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LAW AND POLITICAL CULTURE: A FUNCTIONAL STUDY OF THE RELATION OF THEOLOGY TO JURISPRUDENCE, POLITICAL VALUES AND LEGAL ACTIVITY IN COLONIAL SUFFOLK COUNTY, MASSACHUSETTS, 1671-1680

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Submitted to the Department of American Studies and the Faculty of The Graduate School of the University of Kansas in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

Dissertation Committee:

John Hancock per SH
Chairman

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Part One

Purpose, Scope, Method

INTRODUCTION

Between 1660 and 1690, as they moved into provincial status, the Puritans of Massachusetts weathered one crisis after another. The drama of the era has been captured in Thomas Hutchinson's history of the events and people, but only in the last few years have a number of scholars begun to analyze the period. Robert G. Pope's The Half-Way Covenant, Kai Ericson's Wayward Puritans, and Chadwick Hanson's Witchcraft at Salem each seeks explanations for the crises it examines and all ask the question whether Puritan society has any bearing on the formation of American culture. These works, in conjunction with a number of others, constitute an interdisciplinary effort to study the relationships between cultural values and institutions.[1]

This study attempts to contribute to this interdisciplinary effort. It is an examination of how law related to Puritan political values between 1670 and 1679, one of the three "crisis" decades. Because it is a methodological study, this analysis is limited to the Suffolk County Court during those years. (The Suffolk Court, one of four county or shire courts, included in its jurisdiction the towns of Boston, Braintree, Dedham, Dorchester, Hingham, Hull, Medfield, Milton and Weymouth.) Methodologically, this study belongs to the field of political

sociology, but in it I seek to develop an approach to legal history as intellectual history. Thus, it is interdisciplinary, drawing on sociology and political science for method and contributing, I hope, to intellectual history as social history. Ultimately, studies like this one could provide a more complete understanding of American law and jurisprudence.

Scholars encounter several problems in conducting an interdisciplinary inquiry into the law: the immense volume of court and case records, the problems of locating and identifying the older records (particularly those before the national period of American history)[2] and the consequent time-output ratio which is particularly higher for this field of history than for any other. A brief survey of articles on colonial law reveals that the quantity is low. Methodologies can be developed which will allow scholars to deal with the records more economically than they have in the past.

I hope that I have devised one such methodology. I have used a modification of Talcott Parsons' theory of social action to examine the functional relationship among legal values, political structure and legal behavior. But I hope that this study can transcend the utilization of a controversial theory, and that it can draw scholars into an examination of legal history and the general relationship of law to social and intellectual history. In this study I will suggest possible solutions to three problems which

have prevented the growth of legal history. These problems are: lack of a national legal history, over-concern with the common law, and a divergence between the legal and historical professions.

There are few histories of American law which are national in scope. Law in American history displays no unity. Legal history cannot insinuate itself into the general historical endeavor by way of narrative because whatever else it may be, legal history is not part of the smooth flow of events which has characterized American history as "national" history. For example, even though many scholars have used legal records and have produced history which is national in scope, few have focused on the narrower task of writing national legal history. Instead they have used the materials to support investigation of some other social or political or economic problem.[3] Thus, the only unity which investigation into legal documents yields is usefulness as a universal support. This "support" role has discouraged scholars from concentrating on analyses of American law.

To be sure, law has supported the development of other institutions, but for the colonial period in particular it seems to have played a more important role, even a dominant one.[4] Again, the scattered location and volume of materials almost insure that the history of American law will be local. In addition, the legal historian has the task of confronting intellectually some of the carefully structured

(sometimes unconsciously) anti-regional and anti-local histories of the nation.[5] Over the past fifty years, as the support role of legal materials and legal history has been emphasized, strictly local history has been de-emphasized; consequently, theories and methodologies in local history have been neglected, and legal history has remained undeveloped.

The lack of national unity in a history of American law is discouraging to legal historians in another way. Because their efforts must rest on local peculiarities, they find difficult any participation in the nearly dominant "consensus" school of American historiography.[6] The battles among the frontier school, the consensus school or other "national" schools have necessarily been focused on at the national level. With some exception, regional peculiarities have been left to the antiquarians, again local history remained in an embryonic stage, and consequently legal historians have had little impact on American historiography.

But the field is not completely shut out of American history. Local history is again being slowly accepted. Some scholars who have traditionally accepted the consensus school (or another equally broad national theory) have been moving to "do" more detailed history. For example, the New England town studies which have appeared during the past ten years[7] have made local histories available and have literally begun the task of legitimizing local history. Concomitant with this trend a reassessment of the consensus

school is under way in colonial historiography, and some of the consensus scholars have been supporting the move to local history.[8] Their support should facilitate movement toward histories of American law.

Historians of American law have participated in one historiographical controversy. They have done so partly because dominant questions about the law have led scholars to histories of legal forms. I refer to the historical question, when did the common law become a part of American legal practice? This question has engrossed much historical scholarship.

Since Justice Story's famous decision in Van Ness v Packard,[9] legal formalists and constitutionalists have urged the implications for American law. Story noted in this case that the colonials brought with them the full range of the common law, but that they used it eclectically. He argued later in Carter & Wife v Balfoor's Administrator[10] that they relied heavily on English statutes. Using the cases and their evident implications, scholars have insisted that the common law and English statute provide the sources of American law for the colonial period. No one would argue that Justice Story's decisions lacked constitutional impact or that they were not authoritative in law after they were written into the opinions.[11] But the process of thinking back into time which Story handed legal scholars as historical fact ended in the common law quarrel. It involves mutually exclusive historical stances. When the historical

"schools" had become rigid and when they had engrossed the field of legal history with a relatively unimportant question and with the forms which accompany it, they injured the possibilities for a less professional or utilitarian and a more contemplative examination of American law.[12]

Professional historians ask questions and propose answers through which history assumes contemporary importance. History becomes a factor in the acceptability of social policy among the people. By emphasizing the common law and thus slighting deeper questions about the law, legal historians have left American legal history out of this process. I believe that current emphasis among legal historians could lead to historical decisions about law in American society. Such decisions could leave citizens confused about, and eventually disdainful of, the concept of law.

In my opinion the failure of historians to examine local law and, using a full range of cases, to produce regional and developmental histories of American jurisprudence has already seriously damaged the regard for law in the United States. Concentration on the developmental histories of specific legal forms and on the common law quarrel has probably prevented legal history from making its full contribution to American culture.

A final curb on the full development of legal history is the divergence between the professions involved. In general, legal scholarship, including history, has been

designed to serve the legal profession.[13] Mark Howe notes that "lawyers consider the historians incompetent and irresponsible, and the historians consider the lawyers unimaginative and narrow,"[14] but in my opinion lawyers writing history have simply avoided the use of multiple cases and have concentrated on formal categories because without the categories, cases would make little legal sense. Their differences have to do with basic concepts of utility within the two professions.

The difference in outlook arises from a divergence in training. Legal education is largely technical involving large inputs of procedural tactics which lawyers are expected to apply when they begin practice. With the exceptions of constitutional law and international law, an attorney receives very little institutional encouragement to learn the contemplation which is the mainspring of research and study in academic fields. Again, as Daniel Boorstin points out in an article titled "Tradition and Method in Legal History," history as handled by the lawyers has been the history of legal precedents, legal classification, i.e., forms of contract and so forth. In short, the history has been "the embryology of the vocabulary."[15]

The effort at "law-word" history has been useful for the development of utilitarian or analytical, and, as it is sometimes called, an objective jurisprudence, but it is predicated on the belief that the analytical tradition has been the American tradition. Just as the common law

quarrel has prevented consideration of other possibilities in American culture, the professional emphasis on the embryology of the vocabulary has prevented legal scholarship from going behind the analytical tradition. Julius Stone, in his book, The Province and Function of the Law, makes the case for legal history when he notes that analytical jurisprudence has been dominant in Anglo-American scholarship and that historical jurisprudence, which he defines as the history of justice and concepts of it, has been largely ignored.[16] Professor Stone's distinction brings to mind the famous anecdote about Mr. Justice Holmes, whose law clerk, on being dropped at the supreme Court building in Washington, bid his sponsor good-day by calling out, "Do justice today, Mr. Justice!" Whereupon Mr. Holmes is said to have leaned out the window as his carriage drew away and called back to the young man, "My job is to do law, not justice!" Analytical jurisprudence has been the single construct dominating legal history. I believe, as I explain more fully in Chapter I, that the "model" it has created has largely prevented American historians from examining American law from a cultural perspective.

In his famous address, "Pathways of the Law," Mr. Justice Holmes said, "I look forward to a time when the part played by history in the explanation of dogma shall be very small, and instead of ingenious research we shall spend our energy on a study of the ends sought to be attained and the reasons for desiring them."[17] The technical

pragmatism in Holmes' statement is a product of his emphasis on the law as case, and the statement itself is fairly typical of the legal profession in America. Even in its more compassionate and humanistic utterances, this legal pragmatism fails to provide for the type of contemplation which I believe is necessary to a concept of historical jurisprudence. Furthermore, I think that our failure to treat legal history culturally has contributed to the creation of a legal system which for many participants is a nightmare of injustice and complex procedures, which is wide of the mark of equal treatment before the law, and which in fact is rapidly breaking down.[18] No statement here means that anyone is to blame for the situation. It exists in part because historians have been discouraged from doing their job. It should not exist.

That we have few cultural histories of American law is most emphatically not the fault of the legal profession. Members of that profession, notably James Willard Hurst and Julius Stone, have asked historians to provide an enlarged concept of the law, one within which formalists can operate but which at the same time provides the chance to integrate values with historical event and with the operation of the law.[19] These men are not talking about law as case, but about law as a social dynamic, not about precedent as history, but about the history of the law in social operation. They understand the professional divergence which plagues legal history because they are also historians.

Karl N. Llewellyn in his book The Bramble Bush speaks cynically about what has passed for legal history: "The heaped-up cases through the centuries; the heaped-up wisdom. As I watch the succession of the cases--moving, rising, taking form eternally--as I see the sweep of them entire, I find old formulae of tribute rising to my tongue: 'The full perfection of right reason!' The closer I can come to seeing law whole, the more nearly do I, of the skeptic's clan, find myself bordering on mysticism."[20] Professors Stone, Hurst and Haskins are not talking mysticism; neither are they talking pragmatism. They want meaningful cultural history which can offer alternative views of jurisprudence and which can offer fuller understanding and thus fuller social control of the law.

I think that the lack of national uniformity, coupled with the concentration on the common law question and the professional divergence with its word-history emphasis, has retarded the full development of legal history. I also think that modern methodology and theory applied to local materials can accelerate it. Such application requires no uniformity. Rather it encourages detailed attention to local conditions and thus would allow historians to highlight differences wherever differences exist. Historians could move away from the formal and procedural emphasis and avoid the unanswerable and fairly inconsequential questions about the common law forms. Attention to methodology could also create a zone of intellectual exchange between

lawyers and historians, an exchange which ought to bring to American law a reorientation toward the open and full range of scholarship which characterizes the American academic ideal.

In Chapter I, I compare the usefulness of the objective model with a proposed model based on functional theory. I examine criticisms of functional theory and explain the modifications necessary to suit the theory for this historical study. Lacking a three-dimensional model, I can best describe the theoretical model as spiral in design. It is useful in creating a functional legal model which, I hope, is close to reality for this specific study, a model which one can enter at any level of analysis and move either up the spiral to broader analysis or down the spiral toward the most specific and detailed analysis. The emphasis, as I note from time to time, is on direction and movement.

Values and other elements of culture are particularly important. For an examination of Puritan society this means that the theology must be tied to other cultural elements. To tie the elements together I depend on a perspective derived from Talcott Parsons' action frame of reference, his concept of status-role bundle and, finally, his concept of the societal interchange system. This last theoretical element appears later in the study where it is modified to fit the analysis of Puritan values. (Parsons' terminology is strange to many readers, and I use it

sparingly. I apologize in advance and want to stress that his terms are used in a common sociological sense and do have a preciseness behind them. They are useful in displaying the functional perspective.)

In Part Two of the study, I outline Puritan political culture. The values of Puritan society yield theologically based discrepancies between concepts of liberty and authority. These discrepancies reveal tensions which in turn are evident in the structural parallels between church and state and in the overall organization of the polity. When they are arranged according to the parallels, the values and structures display Puritan political culture. The final structural chart and the depiction of a modified societal interchange system (Fig. 9, p. 137) reveal stress lines as well as lines of communication in the culture.

Drawing on the analysis of Puritan political culture, I define law in Part Three. The definition is an explanation of role in culture and gives rise to a structural-functional model of the court system. This model represents polarities between authority and liberty in Puritan political culture and the importance of law in the resolution of tensions in the culture. Finally, utilizing the legal model and the status-role position of judges in the court system, I explain the theoretical impact of the legal system on the broader social system.

In Part Four, I examine the data from the Suffolk County Court between 1671 and 1680, looking for patterns

which reveal the connections between values and the actors' status-role bundles as they move into the court and polity. Categories of cases which I use are functionally based, and, although they are similar to forms used in more traditional study of legal history, they are drawn from items of cultural importance, rather than strictly legal importance, in Puritan culture. Debt and injury are "personal" categories which means that cases in these two groups tend to involve individual interests. Damage is a neutral category which means that the cases are culturally important according to content. Estate and title are drawn on the importance of inheritance and land title in Puritan culture. Public matter, the final category, is drawn on the importance of rank or status in Puritan society.

These categories are explained more fully in Part Four, where they form the core of behavioral analysis. From the functional perspective the cases reveal patterns of behavior which in turn show patterns of response to political stress. From such patterns emerges a more specific idea of the relationship between law and political culture. The results provide a fresh historical perspective from which to view Anglo-American jurisprudence.

I have modernized spelling in quotations except when the antiquated spelling adds to the statement. I have merely regularized the spelling of names. All dates in the paper are old style, and I have followed the custom of giving a double year for dates which fall between January and March.

CHAPTER I

FUNCTIONAL MODEL AND MODIFICATIONS

Jurisprudence: Equality and Inequality in Legal Models

Those who have examined history or law from a jurisprudential perspective have used the acceptable "objective" or dispassionate mode of thinking. Thus, when a man of Western culture reads about the ideal of a government of laws, not men, or about the ideal of equality before the law, he is reading into the law that same objectivity. It is the idea which Justice Holmes called the "legal"; it carries no relevance other than legal relevance.[1]

In any culture the abstracted ideal of the law is probably present to some extent. In any formally structured system it is almost certainly present because the structures themselves provide circumscribed arenas in which members of groups can act out legal behavior. Conceptually, the legal may be what goes on in the court system and the roles related to the court system--lawyers, judges, jurors, litigants, witnesses and so forth. In such a system goals are set, presumably by written law, highly ritualistic roles are played out according to the specified goals, and "justice" is done.

But law is more than the objective or legal. It is an element of cultural value, often discussed but rarely admitted by members of the legal fraternity. It is a valuative influence or an authority in the creation of community values.[2] It operates in the economy, the polity and society as a whole. To say that it operates unequally is to speak a truism. The concept of selective enforcement would not exist if law operated equally. More important is legislative intent. In creating laws the legislative arm of government sees fit to protect some groups, to isolate others; they do so by placing these groups into exclusive legal categories.

Some special protection or isolation is usually acceptable in society, but some of it is regarded as anti-legal. To note the difference is only to note that some values have a "right" to a hearing in society. Their "right" grants them a legitimating force for the inequalities which arise from such a right. Inequality as it is used here carries no sense of broken morality. In fact, it means inequality as a positive moral force in accordance with the values of a community. Thus, equality before the law, the central concept in the traditional mode of Anglo-American jurisprudence, may sometimes be wrong in the moral sense. Both equality as it is envisioned in the accepted Anglo-American pattern and inequality may be sources of law.[3] Such inequality may be articulated, or it may be unarticulated. Inequality must be public, of course, if it is a

source of law. For example, as I show later in Chapter II and Part Three, Puritan jurisprudence included inequality as a public value both in an articulated sense through theology and in an unarticulated sense through legal behavior.

(The public nature of law is not axiomatic. Eugene Ehrlich, for example, notes that law could exist perfectly well at the private level, and that it has during some historical periods.[4] Yet, most legal scholars of the historical school agree that since the rise of the nation state system in Western culture, law has been closely allied with the coercive power of the state. Its reference points have tended toward community necessity and the designs of power.[5])

The alliance between law and the coercive power of the state is important to this study because corporatism as a state theory brought together political structure and jurisprudence in Puritan Massachusetts. Stressing inequality, Puritan jurists saw no "justice" in removing political or social considerations from the application of the law. In contrast, modern objective thinkers have made a distinction between politics and justice. As an ideal, their definition has been important particularly in the creation of constitutions.[6]

Even when historians acknowledge inequality or the infusion of politics or economics into the legal machinery of a polity, for example, when Charles Beard called all law

the protector and distributor of property in communities,[7] they fail to deal with unarticulated inequality. In accepting the dominant analytical or objective model, historians need only accept equality and objectivity as justice, and they may then test any historical event for its interests in establishing and/or maintaining either of these touchstones of the dominant model. Such testing requires no methodological changes; the historical models are already in existence. But such models are not all inclusive; especially they do not apply to societies where inequality was articulated and generally they leave out the unarticulated inequality which is present in almost any legal system.

The social significance of law as public and unequal emerges from an examination of values as cultural elements. In this study, I examine the Puritans' dependence on their "sense" of justice. For reasons I have already given, I cannot use the objective mode of thinking about Anglo-American legal history. The most precise body of theory available for the examination of values as cultural elements is systems theory as it has been developed in sociology and anthropology, specifically, functionalism as it has been developed by Talcott Parsons and other theorists.[8]

Examination of values is specific to this study. But functional or systems theory has a general applicability to studies of legal history. Because in my opinion legal history must account for more than the simple legal,

because law is closely bound up with other identifiable aspects of society (especially the polity and political values), and because the legal historian must express this interrelatedness, the model must create a perspective from which law and its components can be closely scrutinized. Moreover, the theory or method must provide for law as a social element fulfilling community necessity, demonstrably at the planned or articulated level and at the unarticulated level. Using functional theory, I plan to construct an empirical model which will reveal both articulated and unarticulated inequality in Puritan law. I hope this model will have general applicability for further studies.

Theoretical Criticisms

Functionalism has its critics. They have expressed their criticism in terms of theoretical limitations, and those limitations should be understood before this examination proceeds. Reading first the criticisms and then the presentation of functionalism's positive influence on social science, one should be able to understand what the theory can and cannot do. David Easton cautions students that "concepts are neither true nor false; they are only more or less useful."[9] Writing about systems theory generally and functionalism specifically, Easton notes:

> The same interpretation applies with regard to the function of system as a concept in social research. It is a way of orienting ourselves to our data at the very least; . . . it also provides crucial leads into the analysis of our subject. However, as a way of

> looking at social life, if it should prove to hamper rather than facilitate efforts to understand and explain political interaction, at that point it can be discarded for more fruitful ways.[10]

Easton's caution and statement typify my orientation to functional theory.

Most functional theory is predicated on the congeniality of Talcott Parson's theory to the actual state of any social system at any given time. Yet, critics assert that the theory is static, that it fails to provide for change, or that the change which it provides is gradual or adaptive. They note, furthermore, that the theory is unrealistic because it forecloses the possibility of violent social change and thus fails to represent historical reality. Their criticism focuses on the concept of equilibrium which functionalism has adopted from two sources: economic theory in the classical mode and biological or ecological conceptualizations of systems.[11]

Their critique pursues systems theory into first a teleological spiral and than into an ideological bias. Some change, these critics say, is revolutionary change which sweeps away the structures of present society and either replaces them with new structures or allows new structures to develop in their place. In their criticism, equilibrium, the return to the status quo, creates a conservative bias in favor of what is. Functionalism, they assert, is a theory of the best of all possible worlds; it insists that what is, is what must be.[12]

As Robert K. Merton points out, the teleological critique of functionalism and the ideological critique are closely related. The teleological argument stands behind the ideological one by stating not only that existing institutions must exist as they do, but also that they exist for a specific purpose which is necessary to the structural and cultural configuration of a society. They are arguing that functionalists impose purpose on social structure, by noting that the postulates which seem to the critics necessary to functionalist orientation are not necessary to it.

Functional unity of a society is the first such unnecessary postulate. Society may be unified overall, indeed it must be, but to regard any single aspect of society as part of that unity may be a mistake. Some aspects or elements of a culture may be unnecessary or may contribute to disunity. Given these possibilities, Merton opens the concept of unity to empirical testing. The application of a degree of integration and the common sense acknowledgment that "social usages or sentiments may be functional for some groups and dysfunctional for others in the same society"[13] do away with the idea of functional unity, but leave systems theory in tact. The concept of dysfunction is crucial here and it has been developed by both Merton and Don Martindale into an adequate answer to the teleological and ideological criticisms of the theory.[14]

Merton notes two other false postulates which are important in the ideological critique: that all social and cultural items are equally necessary to the culture and that they are consequently indispensable. These two postulates, he notes, are ridiculous in the face of empirical investigation. Some social and cultural items are obviously unnecessary to the survival of the culture or society, and they are consequently dispensable. Merton's analysis of these postulates depends again on his ideas about maturity and degree of importance and dysfunction within society.

