies alike. In her supreme self-assurance, she flung out a challenge which, on top of the Williams affair, posed the gravest of threats to God's special commission to Massachusetts. "For this you goe about to doe to me," she proclaimed, "God will ruine you and your posterity, and this whole State."<sup>28</sup> The sentence of banishment was pronounced upon her as "a woman not fit for our society."<sup>29</sup> Shortly afterward, in 1638, she was brought to trial before the Boston church, by which she was also convicted and solemnly excommunicated.<sup>30</sup>

Looking back a year later on the Hutchinson episode, Winthrop congratulated himself and the colony on the successful outcome of the episode by writing: "The Lord brought about the hearts of all the people to love and esteem them more than ever before, and all breaches were made up, and the church was saved from ruin beyond all expectation."<sup>31</sup> When she was slain by Indians five years later in another colony, the event was hailed as a special manifestation of divine justice.<sup>32</sup>

Criticisms of the Massachusetts leaders for their conduct of the Hutchinson trial tend to be unduly harsh because their actions have commonly been judged by modern rather than by contemporary standards.<sup>33</sup> Seventeenth century English law provided few of the safeguards that are presently regarded as essential to the fair conduct of a criminal trial. Many of the practices commonly associated with the courts of Star Chamber and High Commission were characteristic of English criminal procedure generally at that time. In common-law felony or treason proceedings, the prisoner enjoyed no right to counsel;<sup>34</sup> he was not entitled to a copy of the indict-

ment;<sup>35</sup> and if he was allowed to call witnesses, their testimony was unsound.<sup>36</sup> Moreover, the rules of evidence were strongly weighted against him. He had no right that prosecution witnesses be produced for his cross-examination;<sup>37</sup> hearsay evidence against him was freely admitted;<sup>38</sup> and he could not refuse to answer questions on the ground of self-crimination.<sup>39</sup> In criminal trials generally, but particularly in trials of persons accused of offenses threatening the safety of the state, the accused had "a very slender opportunity of making an effective defence."<sup>40</sup> By contrast, Mrs. Hutchinson, whose heresies threatened everything that her judges and accusers held most dear, was in fact allowed considerable freedom in making her defense. If the heated disputation that permeates the Hutchinson trial is shocking to modern notions of proper judicial demeanor, it should be emphasized that in the early seventeenth century, no less than in the sixteenth, the ordinary English criminal trial was basically "an altercation between the accused, and the prosecutor and his witnesses."<sup>41</sup> In state trials, such as that of Sir Walter Raleigh for treason, the "altercation" was typically between the prisoner, the court, and king's counsel. Not only was the prisoner at a disadvantage from the standpoint of procedure; he was often subjected to vilification and abuse by the court and the prosecutor.<sup>42</sup> If Winthrop and the other magistrates were occasionally peevish in their questioning, and if, thwarted by the astuteness of Mrs. Hutchinson's answers, they displayed their anger, her trial did not involve anything like the judicial badgering that often characterized the English state trial.

To accuse the colony government of religious intolerance because of its handling of the Williams and Hutchinson affairs is idle. The mind rebels at the lack of historic sense in accusations that in the Bay Colony free speech and free inquiry were suppressed and that the voices pleading for toleration and civil liberty were silenced.<sup>43</sup> In the first place, the idea of toleration was hardly known, certainly not understood, in England or Europe at this time; indeed, it ran counter to those mediaeval principles of unity and uniformity which were accepted nearly everywhere. To the Puritans, Jesuits, in particular, and later Quakers, were anathema, whereas the very name Anabaptist was synonymous with anarchist and was suggestive of the excesses of John of Leyden at Münster

in the sixteenth century.<sup>44</sup> In the second place, if the Massachusetts leaders were deaf to the "new voices being raised on behalf of justice and humanity,"<sup>45</sup> it may be remarked that separation and departures from orthodoxy were utterly subversive of the whole purpose for which the Winthrop group had come to New England. The extirpation of any dissent was essential to the survival of the enterprise. Indeed, the royal charter had expressly authorized the colony government to expel any who might endanger the undertaking, and banishment from the country was a regularly employed penalty in seventeenth century England.<sup>46</sup> Winthrop, as a political scientist, unquestionably understood that, if any element in a community persists in opposing the basic premises of government and its purposes, the psychological attitudes on which its effectiveness as an agency of social control depends are broken down.

The magistrates, as well as the ministers, were convinced that to tolerate many religions in a state would destroy the peace of the churches and dissolve the continuity of the state.<sup>47</sup> Hence they were forced to brand competing religions as heresies. Nearly everyone in the colony government was in agreement with Winthrop when he said that the cause against Anne Hutchinson was "not their cause but the cause of the whole country."<sup>48</sup> Thomas Weld, the eminent divine, wrote that if the New England Way were "*our way* and not Christs," suppression would be "*our great sinne*."<sup>49</sup> This view was to their minds merciful as well as necessary, for it was firmly believed that the faithful would be corrupted and destroyed by the toleration of other groups. "It is a merciless mercy," wrote John Cotton, "to pitty such as are incureably contagious, and mischeivous, and not to pitty many scores or hundred of the soules of such, as will be infected and destroyed by the toleration of the other."<sup>50</sup> Weld was not alone in proclaiming that "to forebeare giving priviledges to such as submit not to the rules of participation, is no rigour, but such a thing as Christ himselfe would doe if in our places. . . . It is no more than all other societies in the world doe, who first require conformity before they permit to any the injoyment of their liberties."<sup>51</sup>

The colony government's supervision of the moral welfare of the community was not confined to the prescription of religious orthodoxy, but extended to countless aspects of personal conduct and

behavior. Wages and prices were fixed, gaming for money was proscribed, and heavy penalties were imposed for excesses in dress and for idleness, disobedience, tippling, drunkenness, profanity, and the telling of lies.<sup>52</sup> Puritanism, it will be recalled, was a way of life, prescribing strictness of living as well as of worship, and God must be worshiped by outward as well as by inner conduct.<sup>53</sup> Moreover, the world was viewed as the scene of open and actual warfare between God and the devil, and the magistrates therefore conceived that, as divinely appointed agents of God, it was their duty to shield the colonists from the temptations of greed and idleness, for "Where God hath a Temple, the Devil will have a chapel."<sup>54</sup> If the divine commission was fully to be carried out, sin in all its forms must be sought out and strictly punished so that the community might remain pure and undefiled by human waywardness.

It is therefore idle to castigate the Massachusetts Puritans for the restrictions which they imposed on personal liberty. The regulation of prices and wages was not only imperative under conditions of scarcity in the colony but entirely consonant both with currently accepted theories with respect to the "just price"<sup>55</sup> and with the Puritan belief that high wages promoted "vaine and idle wast of much precious tyme."<sup>56</sup> Extensive regulation of economic life was also a well recognized feature of contemporary England, which demanded that activities affected with a public interest be supervised and that deceits and abuses in manufacturing be stamped out.<sup>57</sup> Moreover, Puritan ideas as to the realization of God's bounty meant that the production of wealth could not be left to man's volition but must be controlled by government in accordance with social and religious standards.<sup>58</sup> The same kind of paternalism, also reflective of English practices but strongly infected with religious ideals, is apparent in the regulation of personal conduct.<sup>59</sup> Thus, if the community was to function as a unit and carry out the precepts of God's word, it was essential that human conduct in all its aspects be regulated in the interest of promoting the welfare of the whole community.

It would be a mistake, and a grave one, to suppose that the control exercised by the magistrates over the affairs of the colony and its inhabitants was either arbitrary or despotic. It is frequently

overlooked that the charter had not only given the company broad powers to determine the form of the colony government but, as emphasized above, had authorized them to expel any persons who proved a source of annoyance.<sup>60</sup> Although at the outset the magistrates assumed certain powers for which there was no warrant in the charter, most of those that they subsequently exercised or acquired were confirmed to them, or conferred upon them, by orders of the General Court in which the freemen of the colony participated. Designated freemen regularly sat with the magistrates in the County Courts and, through committees of their deputies, participated in assembling the colony laws in the Code of 1648.<sup>61</sup>

Despite sporadic efforts to narrow the extent of certain of the magistrates' powers, there can be little doubt that the freemen of the colony reposed great confidence in the small group of magistrates whom, year after year, they returned to office. Political authority, writes John Dickinson, "rests on obedience, whether produced by reverence, habit, rational conviction, or the fear of compulsory sanctions. . . . [T]he use of force against recalcitrant individuals will not be effective unless acquiesced in, and if need be supported, by the preponderance of the impartial elements in the community not directly concerned with the controversy."<sup>62</sup> In Massachusetts the magistrates had to go before the voters once a year, and this requirement provided a potential check on their exercise of arbitrary power. Yet the check was seldom applied. Winthrop was governor or deputy-governor for fifteen of the years between 1630 and 1649, when he died, and in the remaining years he served as an assistant. After 1630 and until 1650, only thirteen new names are found in the lists of assistants.<sup>63</sup> In this connection it is noteworthy that the full complement of eighteen assistants was never filled, and that in no year until 1680 were there more than twelve.<sup>64</sup>

The confidence displayed in these few men was, generally speaking, continuous despite the fact that the colony population, numbering scarcely more than a thousand at the outset, grew to something in the neighborhood of fifteen thousand within approximately ten years.<sup>65</sup> That confidence resulted in part from the magistrates' conspicuous qualities of leadership and of sound judgment in handling colony affairs; but it also resulted from their political astuteness,



for they took advantage of every opportunity to consolidate their power and to justify its exercise—often after the fact—by ingenious and frequently dialectical arguments. Their casuistry, however, was not attended by a cynical rejection of moral values but resulted from a conscientious effort to relate fundamental tenets of Puritan theology to political realities.<sup>66</sup>

The magistrates enjoyed the advantages that accrue to a clique in power, and their individual temperaments and sense of invincible rectitude were such that they exercised that power without hesitation. All of those who served as governor during the early years were born commanders or trained to a kind of leadership that the colonists were willing to accept. Endecott was a soldier, tactless, impatient, and aggressive. His severity was such that a colonist remarked to his immediate regret) that "its better to goe to hell gate for mercy then to mr. Endecott for iustice."<sup>67</sup> Dudley, too, had been a soldier, not long since a captain of English volunteers under Henry of Navarre. He was a hard man, opposed to leniency in any form<sup>68</sup> and hence appealing to the fanatically Puritan element among the colonists. Bellingham, though impetuous and disinclined to moderation, was perhaps less a leader than he was an experienced administrator who was periodically prepared to take the side of the deputies against the other magistrates.<sup>69</sup> The great man among them was Winthrop, a man of natural humanity, the "purest, gentlest, and broadest-minded of all who were to guide the destinies of the Bay Colony."<sup>70</sup> Lenient to a degree that at times earned him the censure of his colleagues,<sup>71</sup> he was nevertheless practical-minded and never expected perfection however much he sought it. These qualities, together with his passionate dedication to the welfare of his beloved commonwealth, helped to make him the leader that he was, as well as the most powerful figure in early Massachusetts.

Government normally enlists obedience by deriving its purposes and the standards it applies from forces and tendencies at work within the community.<sup>72</sup> Much of the strength of the magistrates' position was therefore a consequence of the fact that the Puritan elements were in general agreement as to the colony's mission, which it was realized must be carried out through forceful and centralized leadership. To men of that time a primary concern of

government was thought to be the effective maintenance of order in the community,<sup>73</sup> and general acceptance of the basic postulates of contemporary English political thought, which viewed government as a power existing independently of the people, clearly reinforced the magistrates' power. Moreover, it was an age in which the mediaeval belief was still current that men are appointed by God to different stations in life and have a duty to cleave to those stations and carry out the responsibilities attaching thereto.<sup>74</sup> Hence in orthodox Puritan thinking the "rights of the people" were far less important than were the advancement of God's glory and the achievement of true liberty through fulfilling the ordinances of Christ.<sup>75</sup> When Dr. Robert Child and others petitioned the General Court in 1646 to enlarge the circle of church membership and secure for all colonists—Puritan and non-Puritan—"civil liberty and freedom," their efforts were resisted and successfully obstructed by an overwhelming majority of the Court.<sup>76</sup> In effect, Child was advocating the establishment of a presbyterian system under which both saints and sinners would have been eligible for membership in the churches and the religious basis of political rights entirely removed.<sup>77</sup> Magistrates and deputies alike saw in these proposals the gravest of threats not only to the New England Way but to the independence of the colony. The Child petition was unequivocally denied, and he and his fellow remonstrants were forthwith brought to trial and convicted in 1646 of defaming the government, slandering the churches, and denying the jurisdiction of the General Court; in the following spring they were again brought to trial and convicted on a new charge of conspiring against the government.<sup>78</sup>

The rigor of the rule of the magistrates was tempered, however, by certain doctrines which were deeply rooted in English political tradition and which helped to prevent the government from becoming a tyranny. Chief among them was one which had been given special impetus in the seventeenth century and which the colonists were hardly likely to forget. This was the ancient principle that the government of kings and civil rulers is limited by the concept of a "fundamental law," made up of immemorial usages which, through lapse of time, had acquired a character of permanence and inviolability. This view of law gave it a transcendental

force from which emanated a protective power existing independently of any human agency and immune from interference either by men or their civil rulers.<sup>79</sup> With this concept of fundamental law many of the Massachusetts colonists were entirely familiar, and among the principal safeguards which it was thought to provide were long-accepted judicial procedures that protected the people from arbitrary governmental acts.<sup>80</sup> Indeed, the freemen's concern about such safeguards was a primary reason for their wish to have prepared a declaration of rights "in resemblance to a Magna Charta," which resulted in the constitutional guarantees of the Body of Liberties.<sup>81</sup>

Unlike the Stuarts, the colony leaders never pretended to be above the law. On the contrary, they felt entirely bound thereby, but they insisted that the fundamental law to which they and the colonists must conform was the law of God as revealed in the Bible. Thus, the Preamble to the Code of 1648 recites:

So soon as God had set up Politicall Government among his people Israel hee gave them a body of lawes for judgement both in civil and criminal causes. These were breif and fundamental principles, yet withall so full and comprehensive as out of them clear deductions were to be drawne to all particular cases in future times.<sup>82</sup>

Of this law the magistrates considered themselves the sole exponents and interpreters by virtue of the divinely ordained office to which they had been called. Because they regarded themselves as accountable to God, as their oath prescribed,<sup>83</sup> they believed that they were under a duty to find biblical authority or justification for all their actions. Thus, to a substantial extent, and despite their insistence on the right to interpret the word of God, the idea of a rule of law imposed curbs upon the magistrates' authority. However, although they insisted that the law of God was the primary standard by which the affairs of the colony were to be regulated, the existence of that standard did not in any way preclude the enactment or adoption of positive laws which were not inconsistent therewith. In other words, the Bible was by no means the only source of colonial law.<sup>84</sup>