Dysfunction, of course, incorporates the equilibrium concept, but it is modified to provide for change, that is, the return is to equilibrium but an equilibrium which may be radically different in total make-up from the former. Merton thus posits a certain relativity among the social and cultural items and their importance in the total integration or equilibrium of society. Dysfunction also incorporates, through the concept of relativity in social integration, the idea of functional substitutes which are important to the theory. Merton explains functional substitutes by noting that a degree of integration is necessary to the survival of any society and that the routes to integration are variable through time. As the routes vary, the relative importance of social and cultural items may also vary.[15] Degrees of importance among cultural items and dysfunctions among cultural values are both important to this study.

Two further criticisms have some validity. The first is that functionalism is limited because it is merely analytical. This critique insists that the theory carries a few basic sociological precepts into the realms of grand theory, and that when it is deflated, its total content amounts to a few tautological statements. C. Wright Mills has expressed this criticism most expertly and with some humor noting that Talcott Parsons amidst his verbal obscurity, is actually saying that people who hold certain values in common will tend to behave similarly in similar situations involving those values.[16]

Mills' criticism is valid at the level of grand theory simply because the high abstractions of Parsons' systems are meant to provide such an analytical base. Parsons offers some greater precision than one would gather from Mills' treatment of his theory, but the test of the theory lies in its intelligibility, in its communicability, and finally in its utility for empirical study. Bringing the theory down to middle range, adapting it to fit the data rather than vice versa, and providing it with an operational base which utilizes both data and interpretative knowledge about the society under investigation--these modifications answer Mills' criticism. If the theory is conceptually useful, as Easton says, it is worth the effort.

A second valid criticism is that functionalism has built into it an emphasis on closed social system: moving from basic systems such as the social systems into subsystems,

the investigator tends to draw boundaries which in fact do not exist.[17] At least one theorist is content to accept this criticism. Don Martindale sees such lines as useful to the investigative tool. Functionalism is a theory of integration; in order to discuss the society one must construct categories. On the other hand, Martindale admits that any researcher using systems theory must automatically de-emphasize the role of individuals and must construct boundaries as if they actually existed. They are conceptual boundaries, in reality they shade off into one another, but they facilitate division and thus social science research.[18] Spiral theory as I describe it in the Introduction is derived from this criticism and Martindale's answer. With it one may range from the highly general idea of integration to the more specific categories of role expectation. Thus the lines which Martindale accepts are still present in this study but they are more flexible.

The infusion of empiricism from Robert K. Merton again reduces the validity of this objection, but it does not answer it. Indeed, the criticism is central. If one is to think in categories of behavior, in groups of actors, and in generalizable lines of social action, one must necessarily avoid descending into the morass of individually motivated behavior. Otherwise, the sheer detail of empirical investigation would preclude any contributions to theory making of any kind.

Thus, systems theory, as does any theoretical stance, carries an assertion: men operate within structures and they operate to fulfill functions for which their socialization has prepared them. The implication, although few theoreticians would accept it totally, is that men as social beings have little or no choice in broad categories of this behavior. It is channeled toward some social end, some function, conscious or unconscious. For its model this study depends on the systems concept. As one can see from both chapters on legal definition and the exposition of the legal model, the lines drawn here are as empirical as possible.

Despite the criticisms, the theory has some very positive effects on social science investigation and is congenial to the state of social precision and theoretical development at the present. One important benefit, particularly useful in this study is the possibility of bringing together broad theory and "narrow" behavioralism into a unified picture of social action. Putting the two together requires the exclusion of speculation about individual human motives. It requires as well concentration on the configuration of motives--social ends or goals--and thus allows one to study records previously thought to be too voluminous. Categories of legal behavior are drawn from the systems model as it explains values and structures in Part Two and Part Three. Without the model and without the systems study of values and structure, these categories would have very

little empirical base. The study of cases would almost necessarily depend on formal study as it has already been developed.

By drawing on this configurational aspect of the theory and seeing society as a puzzle to which the pieces are available if he has the time and material to uncover them, the social scientist is in a position to investigate more empirically a broader range of social items. He can thus build models which are more self-conscious than those involving traditional historical speculation about individual motives. The social scientist is still speculating, but his speculation has a self-conscious point of view behind it. His ideas are transferable or more communicable, and because they are, they should encourage the application of other minds to precise conceptualization of a problem.[19] Both the precision and the communicability allow cooperation, cross-fertilization, and eventually, within the scientific context, the statement or serial hypotheses which are empirically testable.

The combination of broad theory and empirical investigation, goal-oriented speculation and consequent creation of hypotheses are enough to recommend the theory, but its movement into empiricism is its most positive feature. To be sure, not all empirical studies which emphasize theory or social structure are functional studies. Functionalism must present a concept of interrelated social needs, conscious or unconscious, which in some manner or another are

necessary to the continuation of the society. This concept of needs is central to the present study. The study of mere behavior, legal behavior for instance, does not provide for this theoretical definition. For example, law in colonial Suffolk County filled certain needs and created certain needs which are not necessarily evident from the individual behavior of litigants and other participants in legal activity.

The danger here is that speculation can get out of hand and can crush reality under the heavy imposition of some ideal configuration. The affinity between gestalt psychology, for example, and modern functionalism has been noted, and gestalt psychology has been criticized for its almost unlimited theoretical applications.[20] Functionalist scholars must recognize and admit that something called objective reality does exist and that even within a theoretical construct his final aim is to understand that reality. Imposition of categorical empiricism on the models created within the theoretical context should help contain unbounded speculation.

Although the goal-oriented speculation, which provides insights into the operation of society, and the control of speculation through empiricism are positive aspects of functional theory, together they carry a further danger which C. Wright Mills has explained. Mills warns against the administrative syndrome in empirical studies or what he calls abstracted empiricism. He means frankly that some

empirical studies are so careful, so unimaginative he would say, that they do contribute to knowledge but not to understanding.

The administrative syndrome results in a mania, as Mills explains, for empiricism which yields a mixture of administrative divisions within the subject matter, divisions which have little basis in reality.[21] The tie between the artificial boundaries in systems theory and these "boundaries" should be evident. Mills is clearly expanding his general criticism and applying it to spin-off studies. For example, studies of community patterns in voting may be done over and over yielding results about individual elections, based on minute divisions into parties and preferences, involving an accelerating number of variables such as income and residence, and so forth; yet, such studies never yield information about party structure and the function it performs in society or about the importance of politics as a dynamic in community activity.[22] Mills rightly finds these studies theoretically useless. This study avoids the administrative syndrome by beginning, as noted earlier, with a loose acceptance of systems theory.

Modification of the Theory--Parsons

The full range of Talcott Parsons' systems theory is not necessary to this study. Useful parts of it are the action frame of reference, status-role bundle, role grouping or pattern variables, social typologies and the societal

interchange system. Because Parsons creates his theory at a very high level of abstraction, it requires modification before it can be useful in this study. Robert K. Merton's concept of middle-range theory provides the necessary infusion of empiricism as I explain after the description of Parsons' theory. A further modification of Parsons' theory is central to my own definition. Parsons says that law is an institution; it cannot act. In my full definition law can be an active force in society. Such a definition is unusual; few sociologists would accept it. Yet, as I show in Chapter VI of this study, such a definition is valid for Puritan society.

The distinguishing feature of Talcott Parsons' theory of the social system as I use it here is its spiral quality. Almost any statement made at any level of entrance into the system he describes can be made with equal (but more or less abstract) validity for any other level. The only limiting element in the theory is the action frame of reference. Actors can be individuals or collectivities, but they cannot be structures--subsystems or systems themselves. This distinction will become clearer.

Social action for Parsons is individuals or collectivities (groups within which actors have similar immediate interests) acting within social systems or subsystems. Systems are identified by structures but are not the structures themselves. Individuals and collectivities acting are designated "actors" and the categories of actors are ego

(initiator) and alter (reactor). Every act is a process of interaction "under such conditions that it is possible to treat such a process of interaction as a system in the scientific sense and subject it to the same order of theoretical analysis which has been successfully applied to other types of systems in other sciences."[22]

The systems, Parsons says, consist of physical objects which are non-responsive, social objects which are responsive and cultural objects or symbolic elements such as ideas, beliefs and value patterns. Action relating to any of these three classes of objects must do more than satisfy organic needs--biological necessity. It must be a function of actor and his situation.[23]

The concept of cultural object or symbolic elements is important for this study and must be briefly explained here. This class of objects (elements is probably a better term) must be objectified in the action orientation. This is to say that they are not a part of individual personalities; thus, referents in action are social and collective, not individual, even though the actors may be individuals. The concept of cultural objects makes clearer than either of the other two classes of objects that the action frame of reference is an idea of relationship: no act is isolated; every act is social inasmuch as it can be related to one of the three categories. Thus, individuals act as they must. Parsons wants to know why they must act as they do. (As this paper proceeds, I suggest that a major factor

was the "law" or the legal orientation of theology in Puritan New England.)

The actor's expectations may be relative to the physical objects in his culture, and/or they may be relative to social objects--other actors either collectivities or individuals. When expectations are relative to social objects they are based not only on self-expectation, but also on the expectation that others will react to one's own act and so forth. The spiral intensity of such interaction is controlled by the sharing of symbols upon which people can depend for communication. By sharing symbolic behavior (articulated or non-articulated) they can understand one another at some level. The symbols, which are ideas or values, constitute the cultural elements as they are functionally defined in Parsons' theory of the social system. (In this study interaction between behavioral expectation and symbolic elements is the movement within a spiral of theory. The symbols on which it rests are derived from Puritan theology in its historical context.)[24]

Structures define systems and subsystems. They identify the abstract lines which systems theorists draw within society. Such definition is merely interesting and is true of any structural theory. But structure is more important in Parsons' theory. Through structure he classifies acts. He does so by the introduction of "function" into the action frame of reference.

Functions depend on the organizational relationship between structure and act. Acts have relevance within identifiable structures which have developed in the society to perform necessary functions.[25] The categories of function which systems and subsystems help define in Parsons' theory are integration, adaptation, goal-attainment and pattern maintenance. (See Fig. 1.) The social system carries the interaction between people outward in the theoretical spiral to the conclusion of act--support for the fulfillment of some necessary function in the society.

The unit of Parsons' theory, then, is act as it affects the system or subsystem through identifiable functions. Acts, however, exist in the relationships which as a network constitute interaction among those who belong to groups in the society. The multiplication of such relationships is the dynamic participation in the system. Such participation Parsons calls the status-role bundle. Status is defined as the actor's place in the relationship system, and role is defined as the actor's place in the process of the system.

The concept of status-role bundle places participants in relation to act, function and others--to the action frame of reference.[26] The concept itself is not precise, but the addition of data in an investigation should bring it some precision. The degree of precision will depend on the level of investigation: for example, actions within the total action frame represent a continuum from the least abstract acting unit to greater and greater degrees of abstraction

in collectivities. As one moves from the concrete act of one person outward in the abstract spiral to acts by collectivities, one depends more and more on function and structure and less on the status-role bundle. But I should caution after such a statement that one cannot separate the interrelationships between these concepts: these interrelationships are the action frame of reference.

Parsons' scheme of pattern variables describes the direction and quality of acts as they move toward identification as function. It describes role expectation as such expectation moves outward from concrete acts to more abstract functional acts. It also describes the meaning of orientations which actors assume. For example, law as norms[27] (Parsons' definition) combines with the pattern variables of role expectation to produce socially oriented behavior. Socially oriented behavior is both acceptable to the actor and is functional to the system, in the case of laws the legal subsystem. Thus, the paired descriptive terms represent action directionality as it moves to support functional necessity. At their broadest application, they describe the overall direction of rules within the social system. Their importance is a definition of quality at all levels of action in the theory. Parsons supplies five pattern variable contrasts: affectivity-neutrality, collectivity-self, universalism-particularism, ascription-achievement, and specificity-diffuseness. These he defines in accordance with any good basic sociological textbook;

I need not define them here.[28] (The abstract distinction may be seen if one examines the place of these pairs in Parsons' Pattern-Variable Table, pp. 35-38.)

Role expectations derived from an analysis of the pattern variables supply movement through the pattern variables into increasing levels of abstraction. Ultimately, moving through the action frame of reference, the analyst arrives at social typologies. The outline of role expectation given here is based on Parsons' explanatory outline, the major divisions are representative of the hierarchical integration of Parsons' approach to systems theory, and, again, one should note the move outward, from simple role expectations to functions. As action in the social system spirals out from act to function, the system takes on a primary cultural type--instrumental or cognitive primacy, expressive or action primacy and evaluative or moral primacy.

Just as the pattern variables provide a directional description for role expectations, so the cultural description provides a general description. In any given society all types of symbol sharing or cultural orientation will be present, but given the type of activity under analysis, one type will appear to be primary. As an example, I have chosen the part of Parsons' outline which describes evaluative primacy because it is the "moral" in a society, and Puritan society in both law and politics appears to be a "moral" society.

Table 1, Part I: Types of Value-Orientation Components of Social Role-Expectation

Universalistic Achievement Patterns

	Universalism: Affectivity	Universalism: Neutrality
Specificity	[1]Expectation of specific expressions toward a class of objects designated on basis of achievement.	[2]Expectation of specific disciplined action in relation to a class of objects designated on basis of achievement.
Diffuseness	[3]Expectation of diffuse affective expression toward classes of objects on basis of achievement.	[4]Expectation of diffuse disciplined action toward classes of objects on basis of achievement.

Table I, Part II: Types of Value-Orientation Components of Social Role-Expectation

Particularistic Achievement Patterns	Particularism	
	Affectivity	Neutrality
Specificity	[5]Expectation of specific affective expressions regarding a specific object specific relationship on the basis of performance.	[6]Expectation of specific disciplined action toward an object in particularistic relation to ego on the basis of performance.
Achievement		
Diffuseness	[7]Expectation of diffuse affective expression toward object in particularistic relation to ego on the basis of performance.	[8]Expectation of diffuse disciplined action toward object in particularistic relation to ego on the basis of performance.

Table I, Part III: Types of Value-Orientation Components of Social Role Expection

Universalistic Ascriptive Patterns	Universalism	
	Affectivity	Neutrality
Specificity	[9]Expectation of specific affective expression toward class of objects on basis of qualities.	[10]Expectation of specific disciplined action toward class of objects on basis of qualities.
Ascription Diffuseness	[11]Expectation of diffuse affective expression toward class of objects on basis of qualities.	[12]Expectation of diffuse disciplined action toward class of objects on basis of qualities.

Table I, Part IV: Types of Value-Orientation Components of Social Role Expectation

Particularistic Ascriptive Patterns	Particularism	
	Affectivity	Neutrality
Specificity	[13] Expectation of specific affective expression toward object in particularistic relation to ego on basis of qualities.	[14] Expectation of specific disciplined action toward object in particularistic relation to ego on basis of qualities.
Ascription Diffuseness	[15] Expectation of diffuse affective expression toward object in particularistic relation to ego on basis of qualities.	[16] Expectation of diffuse disciplined action toward object in particularistic relation to ego on basis of qualities.

E. Types of Evaluative Action-Orientation (Evaluative or integrative synthesis with primacy of one type of interest.)

1. Instrumental (given cathexis of a goal, cognitive primacy).
   a. Investigative (cognitive problem solution as the goal).
   b. Creative (new expressive symbolic forms as the goal).
   c. Applied (use of knowledge--hence primacy of cognitive interest, in interest of any goal not defined under a or b).

2. Expressive ("acting out" of a need-disposition in terms of expressive symbolism).

3. Moral
   a. Ego-integrative.
   b. Collectivity-integrative.[29]

On the typological outline above, Puritan society would be primarily evaluative (E), but it would exhibit all three types of activity (1,2,3). As a descriptive example within Puritan society with an evaluative primacy, the legal subsystem also would contain primarily evaluative activity. But the legal collectivity usually would act instrumentally (cognitively). This says only that most cases would be routine and would be handled, at the basic action level, cognitively. But, viewing Puritan society, as the action spiraled out through the variable expectations, it establishes a qualitative direction toward the evaluative or moral. For Puritan society it would move into the category collectivity-integrative because the emphasis of Puritan society was corporate.[30] (Part two of this essay establishes Puritan society as evaluative through the theology and the structure of both church and state.) The example of Puritan

society again reveals how Parsons' theory is spiral; the outline above is pushed back and re-represents each level of functioning whether one enters at the most basic level of action or at the highest level of social abstraction. Thus, from this example, one might say that Puritan society tended toward moral questions as a basic orientation, that it tended toward moral questions in action evaluation, and that it tended toward integration of the collective to the exclusion of the individual.

Once one understands this directional aspect of the theory, the complexity falls away. The construct is revealed as, again, moving from the individual act out through role expectation toward the boundaries of the system. At the same time, it is moving from the biological necessity for individual actors (the broadest possible universal) into the societal interchange system and downward to the actor as a participant in social integration. Once one recognizes the directional and orientational categories (pattern variables and typology), a relationship is evident between them. This relationhhip is abstracted in the societal interchange system (Fig. 1, p. 43) which is basic to the identification of structures within the theory.[31]

This description for both role expectation and orientation is simple rather than complex. It typifies structural-functional theory inasmuch as it depends on the hierarchy of socially definable items: act, status-role bundle, actor (individual or collectivity), and, finally, subsystem

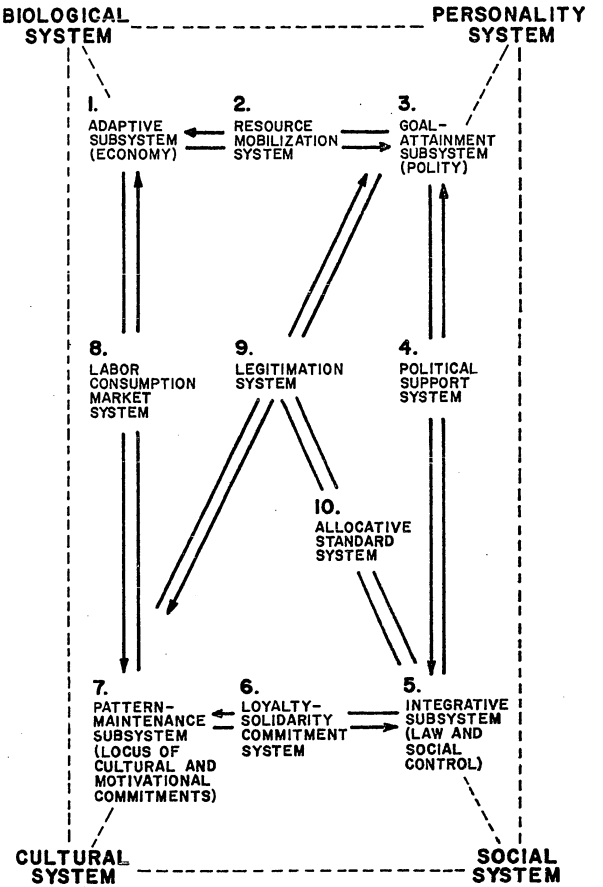
and system. This study depends most heavily on status-role bundle as it is affected by the pattern variables of the role expectation chart and the orientation toward action. Of course, the polity is central as is the legal subsystem. These concepts from Parsons' theory are useful in the analysis of Puritan theology and authority; also, of course, they are useful in the typical description of Puritan society.

By examining Fig. 1, one can see the place of law in the total societal interchange system. It is one of the primary functional subsystems which are given as the economy of adaptive subsystem, the polity or goal-attainment subsystem, the cultural melange or pattern-maintenance subsystem, and, finally, the law as social control or the integrative subsystem. These four subsystems perform the generalized functions which Parsons posits as necessary for the continuation of a social system: adaptation, goal attainment, pattern maintenance, and integration.

The lines of influence are clear, and the basic interchange system is acceptable in this study. It does not contravene basic systems which are apparent from an examination of the records of Massachusetts Bay for the late seventeenth century. It supplies the foundation for the interchange charts which will appear later in this paper.

One overall qualification is necessary: the functional interaction is less clear than one might assume from the interchange figure. Nevertheless, certain elements of the

Fig. 1. Format of the Societal Interchange System. Parsons identifies the following Media: M = Money, P = Power, I = Influence, C = Commitments. In addition to the media, he identifies a hierarchy of control between media and a hierarchy of control within the interchange system, but since the system tends to equilibrium and since this example will be modified further for its application to the Puritan system, these are not necessary here. Linkage 1-2-3 (and its reverse) carries the following: Control of Productivity (M), Opportunity for Effectiveness (O), Commitment of Services to the Collectivity (P), Allocation of Fluid Resources (M). Linkage 3-4-5: Policy Decisions (P), Interest-Demands (I), Leadership Responsibility (I), Political Support (P). Linkage 5-6-7: Justification for Allocation of Loyalties (I), Commitment to Valued Associations (C), Commitment to Common Values (C), Value-Based Claims to Loyalty (I). Linkage 7-8-1: Labor Capacity (C), Wage-Income (M), Commodity Demand (M), Commitment to Productivity (C). Linkage 7-9-3: Operative Responsibility (P), Legitimation of Authority (C), Moral Responsibility for Collective Interest (C), Legality of Powers of Office (P), Linkage 5-10-1: Assertion of Claims to Resources (M), Standards for Allocation of Resources (I), Grounds for Justification of Claims (I), Ranking of Claims or Budgeting (M). (Modified from Parsons' display in "On the Concept of Political Power," Proceedings of the American Philosophical Society, 107, June, 1963, 259.)



interchange chart will be of particular concern in this study. Obviously both the law and the polity are important. In addition, the pattern maintenance subsystem or culture is central here because it provides a platform from which to view the peculiarly corporate attitudes which are discernable in Puritan society and which "ruled" the interaction between law and the polity. The lines which run between culture and law and between law and the polity are representatives of this interaction. The loyalty-solidarity commitment system ties together the shared symbols (which are cultural objects) and the law as norms for social control; this system performs the function of justifying cultural or symbolic loyalties, thereby stressing commonality in culture.

The political support system ties together the legal norms and decision making which surrounds community demands and leadership responsibilities. The legitimation system and the allocative standard system are both important. The legitimation system deals with moral responsibility and the acceptability of constitutive statutes; in short, it legitimates the power of office. The allocative standard system deals with claims moving from the community into the economy or the acceptability to the community of legal decisions particularly in civil cases which are primarily resource claims at a low level of abstration in the spiral of theory.

Thus, the action frame of reference is important here because it provides for acts by individuals and collectivities and for the legal orientation of values derived from

Puritan theology. Such acts should provide evidence for a legal orientation after the theology has been explained. That explanation must provide for a structural relationship (in this case dominated by law as I show below) which is capable of display using the societal interchange chart. A display should make the chart particular to the case under study.

When values and structures are well enough integrated to provide the display without distorting history, one may proceed to a more detailed examination of values and finally to the implications of the systems perspective for the society under investigation. (See Chapter IX.) At this point, one should have a typological orientation in mind and may turn to the role-expectations of identifiable actors in the system. From the actors, of course, one moves to acts as they are empirically available, in this case Part Four, case data from the Suffolk County Court.

Middle-Range Theory--Merton

Role expectations, the typical orientation and the societal interchange system, provide functionalism with communicability--its most valuable asset. But the Parsonian system, particularly the interchange system, exists at an unacceptably abstract level. It is useful for directing one's thinking. Nevertheless, it may lead to the misconceptions that a theoretician can develop a body of theory prior to "building block" activity and that "all cultural

products existing at the same moment in history have the same degree of maturity.[32] Merton's middle-range theory breaks down the Parsonian abstraction by requiring both attention to the details of behavior and some sorting out according to importance or "maturity" of the cultural items which surround a historical problem.[33] Merton's concept of maturity is central when I discuss the legal orientation of Puritan theology and focus this orientation onto the interchange system. Theoretically, the focus yields a system dominated by law. As I show in Part Two, the Puritans would have accepted legal domination as representative of a proper cultural orientation.

Two substantive modifications of Parsons' theory, based on Merton's middle-range concepts, are useful. First, the economy in Parsons' theory is "equal" to other subsystems. In seventeenth century Massachusetts it was relatively less important than other subsystems. Theological symbolism in the culture explicitly excluded raw economics by assuming a greater degree of control over acceptable allocations. For example, the Lynn ironworks cases in the Suffolk County Court prove that the system simply was not equipped to handle investment from outside the corporate boundaries of the community. Thus, the "economic" material which would appear in studies of a later period is here subsumed under other systems.

Second, Parsons defines the legal subsystem as primarily integrative and as an institution. By doing so, he almost

precludes "law" from acting or creating interest. Moreover, he places himself theoretically with evolutionary theorists; the law has evolved in "complex" societies to perform functions which Parsons sees as important to complex societies. Merton would challenge him. Not evolution of functions but differences of function in time are the basis for Merton's non-evolutionary, historical approach to functionalism. I accept Merton.

Political Culture

In Chapter II, on the theology, and in Chapters III, IV and V, on administrative and political structures, I explain Puritan political culture. By doing so, I am laying the foundation for a concept of law as active in society, a concept which departs from the usual jurisprudential ideas about Anglo-American legal systems.

As I show in Chapter VII, law in colonial Massachusetts was more than merely integrative. Because it was tied into the church and the polity through a widely held system of values and because the values or cultural symbols of Puritan community were also based in a legal definition of the universe, Puritan culture, particularly political culture, was doubly legal. It was historically legal (emanating from scholastic theology), and it was immediately legal, depending as it did on a carefully reconstructed Hebraic corporatism. These two elements are basic to Puritan political culture in its value content and its structure. Out of them

emerges a definition of law as active rather than merely functional. In Puritan Massachusetts the socially amoral, analytical or objective law was present, objectively or equally determining claims according to agreed upon goals. But socially moral law was also present, both creating and supporting claims to inequalities according to those goals. The exposition of political culture will help explain this unusual concept of law in society, a concept which departs from the usual jurisprudential ideas about Anglo-American legal systems.

Parsons' Societal Interchange System Chart reveals four major systems which form the core of his theory: the personality system, the biological system, the cultural system, and, overall, the social system. For this section of the study, I am concerned chiefly with the cultural system at a low level of abstraction. The legitimation subsystem, the allocation subsystem and the solidarity subsystem are important because they include such value matters as commitment to community values, justification of claims against the community, the static legality of official power and the very important matter of legitimation. Values are primary in the theory because they are the "culture" with which I am concerned. Structures generally reveal the social commitment to value systems.

The social system runs through media. Parsons identifies four media which literally mediate among the elements of the social system. They are value commitments, money,

political power, and influence. Just as this study stresses the cultural and the primary social systems, so it stresses value commitments and power. Goal attainment, the function of the polity, is central, as is the polity itself for an examination of political culture.

At its most abstract, then, systems as I employ it stresses the implementation of politics. This is only another way of saying that it stresses the circulation of value commitments at the political level. The anchorage of power lies in the polity. Role-expectations within the polity exhibit the assumption that members who are responsible for the implementation of power and its functions in the system have, as Parsons says, high "stock" of political value commitments which they use to secure control of other factors within the system as a whole. That is, they use their authority (if authority has a value in the polity) to secure goal attainment commensurate with their political position and thus strengthen the value commitments on which the process is based.[34]

Thus, at a very abstract level, actors participating in political functioning are creating a backflow of value commitments. Their activity supports the dynamic implementation. The result, again, as I noted earlier, is an intensifying system. By sharing symbolic values, actors in the system decrease the intensity. Symbolic values thus "arbitrate" among actors because actors share a dominant

orientation. Through such sharing, the system is capable of continued functioning.

This backflow of value commitments means that political culture at its most abstract rests on the primacy of orientation within the Parsonian typology of orientations. The primacy in Puritan Massachusetts has already been identified as evaluative for the society as a whole. It was also evaluative for political culture, and, within the political culture, for the legal collectivity. The question which Part Two of the paper will answer is, how do the values of Puritan society influence the ability of the polity to act on and through structures so that functional needs are met? The several perspectives from which the question may be approached are made clear by restating it twice: How is the polity oriented to action? or, How is the polity embedded in the meaning of value items in Puritan culture? Value items are political ideas.[35]

But the ideas do not stand alone. As David Easton suggests, they are part of a complex process which, when viewed from the systems perspective, produces a "loop" of power relations. Such a "loop" provides for "output" and "input" within the system, which for analytical purposes is conceived as discrete or analytically separate from its environment.[36] The discrete system is identifiable in its components, and, in turn, its influence on other systems is explicable in terms of behavior which is tied to political roles. Input-output lines result in the concept of feedback

which is evident from the representations in Fig 2, p. 52. Easton's feedback loop may be considered similar to Parsons' concept of backflow, but it is less abstract.[38]

Political culture, then, includes a systemic environment, power as a medium, values, process and internal relationships or a series of structures which give the system analytical boundaries. In systems theory as applied to political culture, the unit of regard is a subsystem which consists of collectivities capable of acting; these collectivities (not the subsystem) are the government as it is outlined by David Apter.[39]

Apter concentrates on structural requisites which are the structures of authoritative decision making, of accountability and consent, of coercion and punishment, and, finally, of allocation.[40] These are roughly equal to the functional demands which most governments must fulfill as discrete collectivities within the overall environment. The necessity for authority or authoritative action is evident, and the "quality" of government will stem from the nature of authority within the political system. Thus, as the values of Puritan political culture unfold in Chapters II, III and IV, authority will emerge as having peculiar qualities within the system.

Under authority, then, Apter places the structures which in some form or another usually emerge to carry out the functional requirement of the government. Decision making is authoritative when it is carried out by designated bodies or

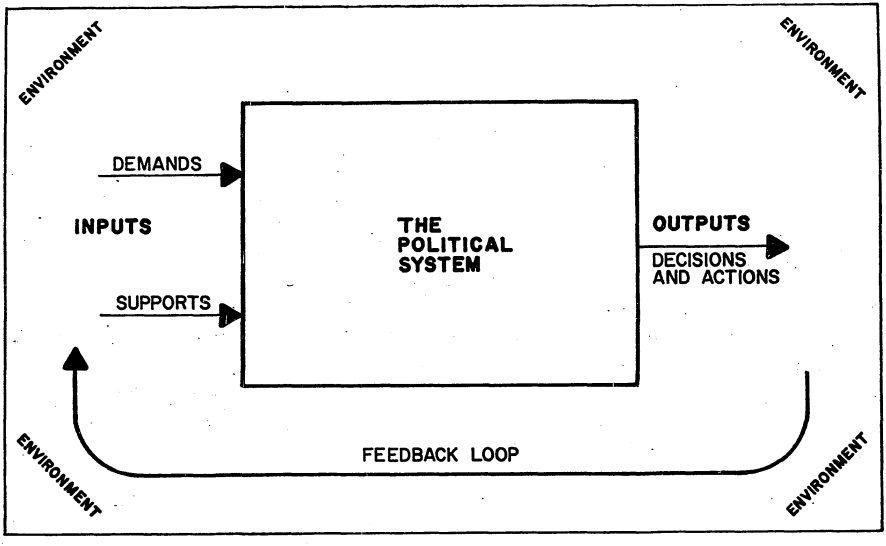


Fig. 2, Adopted without change from Easton, A Framework for Political Analysis, 112, "A Simplified Model of a Political System."

individuals who for some reason or another hold office and/or exercise official power. The structure of accountability and consent is tied into the process of appointment, ordination, election--the operation of whatever structural process is available (usually mixed) for handling inputs from the environment. Coercion and punishment, for the discrete political system, lie in the legal mechanisms which enforce decisions, for example, some type of constabulary, offices of court, and so forth. In resource allocation, the assumption is that there are inputs from the environment (Fig. 2, p. 52) and that the political system operates either in a scarcity environment or in an overall culture where meeting some demands excludes the fulfillment of others. Through the type of authority, then, the governmental structures are tied into the political system from the highest office through the court system down to the lowest local official. Structures mean very little unless one can assess the quality of functioning.

David Easton, in his dynamic response model, has attempted to describe the relational effect of environment and government--the political system. The important and most useful aspect of Fig. 2, p. 52, is the feedback loop. The point of output is the influence of political system on the environment. This influence travels back through the diagram of environmental influences, modifying the environment and creating "new" input for the political system.

Easton cautions against taking his diagram as complete, noting that the interrelations among the societal components do not appear on the chart at all. The political system is discrete, its influence is broad, not exclusive and/or particular, but general and diffuse.[41] This concept of feedback and diffusion is useful during the discussions below, first for the projected movement of political values into the constitutional structures of Puritan Massachusetts, and then for the internal operation of political structures. (It will be central during the discussion of the court system and the definition of law in Part Three of this study.)

Easton suggests that an analysis of the political system can be carried forward by reducing the concept of input to demands and supports.[42] Such a reduction is evident on the bare outlines of the political system in Fig. 2, p. 52, and is useful in the conceptualization of the Puritan political system. As I describe it later in this study, it is a continuing system which responds to demands and supports from the environment. Thus, in utilizing Easton's conceptual models, I am not looking for change. I am looking for process, the "quality" of Massachusetts government which will allow it to be characterized in historical terms. Such a reduction from the actual complexities of any political system is, again, merely useful. It does no damage to the actual structures, nor does it reduce the ability to display them in functional terms. The perspective, as always, is

legal, centering on the court system, specifically on the Suffolk County Court.

More important for the analysis of the court system and of law in Puritan political culture is the idea of output. It is, as Easton acceptably defines it, the ability to meet those demands within the total environment,[43] or, in Parsons' terms, the ability to act or react as functionally required. Action, as I have noted, can be initiated by individual actors as members of a collectivity or by the collectivity itself. The concept of output, based as it is on the importance of authority for the system, brings the system back to the circularity depicted in Easton's diagram. Authority itself must have some base, and that base must be in the broader community, explicitly in the ligitimacy of office and/or more generally in the social acceptability of the political roles. The acceptability of such roles or of legitimacy itself brings this study back again to values, and the political system back to a definition of political culture.

Thus political culture, as I define it here, is the process of the political system as it influences (and is influenced by) the overall culture, including the elements of Parsons' societal interchange system. The process includes also a "quality" or tone of operation, what Parsons calls typical orientation which derives from the relative importance among themselves of the components of the System--

values, power or authority, structure and the process itself influencing itself.[44]

In Part Two of this study, as I move through discussions of theology (values), administration of church and state (structure) and the process or "quality" of government, the nature of the polity will become clear. It was embedded in the theology which was the dominant value system. Interrelations between theology and political action will occupy part of my description of values. Although I am aware that the value structure is usually assumed by scholars, I think I must describe it here. In my opinion, it takes on a slightly different quality when it is viewed from a functional perspective.

Part Two

Theology and Political Culture: Theory and Administration

CHAPTER II

THEOLOGY AND LEGAL THEORY

The theology of Puritan Massachusetts was contract theology. But many of the scholars who have examined both social and intellectual history during the Puritan era have seen a dichotomy between contract theology and the doctrine of love which underlay Puritan corporatism.[1] As John Cotton sought to explain to Roger Williams in his pamphlet war with the theological rebel, the doctrine of love encompassed the harshness, or what seems harshness from a modern perspective, of Puritan social organization and punishment.[2] Perry Miller notes somewhat incredulously that Cotton Mather saw no incongruity between loving the sinner and having him hanged before an appreciative audience. Such punishment was part of the doctrine of love, again, despite the seeming incongruity between Christian love and Puritan harshness.

This apparent dichotomy, not quite as clearly but with the same certainty of righteousness, was the framework for Cotton Mather's sermon, Lex Mercatoria, given before the General Assembly in 1704. By this date, of course, the concern of the Bay Puritans had shifted from othodoxy to trade. This shift itself, as Bernard Bailyn has pointed out in his classical study of New England merchants, began during the

second half of the seventeenth century.[3] The point which is important for this study is not that the shift took place, but that it was merely a shift of content. The ascetic attitude which allowed the doctrine of love to appear in seeming unloving behavior was still present.

Mather began his sermon by noting that the Puritans had begun to cast very broad shadows in the world of trade and that their shadows carried with them bad reputations for "multiplied fradulencies and oppressions." He was speaking of "some horrid cheats among us," whose bad reputations are so much the worse because they carry the reputation of New England for religiousness. Particularly bad were those who represented old New England families but whose religion had been grounded in a "thirst for dishonest gain."[4]

Having established the problem, as good Puritan ministers usually did, Mather provided some guidelines for behavior. Trade and the doctrine of love were coincidental because the doctrine of love encompassed the right to a calling. (The "calling" was, of course, a major tie between Puritan spirituality and the evil of the world.)[5] In the calling of merchant, desiring another's goods and pressing to obtain them were legitimate. Tough dealing was acceptable. But, if the merchant dealt from the improper perspective of greed rather than the proper perspective of love for his fellow man, he dealt wrongly. A merchant must deal as he would be dealt with, and, even though his bargain "might be justified in the forms of law," the merchant should "let a

court of chancery, and equity in his own breast, give a judgment against the doing of it. A thread of charity, as well as equity, must run through our dealing with one another."[6]

Mather's statements are among the best legal treatises offered by the Puritans because in them he set out in high relief two aspects of Puritan law--the ascetic or theological ties and the construction of those ties to bind Puritan actions to the theology. One acts in the world but is not of it. In Puritan theology these ideas were not incongruous. Neither should they puzzle historians of Puritan ideas. They provide insight into theological tensions (not dichotomies) which set the "tone" for much of Puritan life. Ultimately, in this study, they provide the deductive foundation for a description of Puritan political culture and the function of law.

In place of a traditional interpretation of the Puritans as people who failed quite to know what they were about, one finds in this seeming discrepant theology a culture dominated not by the focused right and wrong usually associated with Puritan morality, but by a diffused "sense" of morality. The Puritans were uncertain about the heart of a man. They were slow to condemn for seemingly improper behavior. They were not slow to convict and punish such behavior. Conviction without condemnation derives from the rather intricate system of tensions which ideas like Cotton Mather's must

have produced.[7] Furthermore, tensions themselves were functional in Puritan political culture.

Contract theology in Puritan New England has been admirably described in Perry Miller's New England Mind: The Seventeenth Century. Only a brief review is necessary here. The Puritans began with the creation and with God's promise to Adam and Eve in the Garden. They were to obey his laws. If they disobeyed, they would die. They disobeyed, but they did not die, at least not immediately, and thus began the long travail of mankind which would only end in the final conflagration.[8]

Theology gave structure to the long rise of the world to God. For the Puritans their theology was history of mankind, of the church, of natural law and of nature. It explained both the corporate polity and the dynamic force of law as a mature social element.

After the fall, God was faced with man's apostacy, but He reacted with restraint. He did not excuse man from his legal requirements, instead he promised man that Christ would take the punishment which man deserved. Thus, the law remained intact, the legal responsibility remained in the face of man's inability to perform his legal duty, and the grace of God entered the picture for the first time. This Covenant of Grace, then, was the basis for the contract or compact theory of Puritan theology. It was doubly legal, based as it was on a legal orientation prior to the law and

ending as it did in a series of contracts which described man's relations to God in almost purely legal terms.

Perry Miller points out that this idea of the covenant appeared sometime between 1600 and 1650 and that it was an innovation. When they accepted the covenant, the Puritans of both the new and the old worlds departed from their usual rather strict adherence to scholastic theory as modified by Jean Calvin.[9] By 1680, they had survived both Roger Williams' Arminianism and Anne Hutchinson's Antinomianism and held to the "very narrow" way between the extended possibilities of Calvinism. Indeed, the Puritans, as Miller says, "looked upon [their theology] as the synthesis of piety and reason, and the federal Puritans looked upon the covenant theology as the perfection of that synthesis."[10] The Puritans themselves saw no incongruity; yet, they recognized the tensions between their corporate ideal and their contract with God.

Placing "act" and "will" was a problem which arose from the tension. That they had such a problem means only that the Puritans were men of their historical era. General English attitudes about law and its relation to politics grew out of a quarrel which represented a rather serious political issue and which resulted in a philosophical dispute. The seventeenth century witnessed the codifications and commentaries of Justice Edward Coke. Moreover, legal theoreticians and theologians alike participated in and expanded the battle between the sovereignty of the law, the

common lawyers championed by Coke, and the sovereignty of the King, championed at the outset by Sir Francis Bacon.[11] Throughout this period of history the struggle over sovereignty was dominant in political and legal theory as well as in historical events.[12] It influenced not only the political philosophy but also the natural philosophy from which Massachusetts thinkers took so many of their literary and theological examples.

In the long run, the victors in the struggle were the common lawyers whose interests often coincided with the vanquished Puritan theologians. The two groups held very similar attitudes about politics and philosophy:

> Both were legalists; the one group spoke of divine sovereignty and the other of fundamental law; each advocated a special kind of reason as requisite for an understanding of theology or law; both groups insisted on institutional interdependence; and neither tolerated speculative systems of religion or legal thought.[13]

The point here is that Puritan attitudes, indeed seventeenth century attitudes in general, were not a result of speculation about law or theology. They were a result of an ascetic and highly intellectual approach to reality.