Although the freemen accepted the Puritan premise as to the force of the law of God, to them the "Fundamentalls" of the com-

monwealth also included the traditional rights and liberties of Englishmen.<sup>85</sup> Indeed, the charter had expressly assured that all the colonists "and every of their children which shall happen to be borne there . . . shall have and enjoy all liberties and immunities of free and naturall subiects . . . as yf they and everie of them were borne within the realme of England."<sup>86</sup> Any act or policy of the magistrates which appeared to the freemen as violative of such rights at once aroused their opposition: for example, the imposition of taxation without consent in 1632, the effort to establish a standing council for life, and above all, the magistrates' insistence on discretionary justice.<sup>87</sup> It is significant, however, that all these major constitutional issues were approached by both sides in orderly debate and were discussed in a legalistic fashion which presupposed the existence of constitutional standards which are characteristic of a government under law.<sup>88</sup>

If the individual was regimented and coerced in the interest of forming a community which would be able to walk in the ways of godliness, the magistrates were nevertheless responsive to inherited political traditions. Unlike the democracies of the Greek city-states, or of Italian cities such as Florence in the Middle Ages, in which government was substantially viewed as the agency or protagonist of the poor and the underprivileged, the government of Massachusetts Bay was not concerned with material dissatisfactions. If the lives of individuals were under continual surveillance in accordance with the policies which had developed out of the purposes of settlement, the individual remained for many purposes the basic postulate of rights and obligations. To this the traditions of the English common law and political liberty contributed. Political freedom grew up in England not through popular government as we now know it but through the evolution of the principle of legal limitations on the power of government. Moreover, one of the notable features of the common law, as it came to maturity, was its concern for the individual. In Massachusetts Bay, the individual's position was not constantly shifted and molded to suit the changing purposes of the government, for the purpose was unchanging in that the Bible provided the divine and unamendable constitution which guided it. To the extent that regimentation and restrictions were a marked feature of colonial life, the individual was not entirely free to plan his own

conduct. Let there were wide areas wherein he was left free. "No humane power," says the Code of 1648, "be Lord over the Faith & Conscience of men, and therefore may not constrain them to believe or profess against their Consciences,"<sup>89</sup> and any minority unable to assent to the majority vote in "any Court, Council or civil Assembly" was expressly given the right to make a counter-remonstrance and have it recorded.<sup>90</sup> Extensive economic legislation enacted in the 1640's encouraged individual initiative and enterprise.<sup>91</sup> In such attitudes and policies lay the genesis of the economic and political freedom of later days.

It seems doubtful whether the colonists' acceptance of Puritan doctrines could have enabled the leaders to carry out their objectives in the way they did had it not been for the social solidarity existing and continually promoted within the colony. That solidarity resulted from a strong sense of common purpose, from a vivid community spirit engendered by Puritan beliefs, and from the fact that a substantial number of the colonists had come from the same parts of England, frequently in groups from the same parish. Solidarity also grew out of certain ingrained, traditional ideas and practices which had their origin in the English background.

Among these traditional ideas were those that underlay the organization of the English trading companies, which were the lineal descendants of the mediaeval guilds.<sup>92</sup> The early guilds were fellowship marked by a close analogy to the family. Within them every effort was made to develop a sense of community of membership.<sup>93</sup> Many of the characteristics of the guild were carried over into the trading companies, which not only fostered close cooperation but developed a spirit of exclusiveness toward outsiders. Frequently, they also undertook to regulate the details of the family and social life of the members.<sup>94</sup> The fact that the members, or freemen, of the trading companies were not merely the owners of shares in the enterprise, but were aggregations of individuals associated for business purposes and regulated by exacting standards in the interests of the whole group, tended further to foster a sense of social solidarity among them. These characteristics of the guild and of the trading company were present at the outset in the organization of the Massachusetts Company, and the success of the magistrate in pursuing their central objectives undoubtedly owed

something to those traditions which provided them with precedents known to and accepted by at least some elements in the population.<sup>95</sup>

Another feature of the colonists' background which played a part in the development of solidarity was their inherited political experience. Englishmen of the day had become accustomed to extensive participation in local government, in both town and village life. They were also accustomed to a large degree of governmental control on the part of Tudor and Stuart kings who, through the justices of the peace and other local officials, closely supervised the details of local activities and personal conduct and knit the country together by compelling men to cooperate in the work of government. This political inheritance was reinforced by acceptance of the doctrine, already referred to as a legacy of the mediaeval Church, that society was not a mere aggregation of individuals but a unitary organism in which all parts were contributory and subordinate to the welfare of the whole.

The conditions of settlement likewise promoted a sense of unity within the community and helped the leaders to carry out their religious and political mission. At the outset, the colony population was small, relatively free of the threat of outside interference, and concentrated in a few compact settlements about the bay and close to the seat of government in Boston. This feature of settlement enabled the magistrates not only to supervise closely all aspects of colony life but to make their personal influence felt in every community, particularly through the colony courts. At the same time, they were astute to envisage the potential dangers to which dispersed settlements might give rise, and they perceived that the institutions of local government could be made to contribute to the solidarity of the colony in something of the way that the towns and parishes of England had, as agencies of the central government, contributed to the strength of the Tudor and Stuart kings. To this end, the towns were not only carefully supervised by the magistrates but were made the colony's units of local administration and used for carrying out legislation with respect to numerous aspects of colony life, such as agricultural arrangements, education, and domestic relations.<sup>96</sup> Extensive regulation of this sort was facilitated by the fact that the Massachusetts towns reproduced the

same kind of common life with which the colonists had been familiar in England and which stemmed from the localism of the Middle Ages. Strong local ties, based on the social, religious, and economic associations of daily living, shaped the towns into closely knit organisms. Inevitably, a sense of unity at the local level fostered a sense of unity in colony life generally.

A potential threat to the colony's solidarity was the continuous influx of new immigrants during the first decade of its existence. In 1633 William Laud became Archbishop of Canterbury, and he proceeded with energy and determination to force ritualism on every parish, to silence Puritan lecturers and to suppress their tracts. This was the year in which the full tide of emigration set in. A number of the new colonists brought with them doctrines which, if not wholly heretical, were at best not consonant with those approved by the Massachusetts magistrates and clergy. Others had had not a little personal experience with arbitrary government at the hands of Charles I and were something less than pleased with the form of government they found in Massachusetts. Control over newcomers was facilitated by the resident's oath required of nonfreemen and by the laws requiring the magistrates' consent to the establishment of new towns and plantations,<sup>97</sup> but the reality of the threat which new settlers could present is illustrated by the Williams and Hutchinson affairs and by the Child Remonstrance.<sup>98</sup> That threat, however, was somewhat abated by the events in England in 1640, when the likelihood of civil war slowed down to a trickle the flood of emigration as men decided to remain at home to fight for the parliamentary cause. The economic depression which followed in the wake of this turning of the tide also made emigration less attractive to those whose interests were primarily material. At the same time, the colony's growing reputation for intolerance caused many to leave Massachusetts and settle elsewhere.<sup>99</sup> The result of these various developments was to consolidate the group that remained and further to entrench the position of their leaders.

Probably the most important single force contributing to the solidification of the power of the magistrates in the government and in the life of the colony was the influence of the clergy. From its inception, the Massachusetts enterprise was characterized by the

active cooperation of lay and ecclesiastical elements; indeed, without the close union that developed, the oligarchy that constituted the Massachusetts civil government might well have failed.<sup>100</sup> The teachings of Calvin had emphasized the mediaeval belief in the organic relation between church and state, and, as interpreted by the Massachusetts Puritans, it was the duty of both to create and foster a perfect Christian society. The ministers continually gave direct support to the policies of the magistrates, and, through their sermons and otherwise, they regularly exhorted their congregations to keep the magistrates in office and likewise to support those policies.<sup>101</sup> The handling of the controversies with Roger Williams and Anne Hutchinson provides two notable instances of the cooperation of church and state.<sup>102</sup> In these as in other controversies the influence of individual ministers, such as Hooker, Cotton, and Shepard, was very great, and they could be counted on to form public opinion by explaining and justifying to their congregations important issues of policy. As Winthrop said, the "Ministers have great power with the people, wherby throughe the good correspondency between the magistrates and them, they are the more easily gouerned."<sup>103</sup> The efficient functioning of the system was virtually guaranteed by the requirement that the electorate be members of the churches.<sup>104</sup>

Thus the churches were important agencies of social control not only because they fostered solidarity within the community but because they had extensive powers over individual conduct and behavior.<sup>105</sup> As a group, moreover, the ministers performed an especially valuable function in the resolution of difficult public questions, especially those which related to the allocation of power between the magistrates and the deputies. When such questions were submitted to the clergy for advice, their responses were nearly always favorable to the magistrates' position.<sup>106</sup> In fact, the clergy acted as a kind of board of referees or supreme court on constitutional issues. In their turn, the magistrates as "nursing fathers"<sup>107</sup> of the churches were expected to, and did, support the ministers in the rigorous enforcement of punishments for moral and religious offenses.<sup>108</sup>

In principle, the partnership between the magistrates and the clergy was an equal one. The civil government and the churches

were planted and grew up together "like two twinnes."<sup>109</sup> Both had the same general objective—the establishment and maintenance of a divinely ordered commonwealth—and through both it was achieved. In 1640 Thomas Lechford wrote that "The Magistrates, and Church leaders, labour for a just and equall correspondence in jurisdiction not to intrench one on the other."<sup>110</sup> Thus, although the magistrates were under a duty to reform corrupt worship, they had in theory no authority to interfere with the election of church officers, to perform any ecclesiastical function, or to establish any but a "pure" form of worship. In practice, however, although they continually supplemented one another's efforts, the civil arm was the superior of the two.<sup>111</sup> For example, the magistrates were able to uphold Winthrop's belief in their immunity from church censure<sup>112</sup> contrary as this position was to Puritan thinking of the time.<sup>113</sup> After 1636 permission to establish new churches had to be obtained from the magistrates,<sup>114</sup> and the prospective members were examined by them for proof of the work of God's grace.<sup>115</sup> Similarly, approval of the selection of church officers by the magistrates was customary,<sup>116</sup> and ministers whose remarks displeased the magistrates were subject to censure and rebuke.<sup>117</sup> Even the ministers took the position that any limitation of the magistrates' jurisdiction to nonreligious questions was sinful as well as dangerous.<sup>118</sup> According to the Cambridge Platform of Church Discipline, which crystallized in 1648 once and for all the standards of Puritan orthodoxy, expressly proclaimed it the duty of the magistrates

to take care of matters of religion, and to improve his civil authority for the observing of the duties commanded in the first, as well as for observing the duties commanded in the second table. They are called gods. The end of the magistrates' office, is not only the quiet and peaceable life of the subject in matters of righteousness and honesty, but also in matters of godliness, yea, of all godliness.<sup>119</sup>

The Cambridge Platform stands both as a symbol and as a manifesto of the united and cohesive body politic which Winthrop and his associates had intended to create and had succeeded in establishing. The form of government evolved entirely belies the characterization of Massachusetts as a "theocracy," which connotes

a government in which a priestly class has the controlling voice of authority. In Massachusetts, church and state were separate, however much the two strove for the same goals, and the final voice was not in the clergy. No church could depose a man from public office, and excommunication, though a powerful sanction, did not result in civil disabilities.<sup>120</sup> It should also be noted that in Massachusetts the civil authorities assumed jurisdiction over many matters which in contemporary England were within the province of ecclesiastical authority, for example, the recording of births, marriages, and deaths, the performance of the marriage ceremony, and the granting of divorces.<sup>121</sup>

History presents numerous illustrations of the force and effectiveness of an ideal upon the behavior of men. Yet the force of an ideal, whether of justice, of liberty, or of freedom, frequently spends itself leaving little but memory to survive unless it is accepted as a principle of conduct by the group which it inspires. The high purpose of the leaders of the Bay Colony could easily have given way to the materialism or the failures of everyday living had not those leaders, through the "due forme of Government," which they established, been able to transform their ideals into the practical realities of a commonwealth in which God's word and Christ's way were the central principles of both church and state.

Within the first two decades of its history, the Bay Colony had assumed the form which it was substantially to retain for the greater part of the seventeenth century. The structure of its civil government, its ecclesiastical organization, as well as the relationship between the two, had been formed and settled in a way that seemed to assure for posterity the fulfillment of the mission for which the enterprise had been undertaken. Orthodoxy in civil and ecclesiastical affairs was the central characteristic of this community in which religion was a living, emotional force. Every phase of political and social life was made to contribute to the maintenance of the Puritan system of belief. The electorate had been narrowed to church members who could be expected to support their leaders' policies. Heresies and even differences of opinion were quickly and sharply repressed. Outsiders were discouraged or denied permission to settle. Relations with other colonies were determined by the colonists' growing sense of self-righteousness and their fear

of contamination by nonbelievers. Winthrop, for example, did not scruple to calumniate Virginia as a place where drunkenness customarily prevailed.<sup>122</sup> "These people," wrote the Dutch De Vries of the Bay colonists, "Give out that they are Israelites, and that we at our colony are Egyptians."<sup>123</sup> At the same time, the Massachusetts government did not hesitate to bring under its jurisdiction new territory to the north and also to attempt to dominate the neighboring Puritan colonies.<sup>124</sup>

Outwardly the Massachusetts colonists professed that they remained loyal to the Established Church and to the royal government in England. At the outset the leaders were sensitive both to accusations of Separatism and to any expression of hostility on the part of the English government. It was partly for this reason that they were reluctant either to publish a code of their laws<sup>125</sup> or to frame a written statement of church discipline.<sup>126</sup> Any aspersion on the royal grant, wrote Winthrop, might "have provoked our Kinge against vs, and putt a sworde into his hande to destroy vs."<sup>127</sup> Yet slowly and unobtrusively, and aided by geographical isolation, they set about establishing the New England Way. Judicial appeals to England were quashed or frustrated,<sup>128</sup> and every effort on the part of the English government to interfere with the colony's independence was promptly and strenuously resisted. When, in 1634, at the instance of Sir Ferdinando Gorges, *quo warranto* proceedings were instituted against them and it seemed that they might lose their charter,<sup>129</sup> the leaders began to fortify Boston Harbor,<sup>130</sup> and a committee was appointed to "consulte, direct, & giue command for the manageing & ordering of any warr."<sup>131</sup> Subsequently, when the Child Remonstrance seemed to threaten the abrogation of the charter and the overthrow of the government, the petition was summarily denied and its authors convicted of sedition.<sup>132</sup>

The onset of the English Civil War in 1642 removed much of the necessity for continued lip service to the English Church and state, and the colony thereafter began to express its independence more openly. Even the intimacy of accord and understanding which had characterized the relationship between the Massachusetts and the English Puritans disappeared, and the Puritan leaders in England became "almost as hostile to the ruling oligarchy in Massachusetts as were King Charles and Archbishop Laud."<sup>133</sup> Ancient

bonds were dissolved, and the force of English ways lessened as orthodoxy became more deeply entrenched and isolationism more pronounced. Dogmatic, self-confident, and completely convinced of the rightness of their mission, fiercely intolerant of opposition from within and without, the colony leaders were prepared to, and did, take every step necessary through the instruments of government and otherwise to guarantee the success of their enterprise. This was the Massachusetts commonwealth established under a "due forme of Government, both ciuill and ecclesiasticall."<sup>134</sup>

V

*The Instruments of Civil Government*

IN 1630 the region embraced by the grant to the Massachusetts Bay Company was wild, uncultivated, and largely uninhabited. A pestilence which had broken out among the Indians twelve years before had come close to wiping out the native population, so that little trace remained of the "paradise" which that indefatigable adventurer Captain John Smith had described in 1615.<sup>1</sup> The few scattered trading stations which English settlers had established along the coast had been small and of slight importance, and even the valiant community of the Dorchester Adventurers on Cape Ann had been doomed to extinction in 1626. The only significant settlements still extant in 1630 were the recently established communities at Salem and Charlestown.