One legal historian and theorist supports this historical idea. Roscoe Pound notes that the seventeenth century depended on a philosophical orientation for its relation to the real world, and that the orientation was legalistic rather than speculative.[14] Edmund Morgan and Julius Goebel add to the theory in their respective investigations. Morgan finds Calvinism with its legal emphasis in

seventeenth-century Virginia, and Goebel finds the same legalistic rationalism in seventeenth-century Plymouth.[15] Pound, Morgan and Goebel make two points from their diverse perspectives. First, Calvinism permeated the value system of England during the period of colonization. Second, the ascetic drive internal to Calvin's theology fell on exceedingly fertile ground in England, ground prepared by the struggle between sovereignty and the common law, between will and act. The research cited above provides a concept of internal reinforcement between religious and secular cultural value patterns, not just for the Puritan colonials but for Englishmen as a whole.[16] These value patterns stressed the non-speculative or the behavioral over the speculative and sovereign--again, act over will.

Stressing behavior, the Puritan theologians wrote a plan for obedience to the moral law (act) despite their theological assumption that obedience was impossible. Their benevolent God had unalterably promised mankind that predestination would not mean a capricious edict. After they had placed God in this less than omniscient position, Puritan theologians had to provide for man's will to act in individual salvation. But paradoxically, man's will had to remain absolutely passive. This theological problem on a slightly lower and more human level is central to Puritan ideas about government and law. The Puritans of Massachusetts built a state structure around these concepts. William Ames said "that in morality is called right which accords with right

practical reason, and right practical is the law of nature."[17] In another statement in his Cases of Conscience, Ames speaks of the covenant as a formal agreement wherein "the form doth require internal, and essential the upright dealing of the Contractor, to be true and sincere."[18] A contract at law required mutual consent to the form. Ames is here once removing human will, placing it behind the act, making the act the point of contact between man and God. Behind the act of convenanting, man can will or accept whatever God has planned for him; the act is important for man. In the totality of union between the soul and God, both wills are exercised, but only God's will is important. The Puritan never met God on an equal basis through the exercise of the wills of both; instead, the Puritan decided to act and only then met God in an act of submission.[19] God's will remained sovereign, and the Puritans saved the ascetic or formal "tone" of the covenant.

Puritan divines, according to Perry Miller, stressed the binding nature of the covenant of grace not only for the covenantor, but also for God, whose promise was no less binding on Him than the Puritan saint's promise was on the saint himself.[20] Once the covenant was made (and, in making it, man denied that he could reach perfection according to the law), God exacted not perfection of act but perfection of will. Just as in the overarching theology which contained both Christian love and Puritan harshness, so the Covenant of Grace encompassed the "dichotomy." The heart belonged

wholly to God, even though the material being fell outside the fold. The earlier covenant, the Covenant of Works, "is not recalled but kept by God in the place of man," and all man must perform is the act of faith, an act of heart within the doctrice of love.[21]

Both God's and man's parts were clear. Christ, of course, was the surety, the promise which was binding on God. Man saw God's personality clearly through the covenant. By means of the covenant the theologians took away God's capriciousness and gave man the assurance that if in his heart he truly "willed" himself to follow the law of God, he would indeed find himself among the elect.

This law of God, according to the theologians, contained an "essential" justice. God's justice was absolute reward or punishment according to the letter of the law (and under the letter of the law no man deserved reward, of course--only punishment). God agreed not to dispense absolute justice but "relative" justice. He agreed to do relative justice not in answer to any supplication from man. Out of his own will He subordinated Himself to the covenant, agreeing to administer justice according to circumstances. God was mixing act and will and leaving sinful man room to maneuver in a mixed material and spiritual world.[22] He thus agreed to treat men unequally.

John Eudsen has noted that the Puritans were not given to speculation about either the material or the spiritual parts of man's world. They accepted as given the mixed

place of man. Nevertheless, they were always concerned about ecclesiastical responsibilities. A few writers among them tried to outline man's duty both in the law and in relation to a God whose omnipotence was "reduced." Their idea was that God had particular duties within the covenant because he had undertaken the specific responsibilities of the law. Man had general duties within the covenant because in relation to God he was not required to obey specific laws to the letter. This relationship was possible because God had placed the blame for man's apostacy on Christ.

Samuel Willard, whose Compleat Body of Divinity was the only such speculative treatise to come from the New England clergy, wrote of these duties. He began his treatise with the general duty of man. Man's place and man's duty were to serve and thus to glorify God.[23] Willard found man naturally suited to move toward wisdom and understanding. He was inclined so because in his nature a spark of his former divinity (or innocence) remaind even though it was "woefully impaired."[24] Man's natural bent was toward unity with God, and his natural reason (or natural law) demanded that he move toward such unity.

Having established man's general duty in the first three sermons of his series, Willard asked the question, "What Rule hath God given to direct us, how we may glorify Him?" Then Willard embarked on a long answer which ran through more than two hundred sermons and more than a thousand pages of Puritan reasoning. First of all, there must be a rule,

or else fallen man, whose reason only directs him toward the goal of oneness with God and cannot lead him to it, could never reach the goal. Man, thus, was not made happy, but only capable of happiness, and God proposed happiness "at first in a covenant way." To recover the happiness which Adam and Eve knew, man was to be passive (in receiving Christ) and active in a "new obedience." Treating man as a national creature, God imprinted on man's mind the outline of the "new obedience." It was of the heart, but again, it was tied to act through the rule. The rule itself was "so many particular rules to direct us in our way," Willard said. "But the meaning is, that there is but one system or body of rules . . . ," only "one way of serving God in new and evangelical obedience," and that way was by living according to God's will, not man's will.[25]

Willard stressed the prescriptive nature of the rule, which is the scripture given to man by God, noting at the same time that it was valid before it was written down, "as the law, that once proclaimed, is valid, tho' it be not printed, and so dispersed among the subjects." Within Willard's Compleat Body of Divinity, then, one can see the importance of legal concepts. Willard was stressing not a written law, not even a specific body of moral rules, but a legal "tone" as proper to the Puritan search for God. All life was a search for the rule in both matter (duty) and manners (what is and is not sinful).[26] Because this search was the Puritan's duty (or was the antecedent to the

fulfillment of that duty), God provided a published rule, and Willard suggested that the rule was provided so that man would be blameworthy for his own ignorance.

Such a living idea is implicit in the Puritan emphasis on bodies of law and codes and in the several orders which went out from time to time to have the capital crimes printed separately and distributed to the several towns in the Bay colony. God's law, Puritan life as a search for the law, and the intense corporatism of Puritan organization begin to reveal a shared symbolism dominated by law.[27] Legal domination in Puritan culture depended first on a behavioral emphasis, then on the effort to understand man's duty within that emphasis, and finally on accepting man's duty as a search not for "the law" but for law itself as a general guide toward man's general duty. Willard's outline brought to the cognitive or intellectualized emphasis on behavior a very general moral or evaluative tone. Symbolic or valuative elements in Puritan culture thus moved toward an overall moral dominance.

God's sovereignty and justice came together at this point in the covenant concept. Within the compact, God governed through His will which remained intact, and his governance was evident in his justice. Again, God's justice was of two types--essential and relative.[28] Willard's division is clear. But for a deeper knowledge of what the covenant meant, how it was to affect the lives of his contemporaries, Willard further divided justice according to

God's governance. Governance included both the material laws (science) and natural law. Justice within these divisions of governance was also twofold: commutative and distributive. Under commutative justice Willard placed states and principalities; under distributive he placed judgment by governors or magistrates.

Commutative justice, says Willard, "argues some equality between persons," but distributive justice is dispersed between unequals; or is the administration of a superior to an inferior [my emphasis]."[29] Commutative justice, in the covenant, thus means that God has no respect of persons, that all alike deserve first life, and then, after the fall, death. First is the original covenant between God and Adam, then, either the harshness of death for the species or a new covenant based on God's mercy.[30] But God, by subordinating Himself to the covenant, had brought man into distributive or relative justice, not treating all alike, maintaining his own sovereign position and requiring government to handle fallen man.[31] From a predestinarian perspective, God became arbitrary when he brought man under relative justice. But Willard denied that God was arbitrary.

Dispensation of justice, Willard said, required three things. First, the maker and executor of the law must have lawful authority because, even though a law might be just, if the maker of it had no such authority, it could be disregarded. Second, the law under which this legislative authority acted must itself be just. Even though its

acts might be just, if its authority was unjust, it could not stand to the test. Finally, the judge who dispensed justice was to "keep close to the law," by which Willard meant that judges could not punish for intent or for other cases or for the character of the accused. "If the law be not broken, the man is no criminal."[32]

Willard, indeed, seems here to be holding God to a rather strict or legalistic rule within the covenant. A closer examination reveals that the points which he made, once the covenant is understood, were easily met by God. God did have lawful authority which was his absolute sovereignty over the world (his right to do commutative justice or to give every man his due equally). In His distributive justice, or justice given unequally among unequals, Willard said, God required a combination of grace and faith. This combination was the new law to which man must give his "new obedience." In Puritan theology, through Christ, the new general law came to be above both the judge and the litigant. God honored both the law and the righteous heart or the new obedience. He honored both the general moral law and the individual. Ultimately, God's distributive justice was equal although to us it seems arbitrary.[13]

God, in Puritan theology, was the source of justice. Man saw justice in the law or the rule, as Willard called the scripture, and when he came to God's justice, man came to God's authority and His goodness. No distinction was more important than the one which Willard made next. Man

was to view God's law as divided into the moral sense and the political sense. The political sense lay in the sanctions which required obedience and thus preserved the "honor and prerogative of the law itself."[34] I discuss it below. The moral sense, even though Willard does not make such a strong distinction, was absolute. It fit commutative justice by requiring abedience to the law. As far as Willard was concerned, God had the right to grant rewards and punishments according to the obedience or to the degree of it. But, of course, the new concept of obedience let man off the hook--almost. Degree was important in Willard's exposition.

There is a continuum between the ultimate reward--life--and the utlimate punishment--death. The continuum is the decrease of individual morality within the covenant. To quote Perry Miller: "the covenant of grace is founded not upon morality but intention."[35] The Puritans, no matter how they denied it, lessened the importance, not of the law nor the legal tone of their shared symbols, but of the moral approbation which originally went with individual transgression of the law. Thus, within the theology, "rewards and punishments may take place according to the merit of the case," and "rewards and punishments are the same relative justice, bearing a different respect to the creature according as it stands to the law."[36] God has individualized the law, taking out of it the original absolute concept of moral transgression.

Equality before the law was present in seventeenth century jurisprudence, and it obviously figured in Willard's theology. Inasmuch as it is identifiable it supports the objective mode of jurisprudential thinking in historical inquiry into Puritan law. The force of the covenant is legalistic in tone and is legal in individual application. The implications of this dual legal tone in Puritan culture have been noted by those who looked to the governmental structure for emergent individualism.[37] But haunting this dual legalism is a seeming discrepancy between the idea of degree and the idea of equality. Where, after all, would God's distributive justice fall? The covenant bonds on God's capriciousness were loose.

Willard was aware of the freedom which God retained. He was not quite comfortable with this extreme equality, which through a slightly strained line of reasoning he had created from scripture, because it failed to fit the world quite as nearly as the Puritans required, but it was explicable. God, he said, might seem to be regarding the reporbate in this world, and He may seem to punish good men. In doing so, God was only indulging the reprobate until judgment. The elect, of course, have their reward in Christs' justification for their sins. Thus, justice was honored to each of these types of men equally despite what seemed to be their lot on this earth.[38] Samuel Willard knew, as a good Puritan must, that Puritan theology was of one piece and that Puritan values had a place for the moral.

Covenant theology, of course, did not stop with this relationship between individuals and God. It extended to the society, specifically to the social responsibility of inhabitants, who were the non-political citizens of the towns, and members of the townships, who had full political powers within the colony.[39] Covenanted societies or covenanted individuals brought punishment upon Christian communities whenever they turned away from God and sought to extricate their wills from the covenant bond.[40]

Individuals, as Willard pointed out, could do nothing to make God approve their behavior with earthly blessing, nor would God necessarily punish individuals whose lives were reprobate. Morality, or the importance of morality, became social because the Puritans could not condemn individuals. Individuals had to stand condemned before God in their own hearts. Individual behavior might be criminal or immoral, but it meant relatively little to the community. The rule was distributive or relative justice, a product of governance under the "new obedience." Puritans searched for the rule, and their search allowed them to deal with individuals. But they dealt with them according to their corporate theology. Because Puritans could not look into a man's heart, they dealt with his acts. They regarded the heart of their community. Thus, in their search for the rule, in justice and in governance, the Puritans were corporate or socially moral. On the Parsonian scale their society was typically "evaluative." In their thinking about law they reveal

indications that the Anglo-American objective mode was useful, but that it almost certainly was subordinate to relative justice, the justice of inequality.

The Covenant of Grace between individual and God was often expressed in commercial metaphors. In contrast, its extension into the community was expressed in terms of nature or natural law, the nature of man as a species and the laws which God had made for the governance of His world. When Ames said that "right practical" was rational and that it was the law of nature, he gave away the Puritan drive to extend the law into the community of man and thence into lesser communities. He did not mean the amoral, ascetic drives of Puritanism, but the more richly condemnatory theories of man as a debased species. Puritan divines who dwelt upon this aspect of God and his relation to communities understood natural law to be something quite different from the Thomistic concept usually associated with the term. It was specific to man as a species.[42]

Natural law, no less than the law of the federal theology, is suited to the species which had to live under it. God's natural law for man is thus excellent because it contained an inkling of the full moral law which man lost when he failed to abide by the original contract between himself and God. Willard noted, "This moral law is therefore usually called by divines the law of nature; not in a larger sense respecting the whole nature of the creature,

but restrainedly, relating to the nature of man, because it was fitted to his nature. . . ."[43] From John Cotton early in the intellectual life of Puritan Massachusetts, to Samuel Willard in the declining years of the theology, the Puritan idea was that man is stuck with his crooked nature until judgment day, when he will rise purified in his original state.[44]

This concept of natural law was basic to the theological relationship between man and God. God utilized natural law in the more general sense to sustain his creatures--to see that they propagate the species and to sustain individuals through protection and influence. But the law with which the Puritans were concerned was that part of the natural law which pertained to God's governing what he sustains.[45]

Puritan divines, in the best Ramian fashion, divided God's government into two heads--common government and special government. Common government was science (commutative law) or, as Willard said, "that whereby natural agents are by suitable rules guided to their ends." Special government was more than mere natural rules. It was rules in the special sense of natural which has been noted earlier. It contained the divisions of the ten commandments, those laws which in their letter were voided by man's inability to obey them and for which, in his mercy, God has substituted relative or distributive justice or governance within the Covenant of Grace.

Common government was what made man capable of covenanting; special government provided the occasion for the covenant. Man was first reasonable by nature, and thus would decide to enter the covenant with God. But if man would not decide to glorify God in the manner which God had provided, God would extract his glorification by force.[46] Puritans saw in the state the most readily available force for extracting God's glory from the recalcitrant. They wanted the state to be God Himself within the covenant. They wanted to glorify not the legal God, but the social God, not the God of individuals, but the God of society or of the corporate community.

Puritanism, as both Perry Miller and Michael Walzer point out, was a revolutionary doctrine, a theory of power.[47] As such, it was a good deal more than a mere theology. It was a social theory and a political theory which would wind itself out in nineteenth-century social theories of American reform movements. But during its heyday it provided communities with value systems which encouraged the idea of power and which controlled God's terrible, absolute power by dividing it up into pieces. The revolution was brought to fruition in the little societies of New England, the Congregational churches. The voluntarism was covenanted into these ecclesiastical polities under which the saints lived but from which the natural men of the community were excluded.

By bringing themselves into an exclusive community, they reduced the intense legality of their personal contract.[49] They made God less the just God of Calvin and more the living God of latter-day Christianity. Their theology began with an intense legal morality, reduced the individual responsibility under that morality, then created social morality as the underpinning of the community.

From a systems perspective, Puritan theology treated God both morally and legally (evaluatively with cognitive overtones). Treatment of the individual under such a dominant evaluative orientation would be classified as cognitive, emphasizing behaviour. Treatment of community, the most important element to the Puritans, would be classified as evaluative or moral. It would also be characteristically social.

Emphasis on community allowed the evaluative or socially moral to feed back into the value system, reinforcing not only moral or community behavior but also the basic moral orientations of social elements. As Willard said, Puritans were looking for a rule to live by. Their theological rule lay in an understanding of basic inequality which would allow them to live corporate political lives. In Chapters 3,4 and 5, I describe the administrative structures of their corporate state and explain how their theology combined with the structures to give institutional reality to the moral "tone" of their corporatism.

CHAPTER III

THEOLOGY, THE LAW, AND ADMINISTRATION OF THE CHURCH

Extended into church organization, the inequality in Puritan legal theology resulted in a hierarchy. This hierarchy persisted through the decades of crisis and administratively drew together the Covenant of Grace with its legalism, the congregation, and the corporate morality with its overall cultural influence.[1] Ultimately, in theory at least, the ecclesiastical hierarchy was copied into the lines of political power. Both were based on the righteousness of theological government.

In theory, church organization began with authority or sovereignty within the church. Sovereignty was God's. It was embodied in Christ's directions to the church,[2] and, as John Cotton pointed out in his Keyes to the Kingdom of Heaven, the directions were based on scripture, Matthew 16.19: "to thee will I give the keys of the kingdom of Heaven; and whatsoever thou shalt bind on earth, shall be bound in heaven; and whatsoever thou shalt loose on earth, shall be loosed in heaven."[3] For the Puritans, Matthew 16.19 was an administrative mandate.

Even with a mandate, the Puritans needed Samuel Willard's "rule to live by." As clear as scripture may have been in

theology, it was hardly so clear as an administrative rule. Cotton said that the words in Christ's mandate were both obscure because they were allegorical and controversial because they promised honor and power to men in the offices of the church. Wherever distinctions of honor and power existed, man's pride led him to give them false meaning.[4] John Cotton cleared up the scripture.

Keys, the subject, was Cotton's clue to the true meaning which he found in a series of questions. First, tying the administration of the church to God, what is the kingdom of heaven? Next, asking the organizational question for his essay, what are the keys to the kingdom of heaven? Third, tying the keys to the earthly administration of the church, what are the acts of the keys? Fourth, identifying the saints or the administrative corporation, who are the objects of the acts? Finally, creating the administrative organization or legal organization of the church, who receives the keys?[5]

John Cotton gave a clear answer to his own first question: the kingdom of heaven was the kingdom of grace on earth and the kingdom of glory in heaven. If the Puritans had been satisfied to rest their organization of the legal relation between God and men on the individual covenanting man, Cotton would have stopped here. But they were not satisfied to do so simply because they had to account for the necessity of a church, or a congregation of the saints. Thus, going beyond his simple and individually sufficient

answer, Cotton built the constitutional framework of the fundamental Puritan community--the congregation.

Cotton answered his second question by saying that the keys were preaching and administration within the earthly church. Answering for the acts of the keys, Cotton said that they were the retention or remission of the sins of men. Retention or remission of sins led directly to the objects of the keys--sinful men. Whose sin was confessed, that man was brought into the fellowship of the church and his guilt remitted. Whose sin was held in guilt, that man was held away from the fellowship of the church, which is only to say that his sin was retained in this world and in heaven.[6] The identification of objects is crucial because with this identification came the tie between heaven and earth, not between single sinners and God, but between God and the righteous community.[7]

Students of Puritanism who are also familiar with the traditional Roman Catholic interpretation of this scripture should not confuse Cotton's interpretation with it. He was not here talking about the forgiveness of sin. Forgiveness had already come from God in the person of Christ. Cotton was talking about the constitution of the congregation of the saints whose sins were loosed in this world by their confederation together into a covenanted church. Literally, when he said that the congregation under its officers received the keys, John Cotton was talking about a process which began with Peter and which was central not to God's

contract to save individual souls but to the continuing existence of God's administration in his earthly kingdom. The importance of such a distinction for law in Puritan values is evident: by joining the church, Puritans acted to separate themselves from individual will and, thus, to create a congregation by combining the will of God and the acceptable acts of members. As Thomas Hooker said, "Mutual covenanting and confederating of the saints in the fellowship of the faith according to the order of the gospel, is that which gives constitution and being to a visible church."[8] Puritan churchmen were equal both in act and in the inequality of man compared to God.

In this construction of the organization and administration of the church, there was a line between sovereignty, which was God's and mere authority which lay in man.[9] This line between sovereignty and authority the Puritans would not cross, indeed, could not cross without imperiling their concept of predestination and the whole edifice of the covenant theology with its contractualism and its emphasis on law. God gave the keys, then, not to Peter, the head of the church, as Cotton points out, but to Peter, the apostle, the church officer and the believer. In doing so, God left all three "offices" of the church with a type of power. Cotton, somewhat circumspectly, was making a statement for a mixed constitution: ". . . because we are as well studious of peace, as of truth, we will not lean to one of these interpretations, more than to another."[10]

The keys given to congregationalists were not the key of knowledge without power and the key of order and jurisdiction, two keys which the Roman Catholic theologians of his day accepted. They were the key of knowledge with power (covenanted salvation), the key of order and jurisdiction (church administration and organization), and finally the key of church-liberty. Among these three, John Cotton accepted the last two as clear to the Puritans of his day. The first, however, he notes is the key of faith. By this statement he acknowledged that the covenant could not stand alone, the individual could not act once and continue to be alone in his act. The key of faith ". . . is the same which the Lord Jesus calleth the Key of knowledge, and which he complaineth, the Lawyers had taken away."[11] This acknowledgement was the basis for the pietistic strain in Puritanism and underscored the importance of membership in the community of saints. A combination of law and love created the church covenant. Cotton would not have accepted the objective mode which left individuals at the mercy of the law any more than he would have accepted equal rights. His ideas were corporate. Churches, law and government were administered by groups, not by individuals. They were administered for the community, not for individuals.

Structure or administration of the church covenant depended on the key of order and jurisdiction. The key of order Cotton divided into the kay of power or interest and the key of authority or rule. Here he began his discussion

of the powers of the congregation in the constitutional scheme of New England churches. "Interest" was liberty. Not the liberty of the sons of God through the blood of Christ, as Cotton carefully pointed out, but "external" liberty to join the fellowship of the church, take sacraments and participate in church affairs.[12]

Cotton spoke of power (interest) over church affiars, a power which was given to Peter as a typical believer and which included the actual powers of censure and replacement of corrupt teachers, admonition and counsel to bring back a fallen member of the church and, finally, the beneficience of the church and the maintenance of the ministers.[13] Parallels between this ecclesiastical theory and political culture in Puritan New England will become obvious when I discuss popular liberties.

Authority, the other division of the key of order and jurisdiction, solidified relations in the church. It was ". . . a moral power, in a superior order, (or state) binding or releasing an inferior in point of subjection."[14] Authority belonged to the apostolic successors who were the elders in congregations; their authority was in the law through which, as noted earlier, they bound sinners in guilt, but it was also in the gospel through which they released sinners from their guilt. The ability to bind sin was legal. The ability to release it was corporate, a moral power or a mystery through which the elders, leading the congregation, almost took the place of Christ. Thus, the term order

in Cotton's essay was twofold in meaning: the orders of the church, the elders and brethren as equal divisions exercising liberty and authority, and the actual order between the two, the elders in a ruling position and the brethren in subjection to the elders.[15] In authority, not in the men who held the offices, the law and the corporate came together; the leavening of the whole derived from this concept; their legal abilities and their corporate morality were separate in their acts, but, bringing together law and morality, they used their moral authority to bring the will of God to the union of orders.

Reading either Hooker's Survey and Sum or Cotton's Keyes to the Kingdom, one might assume an actual subjection of one order to the other. Nothing was farther from the minds of these Puritan theologians. The subordination which both men spoke of was mutual in its utility for the administration of the church; both orders, if they believed as good Puritans must, viewed the subordination as mutual. John Cotton was not being cynical or blind when he noted a mutuality of subordination upheld by the formal or structural liberty of the saints to choose their officers. He stressed both the right of the brethren to judge as an act of discretion and the right of the elders to judge as an act of rule. Hooker, too, stressed the mutual "according to the order of the gospel [my emphasis]."[16]

Both orders had legal power. In legal proceedings against a member, for example, the congregation voted for

comdemnation as a jury, ". . . yet the malefactor is not thereupon legally condemned, much less executed, but upon the sentence of the judge." The orders were equal, each having a place in proceedings against "the malefactor." But Cotton cautioned the poeple about too legal a perception of these procedural powers. Moral power had a place also, the place of judgment. For example, Cotton said that agreement by the brethren to elders' suggestions in matters of adjudication was merely agreement that the elders had done their work. Final moral judgment belonged to moral authority--the elders. Hooker, again emphasizing mutuality, noted that the fraternity could disagree only if they could prove that the elders in suggesting a particular course in any way had erred in their preparation of questions.[17] In their mutual subordination the two orders were not protecting officers or offices. They were protecting the morality or the moral order on which rested the exclusive congregational constitution. Thomas Hooker's Latin quotation has often been used to support some democratic drive in Puritanism. It represents, in fact, just this drive behind the merely legal equality between officers and the congregation: "Salus populi supreme lex. It is the highest law in all policy civil or spiritual to preserve the good of the whole; at this all must aim, and unto this all must be subordinate."[18]

The mystery of ordination or election was stated as clearly as any mystery can be. All were equally subordinate to the power of authority, the important key which tied all

together. Thomas Hooker stressed authority when he noted that even though the people had the legal power of their liberty, it was a divided or individual power. They created their unity only in their officers, and they had to look to their officers for unified decision making in the affairs of the church. One is reminded of John Winthrop's "Little Speech on Liberty," wherein Winthrop noted that officers of the civil government, once called by the people, were then called by God.[19] Using one of those nautical metaphors common in Puritan theology and political theory, John Cotton summeed up the place of the elder in the congregation:

> The elders to be both servants and rulers of the church, may both of them stand together. For their rule is not lordly, as if they ruled of themselves, or for themselves, but stewardly and ministerial, as ruling the church from Christ; and for the Church, even for their spiritual everlasting good. A queen may call her servants, her mariners, to pilot and conduct her over the sea to such an Haven; yet, they being called by her to such an office, she must not rule them in steering their course, but must submit her self to be ruled by them, till they have brought her to her desired Haven. So is the case between the elders and brethren.[20]

All were dependent on the church covenant. Not Christian affection, cohabitation, nor mutual attendance in a house of worship would create a church. The mutual pledge to obey and to rule was all important.

With the emphasis on act, Puritans took control of their world. Act was legal. It was prior to Christian love and prior to sovereignty. From the Covenant of Grace through the church covenant, from the most abstract to the basic administration of the visible church, one can trace the development.

Control meant that the law was active in Puritan theology, but active in the moral sense. As I have traced it, first through the theology and then up to this point in church administration, Puritan theology was legally based. Puritans had to regard the individual with an ascetic amorality. In their theology, because they could not stress man's will and could not see into the heart of a man, Puritans had to regard the individual abstractly or objectively. Individuals were amoral in the strictly legal contest. But Puritan theologians wrote the covenant, creating a congregation. With the covenant came the infusion of God's sovereignty and the delegation of power to the church. With the infusion of power came the importance of a mystical hierarchy in the government of the church, and finally, under that hierarchy, came the all important mutual pledge to live within the corporate mystery. The Puritan search for a rule to live by ended in the mystery of God's power, but the development of the mystery was controlled through the gradual addition of power and love.

As always, the question for students of history is what impact did this construct of shared symbols have either in the organization of institutions or in the daily lives of seventeenth-century Puritans? Cotton had provided the Puritan model of church administration. It represented the actual organization of the churches. It also represented the polity as the Puritans conceived it because their political ideas rested squarely on the theology which

described Cotton's organizational model. This model was designed to handle equal inputs from the congregation and the elders. The output was partly mystical, bringing Christ's moral authority to the community. Outputs in the government of the churches provided not just an evaluative "tone" but evaluative action as well. The moral was made real within the administration, not in officers, but in the authority of office. Again, without sounding too ingenuous, I can say that officers and congregation alike were expected to obey the corporate morality of Christ's authority.

But Cotton and Hooker were not proposing, they were defending, and they were defending church administration as it should exist and as it did exist, at least formally, in New England. Samuel Willard, writing later in the century, followed the same organizational pattern in both theory and design.[21] God's sovereignty was the foundation. Through it authority was delegated to "fit persons" and these were the the proper officers of the church. No other officers could be put over the church and all of these had to exist. They were ordained by God.[22] Hooker, almost a seventeenth-century functionalist, liked visual displays, and he provided a chart of organization which is instructive (see Fig. 3). By "institution" Hooker clearly means the institution or investiture of the office, an act noticeably apart from the continuing duties of office. The institution refers to the moral authority of the church, a moral authority vested, as I have explained above, in offices through some

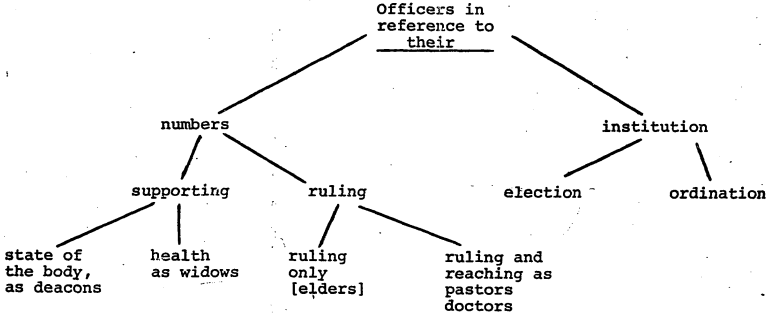


Fig. 3. Officers of the Church.[23]

union with Christ. The congregation elected; officers ordained. Each in fulfilling its function participated in mutual subordination to sovereignty--God. Only in that subordination did they have unity.

"Numbers" on the chart refers to the actual offices and officers performing within the congregation. These officers were ruling elder, teaching elder, pastor, teacher (doctors on the chart) and deacons. All were church officers in Hooker's estimation, but sometimes the deacons were excluded from the designation because their activities in handling the beneficiences of the churches separated them from the purer, spiritual and ruling tasks of the elders. Their tasks were speaking with authority and administering the seals of authority in the church; calling the church together for elections or other special occasions; examining those who desired union with the congregation; ordaining officers; approving speech and silence among the members; preparing issues to be brought before the congregation in order to avoid contention; informing the church of the "law (or rule and will)" of Christ in matters of judgment of privilege; passing sentence when guilt had been assigned; dismissing the church; charging anyone in private.[24] This, then, was the constitution based on Christ's moral authority transmitted to the officers.

Further examination of the duties of office is instructive. They represent an abundance of corporate concerns; that is, they are evaluative within corporate morality. Good

examples are those duties which were concerned with maintaining the corporate boundaries: administration of the seals, examination of prospective members, preparation of issues, and statement of the law (along with sentencing) in censure cases. Cotton listed these duties in the order of their importance to the moral or corporate, from corporate morality downward to concern with individuals and explicit singular transgressions of the law. In individual cases, the effort was to take away the corporate morality, even though that morality might be the basis for the law, and to apply the law on a case-by-case procedure. Hooker outlined the procedure and tied it to actions at law: the elders and the accusor were to make certain that the sin was committed, next, that evidence existed either by confession or witnesses, and, finally, that the rule being applied "is fair and full to convince of such a sin."[25]

Procedurally, the action was designed to prevent moral indignation about sin from overwhelming the judiciousness of the elders' reaction. They accomplished their moral balance or disinterestedness, in part, by placing as much emphasis on the proof as on the accusation and the accuser. This was an idea which is familiar to students of modern law: that a man is innocent until he has been proved guilty. In the strictly legal aspect of church administration, it fit a concept of amorality in individual cases. If one wanted to speak of Puritan balance, one might note that the Puritans accomplished such an objective legality in their

proceedings by placing as much blame on the accusor as they did on the accused. Cases ground down into factual determinations rather than accusation and defense.[26] (Any Anglo-American jurisprudential thinker would recognize in this procedure the objective or analytical emphasis on equality before the law. On such administrative and procedural emphasis has the creation of the dominant model been based. It has been successful because wherever one examines cases it seems to apply. As I demonstrate in Part Four, when one examines cases against history, the objective model may be inadequate.)

Thus, the organization and administration of the churches fit the theory as Cotton and Hooker derived it from their theology. The operation of the church organization fit the outline which their theology provided because the emphasis on authority gave the elders in the church the final word in any power question. But the moral authority under which their authority operated was tempered at another level by the drive to legality. Just as God dealt individually with sinners, so the elders were required, even within the corporate, to deal individually. Power was left in the hands, not of the officers (even though in fact it may have lain there most of the time), but of the value system itself, depended from Christ. This whole organizational theory was kept constantly before the people in the form of the Cambridge Platform of Church Discipline,[27] passed first in 1649 and on subsequent occasions at about ten-year

intervals, more often in times of crisis. It was passed not just by congregations but by the arm of the civil government as well and was printed at public expense. One may say that at the level of value statements, the covenant theology, as it worked within the church to create the corporate ideal, was generally accepted as an authoritative value statement for the community.

Did it work for the polity as well? Was it important to Puritan political culture? I have already noted the parallel structures and shall say more about them later. But the Puritans were fond of asserting that they believed in and maintained a complete separation between church and state. Perry Miller notes that the cross-over between the church covenant and the social covenant is difficult to understand and to establish with any clarity.[28] Reference to authoritative statements hardly clarifies the problem. In the Cambridge Platform the Puritans listed certain sins which the civil arm was to punish: idolatry, blasphemy, heresy, speaking corrupt and pernicious opinions, open contempt of the word, profaning the Lord's day, disturbing the administration and exercise of worship.[29]

To the modern eye, this list reads like a link between church and state, and it has often been cited as proof that the two were linked. But one must try to think from a seventeenth-century perspective. To John Cotton, Thomas Hooker or Samuel Willard, as well as to Governor Winthrop, Governor Bellingham or Governor Bradsteeet, these were

crimes just as surely as petty theft is a crime under modern criminal statutes. Puritan thought about these crimes just as a modern authoritative individual thinks about a comparable modern list which may seem absurd or wrongheaded sometime in the future. The evaluative tone of Puritan theology within the church covenant and the seventeenth-century frame of reference require modern students to take the Puritans at their word.

What then was the connection between the church covenant and the social covenant? John Cotton, often the house minister for the Puritan magistrates, cleared up the connection. In his A Discourse About Civil Government, Cotton noted that Christ retained the actual law giving power. Church authority merely told the congregation what Christ's will was. Then Cotton linked church and state. In the civil realm, just as in the spiritual, law was given through the agency of natural law. Man was the natural subject of civil states, just as the regenerate Christian is the fit subject for mutual submission in the church covenant. The tie between church and state was a tie of necessity. Adam's fall made both types of society necessary to mankind. The distinction between the two was that the ecclesiastical order was immediate through the keys; lordship in the church remained under the direct control of God. Through civil offices political power was mediate from God. Civil power and authority were as necessary as church power and authority after the apostacy of man from the original legal agreement

between God and Adam.[30] In both its meanings, "order" was just as necessary in the polity as it was in the church. One should be aware here that just as the corporate nature of the church was based on the existence of evil and the consequent necessity to infuse morality into the affairs of the saints, so the state, at bottom, was based on the existence of evil. Morality or moral necessity tied together church and state. Just as morality dictated a corporate submission in the church, so it dictated a corporate submission in the state.[31] One can expect the same evaluative typology in the state that one finds in the church. Both grew from the theology which emphasized corporate morality and order.

Within the state, as Cotton saw it, the proper election would be to choose Christians because they would understand the necessity of morality. He agreed that such a choice was exclusive, just as the choice of those who were regenerate for admission into the church covenant was exclusive. Exclusiveness, Cotton said, was illusory in civil states because within the state all inhabitants were allowed to go to law to protect their property. Equal access to the law, then, was one of the foundations for the moral orientation of Puritan government. Saints, because they had access to the morality of Christ, were to be judges of the worldly goods of their non-regenerate brothers. Equal access to the law was based on the fundamental principle of Puritan corporatism in both church and state: inequality. It was

the mainspring of both church and polity and of their jurisprudence, as I demonstrate later in this study.

Whether the implementation of such value configurations made the government of Puritan Massachusetts a theocracy is one of those interminably disputable questions. I do not propose to deal with it here. What is clear from Cotton's statement and will become clearer as the Puritan theory of political power unfolds is the strength of theological or mystical value statements which bridged the gap (in the Puritan's frame of reference) between the church and the state. More important for this study is the value statement on morality as it bridged the gap between the law, as the law dominated individual Puritan contact with the dominant morality, and the corporate ideal, as the corporate ideal took the act of the atomistic contract away from individualism by subsuming it under corporate morality. The involutions of Puritan theory begin to appear and the concept of feedback is useful in considering them. I use feedback extensively in future chapters.

Cotton's statement, made from the ethereal heights of theological speculation, meant, in political terms, that natural law was as important to the covenanted life as was the ability to covenant. Indeed, in all states as corporations, but especially in Massachusetts Bay, man lived according to his nature. His nature was corporate or social or moral. But the law, as individuated or not, was an equal adjunct to this mystery. It formed in Puritan Massachusetts

the most mature identifiable element in Puritan culture. Through law the Puritans came closer to the mystery which tied them together than through any other cultural element. It tied them to God through Christ and to the structure of their churches. Moreover, in case of ecclesiastical infraction, it allowed them to escape from an overwhelming moral rigor (from their corporate nature) back into act.

As Samuel Willard expressed it, man must have a rule to live by. Authority and liberty are often seen as dichotomous. I suggest that among the Puritans the two were subsumed under corporate morality which in turn was controlled by the law, just as God's will had been controlled by a legal contract.

The maturity of law, stemming from the legal nature of Puritan theology, was the foundation upon which these seventeenth-century men built an idea of political power. The legal foundation is evident in their political statements, and the parallels between the structure of the church under the direction of Christ and the structure of the polity under the mediation of magistrates make clear that the parallel growths rested root and branch on the same authoritative values. Political legitimacy and power were supported through corporate morality.

CHAPTER IV

THEOLOGY, LAW AND THE LEGAL ADMINISTRATION OF THE STATE

Cotton and Hooker, as well as the governors of Massachusetts Bay from John Winthrop to Simon Bradstreet, knew that civil government was necessary to the theological order.[1] Civil government was achieved through another covenant, representing, as Perry Miller says, a general European move from status society to contract society.[2] Although the church covenant, so close to the theology, was based upon the original of many individual contracts between man and God, in the political covenant, there was "no such engagement of grace sufficient, infallibly to be bestowed for the keeping of the same."[3] Uncontrolled by individual contract, the political covenant was more easily cast off. It was more easily broken by the people. Political man could depend on the covenant only if he depended on the rule which he understood politically. He understood it not because he was a Christian, that is not because he was among those contracted to God for salvation, but because God had given him the ability to reason and thus to judge of equity and cause. Judging, man could understand what he must do to keep the political covenant.[4] Thus, the source of the political covenant was pushed back beyond the simple organization of

the church to the authority of Christ, back to the moral law or the ten commandments as a general guide for man in his relations with other men.[5] If men failed to obey the moral law, they would inevitably bring down upon the nation the punishment of God.[6]

Between 1641 and 1683, the Puritans wrote this general theological outline into their political ideas. Puritan authors and activists alike disagreed from time to time about specifics, but, from the time of early settlement into the eighteenth century, they rarely disagreed about government as a corporate mixture of law and morality. They present a continuing dependence on the concept of covenant, on the legalism of the Congregational Way which gave them a bent to individualism, and on the corporate morality which created their corporate ideal and supplied the other half of a cohesive world view. To Puritan churchmen and statesmen theology and political theory were one web of power which included the lines of sovereignty and authority. From the Cambridge Platform, from the pulpit and from magisterial comments, the Puritans received authoritative statements about organization and administration which they could apply equally to either realm, church or state. Of course, these theological values were familiar to most Puritans (and, sometimes unhappily, to many who were otherwise minded). I assume that values represent widely shared communicable symbolic elements in Puritan culture. Coming as they did from

a moral sovereignty, the values promoted an evaluative approach to general political questions.

For all Massachusetts theologians and rulers, government rested on the moral law or the natural law, quite apart from contract. They were fond of quoting the fifth commandment: "Honor thy father and mother that thy days may be long upon the land." In his extended examination of theological discipline, Samuel Willard began political considerations with this commandment. Literally, the moral law was the beginning and the end of Puritan political culture. Political culture was connected as well to the idea of contract. Between the moral law and contract, as I have noted earlier, there was tension, often seen as a dichotomy. Just as in the theology, so in political philosophy, sovereignty and authority subsumed the tension between morality and contract. I suggest that the tension which is evident worked for the Puritan system.

Of the fifth commandment Samuel Willard says, ". . . this fifth, which is the first of the second table, is the foundation of all that follow and they may be reduced to and inferred from it."[7] On this commandment rested all other relations between men. Its constitutional importance is evident from Willard's further statement, "The fifth commandment requireth the preserving the honor and performing the duties belonging to everyone in their several places and relations as superiors, inferiors, or equals."[8] Thus, within the natural law, fitted to man's nature and to the

requirements of the fall, God appointed ranks among men, superiors as fathers, inferiors as children. Ranks had duties (as well as rights) and in the medieval world of Puritan New England men were supposed to accept their place. After all, God put them there.