Physically, then as now, the coastal area of the region presented considerable variety. North of the rocky promontory of Cape Ann were the salt marshes and the sands of Ipswich; south were the harbors of Salem and Marblehead and the vast island-dotted bay into which the necks of Charlestown and Boston protruded. A fringe of low hills to the westward circled the so-called Boston basin, forming its quiet horizon and terminating at the ancient Great Blue Hill from which Massachusetts took its name.<sup>2</sup> Through the basin the Charles and the Mystic rivers—slow, meandering streams—wound towards the sea and ended in long tidal estuaries of the bay. At high tide they flooded the low-lying flats and marshes and at the ebb left them reeking of mud and wet grass.

Navigable for short distances only, these streams, which were the chief means of transportation, tended to restrict settlement to their borders or to the neighborhood of the sea. Nearby were good stands of pine, oak, ash, and other timber, interspersed with rocky hillsides, ponds, swamps, and boulder-strewn fields.<sup>3</sup>

So inhospitable was the appearance of the countryside as compared with England that an early settler at Cambridge grumbled that the colony was "builded vpon rocks, sands, & salte marshes."<sup>4</sup> The soil was indeed rocky and, in many places, barren, and what fertility it had was far from uniform. Yet the uneven fields soon brought forth good harvests of grains and other crops, the long seashores yielded a plentiful supply of mussels and clams, and the coastal waters abounded in lobster, bass, and cod. Sea and land fowl were easily come by, and even deer were plentiful.<sup>5</sup> Geographical features thus dictated an economy of subsistence agriculture, fishing, and hunting as the basis of life.

A gentlewoman writing near the middle of the seventeenth century observed that the "air of the country is sharp, the rocks many, the trees innumerable, the grass little, the winter cold, the summer hot, the gnats in summer biting, the wolves at midnight howling."<sup>6</sup> Then, as now, the climate was hard and the weather changeable. Long winters of bitter cold and penetrating dampness were followed by torrid summers with scarcely any spring between. Yet at all seasons, the snow, sleet, rain, or fog could quickly give way to the invigorating sun-laden air that blew in on the north and westerly winds. The country therefore had its fair aspects. If it was bleak and desolate in winter, the grass bent, the trees bare, the birds muted, the fields and marshes sagging under deep snow, in summer its starkness was veiled in green foliage, and it rejoiced in the songs of birds, the brilliance of blue water, and the wildflowers in the meadows.

Such, briefly, was the land and the climate of the region into which the Winthrop group had come. Originally, the leaders had contemplated building a single fortified town, but the prevalence of sickness, together with the shortage of food and water, compelled them to abandon that project, with the result that the colonists divided and grouped themselves into a number of compact settlements in the tidewater area about Boston Bay.<sup>7</sup> Charlestown,



already inhabited by a number of families which had recently removed from Salem, became the seat of the new colonial government but was shortly abandoned for that purpose in favor of Boston. Charlestown and Boston were ill suited for farming,<sup>8</sup> but they were selected for settlement because the necks upon which they were situated were easy to defend and had commanding positions over Boston Harbor. Other sites were chosen chiefly for the availability of fresh water and meadow,<sup>9</sup> and before winter five others had been chosen: Dorchester and Roxbury, south of the Boston neck; Watertown, a few miles up the Charles; Medford, on the Mystic above Charlestown; Saugus (later Lynn) along the coast toward Salem.<sup>10</sup>

Out of the first communities so established developed the township system, which became a prominent feature of the social and governmental organization of the entire colonial period. Almost immediately, indiscriminate settlement was prohibited as the Court of Assistants undertook to regulate the conditions and institutions of local government. At a meeting of that court in September, 1630, it was ordered that no one should settle within the limits of the patent without the consent of a majority of the governor and assistants;<sup>11</sup> thereafter, it was provided that the General Court should have the exclusive authority to dispose of lands<sup>12</sup> and to regulate the settlement of new plantations.<sup>13</sup> After 1636, most towns began as "plantations," settled by permission of the General Court, and were later raised to the status of self-governing communities under the Court's authority.<sup>14</sup> Under the system thus inaugurated, the body of proprietors in each town became grantees of the colony land and acted as agents of the colony in the distribution thereof to individual settlers.<sup>15</sup> It was a system which was markedly different from those of the proprietary colonies to the south, where territorial policies were dictated in the first instance by considerations of profit.<sup>16</sup>

From the outset, therefore, the colonial government exercised close supervision over all the settlements within its borders. Supervision was not limited merely to the allotment of lands. In the early years constables were selected for the towns,<sup>17</sup> and the towns were ordered to provide common weights and measures,<sup>18</sup> to supply arms to the inhabitants,<sup>19</sup> and to record allotments of land.<sup>20</sup> By

1636, however, detailed regulation was no longer practicable, and in March of that year the General Court authorized the towns to dispose of their own lands, to choose their own officers, and to make such orders as were needed for regulating their affairs, provided that such orders were not repugnant to the laws and orders of the General Court.<sup>21</sup> Yet despite this grant of local self-government, the Court continued to exercise extensive control over the towns, individually and collectively, for purposes of safeguarding and promoting the welfare of the colony. The magistrates understood that the centrifugal forces set in motion by the dispersal and localization of social and economic life posed a potential threat to the solidarity of the colony and hence to its mission. Partly, at least, for this reason, the towns were consciously utilized as local units for taxation, for the organization and training of the militia, for the care of the poor, for the maintenance of highways, for supplying juries, and for the registration of births, deaths, and marriages. Particular acts regulated disputes concerning the planting of common fields<sup>22</sup> and ordered the towns to maintain fences<sup>23</sup> and to enforce educational requirements.<sup>24</sup> Thus, although numerous individual divergences might appear, the continual supervision of the towns by the magistrates and the General Court tended to bring about uniformity in the pattern as well as in the scheme of local government.

In their physical aspects, the first towns, as well as those which were subsequently established, reflected not only the economic necessities of settlement but English practices and institutions with which the colonists were familiar. Home lots sufficient for a house, outbuildings, and a garden were laid out on streets in close proximity to one another. The surrounding arable land was divided among the individual settlers in a manner to ensure equality of distribution: that is, each proprietor received not compact grants but several scattered allotments of a few acres each, according to the configuration and worth of the land.<sup>25</sup> The records of the allotments of land preserved in the Cambridge land records are typical of the arrangements made in all the early towns. Thus, Andrew Warner was allotted one house and about one rood for a back side and garden in Marsh Lane within the town; in the west end he was given about one acre; in Ox Marsh three acres and a half; in the



Old Field about twelve acres and a half; on the neck eighteen acres; in the Great Marsh about fifteen acres and a half.<sup>26</sup>

In this way, there was reproduced a system of common fields similar to that which the colonists had known in England—a system under which the fields were owned in severalty but cultivated in common.<sup>27</sup> On the outskirts was the common land of the town, used initially for pasture and wood, but available for future distribution to individuals by the proprietors. Common herding of cattle was also a prominent feature of the town's agricultural life and was a consequence both of English manorial tradition and of the system of common fields.<sup>28</sup> Cattle, sheep, goats, and swine had been brought over from England, and they were put into town herds under the charge of a herdsman employed and paid for by the town. These as well as other aspects of town life make it clear that the colonists sought to reconstruct the community life which they had known in England insofar as consonant with local conditions and with the objectives of their migration.

The first towns were cohesive social and political units which were further cemented by the circumstance of their having been settled by groups which had either migrated as, or soon joined together as, religious congregations.<sup>29</sup> With a common determination to walk in the faith of the gospel, they naturally wished to exclude elements which were incongruous with that central purpose. For example, when Dedham was settled, the townsmen covenanted "to keepe of from vs all such, as ar contrarye minded. And receaue onely such vnto vs as be such as may be probably of one harte."<sup>30</sup> However, although the towns were settled primarily as congregations and functioned both as religious and as political units, they were also associations for economic purposes. This feature of the Massachusetts towns has attracted the attention of but few historians, yet from many standpoints the town was a common economic venture, almost a partnership.<sup>31</sup> Although grants were made to individual proprietors, the management of the common fields and common herds required cooperation and extensive regulation. The town records are replete with detailed provisions governing the maintenance of fences,<sup>32</sup> the building and care of highways,<sup>33</sup> the gathering of firewood,<sup>34</sup> and the ringing of swine.<sup>35</sup> These orders continually emphasized in daily life the economic as

well as the social ties of the community, and they helped further to promote cohesiveness within each town, already knit together both by religious beliefs and by the common background and traditions of those within it. The carrying out of town regulations required supervision by a horde of town officials, such as fence viewers, haywards, hog ringers, surveyors of highways, with the result that a substantial number of the inhabitants were involved in the management of town affairs. Hence, the community in its political aspect coincided with the community in its social and economic aspects.

Local solidarity was further enhanced by the system of land allotment. Since each community had the responsibility of making allotments of land to individuals, each town had a direct interest in admitting or excluding new members who would participate in the community organization.<sup>37</sup> For this reason, numerous town orders restrained the alienation of land and forbade strangers to settle within the town limits. In Watertown, for example, it was ordered that no man should sell to any "forrainer" his lot on the "Towne plott," "It being our reall intent to sitt down there close together."<sup>38</sup> In Boston it was ordered that no further allotments of land were to be made to newcomers unless they were likely to be received into the congregation; it was also ordered that no one should sell his house or allotment to any newcomer "but with the consent and allowance of those that are appointed Allotters."<sup>39</sup> The Boston records reveal that any sale made in contravention of the order was declared void, and the grantors fined from one to six pounds.<sup>40</sup> There are recurrent references to the question of admitting new inhabitants,<sup>41</sup> and to orders prohibiting the entertainment of strangers<sup>42</sup> and requiring unauthorized persons to depart.<sup>43</sup> Such orders were motivated both by a desire to retain intact the social and religious solidarity of the group and by a concern lest newcomers become a charge upon the town.<sup>44</sup>

Many of these provisions were supplemented by colony orders which reflected the same underlying policies. As already stated, the Court of Assistants had declared in 1630 that no one should be permitted to settle in the colony without the permission of the magistrates.<sup>45</sup> In 1637, when the so-called Antinomian controversy was at its height,<sup>46</sup> the General Court enacted that no town should

entertain any stranger for a period longer than three weeks or allow him any lot or habitation without permission of some member of the council<sup>47</sup> or of two other magistrates.<sup>48</sup> Such provisions were dictated by the government's recognition of the need to promote uniformity of attitude and orthodoxy of belief.

By continually nurturing community sentiment, the colony government was able more effectively to utilize the towns as units of local administration and to keep alive the memory of the English parish and manor as self-contained, group-minded communities, the focus of social life as well as agencies for self-government.<sup>49</sup> The group was thus the characteristic feature of social, political, and economic life. The lone frontiersman who later typified the settlement of the West was practically unknown in the early Bay Colony. Indeed, the law required that men as well as women should not live alone but should be members of some household or family.<sup>50</sup>

The magistrates' supervision of the affairs of the towns was facilitated by the judicial organization of the colony already discussed.<sup>51</sup> Sitting on all the courts of first instance, particularly the County Courts, they had an opportunity to observe at firsthand the kind of problems which affected the welfare of the colony as a whole. Their judicial functions enabled them not only to mold the life of the communities through court orders and through the imposition of fines and sentences but to perceive what remedial legislation might be required in the General Court. In addition, since the magistrates resided in the more important towns, they were in a position to make their personal influence felt through the contacts of everyday living as well as in the town meetings in which they were regular participants.<sup>52</sup>

By 1642 official recognition appears to have been accorded to twenty-one communities, and by 1647 the number had increased to thirty-three,<sup>53</sup> most of which were situated along or near the coast not far from Boston.<sup>54</sup> Each community regulated its affairs in the first instance through the town meeting. Since the individual proprietors were regarded as integral parts of the community, each was expected to bear his share of the common responsibilities. Attendance at town meeting was therefore generally compulsory.<sup>55</sup> The earliest meetings appear to have been informal, called as the occasion required. Their chief business was the allotment of lands

to individuals, the admission of new settlers and the enactment of orders and bylaws for the regulation of community affairs. As the population increased, their procedures and functions became institutionalized, and the town meeting, where all inhabitants were free to speak if not to vote, became a vehicle for distilling public opinion. Since the towns elected the deputies to the General Court, they inevitably became centers of debate on the great controversial issues that affected the entire colony—the Hutchinson affair, the Child Remonstrance and the issue of the negative vote.