As always in Puritan theory the statement is not entirely clear. Before the fall, ranks were one thing. Superiors and inferiors within such ranks presumably would be clearly defined. Lines of authority would thus be clear and moral obedience would be automatic. What was moral would be what was. After the fall, the ranks were another matter. Lines of power among men were open to dispute and interpretation, as Cotton's essay Keyes of the Kingdom suggested, and man contended with man for the prestige of office.[9] Who belonged to what rank? What distinguished the usurper from the man designated by God? As if these questions were not enough, Puritan theorists asserted that even though the proper lines of power might be unclear, ranks still had the reciprocal duties which they had before the fall. These thinkers were taking state organization and administration under the canopy of God's sovereignty.

William Hubbard gave the best exposition of these general ranks. The political realm was divided into heads and brethren. The heads or magistrates had the duty to know what to do by wisdom. The brethren had the duty to do it.[10] Many scholars have seen this division among men as the harsh reality of Puritan life and the core of Puritan

theory. I suggest that one must accept the ideas basically as they were stated, yet must modify them within a historical context.

When he wrote this clear division in ranks and duties, Hubbard was speaking to the General Court during King Phillip's War. He naturally stressed the aspect of Puritan theory which gave importance to one of the tension-producing pairs of values--rule and obedience. A tempered interpretation of Hubbard's statement would be that honor belonged to the authority of the leaders rather than to the state as an identifiable element. Their authority fit them exactly to corporatism which I have outlined in the chapter on theology and church administration.

Absolute divisions were also modified by the nature of duties. Duties attendant on the fifth commandment were both precise, as in medieval orders and ranks among men, and were reciprocal. Samuel Willard, for example, noted that in performing these duties one must do no less and no more than was required by the post the person is in. To do less was dishonor. To do more was contempt or "sordid flattery."[11] Thus, obedience was one pole or extreme in Puritan political values.

Hubbard's statement contrasts with that of Jonathan Mitchell's sermon of 1671 in which he reiterated Hooker's "salus populi" comments noted earlier and in which Mitchell outlined a rather limited role for the leadership. That role was to keep the people religious, to keep them safe

from enemies, to keep them honest in civil affairs, "by restraining and redressing injuries between man and man . . . by the administration of justice; by the free passage of righteousness, which assigneth to everyone his own; and of equity also, abating the rigour and extremity of strict justice, where need is."[12] Mitchell has defined the responsibility of leadership as limited. Moreover, the major thrust of his statement was toward the legal responsibility of the civil state. His limitation on civil government, taking away its moral authority and leaving it only legal authority, is instructive, again, in historical context. In 1671, a struggle between church factions had spilled over into the political arena. Mitchell and others of the orthodox party were attempting to prevent a take-over by the Young Turks in the political-religious life of the community and to retain the power of the clergy over the laity.[13]

Just as with Hubbard during King Phillip's War, history provoked an extreme statement which represents the pole opposite to authority. Mitchell was stressing the limitations of authority (his perspective was not libertarian, however) and thus the importance of obedience to God rather than to man. Again, value conflicts were subsumed under God's sovereignty to which both ranks owed allegiance.

During crisis periods the value system which contained these value "dichotomies" proved functional. Tension which routinely existed between elements of the organizational structure was probably useful. Samuel Willard, in the

mechanically logical, Ramist fashion so typical of Puritan ministers, explained how the ranks held everything else together. A modern sociologist could appreciate his elementary analysis. Within the fifth commandment superiors and inferiors had different duties qualitatively, but one man could have relations to another in both superior and inferior positions at the same time. Due care, Willard said, must be taken to separate and observe the differences in proper duties one toward another.[14] Willard used a familial example to explain what he meant. Children, he noted, owed parents obedience. Parents, on the other hand, owed children provision and governance. Of course, parents must maintain their authority. They could do so by "avoiding the extremes [of] rigor and indulgence."[15]

In their theory of government, then, based primarily on the concept of the family, as Edmund Morgan has pointed out in his The Puritan Family, the Puritans were able to have absolutism and limited government at the same time. Absolutism lay in the moral authority of magistrates. Limitations lay in the necessity to maintain authority through "indulgence." Puritan government was theoretically balanced between extremes. On the one hand, Puritans supported ranked inequality which was derived from God's sovereignty. On the other hand, they supported an equality which flowed from the same source. Rule and obedience, justice and mercy, morality and law--these were the tension-producing extremes in the evaluative system of Puritan New England.

Continuing this same balanced political philosophy, Samuel Willard said that government was also based on two types of law. The first was hierarchical law from God through the church to the existence of ranks among men--moral law requiring the dispensation of distributive or relative justice. The second was a less clear and limited hierarchy based on the natural law or necessity which granted every man his station through contract--the individual law of federal theology transferred to the civil realm.[16] Here again was the basic limitation through the law on the abilities of superiors to translate one superior position into another. Both ranks alike lay under the moral authority of Christ, who, in the best English parliamentary fashion, merely had his representatives in the government of Massachusetts.

After setting each element of government on its proper legal base, Willard moved to describe the government operationally. Civil society was formed, he noted, to allow men to work together for their happiness which lay in obedience to the moral law. Actual forms of government should be accommodated to the specific nature of the people and the place. No particular form was preferable even "though a mixed constitution [monarchy, aristocracy, democracy] is best suited to maintain government in its due bounds."[17] Like any political philosopher of his day, Willard said that those who rule must rule by some compact with the people, even though the actual constitution may be any of many

forms. But always, Willard insisted, rulers were bound to rule justly, and they could do so only through established laws.[18]

At first reading, Willard's statements on government seem circular. They returned again and again to the dual legal base of Puritan theology-- the corporate or moral law and the individual or limited law. His speculation about government, his exposition of Puritan political values, turned in upon itself over and over. So did the statement of other ministers whose sermons were more polemical. In their theory the Puritans were brought down to being people of the law. Just as the idea of moral authority bridged the gap between church and society, so did the idea of law bridge the gap between authority (obedience) and liberty (limitation). Moral law had a place in the state. Puritans began with it. They could not disregard it, although in individual cases they could allow procedure to obscure it.

The mysticism of Puritan moral law was never far from political values. Keeping it present, of course, depended on keeping the state and the church closely allied. This alliance itself required that the idea of individual equality should not over-balance the important idea of moral inequality. (Oddly enough, during the years of the Half-Way crisis, 1671-72, the deputies, in league with the ministers, sought to prevent the churches from giving up their ties to the state while the magistrates sought some modification of the original close ties.)[19] Giving election-day sermons,

Thomas Shepard in 1671 and John Oxenbridge in 1672, reiterated strongly this mystical element. These two Puritan divines found quite clearly in history and present circumstances that the government of Massachusetts had been established by God. They insisted that the Puritans were still in solemn covenant with Him, and that government had to be exercised accordingly. Shepard, rivaled only by Thomas Hooker in his penchant for using schematic presentations, used a chart to show the lines of power. All power, civil and ecclesiastical, was from God (see Fig. 4). Chiefly,

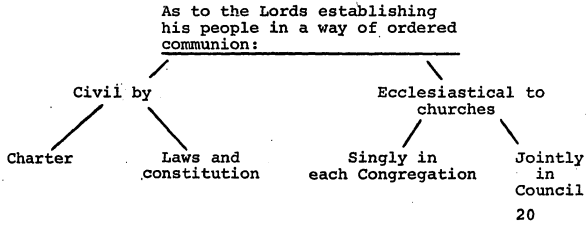


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Fig. 4. Theological constitution.

Shepard's diagram referred to the establishment of the churches. The people of Massachusetts Bay were obviously God's people as far as Shepard was concerned, and John Oxenbridge noted that the people, who had the right to choose within the covenant, had to choose God not only in Church matters but also in marriage, in magistrates, and so forth. To choose according to earthly interest was to mock God.[21]

Moreover, in a Christian mystical commonwealth as Massachusetts was, the magistrates and other officers were called from God and were Christ's representatives to the earthly functions of the law, a law which was both earthly in its necessity and heavenly in its judgments. Every man, in covenant with God, was responsible for his behavior under the law on earth. In addition he had the heavenly law to reckon with: ". . . and it is the law of necessity upon you all, if not here yet elsewhere, to give an account of your administration."[22] The covenant, the necessary parallels between church government and civil government, the laws and the liberties of the people are all subsumed under the first constitutional principle of the Puritan colony--the fifth commandment, the moral law which required obedience from rulers and ruled alike.

Wherever they turned for whatever reason within their theology, the Puritans found useful the tension between obedience and limited government. This tension existed not only at the first constitutional level, as we have already seen, but also at the very practical level of value interpretation. If it had been clear one way or the other, the structure and administration of Massachusetts government would almost certainly have been different. Again, the balance of values resulted in a balance between obedience and liberty, a balance which seems to have been perfectly functional. Willard made clear that the same mutual subjection applied in this balance. He reiterated the same mystical case for civil

power as for church administration: "As to that question which hath with so much vehemancy been debated pro and con, viz., whether magistrates were made for their people, or the people for their magistrates, it is enough to say . . ." that the two were equally made for each other and that their happiness lay in "mutual conformity to the will of God . . ." in matters of government.[23] The mutual conformity or subordination is the mystical element of Puritanism. In his sermon during the Half-Way crisis of 1671, John Oxenbridge attempted to define the liberty which attended authority. He said that having the right to vote for deputies, the people had the protection or their own liberties in their own hands. Oxenbridge continued by saying that deputies to the General Court had undertaken more than mere subjection to the laws (obedience or the assurance of obedience). They had undertaken as well the protection of liberties (which were laws themselves of limitations on government). Specific liberties under the law had to be made known just as certainly as obligations to the law were made known.[24] Oxenbridge was saying that at the very level of their contact with government, the people must somehow deal with the tension between obedience and liberty; that in doing so, they must provide their own place within the government and still support the place of the magistrates. Again, I may say without seeming ingenuous, that for all their inequality, or perhaps because they were so unequal, the magistrates and people alike had to obey the same basic moral laws.

From a systems perspective, each division of the polity, heads and brethren, was insecure. Constant resolution of this insecurity was functional. Such resolution was a dynamic in the Puritan state. With the theology dependent on law, the structure of the church dependent on law, the transfer of theological value into the community dependent on law, and the function of government in civil affairs dependent on law, one should not wonder that the Puritans sought to bring their idea of corporate love into the dominant value of their world-view--the law. In their theory of state power, the Puritans brought into their polity mutual submission to moral law. Moral law was the social or the corporate and rested on the law of God.

Bonds of "cordial and entire love" between magistrate and people allowed the Puritans to distinguish qualitatively between the power of one rank and the power of the other. They did not think quantitatively in majoritarian terms as do modern political theorists. The magistrates in their offices were "charged with a great charge," and the duty of their office grew <u>from</u> their love for their fellow Christians <u>into</u> their corporate responsibilities. Upon them rested the duties to see that the good of the whole was served in every decision made by the government.[25] Within this corporate idea, as is obvious, the responsibility rested on the leadership, but ultimately it rested on the voters who chose the leaders, including the leaders themselves. It did <u>not</u> rest with individual private men. Mitchell enjoined the idea

that a private man had the right to free speech if such speech would hurt "the country." He insisted that private men "must endeavor the good of it by estate" or whatever else they had at their disposal.

Corporate participation, then, was itself to be corporate in quality.[26] Reciprocation of feedback was a term which Puritans not only would have understood but could have embraced. Mitchell's argument, significantly, ended in a caution against extremes in either religion or government. The people must "be safe and sober," and must "study unity" in righteousness.[27] Hubbard, giving the corporate ideal a clearer base, noted the "four elements" of corporate perfection: beauty in order, wisdom in council, unity in conduct, strength in courage and resolution.[28] Hubbard's, Shepard's and Oxenbridge's historically oriented religious and political polemics thus join Samuel Willard's more analytical statement. Order existed under the law. Wisdom was a product of the law.[29] Unity supported the law morally and socially. Finally, strength lay in enforcing laws, never in overriding them.[30] These elements of corporate perfection stressed the general moral law under which the magistrates and the people lived. Even though such ideas usually argued for corporate dominance, when they were brought down to specifics, they prevented the moral authority of the magistrates from too rigorous an application. Returning to his major theme in his treatise, Samuel Willard fixed particular charges on the magistrates. "They ought to maintain

a body of wholesome and good laws, to be the fixed rule of government . . . because all men must have the means to "preserve themselves safe from the danger of civil censures." Willard was thus throwing the people and rulers alike upon the law.[31] Hubbard more generally defined the legal responsibility of the magistrates: ". . . a heart without affection, a mind without passion, a treasure to keep what we have, and a steward to distribute what we ought to have."[32] Clearly, the law was valued as an arbiter between the necessity of obedience and the necessity of liberty. In theology, in justice, in government and in legal cases, the objective ideal was one side of Puritan law. The objective idea argued equality. The moral argued inequality.

One must recognize the distinction which exists in these Puritan tracts. Liberty could exist under subjection to the law because such subjection was not subordination to man. Rulers were living Gods. They had both the experience of law-giving in their legislative function and the experience of judgment in their judicial function. Subjection to rulers was subjection to God or to the theology, as one prefers, and true liberty lay in "habitual conformity to the law of liberty" which was "the chief principle of our liberty." Liberty in the commonwealth of Massachusetts and the liberty in the Congregational Churches rested on the same base. In resting it there, the Puritans again subsumed under their overarching corporate ideal two seemingly

antithetical treatments of man: the active social morality of day-to-day life and the abstracted law of case procedure.

The Puritans, then, rested their existence on a value system in which law turned back upon itself at every level--the constitutional as well as the private suit, theological questions no less than the questions about a debt for a few shillings, unity under rulers no less than the subordination of the private man. They built their political values on their theological values, and upon both they constructed the corporate state, designed to promote corporate morality and to use the law as its instrument at all levels in the society. It began in Christ's moral commandment, traveled through the mediation of the ruler's moral authority, was hedged about by individualism, and ended in the importance of the corporate ideal. On it the Puritans based a political structure. Puritan corporate constitutionalism becomes clearer as I examine these political structures in Chapter V. Structure and value (Puritan constitutionalism) and a socially legal orientation are components of Puritan political culture.

CHAPTER V

THEOLOGY, LAW AND THE POLITICAL SYSTEM

The utilization of the law and its importance to the values of Puritan society point up certain parallels which existed at various levels of social interaction. Puritans made a distinction between the merely legal or behavioral and the socially moral, a distinction which was parallel to the theological legalism. They distinguished the theological from the corporate ideal. Both distinctions were tied to the real world through a third--that between obedience and liberty or, said another way, between authority and limitations on it. These distinctions, as I have noted, were viewed by the Puritans not as exclusive categories, but as a continuum which tied together their theology, their society and its subsystems. (Compare Parsons' Interchange System, Fig. 1, p 43, and Fig. 9, p. 137.)

Two of these polarized continuums are evident in the polity of Masscchusetts Bay: behavior opposite social morality, liberty opposite obedience. They present not the simple structure of offices and duties which one first sees from reading Puritan literature, but a complex, tension-filled feedback system which functioned both to create the tension and to alleviate it. As I suggested earlier, viewed

from a systems perspective, this tension performed the function of tying together the mysterious theological symbols and the day-to-day material lives of Massachusetts Puritans. Tension demanded alleviation, and in the give and take of accommodating it, the Puritans lived out their balanced theology.

David Easton's feedback loop is evident if one looks first at the parallel structures, church and state, in Fig. 5, p. 117, and then the constitutional structures of offices which appear in Fig. 6, p. 118. Both displays show the law as it supported the value ideals of Puritanism and as it moved those ideals into the structures. The law made unnesessary the usual power divisions among levels of office (although there were designated areas of power for the various offices) by bringing all offices under the general head of authority. During routine periods, the offices and the men who held them fell into a hierarchy in which the shared symbols of their theology played an unarticulated role. During crises the role was articulated. The Puritans accepted with ease this value role. The actual articulation of the theology during crises indicates, furthermore, that the Puritans understood and used the tensions involved in their system.[1]

Members of the congregation and the electors were identical until 1664, when the King in Council sent the first of several commissions to investigate the colony. After that time some residents of the colony sought to force a

constitutional change while others, members of the churches, sought to conserve the close ties between theology and the government. Those who sought change were eventually successful, but the degree of their success remains open to question.

Moral Law (Authority)

Cambridge Platform	Charter of 1629
Church	State
Elders:	Magistrates:
Teaching elders--minister teacher	Executive--governor dpty gov
Ruling elders	Assistants
Deacons	Deputies
Congregation	Electors

Fig. 5. Parallel structure, church and state.

Ties between the town and the colonial government are quite clear. Incorporation was granted under a loose analysis of charter rights. In Fig. 6, p. 118, the two lists of township offices represent those most often filled. Selectman down to town clerk, Fig. 6, were the offices with the most general responsibilities, fenceviewer down to procurer of wood, the least general. Usually the more general the duties of a job were, the more prestigious the office. In In Fig. 6, the secondary list of town offices should not be

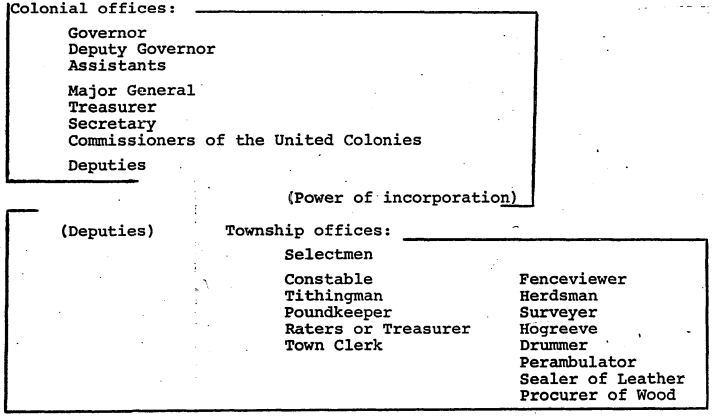


Fig. 6. Federal structure: Colony and township offices. This display lists the offices divided into colonial and township, and it also indicates the general lines of representation in the colony. Although all of the offices noted here were designed as elective, in fact they were often filled by appointment, especially the second list of township offices which were usually rather unimportant politically. This second list, however, was important for the continuing functioning of the town. The lists and assessment of importance are taken from John Fairfield Sly's Town Government in Massachusetts, 3-4 and 39-40.

disregarded. They represent service in a corporate community where service was considered valuable and where any official position was regarded by high authority as intrinsically important. But whether they actually shared the "mystical" transfer of authority to the highest office is questionable.

Overlaying these minor offices with the mantle of Puritan value, one can make an assessment within the political culture of the relative importance of them. Public visibility is probably the safest means to recreate such a ranking, and, accordingly, the offices would run as follows: constable, whose duties from time to time incorporated some of those usually trusted to other of the minor officials; tithingman, who was the Sunday constable and who was responsible for church attendance, for order in the meeting houses, and for the collection of fines against those who failed to attend worship services; poundkeepers, whose duties included the major responsibility of empounding animals when they threatened the settlers' crops; town clerk, whose duties included calling the town meeting and keeping records of it; raters or treasurers (or both), who apportioned tax rates with the approval of the selectmen with the treasurer handling disbursement and the collection of taxes.

Within the group of townsmen, of course, other officers had greater public visibility. For example, the selectmen themselves were the general overseers of the town and were responsible for the "prudential" and legal affairs. In addition, the moderator of the town meeting presided over

the meeting, controlled debate, and held in his hands the power to direct the group toward certain goals. Occasionally the moderator was chosen by the selectmen, but usually he was elected by the townsmen at the yearly election, along with the other officers noted here.

As any student of political history knows, a hierarchical presentation of government such as that employed here displays formal government only partially. In Massachusetts, as I have noted earlier, the government may be seen as a complex feedback system. The congregation at the town level, the electoral system and the judicial system provided the channels of representation, not for the people of the colony as individuals, but for the corporate existence of the government. Power in the colony moved from the basic structure (Fig. 7, p. 127) through the congregation, the electoral system and the judicial system. It diffused into society and, through the typical evaluative orientation, flowed back into the processes of the political system. In this "flow" of power the town meeting was primary.

Three levels of constitutional structure were brought together in the Massachusetts town meeting whenever the responsibility for the maintenance of churches was raised. The town was responsible for paying the minister, usually through contact between the treasurer (or some other official when a treasurer did not exist), and the deacons who were responsible for the financial affairs of the church.[3] In addition, of course, the town was responsible for basic

enforcement of the compulsory church attendance laws. Values flowed from these connections. Providing for the church out of the town treasury was "right" just as compulsory attendance was "right." Through formal and informal structures, values were turned back into the corporate ideal even as they lent the ideal further support.

Just as the town was "right" to provide for the church, so was the colony "right" to provide for an electoral process. It created ligitimacy within the system for the Puritan government. Often, as they amended the corporate ideal, the Puritans cited a necessity for the consent of the governed. Puritan leadership often insisted that it had that consent, as has been noted, by avowing that the leadership itself was called from among the freemen in the colony, and, upon being called, they had their commission from God.[4] The electoral process thus represented the same tension which was implicit in the value system, a tension between the corporate and contract theories of government or between obedience and liberty.