The historian of Deerfield has summarized the scope of the towns' activities and responsibilities as follows:

"The Town" acted on all matters pertaining to the welfare of the community: Divided the land, built fortifications, meetinghouses, school-houses, ferry boats, and pounds; hired the minister and schoolmaster; chose military officers; laid out highways and graveyards; levied rates, prescribed the "specie" in which it should be paid, and fixed its price; fixed the price of grain betwixt man and man, and the price of labor; looked carefully after the common field, the fences and the stock; fixed the time for opening and closing the meadows; regulated the building of mills, and settled the toll for grinding and sawing; . . . enforced attendance on divine worship and its own meetings.<sup>56</sup>

At the outset, those attending the town meeting consisted of the proprietors to whom allotments of land had been made. Many of these were church members and had been admitted as freemen of the colony; others who were not freemen also took part in town government, but the extent to which they and later arrivals participated is not wholly clear. An act of the General Court in 1635 provided that "none but freemen shall have any vote in any towne, in any action of auctoritie."<sup>57</sup> However, the records disclose that nonfreemen served on *ad hoc* town committees and even as town officers after that date,<sup>58</sup> and it may be assumed that they were also permitted to vote on certain types of matters.<sup>59</sup> As time went on and the number of nonfreemen increased, it was thought necessary to modify the 1635 order, and in 1647 it was provided that nonfreemen who were over twenty-four and who had taken the resident's oath of fidelity to the colony might vote in town meeting for town officers and on questions of roads, schools, and

lands.<sup>60</sup> About the same time, since it had become apparent that many church members had failed to become freemen in order to escape service in town affairs, it was enacted that such persons might be required to serve on juries and as town officers.<sup>61</sup> Other townsmen, who are described merely as inhabitants and cottagers, were men without shadows who apparently took little part in local government except insofar as they may have contributed to the weight of public opinion. Yet they, in common with every inhabitant of the colony, freeman or nonfreeman, were expressly accorded the right to attend any session of any court or town meeting and "either by speech or writing, to move any lawfull, reasonable, or material question; or to present any necessarie motion, complaint, petition, bill or information wherof that Meeting hath proper cognisance."<sup>62</sup> Thus, although the power of official action was substantially confined to freemen, one of the basic constitutional guarantees of modern democratic governments was assured to everyone who resided in the colony.

In most towns, routine and regular business was delegated to "selectmen,"<sup>63</sup> and the centralization of authority in their hands served further to promote a sense of unity within each community. The selectmen were the most important of the town officials, and their powers were broad. The records of some towns set forth those powers in considerable detail, whereas others merely describe them in general terms, subject to specified limitations.<sup>64</sup> Meeting once a month or oftener, the selectmen usually supervised the local financial administration,<sup>65</sup> sold or allotted town lands,<sup>66</sup> appointed minor town officials<sup>67</sup> and took care of a host of administrative duties<sup>68</sup> on behalf of both the town and colony governments.<sup>69</sup> These duties were more extensive in a large town like Boston than in smaller communities. There, for example, the selectmen are found granting permission for the building of wharves<sup>70</sup> and other structures;<sup>71</sup> for mowing of meadow,<sup>72</sup> for sinking of wells.<sup>73</sup> They ordered the repair of fences<sup>74</sup> and regulated the location of cellar doors,<sup>75</sup> and they issued licenses to brewers<sup>76</sup> and "victualling houses."<sup>77</sup> The records also reveal the selectmen active in the exercise of quasi-judicial functions—imposing fines,<sup>78</sup> issuing injunctions,<sup>79</sup> settling claims to land,<sup>80</sup> and abating nuisances.<sup>81</sup> They also heard and determined small causes when a magistrate or commis-

sioners were disqualified to sit.<sup>82</sup> These illustrations underscore the importance of the town in areas which we would today call public or municipal law, and at the same time they demonstrate the extent to which private substantive law was secreted in the interstices of nonjudicial activities.

Numerous other officials supplemented the work of the selectmen in managing the affairs of the town and resolving problems which arose out of conditions of close living. Of these lesser officials the most important was the constable, whose duties included the execution of punishments ordered by the magistrates, together with a variety of police functions and numerous administrative duties.<sup>83</sup> So onerous had the constable's duties become by the 1650's that the listing of them required twenty-six clauses,<sup>84</sup> and it became necessary to compel men to accept office by substantial fines.<sup>85</sup>

Among other town officers were generally a town clerk or recorder,<sup>86</sup> a pound keeper,<sup>87</sup> a common drover or herdsman,<sup>88</sup> fence viewers<sup>89</sup> and hog reeves.<sup>90</sup> Boston had a drummer,<sup>91</sup> a water bailiff,<sup>92</sup> and a bellman.<sup>93</sup> As the century progressed, still other officials, such as tithingmen and overseers of the poor, were added.<sup>94</sup> Yet the list does not stop here. Superintending most aspects of commercial activity was a host of minor officials—packers, sealers of weights and measures, sealers of leather, cullers of fish, cullers of lumber, surveyors of wheat and flour.<sup>95</sup>

Students of English history will recognize in the foregoing list of functionaries the names and titles of those who took part in and supervised the work of local government in the English towns, manors, and parishes of the period.<sup>96</sup> The similarity was not merely one of nomenclature, for the town officers of Massachusetts Bay performed on behalf of their communities substantially the same duties as their English counterparts, and the town oligarchy paralleled the oligarchy of the English parish. The fact that the Massachusetts towns, in regulating their own affairs, drew upon their antecedent experience in the parish vestries and manorial courts again emphasizes the extent to which English institutions and customary modes of action were carried into the New World. The same point is further brought out by the uses to which the town officers were put on behalf of the colony government. In England, in the sixteenth and seventeenth centuries, local officials,

locally appointed, were made to carry out policies formulated by the central government. The English had never employed anything comparable to the French bureaucratic system of *intendants* for the supervision of local government. Instead, they had built upon and developed the deeply-rooted tradition of what has been termed self-government at the king's command.<sup>97</sup> Under Elizabeth the duties of the justices of the peace had been enlarged to carry out through local units, primarily the parish, extensive functions of local government—the apprehension of vagabonds, the upkeep of bridges and highways, the care of the poor, wage and price regulation. This the justices accomplished through numerous parish officials—notably constables, bridgewardens, surveyors of highways, and overseers of the poor—who were made responsible to them.<sup>98</sup>

Just as in England the crown habitually depended on the manor and the parish to carry out its orders on a nation-wide basis,<sup>99</sup> so in Massachusetts the colony government turned to the towns as analogous units of local administration to carry out their orders on a colony-wide basis. Indeed, there is a remarkable similarity not only between the records of the Massachusetts County Courts and those of the quarter sessions of the English justices of the peace<sup>100</sup> but between the type of orders which the General Court directed to the towns and those which the Privy Council directed to the English local units of the period.<sup>101</sup>

The Massachusetts town, like the English parish and the English borough, was primarily a unit of obligation by means of which the services required by the community as a whole could be exacted, generally without compensation.<sup>102</sup> This conclusion is illustrated not only by the examples above adduced, but also by the fact that, as in England, the local community was the primary unit of taxation and defense. With respect to taxation, however, the colony system drew less on English practice in levying the national subsidies than on those of the county and the parish in levying rates and of the trading companies in exacting assessments from its members. Osgood has observed that the "levy of direct taxes . . . was a remarkable extension of the right of trading corporations in England to levy assessments on their stockholders."<sup>103</sup> Strict observance of this right would have limited levies to those who were freemen, but in Massachusetts, contrary also to English governmental practice, all in-

habitants were made liable.<sup>104</sup> Nevertheless, as in England, each locality was the primary unit of tax liability.<sup>105</sup> The system of defense was likewise based largely on the English principle of universal military obligation, and men procured for service were organized into local trained bands imitative of those in London and the counties.<sup>106</sup>

In order adequately to delineate the pattern of Massachusetts society and the structure of its government, it is important to emphasize the degree to which nearly every aspect of town life was minutely regulated by public officials, far beyond what might be supposed to have been the needs of local government. In England, regulation of agricultural and manufacturing practices was characteristic of the policy of mediaeval manors, towns, and guilds and had survived into the seventeenth century.<sup>107</sup> Moreover, supervision of countless details of local life was a marked feature of local government in that age, which fined communities for defective bridges and highways and punished men for that elastic offense known as the common nuisance. So numerous were the activities dealt with by English local courts that it can fairly be said that "it is difficult to find any kind of personal conduct, whether intrinsically innocent or plainly criminal," which might not find its way into jury presentments.<sup>108</sup> In Massachusetts, however, such regulation and supervision was carried to the point where official intrusion completely permeated the fabric of local society. Wages and prices were fixed,<sup>109</sup> exports limited or prohibited,<sup>110</sup> impressment for farm labor authorized.<sup>111</sup> In order to encourage good habits and the profitable use of "precious tyme," lying and idleness were punished<sup>112</sup> and sumptuary legislation enacted to regulate food, drink, clothing, and amusements.<sup>113</sup> Not only did the colony government prescribe the conditions under which wine and liquor might be sold or consumed<sup>114</sup> and tobacco smoked<sup>115</sup> but it fixed the price of meals "to prevent extravagance in diet"<sup>116</sup> and banned the consumption of venison and cakes except under specified circumstances.<sup>117</sup> The wearing of silks, laces, and furs was the subject of several enactments,<sup>118</sup> and games of dice, cards, and shuffleboard were proscribed.<sup>119</sup> Manufacturing and commercial undertakings of every kind were extensively regulated,<sup>120</sup> as the law undertook to fix wharfage charges, interest rates, and the toll that millers could

charge for grinding corn.<sup>121</sup> Strangers were discouraged or denied permission to settle.<sup>122</sup> Education was made compulsory, and the selectmen of the towns ordered to catechize the children of the colony to make sure that they had learned to read.<sup>123</sup>

Many of these practices, as already indicated, had their counterparts in the local English law and in the paternalistic regulatory statutes of the Tudors and the first Stuarts. Price regulation was an ingrained feature of governmental policy at the end of the sixteenth century.<sup>124</sup> Alehouses and innkeepers, tippling, the smoking of tobacco and excesses in dress were subjected to regulation by statutes of James I,<sup>125</sup> and frequently for the same reasons as in Massachusetts.<sup>126</sup> Profane swearing,<sup>127</sup> nonattendance at church,<sup>128</sup> unlawful games<sup>129</sup> and Sunday sports<sup>130</sup> were punishable by justices of the peace or in the Star Chamber. Precedents for the colonial hostility to strangers can be found in town ordinances and the jury presentments of the manorial courts.<sup>131</sup> However, Massachusetts went much further in undertaking to supervise personal conduct than did England.<sup>132</sup> The greater degree and comprehensiveness of this sort of regulation, both at the local and at the colony levels, may have resulted in part from the inspiration of Calvin and from practices at Geneva, where, in the sixteenth century, blasphemy, profane oaths, excessive drinking, and even the entertainment of strangers were proscribed.<sup>133</sup> But it resulted principally from conceptions derived from Puritan doctrine, which prescribed strictness of living and upright conduct as essential for salvation. If doctrine was to be translated into action, and if the community was to function as a unit to carry out God's purposes, society must be regimented to a far greater degree than that to which its members had been accustomed in England. To a substantial extent, the churches could be counted on to inspire and direct the conduct of its members, yet those agencies of social control were not always successful in guiding the actions of wayward, mortal men, and in any event needed the firm authority of the civil government to fall back on. More importantly, the greater part of the colonists were not church members and they were no longer subject to the disciplinary action of the English ecclesiastical courts, which had jurisdiction over numerous types of moral offenses.<sup>134</sup> The disruptive tendencies which that element was capable of setting loose were a constant

source of concern to the civil government. Hence, the legislature undertook to proscribe, and the courts to punish, activities which to the modern eye are matters pertaining entirely to private conduct.

The extensive regulation and supervision to which the Massachusetts communities were subjected provides convincing evidence of their belief that it was possible to shape their social and economic lives by controls which were in part self-imposed and in part thrust upon them by the colony government. Not only the colony leaders but the freemen generally had complete confidence in their ability to change and adjust the conditions of their community life by deliberately eliminating what they felt to be bad and establishing what they looked upon as good.<sup>135</sup> The activities of the towns in this respect represent another aspect of the Puritan determination to make over society in the image of the ideal which they had conceived. Underlying uniformities in social behavior tend to make such action more feasible in small, self-contained communities where there are common traditions and a strong sense of common purpose than in large and more amorphous political units. The success of similar efforts in ancient Athens, and more particularly in the Greek colonies of southern Italy,<sup>136</sup> illustrates the wisdom of the observation of a distinguished political scientist that because in Massachusetts the possibilities of common action were so patent, community action "took naturally and inevitably the form of political action."<sup>137</sup> When the end of law is viewed as the orderly arrangement of the whole community, so that every aspect of community life comes within its scope, and when the individual is viewed only as a member of that community, few departments of his life are left free from the control of law in the interest of the whole group.