By 1670, the structure of the electoral process was a product of compromise between necessity and theology. In 1632, when they limited freemenship to church members, the Puritans effectively limited the franchise to members of some congregations.[5] By limiting formal political participation, they excluded from office many "upright" men who were obviously qualified otherwise. A modification in 1641 allowed every inhabitant or foreigner who had interest in

the town to speak in town meetings. In 1647, the General Court declared that those men "of useful partes and abilities . . . , which are not freemen . . . , it shall be lawful for the freemen within any of the said towns to make choice of such inhabitants . . . , to have their votes in the choice of the selectmen for town affiars, assessment of rates and other prudentials proper to the selectmen of the several towns."[6] Local boards and committees still had to consist of a majority of freemen, and through this requirement the General Court safeguarded the corporate ideal even as it brought contract (and quantitative thinking) into the political poocess.

Only when a new charter was issued in 1690 did the restriction fully disappear. Throughout the period under discussion, such a restriction was nominally out of Puritan constitutional structure. It had been declared null in 1664. On the other hand, efforts on the part of the clergy and the leadership to retain the restriction indicate that it remained a value.[7] Puritan leadership showed its reluctance to drop the church ties of the electoral process even as they hedged their bets against the restored monarchy:

> In answer to that part of his majesties letter of June 28th, 1662 concerning admission of freemen, this Court doth declares [sic], that the law prohibiting all persons except members of churches, and that also for allowance of them in any County Courts, are hereby repealed; and do hereby also order and enact, that from henceforth all Englishmen presenting a certificate, under the hands of the ministers or ministers of the place where they dwell, that they are orthodox in religion and not vicious in their lives, and also a certificate under the hands of the selectmen of the

> place, or of the major part of them, that they are freeholders, and are for their own proper estate (without heads of persons) rateable to the country in a single country rate, after the usual manner of valuation, in the place where they live, to the full value of ten shillings, or that they are in full communion with some church amongst us, it shalbe in the liberty of all and every such person or persons, being twenty-four years of age, householders and settled inhabitants in this jurisdiction, . . . to present themselves and their desires to this court for their admittance to the freedom of this commonwealth. . . .[8]

From these rather stringent restrictions placed upon the "opening" of the freedom, the new provision could hardly be called the dismantling of the Puritan constitution.

When the names of non-churchmen were later submitted under this law, the General Court held them over for one term, presumably in the hope that they would be withdrawn.[9] Actual operation of the provision is not clear. Nevertheless, the fact that Richard Wharton and some other prominent merchants in the colony complained about it leads one to assume that it served its purpose reasonably well. In 1681, the General Court made provision for those persons who were non-freemen but inhabitants who had served meritoriously "in any town offices" to have their names automatically accepted into the freedom of the colony.[10] Again, one must conclude that the law of 1664 worked to discourage, if not to exclude, some men from the freedom. During the decade under investigation the legal voting rights had been expanded, but the ties between the electorate and the theology were maintained.

In colonial elections freemen voted in their respective towns for the Governor, the Deputy Governor, the Major General of the colony, the Secretary, the Treasurer and, finally, for the Commissioners to the United Colonies. (See Fig. 6, p. 118.) These offices were considered the highest in the colony. In addition, the freemen in each town elected two deputies to represent them at the General Court. In the method for electing assistants or magistrates, the highest body of officials in the colony, one can see how the electoral process helped the political system preserve, even one might say, hoard, authority.

At their meeting they would propose a list of candidates. These lists were collected at Boston, compared, and the twenty-six candidates who had the greatest number of nominations were then sent as a list back to the towns. Each freeman then voted for twenty men through the bean method, putting in a white bean for an affirmative vote or a black bean for a negative. Tallies were then brought back to Boston, where the votes for each man were counted. The eighteen candidates who received the highest number of votes were declared elected to office for the year." Emphasis in nomination seems to have been on previous service, because the same men were returned to office year after year (except during the Half-Way Covenant crisis of 1671-72 when some of the magistrates were defeated, probably because they had stood against the corporate authority which they were supposed to represent.)

Apart from magisterial elections, the voting process appears to be safely democratic. From a modern perspective it could even promote democratic individualism because it seems to provide abundant apportunities for anti-corporate change.

Such appearances notwithstanding, a closer examination, with the values of Puritan society in mind, reveals the same tensions in the electoral process which existed in the values of the community. First, the effort to prevent any unorthodox persons from gaining the freedom was emphasized behavior. From a systems perspective such an emphasis is evaluative. Puritan rulers sought to maintain an exclusive organization which would be morally oriented and which would emphasize submission and sovereignty and opposed to liberty and individual will. Second, the tension between obedience and liberty is evident. Obviously, the Puritan expectation was for self-discipline under the corporate ideal--politics for the good of the whole. One sees this self-discipline or submission in the return, year after year, of the same general officers (but not of deputies).[12] Even if the yearly return of officers was out of apathy (I do not believe that it was), the apathy was born not of indifference to the duties of these officers, but of the assurance that they did in fact safely represent the corporate ideal.

Election procedure exhibits still another of the multiple tensions of Massachusetts government. In electing assistants the freemen participated in the one vote which

was for or against a candidate. Even in the process, the magistrates were set off from the rest of the freemen. Election of magistrates was also the one election, not necessarily by design, which required the town meeting to sit twice. Finally, electing magistrates, the colonists elected not just general offices but also judges, the officials who were most important under the corporate system based on law. The Cambridge Platform called the magistrates gods on earth, as did the preamble to the printed laws of the colony.[13] In the election process, as in the election law and in the nomination process, the image of individual participation was preserved (the possibility of it was truly present), but the tension between individual will and moral authority was most important. Of course, the hierarchy including the individual was subsumed under the moral law or God's sovereignty, and again tension alleviation or accommodation concentrated in the overall dynamic of Puritan Culture.

Traditionally, when one speaks of power in politics, one speaks of sovereignty. In the system depicted in Fig. 7, p. 127, sovereignty cannot be fixed to any group or office because the mystic tie between Christ or God and the authority of office, in both church and state, absorbs it. Sovereignty, if it existed at all apart from Puritan theology, existed in the interstices of the flow lines, in the give and take of power and influence. Lack of a fixed place for sovereignty was in part responsible for the

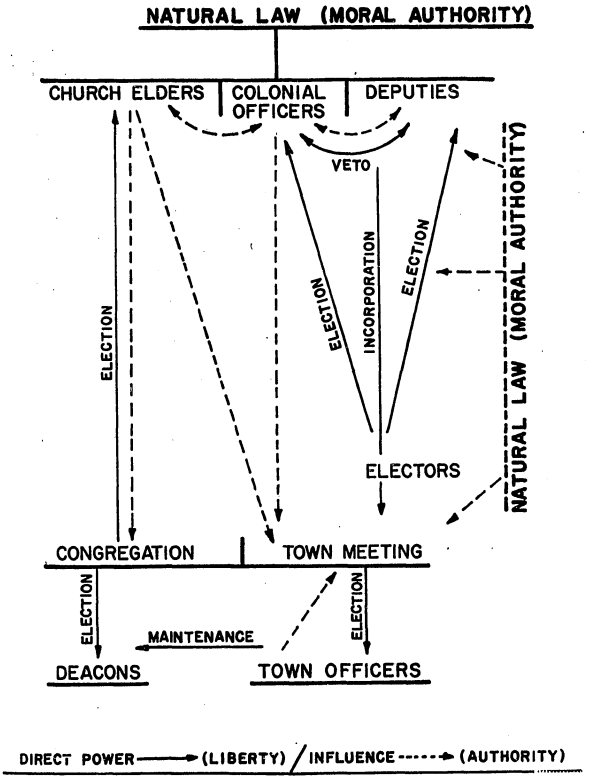


Fig. 7. The flow of political power and influence after the infusion of the town meeting and the electoral process into the constitutional structure of the colony.

tensions which have been discussed throughout this section of the study. When the Puritans spoke of their system as a mixed aristocracy and democracy, they were being quite perceptive. In its organization and operation it was mixed. As good corporatists they thought not in terms of individuals but of groups. Even so, drawing on the ideas of their age, they created structures which encouraged the idea of contract--an individualist idea. Again, they were not political theorists, but theologians of the moral law. To charge them with the manipulation of power in the modern nation-state sense would be bizarre. They were looking for cohesion, and they set themselves to achieve it. They used their multiple tensions.

Puritan theology gave cohesion to the polity and the churches. It carried the tension between the corporate ideal and legalism. Cohesion came to structure and moral authority because the political system created and encouraged tension between obedience and liberty. Above all, cohesion came to Puritan society through the systemic distinction between the legal and the socially moral. The Puritans never could and never had to say just where sovereignty lay in Puritan politics. But they had to place justice, both because case decisions depended on it and because the system itself ran on two ideals of it. The two ideals themselves were products of legal tension and held together three elements--the corporate state, the theology of law, and the corporate ideal. The political system displayed all the tensions--

theological, political and legal. But the tensions become particularly evident and their utility stands out when one adds the legal system to the configuration of political culture.

Fig. 8, p. 131, is a chart of the court system. Law in Puritan Massachusetts acted to create tension by bringing together structure and legal theology as moral authority. Law acted to release tension by allowing those who felt wronged or who experienced injustice to make their experience public. It was both individual in the sense of tension release and corporate in the sense that it assured others of their corporate place. It supported both contract and status.

Such a function, within the Parsonian functional model, is typical for legal systems in general. But in Massachusetts, as I display in Figure 9, p. 137, the law and the legal system played a relatively greater role than it can play under the concept of institutional equality which characterizes Parsons' theory, or than it can play under the common Anglo-American jurisprudential model.

Tension between obedience and liberty, the power issue of the system, is evident when one realizes that the General Court sat as the court of final appeal in all cases whatsoever. Technically, after a private case had been heard in the Court of Assistants, the litigants were free to bring an appeal to the General Court in the form of a petition. Petitions had to bring some procedural issue into court.

Some of the cases which the General Court ultimately heard were, in fact, political cases which were simply too controversial for the Court of Assistants to handle. The plain implication is that the Court of Assistants, consisting of members of the General Court's upper house, made a distinction between the private law matters to be handled at the lower level and those questions which related to the colonial well-being.[14] Their distinction was between routine cases or the merely legal questions brought into court and the cases which involved the corporate ideal, the socially moral. Liberty in the law was thus routine, and the court system, as it was structured, showed an objective design for the law. (See Fig. 8, p. 131.) Political cases, those involving a matter of corporate authority or of imperial danger to the colony, were quite another matter. This distinction will become clearer when I discuss the case data.[15]

With the exception of the Admiralty Court, which was created in 1672, and the Court of Two Magistrates, which handled minor administrative decision in private cases, the colonial-level courts depended on judges and juries. In the sense of role fulfillment, the two may be regarded as authority and liberty. Appeals from the colonial-level courts lay to the Court of Assistants, which after 1649 handled few original cases, leaving all civil and most criminal cases to the county courts. The Strangers Court also handled original cases, but it was reserved for merchants and shippers

who were passing through Massachusetts on business, so that these non-inhabitants could avoid the sometimes long process of Puritan litigation.[16]

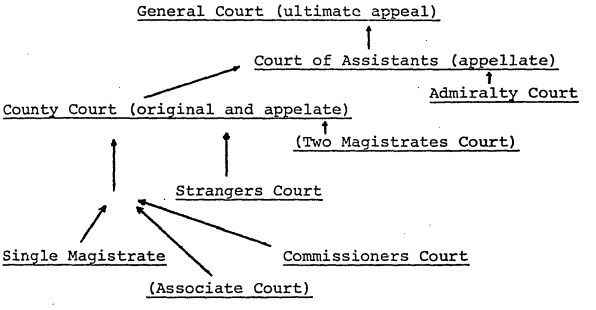


Fig. 8. Court system in Puritan Massachusetts. Structure and lines of appeal in the colonial level and town level Courts.

The Single Magistrate Court was a local or town court in which a single magistrate with a group of appointed citizens, always very prominent men from the town, was empowered to try small cases. Small cases were defined by statute as civil or criminal cases involving suits or fines of less than twenty shillings. If no magistrate were available, the General Court appointed associates who were empowered to exercise the same authority as the magistrate, but the number of men required was expanded from the

magistrate and one other to the associate and any two selectmen from the town.[17] Commissioners Court was merely an extension of the power granted the Magistrates Court at the colonial level. Power to try local cases was placed in the hands of seven commissioners, any three of whom, along with one magistrate, could sit on small causes. Duplication at the town level is evident, but the three local courts existed in towns wherever they were necessary and convenient. Commissioners Courts were by far the most common. Frontier communities often had Associate Courts, but a Single Magistrate Court seems to have been used most often in Boston for cases which today would be called small claims cases. Appeal from these several local or town courts lay first to the four County Courts and from there to the Court of Assistants.[18]

Total organization or structure of the court system was clearly designed to allow every man his day in court. It provided easy access to some court in every locality (although major causes, suits in amounts over the maximum set by statute and some criminal actions, were reserved for colony-level courts). Also, court procedure provided easy appeal through the clearly defined appeal routes. Yet, like the electoral system, the structure was based on the corporate ideal of moral leadership. It insured participation at every level by the magistrates or the most prominent men in the community (their status defined by the magistracy).

The circle of authority which was evident in the translation of theology into political values is again evident. The legal structure of Puritan Massachusetts translated moral law into corporate behavior. Behavior, in turn, was transferred to a structure which supported the legal values of Puritan theology. Cohesion was important and the tension was inevitable between routine case law at the individual level and the corporate or social morality for which the magistracy was responsible.

That the legal system, in theory at least, was designed to perform such a function is made clear in Samuel Willard's Compleat Body of Divinity. God, as the ultimate dispenser of all justice, gave the ancient Israelites three kinds of law--moral, ceremonial and judicial or commands, statutes and judgments. They were given as "one entire system, and so must be distinguished as to those which were general and those which were specific. Moral law was given to all mankind as the natural law and set the bounds between right and wrong. (I have been speaking of moral law as moral authority.) It formed the basis for all human law. Ceremonial laws were given only to separate Israel from all other nations; these laws foreshadowed the coming of Christ, and Willard considered them of no force since Christ had come. Judicial laws were in part appendices of both other types, and, when they were part of the moral law, they were binding on mankind.[19]

Willard found binding those judicial laws which provided for punishment or for restitition. They were both criminal and civil. Speaking of the judicial law led Willard to a consideration of specific laws and judgments under them. Laws had to be balanced "righteous and just." By just, Willard meant that the punishment had to fit the crime. In civil cases, the judgment had "to preserve mankind in good order, and in that regard, salus populi est suprema rex." By "good," in his statement, Willard meant no "metaphysical notion, but what is moral and political." Judicial laws were to be judged, then, by whether they promoted the "well-being of the whole."[20]

Willard seems to have opted for a rather unrestrained or unlimited concept of corporate legal power. He did not. The corporate ideal or social morality extended into man's law only in those theologically defined legal areas--the moral (social) and the judicial as it touched the moral. Objective or individual law was available to man outside the corporate ideal wherever man was morally free. When the moral was uninvolved, the law could become completely objective or individual. Thus, the sphere of the law was, again, both corporate and individual, and the two were utlimately subsumed under the moral authority of the natural law.

Tension between the legal and the corporate built from the function of preserving society in good order. Under good laws, Willard said, "all orders of men" had to have "due honor and respect" and "due distance be maintained

between superior and inferiors."[21] Just as these distinctions were a part of the political value system, so were they built into the structure of the legal system. The courts depended on office. Office depended on person as the person carried the community status which allowed him to return to his place year after year. Thus, the assistants or magistrates retained in their hands the judicial power over colonial courts and corporate persons down to the town level. They relinquished it only in cases of necessity where no magistrate was available to sit in the Single Magistrate Court. Between obedience or authority (law in the moral authority of the magistrate) and liberty (the ability, in this case, to do either what the moral law said must be done for the social good or to do what was neither good nor evil) there was a tension which heightened polarity.

Stressing good order or status as righteousness, the Puritans put the finishing touches to their political values. In order to maintain the "right" to act for the moral good of the whole, the magistrates were to execute laws forcefully without regard to persons.[22] What seems contradictory to a modern observer was useful to the Puritans. They had to have due regard for inferiors and superiors; yet, having no regard for persons, they could treat each case according to its legal merit. Tension here is obvious. According to historiaal circumstances, Puritan magistrates were able to draw now on corporate morality,

now on individual amorality. Systemic legal tensions, tied by structure to the political system, allowed the magistrates a broader concept of jurisprudence than most jurists would accept. Again, according to corporate necessity and the political nature of a case, they could stress either individual equality or corporate inequality.

Puritan political culture was legally dominated by Puritan theology. Theology itself was dominated by the moral law. In conjunction with certain traditional political structures, dominance of the moral law led to a particular administrative structure in the church. Church structure and state structure were parallel in Puritan Massachusetts. Both structure and administration of the political system, including the courts, were dominated by moral authority in an abstract sense, giving the total culture an evaluative orientation. Theoretically, decisions did not depend on individual motives or on politics, but on the mutual subjection of magistrates and people to the corporate ideal. The political culture carried within it certain moral values: first, the moral law under which sinful behavior could be punished; second, the corporate ideal used as a rule to test not only specific judicial laws, but also to test the decisions arising from those laws; third, under the corporate ideal, the maintenance of authority which itself upheld the ideal of legality in a moral sense; fourth, the proper maintenance of positions in the community; finally, the objective ideal or the decision

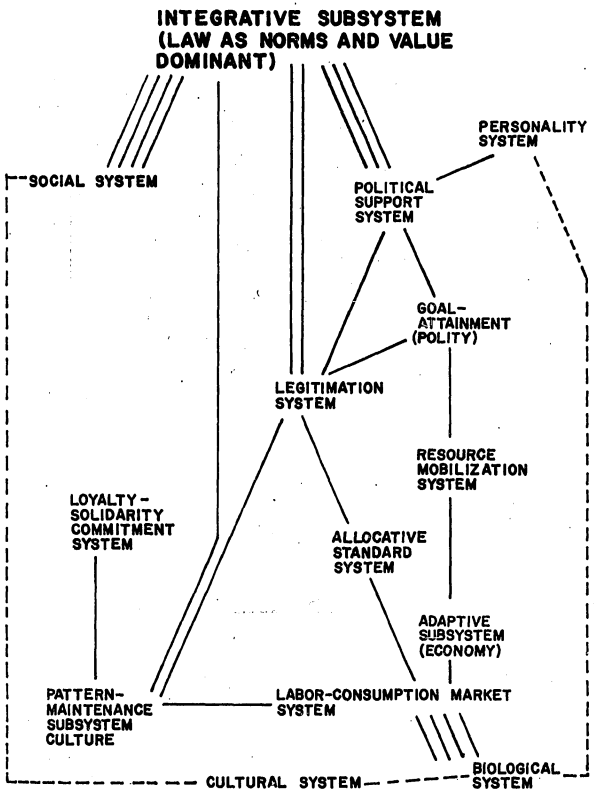


Fig. 9. Modified societal interchange system showing the maturity of law within the Puritan system. See Fig.1 for media.

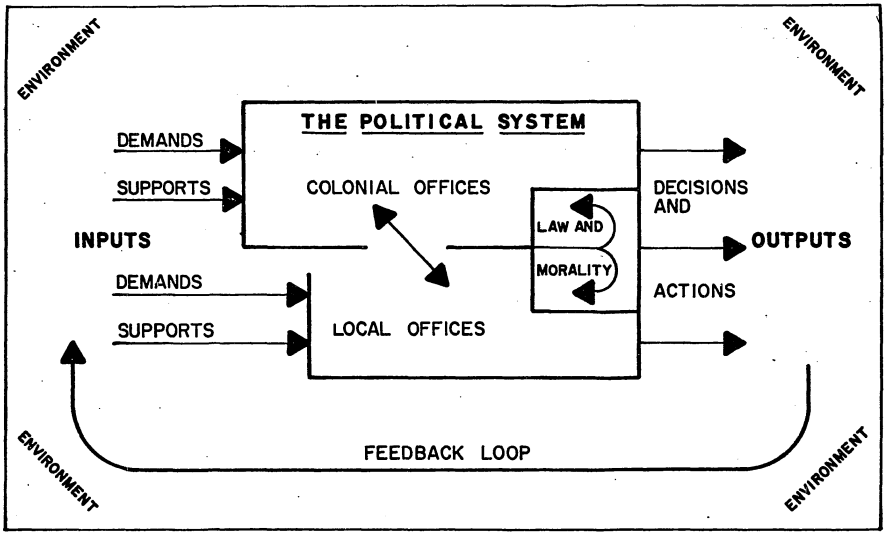


Fig. 10. The Puritan Political System.

without regard to persons. In the largest sense, under its legal domination, political culture in colonial Massachusetts was dominated by balance between polarized value demands. Tensions created by polarized demands were generally useful in creating a dynamic for the Puritan social system.