The cohesiveness of group life within the towns owed much to the organization of the family, which was the basic social unit in the colony. The greater number of those who emigrated to Massachusetts Bay had come as members of a family group, which comprehended servants and apprentices as well as parents, children, and close relatives. The natural force of the family bonds was strengthened by the mediaeval conception of the holy family—the stern but just father, the suffering and compassionate mother, and the obedient child. That conception, however, was infused with Pu-

ritan ideals and made to strengthen the group life of the community, so that the relations between husband and wife, parent and child, master and servant were viewed as far more important than they had been in England. Indeed, those relationships were described as the very ligaments by which society was held together—"the root whence church and Commonwealth Cometh."<sup>138</sup>

From the outset, therefore, the colony leaders promoted family life and were paternalistically solicitous of its welfare. Early laws sought to bring everyone under the control of family government. Thus, in 1629, the officers of the company instructed Governor Endecott from London to divide the servants belonging to the company into artificial families, so that they might live together rather than separately.<sup>139</sup> In 1638 the General Court ordered every town to "dispose of all single persons & inmates within their towne to servise, or otherwise."<sup>140</sup> The economic needs of family groups were taken into account in making the first allotments of land,<sup>141</sup> and the courts were given power, in the administration of decedents' estates, to vary the shares allocable to distributees<sup>142</sup> in order to hold the family together and to safeguard the interests of minor children.<sup>143</sup>

Numerous orders and laws regulated the relationships among the members of the family group. Of principal importance were those relating to husband and wife. From the outset, it seems to have been assumed that sexual misconduct by or with married persons was likely to occur when the opportunity presented itself,<sup>144</sup> and efforts were therefore made to prevent such occurrences in a variety of ways. In October, 1631, adultery was made punishable by death,<sup>145</sup> and, although there were few convictions under that act,<sup>146</sup> those suspected of adultery, or of dissolute carriage with married women, were promptly punished.<sup>147</sup> Jury presentments were frequently made of married persons living apart from their spouses,<sup>148</sup> and court orders,<sup>149</sup> as well as a statute of 1647,<sup>150</sup> enjoined such persons to resume their conjugal relationships except upon the showing of just cause. Other aspects of the relationship between husband and wife were also a subject of attention. The wife was admonished to submit to her husband's instructions and commands,<sup>151</sup> and the courts did not hesitate to inquire into domestic discord and to enjoin its termination.<sup>152</sup> However, when corrective

action appeared useless or impossible, a marriage could be terminated by divorce proceedings in the Court of Assistants.<sup>153</sup> Desertion,<sup>154</sup> and later cruelty and adultery by the female spouse, were typical grounds for granting a divorce.<sup>155</sup>

Children and their relationships with their parents were objects of special solicitude in Massachusetts. Pursuant to biblical precept, and also in recognition of the dangers which could result from the impairment of parental authority, the colony laws provided that a rebellious son should be put to death and that a child who cursed or struck a parent should be similarly punished.<sup>156</sup> Neither law appears ever to have been invoked, but there are several cases before 1650 of whippings inflicted upon sons who disobeyed or struck a parent.<sup>157</sup> The importance attached to the family is further illustrated by the fact that the courts often remitted children to the family unit for correction or punishment, as in the case of two boys who were found to have been accessories to a theft and were ordered whipped "by the Governor of the Familie wher they had offended."<sup>158</sup> Parental approval of the marriage of a daughter was considered of sufficient moment to warrant legislation imposing penalties on any who might seek "to draw away the affections of any maid . . . under pretence of marriage before he hath obtained libertie and allowance from her Parents or Governours (or in absence of such) of the neerest Magistrate."<sup>159</sup> Parents were under an express duty to support their children,<sup>160</sup> and also to instruct them in "some honest lawful calling, labour, or employment."<sup>161</sup> They were also under a duty to see that in due course their children were suitably married.<sup>162</sup> Willful or unreasonable denial of a timely marriage, or unnatural severity toward children, gave the latter the right to legal redress in the courts.<sup>163</sup>

Since servants and apprentices were considered members of the family unit, they too were within its government. Broadly speaking, the term "servant" connoted anyone who did work for another. Thus, the class included voluntary servants—hired, apprenticed, or indentured—and involuntary servants—slaves, captives of war, and those condemned to servitude by the courts. The Massachusetts apprenticeship system, in imitation of that prevailing in England under the Statute of Artificers and the Poor Law of 1601,<sup>164</sup> imposed upon masters responsibility for the moral and bodily welfare

of their servants. Generally, those responsibilities were set forth in indentures which were enforceable in the courts,<sup>165</sup> but the mutual obligation of masters and servants were also expressly set forth in the colony laws.<sup>166</sup> By a law of 1642, masters were also required to see to it that their apprentices learned to read, and the selectmen of the towns were charged with superintending compliance.<sup>167</sup> Masters had the right, indeed a duty, to admonish and correct their servants, and those whose crimes or delinquencies brought them before the courts were, as in the case of children, often remitted to their masters for punishment.<sup>168</sup> However, a servant who was cruelly treated or who suffered bodily injury at the hands of his master might see redress in the courts.<sup>169</sup> Yet in Massachusetts, as in New England generally, "servitude" was much more than a means by which one class exacted work from another. "It was also a school, where vocational training was combined with discipline in good manners and guidance in religion. . . ." <sup>170</sup> To that end, wealthy and even aristocratic parents frequently placed their children as servants in the families of friends and even of strangers.<sup>171</sup>

The family was thus a small but important agency of social control in the colony. Its jurisdiction was both strengthened and supplemented not only by the civil government but by the churches, which continually emphasized the duties and responsibilities of the members of the family group to one another and to the community.<sup>172</sup> The colony leaders would certainly have understood the wisdom of Napoleon's instructions to his lawyers engaged in drafting the Civil Code: "Make the family responsible to its head, and the head to me, and I will keep order in France."<sup>173</sup> In Massachusetts the stability of the social system was fostered in several ways through the family, which was deliberately employed as a quasi-official agency to effectuate specific governmental policies, such as literacy, the suppression of doctrinal divergences, and the maintenance of good order in the community. However, the courts were always at hand to assist the heads of families who were unable or unwilling to carry out their appointed functions, and the magistrates regularly employed fines, whippings, admonitions, or recognizances for good behavior in dealing with the unruly servant, the cruel husband or master, and the scolding wife.<sup>174</sup> The aid of the courts could also be invoked to help children and servants aggrieved

by undue severity on the part of family government. The availability of judicial remedies in such situations was but another instance of the policy of the colony leaders to act as the final arbiters of the law and institutions in the commonwealth.

Government supervision of family life, and the utilization of the family unit as an agency of social control may appear, and have sometimes been represented to be, consequences of Puritan beliefs. Undoubtedly, those beliefs, together with the assumptions upon which the colony government was based, accounted in large measure for much in the form and function of family life in Massachusetts. However, in this respect, as in the case of other institutions and practices, the colonists drew upon and modified attitudes and usages with which they had been familiar in England. The apprenticeship system, as is attested by the colony laws and by the few indentures that have survived, was based fundamentally upon that obtaining in England,<sup>175</sup> and the procedure for dealing with disputes between master and servant was not greatly at variance with contemporary English practice.<sup>176</sup> Moreover, judicial supervision of family relationships was common in both the civil and the ecclesiastical courts of the time. For example, English justices of the peace employed the recognizance for good behavior as a means of punishing or preventing sexual misconduct on the part of man or wife. At a quarter sessions in Nottinghamshire in 1610, Richard Walker complained that Peter Rod "being a married man had unbecomingly kept company with the wife of the said Richard," despite Peter's having entered sureties "that he would not further keep company with the wife of the aforesaid Richard."<sup>177</sup> Cecilia Bower, in the same county, was charged with incontinence and entered a recognizance that she would henceforth be "of modest and honest behaviour" and would not keep company with Richard Hancock.<sup>178</sup> Deserting husbands were not only ordered to receive back their wives and to support and "live quietly" with them,<sup>179</sup> but required to put up sureties lest their families become a public charge.<sup>180</sup> On the ecclesiastical side, the Archdeacon's Court regularly punished married persons living apart, and sompnours spied upon and reported the *amours* of the parish in order to bring offenders to trial.<sup>181</sup> Numerous cases are recorded in which the Church courts ordered men to resume their conjugal duties<sup>182</sup> and sentenced them



openly to acknowledge lewdness, cruelty, and refusal of cohabitation.<sup>183</sup>

The strong sense of solidarity bred in the towns by the various factors detailed in this chapter goes far to explain the willingness of the colonists to subject themselves to detailed regulation of personal behavior in the interest of the community. As in early Greece, law was viewed, to a substantial extent, as a restraint upon individual action in order to promote a wider goal, that is, the interest of the whole group to which the law applied.<sup>184</sup> The maintenance of good order in the community was thought to give individuals a wider freedom. It was an attitude that had much in common with the Delphic teaching, repeatedly expressed in Greek literature, that to obey the law is to be free.<sup>185</sup>

The control exercised by the magistrates and by the clergy over the local units of settlement was not only consistent with, but strongly supplemented by, the centralization of the colony government in accordance with the purposes for which the enterprise had been undertaken. Massachusetts Bay was no mere federation of towns. As in mediaeval England, men were drilled and regimented into communities in order that the state might be strong.<sup>186</sup> The task of the leaders was immensely facilitated both by widespread acceptance of the premises upon which society was organized and by the fact that close supervision of daily affairs by government authority was precisely what the colonists had been accustomed to in England. The introduction and adaptation of familiar institutions and practices was as wise as it was politic, for little violence was done to inherited sentiments upon which the strength, and often the survival, of a society must depend. Thus the varied threads of tradition and design were woven together to fashion the strong web of the new commonwealth.



## VI

### *Communities of Visible Saints*

No ACCOUNT of local government in the Bay Colony would be complete without reference to the role of the churches in the affairs of the commonwealth. Not only did religious beliefs and doctrines permeate the daily lives of the colonists and stimulate their awareness of the mission to be fulfilled, but religion was the primary basis of public and private morality. Moreover, the solidarity of town life which resulted from common political and economic interests was continually supplemented and strengthened both by the church organization and, more especially, by the work of the ministers and other officers of the churches.

Each town was prompt to organize its own church as soon as possible after settlement. The earliest churches consisted sometimes of only a handful, sometimes of larger groups which had migrated and then settled together. Initially, the "gathering" of a church was a spontaneous affair within each town,<sup>1</sup> and those who joined would sign a covenant "to walke in all our wayes according to the Rule of the Gospell, & in all sincere Conformity to his holy Ordinances, & in mutuall love, & respect each to other, so neere as God shall give us grace."<sup>2</sup> It was the covenant that transformed a body of believers into a church. The election of the minister and church officers followed, and, in due course, the meetinghouse, as it was invariably called, was constructed.<sup>3</sup> This was built near the center of town, a plain and rectangular structure, lacking the spire that is today a part of the New England sky; it served a dual function, as

the place for Sunday worship and lectures and for town meetings.

Before long, the gathering of churches was subjected to the authority of the colony leaders. An order in 1636 provided that no new church might be established without notifying the magistrates and elders and receiving their approbation.<sup>4</sup> The purpose of the order was to promote orthodoxy and uniformity within the churches, and thus to ensure that they entirely subverted the essential mission of the colony. Thereafter, the magistrates supervised the gathering of churches,<sup>5</sup> but the election of the ministers and church officers was left to the individual congregations.<sup>6</sup>

Each church was in the primary charge of a pastor and a teacher. These were known as the "teaching elders"—the one to exhort to right living, the other to explain and inculcate doctrine. Frequently, in smaller towns, these functions were combined in one person. In addition, there were the "ruling elders," solid and influential men of unimpeachable orthodoxy, chosen from the laymen of the congregation, who were thoroughly familiar with religious doctrine and entirely capable of expounding it.<sup>7</sup> Their duties involved the examination and admission of new candidates for church membership, the summoning of the congregation, the admonition of those who gave signs of falling from grace, the excommunication of the unfit, and the supervision of all details of church business.<sup>8</sup>

Admission to church membership was an affair of great earnestness and followed a solemn pattern of procedure in order to ensure the fitness of all in the congregation.<sup>9</sup> Both men and women were eligible, but "sainthood" was a prerequisite, and this the candidate had to establish before the elders by a review of his whole life, a description of his conversion, and his subsequent experience in the ways of grace. If the elders were satisfied by the examination, the candidate would be called before the congregation, there publicly to make a confession of sins and a profession of faith.<sup>10</sup> Then, if accepted by the congregation, he would agree to the various heads of the church covenant and would promise to forsake his former corruptions and to give himself up to the Lord Jesus as his only prophet, king, and lawgiver.

The standards for admission to a church took no account of wealth or social status, for their purpose was to bring about that fellowship of "visible saints" which had been a primary object of

the migration. All who could lead the kind of life enjoined by the strict precepts of the Puritan ethic contributed to the fulfilling of God's commission to Massachusetts. Servants, even Negroes, who could satisfy the congregation of their godly conversation among men were as welcome as the most prominent persons in the colony.<sup>11</sup>

The church covenants to which the members subscribed vividly illustrate that religion was not only a guide to conduct and a source of solemn personal joy but a basis for mutual privilege and obligation within the group. Thus, the covenant of the Dorchester church recites:

And lastly wee do hereby Covenant & promise to further to our utmost power, the best spirituall good of each other . . . by mutuall Instruction, reprehension, exhortacion, consolacion, and spirituall watchfulness over one another for good. . . .<sup>12</sup>

To social and institutional forms within the towns these covenants lent a special solidarity, the more so since members of congregations were enjoined not to remove or depart without consent from the church that they had joined.<sup>13</sup> The principle that the churches were independent of one another likewise encouraged cohesiveness within the towns, for every member was expected to attend only his own church and might not even partake of the sacraments elsewhere without letters of recommendation from his own church.<sup>14</sup>

In principle, each congregation was self-governing in the sense that its members had come together in voluntary association and elected the minister and the elders. However, the latter wielded, within the ambit of their jurisdiction, wide powers which were enhanced by their ability and by their social standing in their respective communities. All business was prepared and brought up by them, and the congregations were expected to, and generally did, entirely support their recommendations. Puritan belief in the necessity of submission to authority further strengthened their position, so that there developed an ecclesiastical oligarchy which was in many ways comparable to the oligarchy of magistrates. Despite the principle of the independence of the churches, the elders frequently conferred together on their own motion, or at the request of the magistrates,<sup>15</sup> in order to help promote that uniformity of doctrine

which was essential to the preservation of the commonwealth. At an early date, meetings of the elders were arranged to discuss the common problems of the churches, and in time these meetings became regularized as church synods. "It belongeth unto synods," declared the Cambridge Platform, ". . . to debate and determine controversies of faith . . . to bear witness against mal-administration and corruption in doctrine or manners in any particular church; and to give directions for the reformation thereof."<sup>18</sup> However, although every effort was made to eliminate doctrinal divergences, the concept of church independence was preserved by insisting that the synods had no power to exercise church censures by way of discipline,<sup>17</sup> and the Code of 1648 expressly provided that the churches were not to impose authority upon one another.<sup>18</sup>

To the magistrates the churches were a vital part of the scheme of government, and indispensable instruments for molding the pattern of daily life in the colony. Not only did they go to great lengths to promote doctrinal uniformity,<sup>19</sup> but they continually promoted the welfare of the churches by supervising their establishment and by matters such as those assessing all town inhabitants for the salary and lodgings of the minister.<sup>20</sup> In addition, it was ordered that no house in any town should be built more than half a mile from the meetinghouse,<sup>21</sup> and church attendance was made compulsory for all inhabitants, whether church members or not.<sup>22</sup>

The role of the churches in the life of the colonists is particularly revealed in contemporary sermons, which emphasized the ways of godliness by encouraging meditation, cautioning against idleness, condemning fraud and injustice, warning against bad company and drunkenness, enjoining frugality, and urging mutual love and peace among Christians.<sup>23</sup> Individual sermons were frequently directed toward some current problem or issue in the colony or in particular towns. For example, Thomas Shepard pleaded for stricter observance of town bylaws,<sup>24</sup> Hugh Peter urged the support of economic programs, and John Cotton preached on the ethics of trade and business practice.<sup>25</sup> Each year, special election sermons exhorted reverence for the symbols of government by commending the fit character of civil leaders.<sup>27</sup>

On the elders devolved the responsibility of supervising the conduct of church members, and hence, with respect to the offenses

within their jurisdiction, they were a particularly effective agency of law enforcement. Misdemeanors which were viewed either as offenses against morals or against ecclesiastical discipline were principal subjects of accusation, confession, and punishment. Chief among them were drinking, lying, swearing, theft, adultery and fornication, on the one hand, and the expression or advocacy of heretical doctrines on the other.

Most of these offenses were independently punishable by the civil authorities as well, so that wrongdoers who were church members could normally expect to be twice visited with penalties for the same offense.<sup>28</sup> Thus, it will be recalled that after Anne Hutchinson had been sentenced and banished by the General Court she was then tried by the Boston Church and excommunicated.<sup>29</sup> Another example is afforded by the case of William Webb's wife, who was several times rebuked in court and by officials of the market, and finally excommunicated, because she customarily "nimed off bitts from each loaf" of bread to diminish their weight.<sup>30</sup> Despite occasional differences between the civil and the church authorities,<sup>31</sup> the two jurisdictions cooperated closely with each other and well supplemented each other's work. Some offenses the magistrates believed could be better punished in the first instance by the churches. Thus, the County Courts sometimes sentenced a miscreant to confess his sin before his congregation.<sup>32</sup> Again, Winthrop describes sending for the elders to discuss their dealing with excesses in dress and costliness of apparel.<sup>33</sup> Only when it appeared that the churches had failed to take adequate corrective action "at hoame" did the General Court enact a law proscribing a variety of ornaments and styles in dress.<sup>34</sup> Other offenses, although essentially of an ecclesiastical nature, the churches called upon the civil arm to aid in punishing: idolatry, blasphemy, heresy, and the venting of corrupt and pernicious opinions the Cambridge Platform expressly declared were to be restrained and punished by the magistrates.<sup>35</sup>

Thus, the church communities were not only active agencies of law enforcement within the colony but also sources of positive law in the sense that law consists of the rules and standards whereby men are expected to order their conduct. This fact is one of the most notable features of the colonial legal system. However, to men accustomed to the jurisdiction of the English ecclesiastical courts it

was hardly an innovation to confer upon the Massachusetts churches extensive powers over a wide variety of crimes and offenses. In contemporary England, notwithstanding the secularization of ecclesiastical affairs that the Reformation had brought about, those courts still exercised disciplinary authority over the religious life and moral conduct of most of the population.<sup>36</sup> The Archdeacon's Court regularly punished not only contempt of the clergy and Sabbath breaking,<sup>37</sup> but drunkenness,<sup>38</sup> incontinence,<sup>39</sup> adultery,<sup>40</sup> disorderly carriage,<sup>41</sup> idleness,<sup>42</sup> lying,<sup>43</sup> swearing and blasphemy.<sup>44</sup> The churchwardens of every parish were bound by oath to inquire at all times into the delinquencies of parishioners and to report them to the archdeacon, with the result that whatever offense "escaped through the sluices controlled by constable and justice was captured in the finer mesh of the archdeacon's net."<sup>45</sup> Despite the colonists' antipathy to much that concerned the Established Church, they substantially reproduced this dualism of authority that they had known in England.

The jurisdiction of the Massachusetts churches, however, was much broader than that of the ecclesiastical courts. Their procedure also was vastly different in that in New England the whole congregation acted both as judges and jurors of the accused. Their weapons were limited, and their powers did not for most purposes extend to nonmembers, who constituted the bulk of the population.<sup>46</sup> Yet they were not confined to regulating only offenses against religion and morals in the accepted modern sense, but supervised family life, personal conduct of all kinds, and even business relationships. In 1635, for example, a member of the First Church of Boston was cast out of the church for "scandalous oppression of his wives children in selling away their inheritance from them."<sup>47</sup> Another parishioner was excommunicated for cruel correction of servants,<sup>48</sup> and another "for extortion, deceit, and lying, in and about Iron Worke which he made for one Mr. Jacob."<sup>49</sup> The wife of Martin Stebbins "was so vyolent in her passion, that she offered vyolence to her husband, which being divulged, was of such infamy, that she was cast out of o[ur] Church."<sup>50</sup> Robert Keayne, the prominent merchant involved in the case of the missing sow,<sup>51</sup> was censured by the Boston church for making excessive profits on the sale of goods and forced tearfully to "acknowledge and bewail his cov-

etous and corrupt heart."<sup>52</sup> After this latter episode, in order to prevent such practices for the future, John Cotton undertook to draw up for the colonists a code of business ethics and fair trade practices.<sup>53</sup> It is important to note that the rules laid down by Cotton were based upon mediaeval conceptions of the "just price" still current in contemporary England.<sup>54</sup>

In carrying out their duty of supervising personal conduct, the elders were aided initially by the members of the congregation, who exercised mutual inspection, or "holy watching," over one another's lives, and reported delinquencies that came to their attention. By his covenant vows, each of the faithful bound himself to watch over his neighbor's soul as his own, in order to promote the spiritual and moral welfare of his fellow members,<sup>55</sup> as well as to keep untainted the household of God by preventing "scandalous persons" from defiling holy things.<sup>56</sup> John Cotton had preached to the Winthrop group as they left England, "goe forth, every man that goeth, with a publicke spirit, looking not on your owne things onely, but also on the things of others."<sup>57</sup> Holy watching therefore emphasized the welfare of the group and thus fostered solidarity within the community of the church. At the same time, the performance of this duty was of great assistance to the colony government in that much crime came to light through the vigilance of church members who distilled the *fama publica* of the vicinage. The civil courts accordingly welcomed testimony from this source for the prosecution of crimes that came within their jurisdiction.<sup>58</sup>

English experience likewise prompted, at least in part, the practice of holy watching, although it had also been among Calvin's recommendations for promoting Christian living in Geneva. The records of the city of Norwich reveal that adult males were under a duty to disclose and bring to punishment every breach of the laws and customs of the community, and contemporary legal manuals amply attest that this obligation was not confined to East Anglia but was enforced in many parts of England.<sup>59</sup> The practice appears to have been a survival from the days when local communities were made responsible, and subject to punishment, for the misdeeds of their members.<sup>60</sup>

The procedure which the Massachusetts churches employed in dealing with the numerous types of offenses of which they took

cognizance demonstrates that a primary concern was with repentance and the reform of the individual involved, for salvation was the end of mortal life.<sup>61</sup> The severity of the punishment—rebuke, admonition, or excommunication—depended on the seriousness of the offense and the attitude of the offender; but no sin was unpardonable, and one whose contrition was complete could again be restored to the privileges of church membership. Thus, Temperance Sweet, admonished for having given entertainment to disorderly company and “ministering unto them wine and strong waters even unto drunkenness,” was released from the admonition upon open acknowledgment of her sin.<sup>62</sup> Every effort was made, and the greatest patience exercised, to discover the personal reasons for the commission of the offense and to bring the culprit to see the error of his or her ways before sentence was passed. Each case was therefore treated individually, and the participation of the whole congregation in the trial helped to prevent the process from becoming self-righteous or arbitrary.<sup>63</sup> “In dealing with an offender,” states the Cambridge Platform, “great care is to be taken that we be neither over strict or rigorous, nor too indulgent or remiss: our proceeding herein ought to be with a spirit of meekness, considering ourselves, lest we also be tempted. . . .”<sup>64</sup> This leniency on the part of the churches is illustrated by the case of Anne Hibbon, who, openly and upon insufficient grounds, charged certain carpenters with extortion and combining to fix prices. The matter was laid before the elders who, after due investigation, admonished her for her unchristianlike jealousies and causeless suspicions. Neither the admonition nor subsequent patient effort to bring her to reason had any effect; she resisted all overtures, defied the church, and persisted in her groundless accusations, with the result that finally, after the proceedings had dragged on for six months, she was cast out of the church.<sup>65</sup>

Even the sentence of excommunication was neither final nor irrevocable, and true repentance would normally result in the offender's regaining membership.<sup>66</sup> The church records disclose several cases of persons excommunicated more than once and as many times restored.<sup>67</sup> This process of reform was aided by the colony laws which prescribed that any person who had been excommunicated must endeavor to restore himself within six months or

be presented to the Court of Assistants “& there proceeded with by fine, imprisonment, banishment, or further.”<sup>68</sup> Yet, in Massachusetts, as explained earlier, excommunication did not entail the serious civic disabilities which accompanied it in contemporary England.<sup>69</sup> Not even the right to hold office was lost by excommunication from one of the Massachusetts churches.<sup>70</sup>

Underlying the idea of church punishment was the importance not only of right living but of upholding the Puritan conception of a church. The sin of one was the sin of all, and the infection of that sin so tainted the whole that it ceased to be a church if it continued to harbor within itself any member who was unworthy.<sup>71</sup> The Cambridge Platform declared:

The censures of the church are appointed by Christ for the preventing, removing, and healing of offences in the church; for the reclaiming and gaining of offending brethren, for the deterring of others from the like offences; for purging out the leaven which may infect the whole lump; for vindicating the honor of Christ, and of his church, and the holy profession of the gospel; and for preventing of the wrath of God, that may justly fall upon the church, if they should suffer his covenant, and the seals thereof, to be profaned by notorious and obstinate offenders.<sup>72</sup>

The Puritan conception of the church as a group of professed believers, held together by their covenant to walk in the ways of godliness, was one of the deepest and most persistent influences on the life and institutions of the colony. It was to seek such a fellowship that the enterprise had been undertaken, and from that purpose had sprung the conception of civil government which limited political power to the proven elect and concentrated authority in a small group of leaders to whom full obedience was owed. By the 1640's, the greater proportion of the colonists were probably outside the churches; but, as Thomas Weld wrote, “If the Saints be thin sowed, who can helpe it?”<sup>73</sup> It was the “fault of the people, not of the rule, nor of the way,”<sup>74</sup> By the end of the 1640's, the Massachusetts churches had achieved, on the ecclesiastical side, a counterpart of the “due form” of civil government. They had, as Professor Miller so aptly says, “solved one half of the old Puritan dilemma, by showing how a discipline gathered out of the Word could subserve the political ideals of civil supremacy and national unity.”<sup>75</sup>

## VII

### *The Sorts and Conditions of Men*

THE institutions of government established in the Massachusetts Bay Colony effectively illustrate the extent to which the generation of those that settled the colony between 1630 and 1650 were heirs to the political traditions of the England from which they had removed. Born, and for the most part matured, in the age of Elizabeth or of the first James, all had been reared in a climate that nurtured a strong and centralized monarchy, and all were accustomed to the supervised autonomy prevailing in the towns, parishes, and manors in which they had lived. Most were acclimated to the localism of rural life, with its immemorial customs and ancient farming practices upon which Tudor and Stuart legislation only slightly impinged. At the same time they were also heirs to English social and intellectual traditions, and these included not only attitudes which had come down to them from the Middle Ages but new outlooks generated by the Protestant Reformation and by the economic and other adjustments which had taken place in the reign of Elizabeth. In nearly every respect the colonists' attitudes, manners, prejudices, and superstitions reflected their English heritage and differed little from those of their contemporaries in the social classes or localities from which they had sprung.

So ingrained were English traditions in the colonists' thinking that countless features of English social life were duplicated in early Massachusetts. The East Anglian type of house, with its second-story overhang and its leaded casement windows, rose along

the village streets;<sup>1</sup> English cattle, sheep, and pigs grazed on the commons and meadows;<sup>2</sup> English grains—wheat, barley, oats, and rye—grew in fields cultivated by English implements; and gardens were planted with familiar English vegetables—peas, beans, carrots, cabbages, parsnips, and turnips.<sup>3</sup> English fruit trees—the apple, the cherry and the plum—thrived in their orchards.<sup>4</sup> Tastes in food, principally a stout diet of meat, fish, bread, and pottage, remained the same, and beer was the staple drink.<sup>5</sup> Like Englishmen of their day, the colonists wore bright-colored clothes, and their furnishings and household utensils were imported from England or copied from English models.<sup>6</sup> Even the social distinctions and class consciousness obtaining in contemporary England tended to persevere in the colony. The fact that there were continuing and regular contacts with old England, through letters and the arrival of new immigrants, helped during the first ten years not only to keep alive but to strengthen ancient memories, traditions, and associations. Only in their religious and intellectual interests, which reflected Puritan beliefs and ideals, were the colonists notably different from the majority of contemporary Englishmen.

No one who gives thoughtful attention to contemporary sources can fail to appreciate that the colonists were not a drab, forbidding, or gloomy people, but were human beings, alive and moving always in a colorful scene reminiscent of English village life. Children had their dolls, toys, and games; and if the diversions and laughter of their elders were tempered by a sense of the urgency of their mission and of the importance of not wasting "precious tyme," many allowed themselves the luxury of rich clothes, elaborate furnishings, and fine silver, and enjoyed—in moderation—the pleasures of good food and wine. Court records, as well as contemporary accounts, amply attest to the zest of the humbler classes for contention, gossip, and the fellowship of the tavern; and the low cost of colonial justice afforded them ample freedom to indulge their litigious instincts. Upper-class Puritans tended to be serious and sober-minded. Death or disaster might strike at any time by the will of God, and personal losses were endured with resignation and without self-pity. Yet even the Puritans were of this world and could yearn for and rejoice in the pleasures of secular love and in the loving, if grave, companionship of marriage. Moreover, the soft beauty of the native country-

side was not lost upon such people as John Winthrop, who took time to record that the offshore breeze near Mount Desert carried "a sweet . . . r" and "a smell . . . like the smell of a garden"; and Anne Braintree, daughter of Thomas Dudley, who described in lyric verse the "mixed hue" of native autumn leaves and "stones and trees i sensible of time."<sup>7</sup>

The strength of tradition in all phases of early Massachusetts life was such that no appreciative understanding of the colony's political structure, or of its laws and institutions, is possible without some reference to contemporary English society. It is true, of course, that many practices and patterns of English life suffered a "sea-change" in the course of transplantation because of new conditions prevailing in the colony. For example, the wattle and daub of the East Anglian house were found insufficient to withstand the rigors of a New England winter without the protection of wooden clapboards; likewise, the thatch of their roofs was supplanted by shingles because of the greater danger of fire. Obviously, religious beliefs also affected the extent to which English ways were carried over to the colony. Tastes in art and literature conformed to and were molded by Puritan principles, and sermons became the absorbing intellectual interest. In addition, insofar as most of the colonists had an interest in improving their situations as compared with England, there was a conscious desire to reform or alter what they had known at home. Nevertheless, and notwithstanding these necessary qualifications, the first generation, at least, remained basically English in their outlooks, habits, and understandings.

The social structure of England in the early years of Charles I differed little from what it had been in Elizabeth's reign. Vigorous and enduring, the outlooks and usages of the Elizabethan age had carried over into the two reigns that followed. Even during the first forty years of the seventeenth century, as Trevelyan says, "No industrial, agricultural or social change of importance took place. . . ." <sup>8</sup> Men continued to live by farming, sheep raising, cloth-making, shipbuilding, commerce, and fishing, as well as by the innumerable crafts and trades that were to be found in every city, borough, town, and village. Except for a very gradual increase in the level of prices, and for occasional economic dislocations in particular areas, conditions remained relatively settled and gave little

hint of the seeds of revolution germinating beneath the soil. Class divisions continued to be recognized and accepted, and were in fact accentuated by the increasing importance of money, which had become one of the most important of social determinants. Broadly speaking, society was divided into four classes: first, the nobility and the gentry, made up of landed proprietors who did not live by manual labor,<sup>9</sup> and from whom were recruited most government officials; second, the merchants, engaged in commerce and manufacturing;<sup>10</sup> third, the yeoman class, "Land hungry and land loving,"<sup>11</sup> described by a contemporary as "farmers to gentlemen . . . or at the leastwise artificiers, and with grazing, frequenting of markets, and keeping of servants . . . do come to great wealth, . . . and often setting their sons to the schools, to the universities and to the Inns of the Court;"<sup>12</sup> fourth, the artisans and wage earners of town and country, freed from the taint of mediaeval villeinage, mostly poor but generally independent and self-reliant.<sup>13</sup>

These class divisions were neither hereditary nor fixed, and there was, to use Pareto's phrase, a marked "circulation of the elite."<sup>14</sup> Despite a tendency toward stratification which resulted from the still current idea that people were born into particular stations in life, wealth, and to some extent education, had become important determinants of social status, and those of one class were constantly moving into another. People of different classes intermingled freely, and there was little of the snobbery that was later to characterize the gentry of Jane Austen's day. Much of this fluidity is attributable to the importance attached to wealth, but it also resulted from the fact that town and country were not so clearly separate as they are today. When Milton writes of the populous city "Where Houses thick and Sewers annoy the Aire,"<sup>15</sup> it should be remembered that even the largest cities were clustered about with gardens and orchards. The country was always close by, and the country was the home of most Englishmen. Then, too, contacts between the towns and rural areas were continuous. Well-to-do merchants often lived upon country estates without losing their city affiliations, and younger sons of the gentry were regularly apprenticed to merchants or guild members in the towns.<sup>16</sup>

The pattern of English class distinctions survived the migration to New England and persisted, though with diminishing influence,



throughout the seventeenth century. From the outset, their importance was continually emphasized by the magistrates and the clergy and justified on the basis of religious ideals. Differences in wealth or in social position were looked upon not only as ordained by God but as reasonable in themselves because they accorded with inherited attitudes. Equally important was the leaders' conviction that the existence of class distinctions made for good order within the community by differentiating the superior and governing class from those of inferior status.<sup>17</sup> The persistence of English class distinctions was also significant because they provided the matrix for certain psychological attitudes and ideas which unquestionably influenced both the structure of colonial society and the development of the law. Most of the original colonists appear to have been of the yeomen and artisan class, men who were bred to a belief in hard work, and in not wasting "precious tyme," to the end that God's bounty might be improved and wealth acquired. Many of these had come from areas which had felt the impact of the enclosure movements and were consequently anxious to have land of their own assured to them. Nearly all believed in the innate inequality of man, fostered by class distinctions, and upon that premise the structure of the colony government had been reared. Both the Body of Liberties and the preamble to the Code of 1648 expressly refer to the liberties, immunities, and privileges "due to everie man in his place, & proportion."<sup>18</sup>

Of the settlers who came with the Winthrop Fleet, it has been estimated that perhaps a tenth were of a social rank above yeomen, and among these the nobility was hardly represented.<sup>19</sup> Nearly one-fifth appear to have been apprentices and indentured servants who had bound themselves out for a term of years in return for their ocean passage; the remainder, as stated, were small farmers, tradesmen, skilled and unskilled laborers.<sup>20</sup> Generalizations about those who came later are likely to be misleading in the absence of detailed biographical information. For the most part, however, they, too, appear to have been mainly of middle- and lower-class rank—yeomen, tenantry, and domestic servants, with only a small percentage from the gentry.<sup>21</sup> Many of the colonists were nevertheless persons of wealth and substance. For example, Captain Keayne, whose involvement in the lawsuit over the missing sow brought to

a head the issue of the negative vote, brought with him £2000 or £3000 "in good estate."<sup>22</sup> Elaborate documents of sale, leases, powers of attorney, and the like have survived to demonstrate how extensive were the property and commercial interests of many of the colonists as early as the late 1630's.<sup>23</sup>

Although English class distinctions were not forgotten,<sup>24</sup> they were soon modified as society began to regroup itself into new classes in response to local conditions. Within a short period after settlement, it is possible to identify among the settlers in Massachusetts five fairly distinct groups, each characterized by common traditions or by adherence to particular ways of life.<sup>25</sup> From the standpoint of the colony's law and legal development, these classes were chiefly significant because of the privileges, exemptions, and disabilities which attached to membership therein. Important though religious orthodoxy was in the colony, it was not of itself a determinant for membership in any social class: as in England, wealth, family connections, and education were chiefly what determined social status. Nevertheless, orthodoxy did prescribe that many of the outward and visible signs of social distinction might be enjoyed only by the elect, as is evidenced by President Dunster's compulsory resignation from Harvard because of his views on infant baptism.<sup>26</sup> The descent to Avernus was easy.

Of the five social classes identifiable in Massachusetts Bay, the most important was an "upper" class composed of men of wealth and education, united to a substantial extent by the ties of marriage, blood or friendship, and above all by a dedicated belief in the undertaking upon which the colony had embarked. Nearly all of these were recruited from the English gentry and merchant classes. Most of the magistrates belonged to this group, and, because of the importance of education as a social determinant in the colony, so did the clergy and elders. Few of the colony's laws were expressly enacted for the benefit of this upper class, and most of the privileges and exemptions which the law accorded its members were granted by virtue of their offices, or positions, rather than because of their social status.<sup>27</sup> A notable exception is the provision in the Body of Liberties that no "true gentleman, nor any man equall to a gentleman be punished with whipping, unles his crime be very shamefull, and his course of life vitious and profligate."<sup>28</sup>



The second, or "middle" class, was the backbone of the social and economic structure and was made up of artisans, tradesmen, shopkeepers, and also of independent farmers and proprietors. Hence, because it cut across many occupational lines, it was more inclusive than the English middle class of the period. This wider inclusiveness is explained by the fact that everyone, farmers as well as village artisans, lived in compact town communities which made for a social solidarity that was fostered by closeness of daily living and weekly worship.

A free lower class was a feature of early Massachusetts society, but in the first decade of the Bay Colony's existence it was not a large group. It consisted of common and unskilled laborers, poor and, for the most part, owning no house or land but living with their employers or in a neighboring cottage. The "have-not" character of this class made it identifiable as a separate group rather than additive to the middle class with which its members lived in close contact.<sup>29</sup> Their low standard of living tended to promote both criminality and civic irresponsibility, particularly among those who were not members of the churches, with the result that the impact of the laws against idleness, loitering, and drunkenness were especially felt by this group. At the same time, the law attempted to alleviate their condition by provisions for the maintenance and employment of the poor and their families "for the ease of the Country."<sup>30</sup>

The fourth, or "servant," class was composed of bonded and indentured servants who had sold their personal freedom for a period of time, either to pay the costs of ocean transportation or to pay off other debts to creditors in the colony;<sup>31</sup> it also included apprentices who had been bound out to learn a trade. Since the bondage of those in this group was not indeterminate, and since all could look forward to eventual freedom, generally to membership in the middle or lower class, the grouping is in a sense artificial, particularly since in their backgrounds and attitudes they differed greatly among themselves. Nevertheless, social mobility during the period of bondage was next to impossible; and this fact, together with other restrictions which the law or the terms of their indentures and agreements laid upon them, gave them an outlook and a position which make them separately identifiable as a group. More-

over, special class legislation imposed particular disabilities and penalties upon servants, who were not allowed to trade without their masters' consent and were forbidden taverns and similar diversions.<sup>32</sup> Whipping, rather than restitution, was the punishment imposed upon them for theft.<sup>33</sup> At the same time, the law accorded them certain rights already referred to, such as food, shelter, and clothing, and it also protected them against undue harshness of treatment at the hands of their masters.<sup>34</sup> Despite such provisions for their welfare, their status and the degree of control exercised over them tended to encourage irresponsibility and criminality, and they, too, were the objects of criminal statutes and of the laws against idleness.<sup>35</sup> The early records provide ample testimony not only of the negligence and heedlessness of servants,<sup>36</sup> but of their running away, stealing, and committing other crimes.<sup>37</sup> However, the class of servants began to shrink after 1640 as the terms of their initial bondage expired and the cessation of immigration prevented others from taking their place.<sup>38</sup>

Clearly demarcated from the servant class was the fifth and lowest class consisting of "slaves" for whom bondage was nearly always permanent. The class was numerically insignificant—a few Negroes, a few Indian captives of the Pequot War, and a few sentenced to slavery for crime.<sup>39</sup> In 1676 it was estimated that there were only two hundred in all of New England.<sup>40</sup> Most of them were household servants and farm hands, and, like bonded servants, they appear to have been prone to criminality.<sup>41</sup>

These classes, although separately identifiable, were not rigid. Early Massachusetts society was hardly the caste society that Brooks Adams has described:<sup>42</sup> on the contrary, as in contemporary England, there was a marked degree of elasticity within, and mobility between, all classes except the lowest.<sup>43</sup> The conditions of settlement offered numerous opportunities for initiative and action, and ability or capacity for leadership received prompt recognition. To such recognition class distinctions were no deterrent. Men who began in the free lower class, or in the servant class, could, with diligence and hard work, move up into the middle and even the upper class, and their choice of occupation was relatively free. Wealth, however, remained the primary factor in the determination of social status. The existence of undeveloped land provided an opportunity

to accumulate surplus through the sale of agricultural and forest products, and the small trade which flourished on the rising tide of immigrants during the 1630's also provided men with means for improving their situations. Moreover, the apprenticeship system, together with the educational facilities of the grammar schools and of Harvard College, also provided avenues whereby the eager and the gifted might become men of substance or rise to positions of prominence in civil or religious affairs. Birth and blood, aided by the laws governing the descent and distribution of property, were likewise determinants of social status, and intermarriage with the leading families therefore furnished still another means of social ascent. Unquestionably, this elasticity and mobility were among the factors which tended somewhat to modify the oligarchical nature of the colony organization.

The existence of class distinctions helps to explain the inequalities which characterized early Massachusetts society and which have been discussed in describing its political features. Those distinctions, like so much else in seventeenth century life, owed their origin to mediaeval ideas which taught that every individual was born into a particular class through the providence of God, that each had his appointed function to perform in his proper place, and that each must accept his status and not attempt, by imitation or otherwise, to escape it.<sup>44</sup> These lingering ideas were not only generally accepted but, as already stated, were in fact fostered by the colony leaders with a view to reinforcing class sentiments. Winthrop began his discourse on Christian charity by stating that by divine providence "in all times some must be rich some poore, some highe and eminent in power and dignitie; others meane and in subieccion;"<sup>45</sup> and he emphasized that the existence of inequality was reasonable in itself and led, through a distribution of duties, to the general improvement of society.<sup>46</sup> The churches also insisted that none of their members "live inordinately, out of rank and place. . . ." <sup>47</sup> To such ideas may be traced not only the form of the colony government but specific class legislation, such as the laws with respect to servants and apprentices,<sup>48</sup> and those proscribing extravagance in clothing and dress, which were intended, at least in part, to prevent the lower classes from aping their social betters.<sup>49</sup>

Certain leveling factors tended to minimize, but by no means

obliterate, class distinctions, which tend to be overlooked or to become less important in an environment where all have to work, regardless of social status. Endecott apparently took his turn at the saw pit, and Winthrop himself is said to have put his hand "to any ordinarye labour with his servants."<sup>50</sup> Common participation in the tasks of local government and of defense unquestionably had a leveling tendency, as did the town meeting, the system of land distribution, and education in common schools. The churches, too, tended somewhat to diminish the importance of social classes inasmuch as admission to a congregation depended not upon status or wealth but upon proving oneself to be of fit character. Moreover, all inhabitants, regardless of status, stood equal before the law,<sup>51</sup> and even nonfreemen were expressly accorded the right to attend public meetings and "to move any lawfull, seasonable, or material question."<sup>52</sup> None of these practices, however, was inconsistent with the existence of social classes, and no one believed in the so-called equality of man. Such equality as existed in the colony was an equality of the elect; it transcended, but did not displace, class distinctions.

Significant as were social distinctions in Massachusetts Bay, those resulting from the insistence on religious orthodoxy had a far more fundamental influence on the development of the laws and institutions of government in the course of the first twenty years. Political rights depended not upon wealth or inherited position but upon whether a man had been admitted as a freeman, and this in turn depended upon whether by reason of his personal conduct and beliefs he was acknowledged to be a "visible saint" through membership in one of the churches.<sup>53</sup> Hence, in describing the sorts and conditions of men, it is essential to distinguish between the freemen, who participated in the work of government, and the nonfreemen, who constituted a majority of the population but who had few political rights except in the towns in which they lived.<sup>54</sup>

Among the freemen three groups are distinguishable: the magistrates, the ministers and elders of the churches, and the remaining freemen who, by 1640, appear to have numbered about thirteen hundred.<sup>55</sup> The dominating influence of the first two of these groups in the life of the colony has been repeatedly emphasized. The third group made affirmative and even significant contributions in the

routine work of government,<sup>56</sup> but one of their most important functions in the political affairs of the colony was as a group check upon the magistrates through annual elections and through the opposition of their deputies to the latter's legislative programs and policies. Many of the deputies were men of substance, merchants and large landowners. Most of them served for successive terms, and several by 1650 were veteran legislators with extensive experience on important committees of the General Court.<sup>57</sup> The influence of such men individually and as a group, inevitably made itself felt in the development of the colony's laws and institutions. However, the majority of the freemen led obscure lives and played a subordinate role in the life of the colony. Yet their sentiments and attitudes are not to be discounted, for the strength of Massachusetts institutions ultimately depended upon those who accepted them and lived within their framework. In constructing the law and institutions of the commonwealth, the colony leaders did little violence to inherited traditions, and for that reason they had the general support of the freemen in their work. For instance, nearly all the freemen had had some experience with self-government in England, and their familiarity with legislation restrictive of economic and personal freedom made feasible similar legislation in the colony. On the other hand, they had learned to cherish the economic independence which had resulted from the break-up of the manorial system and the decay of feudalism, and were intent that neither should be reestablished. Those who had come from East Anglia brought with them memories of tenantry dispossessed to make room for sheep raising. Such sentiments were undoubtedly influential in the enactment of laws assuring certainty of title to land<sup>58</sup> and proscribing the incidents of feudalism,<sup>59</sup> if they did not in fact provide the initiative therefor.

It is nevertheless plain that direction of the colony's civil affairs came primarily from the magistrates. It was they who, as leaders in the enactment of orders in the General Court, and as judges in the courts where those orders were applied and developed, were the most important of the defined groups in colony life. In their own eyes they were a ruling class set apart by divine law as governors of the people.<sup>60</sup> Their experience and intellectual attainments, together with their practical capacities, undoubtedly account in large

measure for the deference they were paid by the colonists who had been accustomed to revering the local gentry in old England. Moreover, most of the magistrates had been born or trained to the responsibilities of leadership and had had substantial administrative or business experience. Several had served in positions which gave them firsthand knowledge both of local customs and of the common law of the central courts of justice in England. Needless to say, that experience left a marked impression on the law of the colony.

Unquestionably, the leading figure among the magistrates, and the one who chiefly inspired the development of law and government, was John Winthrop.<sup>61</sup> His early life particularly qualified him for the tasks and problems which confronted him in New England. Born in 1588, the year of the Armada, he was the grandson of a self-made businessman who had acquired the lordship of the Manor of Groton, in Suffolk, forty-odd years before.<sup>62</sup> After less than two years at Trinity College, Cambridge, Winthrop returned to Groton and, in due course, was appointed a justice of the peace and became engaged in the administrative and criminal work of the petty and quarter sessions.<sup>63</sup> In his twenties, he was admitted to Gray's Inn;<sup>64</sup> in his late thirties he was appointed attorney in the Court of Wards and Liveries.<sup>65</sup> Although that office was not one which gave him the experience of what might be termed general practice, since his duties involved the law of guardians, wards, and estates, it afforded him an opportunity for legal draftsmanship and necessarily involved him in other aspects of English law.<sup>66</sup> That he had some such general knowledge of law is apparent not only from the fact of his admission to Gray's Inn and from parliamentary bills which he drafted but from specific references to English law in the course of his writings.<sup>67</sup> Well and widely read, Winthrop was able to express clearly and with force theological as well as political ideas, with the result that much in the scheme of colonial government, as well as recommendations for particular legislation, was the consequence of his individual effort. A devoted public servant, he was temperate among many who were extremists, "not sparing, but always as the burning torch spending his health and wealth for the good of others."<sup>68</sup>

The backgrounds of several of Winthrop's associates who served

as assistants and officers of the colony should again be emphasized. Thomas Dudley and Simon Bradstreet had served in turn in the responsible position of steward of the estates of the Earl of Lincoln, and Dudley, though self-educated, is said to have "learned much skill in the law."<sup>69</sup> Richard Bellingham, who served on one of the committees that worked on the Code of 1648, had received a legal education, had been a member of parliament, and had held the important legal office of recorder of Boston in Lincolnshire.<sup>70</sup> John Winthrop, Jr., had been admitted a barrister of the Inner Temple, and William Pynchon had served as a justice of the peace in England.<sup>71</sup> John Humfry was a member of Lincoln's Inn and had reputedly been an attorney in the Court of Wards; in addition, he had had substantial business experience in London as treasurer of the old Dorchester Adventurers which had planted the early colony on Cape Ann.<sup>72</sup>

Of the ministers and elders, both as a group and as individuals, some account has already been given.<sup>73</sup> All had an important influence on the law of the colony insofar as the discipline of the churches regulated the conduct of their members;<sup>74</sup> but, in addition, five of them—John Cotton, John Norton, Hugh Peter, Thomas Shepard, and Nathaniel Ward, who were the most distinguished ministers in Massachusetts—served on one or more of the committees that drafted the provisions of the Code of 1648.<sup>75</sup> Of these five, the most influential were Cotton and Ward. Although Cotton had no legal training, he framed in 1636 a proposed code which Winthrop referred to as "Moses his judicials."<sup>76</sup> He also served on the committee that drafted the Body of Liberties in 1641, and the enactment of several provisions therein undoubtedly owed much to his suggestions.<sup>77</sup> Ward's contribution was more substantial. Before his entry into the ministry, he had studied law,<sup>78</sup> and by his own statement he had "read almost all the Common Law of *England*, and some Statutes."<sup>79</sup> It was he who was primarily responsible for the Body of Liberties, and he was an active member of the committees which produced the final draft of the 1648 Code.<sup>80</sup>

Important as the English heritage was in determining the patterns of life and thought in Massachusetts Bay, the conditions of settlement had an equally significant influence upon the life of the colony. Although religion was a dynamic force pervading the or-

ganization and conduct of church and civil affairs, and although men could sit in rapt attention listening to the sermons of Cotton and Shepard in a meetinghouse chilled by piercing winter winds, it could hardly provide the substance by which they lived. Like their contemporaries in old England, the men of early Massachusetts made their livings from the land and from the sea, through trade, business, and manufacturing. As stated earlier, those who settled in the first towns sought to re-create the community life with which they had been familiar in the towns and parishes from which they had come. Initially, the Massachusetts towns were primarily agricultural or fishing communities, with such trades and crafts as were necessary to such a life—those of the smith, the miller, the wheelwright, the carpenter. Later towns began in the same way, but in both the original and the later settlements the increase of population was accompanied by specialization. During the first years, with immigrants arriving at the rate of about a thousand a year, the first problem was subsistence and shelter. As the towns grew and multiplied, however, opportunities for industrial and commercial activity appeared. Thus, men who were trained in England as artisans or craftsmen began life in the Bay Colony as farmers but often resumed their trades at a later time; others, arriving after the period of first settlement, would at once take up their accustomed occupations.

In the 1630's the economy of the Bay Colony was essentially one of subsistence agriculture. Fishing also provided needed food and, in addition, furnished a basis for trade, as did trapping, especially of the beaver.<sup>81</sup> A few ships were built for fishing<sup>82</sup> and some coastwise commerce developed as occasional vessels came into Boston Harbor.<sup>83</sup> Although highways and causeways were constructed, ferries put into operation,<sup>84</sup> and weekly markets or fairs instituted at Boston, Salem, Watertown, and Dorchester,<sup>85</sup> trade was for the most part local and in needed commodities purchased by exchange or sale of surplus agricultural commodities and livestock.<sup>86</sup>

A significant stimulus to commerce and manufacturing was provided by the economic depression which befell the colony in 1639 as a result of the drift toward civil war in England. Immigration came virtually to a halt as the success of the parliamentary cause seemed more assured and men decided to stay at home and take up arms should the need arise. The onset of war in 1642, together with

the colony's growing reputation for intolerance, not only discouraged new settlers but even caused many of the colonists to return to England or to settle elsewhere.<sup>87</sup> These developments had a profound effect on the economy of the colony.<sup>88</sup> Those above the subsistence level of farming who had made money by the sale of surplus cattle, lumber, or crops to newcomers, and those who had sold their labor, suddenly found they had no market.<sup>89</sup> The value of domestic commodities fell sharply: the price of a cow, for example, dropped from £20 to £5 within the space of months.<sup>90</sup> Money suddenly became short, and foreign commodities virtually unobtainable.<sup>91</sup> With the appearance and rapid growth of a debtor class, and an attendant increase in crime,<sup>92</sup> it became vital to encourage industry and the manufacture of exportable commodities.

The urgency of the situation was apprehended by the practical-minded leaders of the colony, who understood that if Massachusetts was to go on in the ways of godliness and stand as a permanent example to the world, prompt and efficacious steps had to be taken. To stimulate and regulate trade and commerce through governmental action was entirely consistent with contemporary English economic ideas and practices, which regulated prices, wages, trade, manufacturing, and the quality of goods on a national scale.<sup>93</sup> Indeed, from the very beginning the colony government had undertaken to fix wages and prices and to prescribe the conditions under which merchants might enter particular trades and callings.<sup>94</sup> Accordingly, to meet the emergency, special laws were enacted to provide tax exemption and other benefits for those engaging in the fishing and mining industries<sup>95</sup> and to permit the payment of local debts in corn, fish, and similar staples.<sup>96</sup> The planting of hemp and flax was encouraged,<sup>97</sup> and clothmaking,<sup>98</sup> mining,<sup>99</sup> manufacturing,<sup>100</sup> and sheep raising<sup>101</sup> were stimulated. In 1640 earlier orders prohibiting the export of pipestaves, plank, and other wrought timber were repealed.<sup>102</sup> In 1641 a special mission headed by Hugh Peter and Thomas Weld was sent to England to obtain extensions of credit and "for ease in Customs and Excise."<sup>103</sup> Ships were needed for foreign trade, and these soon began to splash down the ways.<sup>104</sup> At the same time, and to ensure the success of that trade, a series of laws provided for the inspection and approval of various types of exportable commodities.<sup>105</sup>

Efforts to find foreign markets met with quick success.<sup>106</sup> Within less than a decade, the vessels of Boston and Salem were trading not only in the middle American colonies but in Holland, in the Canaries, and in Spain.<sup>107</sup> Men bred to the land, or to trades and crafts, forsook the plow and the shop for the rising star of ocean commerce. The rapid increase in commercial activities also provided a stimulus to local trades and crafts and, in addition, brought into existence a substantial merchant class.<sup>108</sup> These developments led to the enlargement of the body of law dealing with commerce and maritime law as suits arose over wages, demurrage, charter parties, and the like.<sup>109</sup> So important had commercial law become by 1650 that the General Court ordered that Malynes' *Lex Mercatoria* be studied and such laws extracted as were applicable to Massachusetts needs.<sup>110</sup>

Within ten years the colony's economy changed to one in which diversity of occupation, abundance, and even luxury had begun to appear. Edward Johnson, writing in the early 1650's, states that "this poor Wilderness hath not onely equalized England in food, but goes beyond it in some places."<sup>111</sup> Cotton and sugar came in from the Barbados; butts of wine from the Canaries; fruits, oil, and soap from Spain; to say nothing of manufactured articles, carpeting, silks, and pewter from England.<sup>112</sup> Although many of these commodities were reexported, the bulk of them was consumed or used in the colony.<sup>113</sup> The wealth and the tastes for luxury which this trade engendered were such as to become a source of concern to the colony government.<sup>114</sup> The entire basis of the Massachusetts economy had altered, and with that change were born new ideals which shook, and eventually undermined, the religious foundations of the colonial government. The immediate effect of the change was, paradoxically, to strengthen the political structure formed during the first twenty years, for the religious minority which controlled the government found it necessary to consolidate and entrench their position. For several decades the original character of that structure was to endure in semi-isolation, glacialized in the efforts of the government to assure permanence for the ideals of its early leaders. In time it crumbled as the religious aspects of life necessarily gave way before the relentless march of commerce.

The economic development of Massachusetts in the 1640's un-

questionably improved the material conditions of daily life far beyond what any of the immigrants could have dreamed in 1630. During this time other influences were also shaping the form of colonial society and the character of its citizens. No survey of the sorts and conditions of men in early Massachusetts would be adequate without some reference to their intellectual life, which exercised a pervasive effect on all aspects of the colony's development. Puritanism provided a stimulus to intellectual activity which was not lessened by the demands that the new environment and the problems of government made upon them. The intellectual level among the colonists generally was high to begin with. Many were university graduates,<sup>115</sup> and they were determined that learning should be made to vitalize and strengthen the institutions they had established. Education was essential in order to know and do the will of God and to defeat "that ould deluder, Satan."<sup>116</sup> Every church must have its minister who could properly interpret the Scriptures, and the congregation must be sufficiently educated to be able to understand his exposition. Moreover, good citizenship prescribed that all should know the capital laws, and it was expressly enacted that children should be taught to read for that purpose.<sup>117</sup> Yet in their emphasis on education the colony leaders had an even broader purpose, for they hoped to preserve the European civilization and culture they had known and to counteract the necessarily materialistic and leveling influence of the frontier.

These purposes, which were at once religious, intellectual, and social, were promoted through the setting up of a printing press, through the establishment of a public school system and, most notably, through the founding of Harvard College.<sup>118</sup> The printing press was operating in Cambridge by 1639, the earliest in North America outside Mexico, and it began immediately to publish Puritan sermons and tracts and, in due course, the colony's laws, works of history, biography, and poetry.<sup>119</sup> The Massachusetts public school law was enacted in 1647, the earliest general education legislation of modern times.<sup>120</sup> Although several towns had established elementary schools as early as 1640,<sup>121</sup> this act made education a general public responsibility by requiring that every town of fifty or more householders should have a school, which was public in the sense that it was open to all who were qualified and that no one

was excluded because of lack of funds from obtaining an education for which he was fitted.<sup>122</sup> The colonists' greatest achievement in education, however, was the founding of Harvard College—"first flower of their wilderness"—in 1636. Reflecting the course of studies of the University of Cambridge on which it was modeled, the Harvard undergraduate course demonstrates that its founders had a far broader objective than the training of ministers; namely, "to advance *Learning* and perpetuate it to Posterity."<sup>123</sup> In assuming at once the power to grant degrees, the college took what has been described as "a bold step, . . . the first declaration of independence, in that it declared and settled for the colonies the principle of freedom of education from control by Church and State in the mother country."<sup>124</sup>

These attitudes provide yet another indication of the way in which the colonists drew upon their cultural heritage in fashioning the new civilization of Massachusetts Bay. However, unlike the English social and institutional heritage in which all the colonists shared to a greater or less extent, the intellectual heritage—despite the pervasiveness of its influence in the colony—belonged primarily to those among them who were Puritans.<sup>125</sup> To them, in varying degrees and according to their education and capacities, the philosophical aspects of religious and church doctrine were overriding interests, which are amply revealed in contemporary sermons and in their libraries, chiefly filled with books on theology and ecclesiastical polity. Yet their libraries also contained books on natural science, literature, and history, which emphasizes that they shared with contemporary Englishmen, Puritan and non-Puritan alike, much of the legacy of the humanism of the Renaissance.<sup>126</sup> In this respect, however, they were eclectic and took "what seemed to them to consort with their philosophical and religious standards and to be best adapted for their special purposes."<sup>127</sup> Thus, they read the classics less for pleasure than for the lessons and examples which they afforded. Nathaniel Ward, for example, in his election sermon in 1641, propounded moral and political principles grounded upon those of Greek and Roman government,<sup>128</sup> and Winthrop frequently referred to the experience of antiquity in deciding important public questions.<sup>129</sup>

Except for its special concern with Puritan developments of