Figs. 9, p. 137, and 10, p. 138, respectively are displays of the legally dominated societal interchange system, a modification of the Parsonian model to fit the morally dominated society and the dynamic feedback system which allowed action expression to the involuted values of Puritan theology. During the ten years between 1670 and 1680 the system survived and performed the traditional functions of political systems--regulation of power, mobilization and allocation of resources, and control and direction of deviance. It did this despite an internal religious/political upheaval between 1670 and 1672, the coming of Edward Randolph as the King's commissioner, challenge from a group of powerful merchants who had imperial connections, and a materially devastating Indian war which reduced the resources of the colony by about one half and constricted the borders, for a time at least, back to the seacoast towns and the towns immediately south and west of Boston. Systemic tensions were central to this survival. Part Three presents a deeper examination of the tension between obedience and liberty and that between the merely legal and the socially moral, the polarities which most affected Puritan legal behavior.

Part Three

Puritan Law: Definition, Jurisprudence and Operational Theory

CHAPTER VI

JURISPRUDENCE AND PURITAN LAW, A DEFINITION

Because legal theology permeated the culture of the Massachusetts Bay Colony and because law in its divisions underlay the tensions which were useful and functional in the political culture, current definitions of law are not useful in this study.[1] Defining law for Puritan culture provides both a more valid picture of that culture and a different perspective for American jurisprudence.[2]

From time to time in the development of American culture, law has probably been more or less dynamic and has thus influenced political and social legitimacy to a greater or lesser degree. To be sure, at all times law fulfills the functional requisite which Parsons set for it--integration. But considering Puritan culture as an example, one can see that a separation between the legal collectivity and the flow of values would have to be merely an analytical separation. They are too intimately tied together for any "objective" definition of law.

Karl N. Llwellyn and E. Adamson Hoebel make clear the perspective I am speaking about and the dynamic which law exhibited.

> But there is more to law than intended and largely effective regulation and prevention. Law has

> the peculiar job of clearing up social messes when they have been made. Law thus exists also for the vent of breach of law and has a major portion of its essence in the doing of something about such a breach. By its fruits it is to be known; indeed, if it fails to bear fruit on proper occasion, its very existence is drawn into question. . . .
>
> What has been said lays out three roads into exploration of the law-stuff of a culture. The one road is ideological and goes to rules which are felt as proper for channeling and controlling behavior. Students of ethics and legal philosophers are likely to call these felt standards for proper behavior "norms." Students of modern law . . . , speak of them as "rules" for behavior. . . . The second road is descriptive. . . . It explores the patterns according to which behavior actually occurs. The third road is a search for instances of hitch, dispute, grievance, trouble; [sic] and inquiry into what the trouble was and what was done about it. . . .
>
> The three approaches are related; indeed, they flow each into the others. For it is rare in a simple group or society that the "norms" which are felt or known as the proper ones to control behavior are not made in the image of at least some of the actually prevalent behavior; and it is rare, on the other hand, that they do not to some extent become active in their turn and aid in patterning behavior further.[3] [My italics.]

In Part Two I discussed general legal rules or norms. One of these was equality before the law. Modern legal historians and theoreticians emphasize this norm and in so doing emphasize nineteenth and twentieth century concepts of freedom and representation. In legal history they look for (and can certainly find) the kind of rules or norms which support the concept of equality. From a seventeenth-century perspective they might better be asking about inequality and corporatism.[4]

The moral law, corporate ideal, maintenance of authority, community order and the objective ideal as Puritan legal values describe the legal sway over political thought in

seventeenth-century Massachusetts. In the political culture mutual submission to the corporate ideal gave the moral law final authority; what appeared to be a dysfunctional group of tensions was actually both useful and functional in the culture. The same general orientation and the same sets of formative attitudes appear in ideas about law. Puritans derived an active jurisprudence from their ideas.

Jurisprudence arose not from the statutes (although they contributed to it) nor from the "law-words" which are nothing more than names for forms and procedures.[5] It arose from the jobs which law performed. For a cultural definition of law one must turn first to its most general performance in society and in the polity.

First, just as it did in political culture, the law brought together dominant concepts of seventeenth-century theology. Roughly formulated these were morality and utility.[6] Taken back to their most general source, the two concepts end in the historical quarrel between the King and the common lawyers. Stated another way the quarrel was between sovereignty and individual rights or between will and act.[7]

Throughout the late sixteenth century and during the seventeenth century, except for the brief years of Puritan rule, will remained dominant. In his Laws of Ecclesiastical Polity Richard Hooker supported both crown authority and Armenianism, a brand of Protestant dissent which promoted

the efficacy of individual will in the salvation process.[8] This theological marriage between crown and church expelled the problematic insistence on predestination to which the Massachusetts Puritans clung. Will was victorious.

But in the law the victory went to act. The triumph of Edward Coke's common law meant an emphasis on legal act, the singular event or the "facts" in a case, rather than an emphasis on intent. When constitutional historians cite the rise of limited or contractual government, they are citing the decline of will and the rise of act. Theologians turned to will; lawyers turned to act.

The Puritans of Massachusetts were not immune to the trend of their age. Even though they were required by their corporate ideal to tie together theology and law, they too found useful the common law emphasis on act. As Samuel Willard noted, particularly in his discussion of church procedure and the criminal law, the prosecution first had to ascertain that a crime or a wrong had been done.[9] Any definition of Puritan law must begin with this behavioral emphasis. In its day-to-day functioning Puritan law was not morally condemnatory. At its working level it compared behavior (act) to norm. In their emphasis on act the Puritans were stressing utility at an individual level and according to Parsonian classification would be creating in legal culture a cognitive orientation. Such an orientation would contradict the evaluative orientation which political culture displayed.

But stress on utility or individual rights was only part of the job. Puritan law was not blind to social morality. Max Rheinstein marks a peculiar twist in Anglo-American jurisprudence in his introduction to Max Weber's On Law in Economy and Society. In Anglo-American jurisprudence lawyers are motivated by case reasoning. They do justice for individual litigants not out of some formal logic of social justice but out of an analytical predictability in the law, a predictability which is in turn based on precedent. They deny that they act on social propositions, but, Rheinstein suggests, such propositions are very likely hidden in the interstices of the cases. Thus, case law may seem peculiarly cognitive or objective, even carrying forward the traditional fictions of legal procedure; yet, at the social level it is evaluative or moral.[10] The Puritans, in requiring law to bring together the corporate ideal and individual amorality, happily had a way of admitting the social or moral to their courts. They did it by designating as judges the political leaders of the community.

Under corporate authority, act had legal meaning because the Puritans emphasized behavior at the individual level. This meaning depended not on person or position, wealth or poverty, relationships of blood or any other non-abstract relationship. Such meaning was itself derived from an analysis of theology; the individual heart was an unknown. Even the emphasis on behavior was subsumed under corporate values. Legal process was clearly individual

only when it stopped at the comparison of act to norm, when Puritan judges saw no social or political content in the case. Thus, values, as they moved into legal relationships, moved through vague social propositions which were brought into legal focus through contract and its ideal of equality. Inequality or social morality became an adjunct to the law as process. Such inequality could be used wherever necessary in order to carry out the social goals of the community. It had to be excused, even valued, from the corporate perspective, because law was designed to operate for the good of the whole.

Just as they had with their political ideas, in bringing their legal ideas down to a practical level, the Puritans turned to balance. They could allow neither the corporate ideal nor the individual process to overbalance the system. Just as in their theology, they turned here to contract, bringing individuals and corporate representatives alike under the moral law. In the preamble to the Laws and Liberties of 1648, the Puritans noted that the magistrates who acted as judges were chosen "from amongst the rest of our Brethren" and were given "power to make these laws." Non-freemen who might have felt that they could stand outside the laws because they could not vote were wrong in feeling so. They had given their "tacit consent" to the government and the laws. They were individuals acting in a political manner just as surely as the freemen were. But individual consent was not the only criterion. The

preamble went on to note that even though some laws might harm some individuals, other laws might help the same people. Mutual subjection to the law was the "right" way to perceive them; "thus must we be content to bear anothers burden and so fulfill the Law of Christ." Again, the Puritans made their systemic tensions work for them. They had both limitations and authority in their political culture. In their legal culture they had individual amorality and absolute social morality as part of the same continuum.

This first job performed by law in Puritan culture was a value-integrative function, tying together the two seeming extremes. The second job, closely related to the integrative function, was more mundane: law compared act to norm. This job has been described above as a process, and the term "process" has a rather special meaning here. Continental theoreticians have exhibited a non-analytical orientation in their perception of Anglo-American jurisprudence. Max Weber has given it detailed attention and his distinction between the merely legal and the sociological concepts of law clarifies what process means in this study. (It also provides some insight into the utility of an evaluative orientation toward jurisprudence as opposed to an objective or cognitive orientation.)

Weber notes that the legal is the logic of the law, it is "[w]hat significance . . . what normative meaning ought to be attributed in correct logic to a verbal pattern having the form of a legal proposition."[12] Study of the

legal would constitute study of the statutes and decisions and the projection of predictability which may be derived from them. Puritan law, with its emphasis on behavior compared to norm, was legal whenever the comparison stopped with the logic of a legal proposition. Legal propositions may carry a moral flavor when one examines them superficially, but they are nothing more than the extension of verbal patterns or logical projections. The merely legal may be provided by stopping with the law as a proposition or as logic, that is, by stopping with the legal system confined to its own resources.

On the other hand, Weber defines law sociologically as "[w]hat actually happens in a community owning to the probability that persons participating in the communal activity (Gemeinshaftshandeln), especially those wielding a socially relevant amount of power over the communal activity, subjectively consider certain norms as valid and practically act according to them, in other words, orient their conduct toward these norms."[13] The norms stand outside the legal system (although they may be represented in it by statute or by interest), and, for the act of comparison, the law (or the legal collectivity) must reach outside itself. The sociological definition includes the concept of influence. It fits precisely the "process" of Puritan law because that process, coming as it did from visible political actors through the political organization without any separation of powers, was politically and thus theologically dependent.

Influence, as Max Weber defines it, means the abstract necessity (or function) which leads legal participants to declare some aspect of a single case legally relevant and to leave other aspects of it out of legal cognizance. Weber sees these influences as flowing from the economy and the polity.[14] For reasons I have already covered, the polity was rather more important than the economy in Puritan New England, and law as process flowed through and from the polity rather than the economy.

Process as a function of law broadens. The polity as it is related to law takes on specific functions such as guaranteeing personal security, implementing status by securing honor and respect, assuring authority positions in the community, guiding one-to-one relationships in the marketplace, and so forth.[15] The security of status and authority are not traditional functions of Anglo-American law, at least from an analytical perspective; yet, the polity in Puritan New England did not perform these functions without law; in fact, law as process was designed to perform them. But the important point is that the job was not confined to the legal collectivity. It included a mixture of the legal and the political, just as Weber suggests in theory, and thus this job, too, assumed a moral or evaluative tone.

A useful conceptual device for seeing law as process is the categorization of legal interests into individual interests, public interests and social interests. These are valid and encompassing categories as long as one remembers

that the actors in specific cases are still individuals operating within the legal system. The legal system and the social system remain conceptually separate, connected by the process at law.[16]

Individual interest as the term is used here means the personal interests of actors, for example, family relations, claims of occupation or claims on the law such as the proper physical and psychological access to sustenance.[17] Public interests are the interests of the polity which are of special concern for this study. Roscoe Pound defines social demands as peace, order, and the public safety, and such a definition obviously includes public demands. (Julius Stone suggests that political demands are difficult to distinguish from social demands.[18] They are difficult to distinguish and I accept a connection between the two. In my definition of law as well as in this study, however, I stress power demands in the political system.)

Law, because it reached outside any static arena, was dynamic in Puritan culture. It was folded back into the polity with all the moral implications carried by a mutual submission of offices to the corporate ideal and the moral law. Law was not statute. It was not legal decision, nor was it official authority. Yet, it contained elements of these. It performed two general functions; it tied together the corporate and individual ideals, the social and the legal and it processed claims according to individual, public or social demands.

As Llewellyn and Hoebel suggest and as Max Weber outlines in his definitions, law can have its own demands either abstractly through its influence or through the actors who move in several arenas of social function. In Puritan political culture, the primary function of law was legitimation of moral authority. The specificity of law lay in the situational demands which fell into patterns of legal behavior (see case categories in Part Four) and either legal or moral response. Routine cases were merely legal; political cases were socially moral along the pervasive lines of political or official power. Again, the tension between the two was functional for Puritan culture; it created avenues along which symbolic behavior was situationally defined as legitimate.[19]

Fig. 11, page 152, represents the law in functional perspective. Internal dynamics are evident in the movement from judge and jury. Legal activity drew in the statutes and procedures (the legal) and the social norms which provided the comparison of act to norm. In this paradigm of legal activity the roles of plaintiff and defendant represent behavior or individual participants in the cases. Their roles are legal act when they are considered conceptually separate from the social system, but, when they are considered as social actors with status and moral positions, their roles fall into the same continuum characterized by the polarization of act and will or behavior and intent. In short they are securely within the legal/moral value

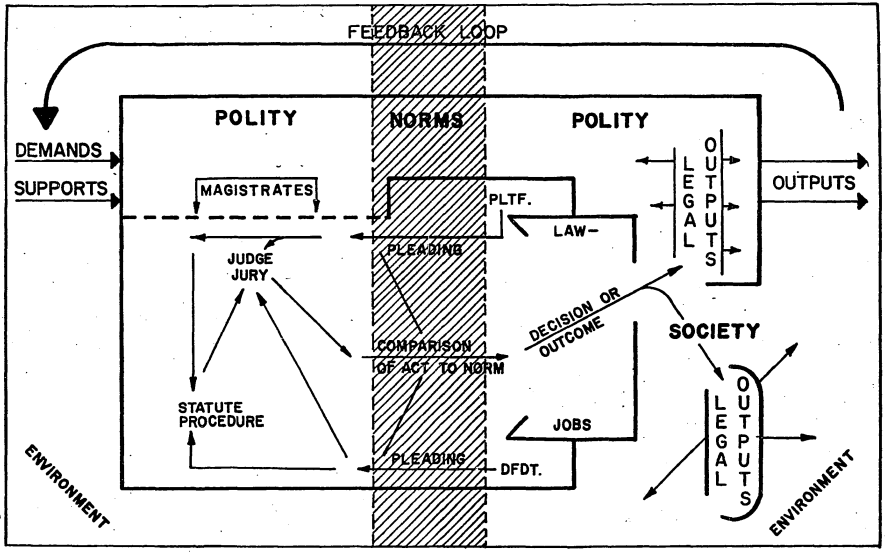


Fig. 11. Flow Chart of Puritan Law.

system. Pleading was the litigants' dynamic contribution to the process of law, and through pleading, they sought to explain their legal behavior as act. Pleading was either an insistence on act (when the plea was for dismissal) or a suggested comparison of act to norm.

Even though the detailed discussion of responsibilities within the functional legal system is better left until later, one can see here how the status-role bundle and the alternative patterns of role orientation which Parsons describes are related to the general functioning of the court system. The decision, based on the input of legal acts, moves into society as a whole and/or into the polity, thus supporting through feedback the legitimacy of the system. One should regard this feedback as normative in specific cases only with great caution. Questions about values, about how well the Puritans integrated law in political culture along their value continuum, must be answered from the patterns which appear when, in Part Four, I consider cases according to category.

Before defining law, I must note one problem which James Willard Hurst has noted--excessive abstraction in the study of legal history.

Professor Hurst warns scholars that in studying legal history they are likely to be swept up in the logic of the law and the order of it. After all, law is a rational process, scholarship is a rational process, and one major function of the historical branch of scholarship is to

bring rationality to events. Professor Hurst is well aware that the natural direction for the scholar is to impose his own cognition on historical documents, but he cautions historians of law that they must consider the less clearly evident effective elements in the operation of the legal order.[20] This problem is familiar to anyone who has used the history of ideas in an attempt to understand a culture. Coupled with the further rational structuring which systems analysis requires, the discussion of law could well move into the totally abstract. This study could become no more than one more method for examining consistency in Puritan ideas.

The model of legal functioning and the examination of it throughout Part Three are tied to reality in three ways which in combination prevent the study from moving into abstraction. First, the infusion of values from society as a whole provides a model of inequality. It moves away from the merely legal. Inequality was the affective in Puritan New England. Second, the consideration of cases through the placement of participants according to expected behavior in the legal system or the polity should prevent reification of the system itself. The system is tied securely to empirical data for its operation. Finally, the study is largely of civil cases. I avoid the normal concentration upon the overtly political cases which usually have a criminal charge tied to them. By this concentration on civil law I avoid the simple logical projection of political theory which

might accompany such "criminal" investigation. In this study there will be no astounding social prosecutions. I am seeking the steady feedback between the polity and the legal system because it best represents Puritan culture.[21]

My working definition of law in Puritan culture follows: law was the comparison of act to norm wherein act holds no intent or will and the norm was either neutral or socially moral. The boundaries of law were thus the behavioral boundaries within which participants at law submitted to the corporate ideal. Thus, Puritan law cannot be shown on the flow charts, although they are useful to an understanding of it. It "acted" at the political and social boundaries of the community, helping to create these boundaries. This dynamic quality will become clearer as I explain the operational theory on which the court system rested.

CHAPTER VII

THE LEGAL SYSTEM--ROLES

Relationship between structure and roles in the county court are best displayed when the law is combined with the general structure of such a court and the relation of the court to other structural items. Such a combination is the county court system or, for limited purposes in this section, the legal system.

A structural examination provides insight into the relative importance of the various roles--judge and jury, plaintiff and defendant, witnesses and attorneys. In addition it makes clearer the place of statutes and their functions in the social system. Structural-functional examination also requires an exposition of pleading, the dynamic which brought actors, statutes, and norms together and thus it leads to some insight into the decisions which comprise the "social" and "political" output of the legal system. I discuss actors, statutes and pleading in this chapter. In following chapters I discuss pleading and finally decision, which I define functionally as the authoritative impact of legal output on the polity and ultimately on the social system as a whole.

Both in role and content a legal system changes slowly. The legal system in Massachusetts was no exception, and the

elements in the county court system changed little between 1644, when the courts were created by statute, and 1680, the end of this study.[1] After 1680, like all courts in the colony, the county courts entered a period of uncertain jurisdiction, coming as they did under attack from Edward Randolph, the imperial commissioner and from a disgruntled segment of the colonial population.[2] Amid changes in the colony the Suffolk Records reveal an uncertain tone after the terrible impact of King Phillip's War, but the Suffolk County Court was not disrupted.[3] The whole legal structure changed in 1690-91 when William and Mary issued a new charter for the colony and the courts fell under the purview of the governor and council. Thus, the court's responsibilities and powers as they are discussed here are valid up to 1690.

I have divided roles in the legal system into enduring and non-enduring. This division is simply to differentiate between two groups; the first having fairly circumscribed functions internal to the court and the other coming to the court from the larger society and having functions which are less circumscribed.

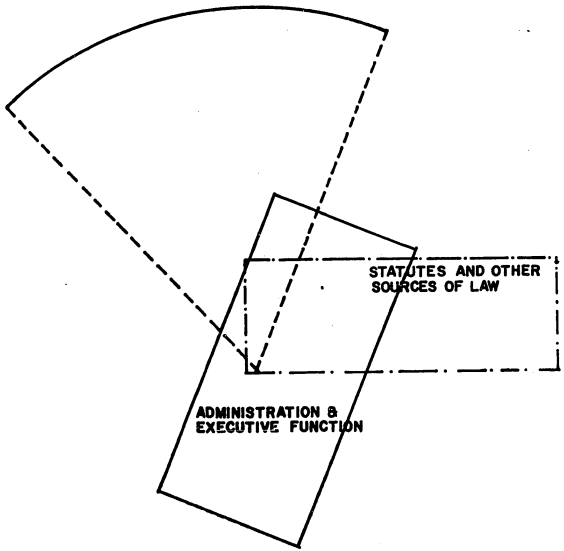
Enduring Roles

Enduring roles are those of judge and juryman. As actors they were more institutionalized than other actors at law. Their functions were set by statute and practice, and they comprised a "closed" group, which is to say that they were few in number and repetitive in election and appointment. (See Appendix 1.)

Judges in the Suffolk County Court show great continuity over time. One should not be surprised since their role was created by statute, and the statute specified that judges were to be drawn from the assistants on the General Court. I have already discussed the continuity among these high office holders. The Suffolk County Court sat in Boston and thus was able to muster an array of the most prominent assistants in the colony. The governor was almost always on the bench, and the deputy governor was usually there. Other judges were usually deeply integrated into the religious and political affairs of the colony as well as being men of affairs in the expanding commercial enterprises of New England. In all, only nine prominent men sat as judges on a court which held four sessions a year and usually had five judges presiding. Thus, mathematically, nine men held 200 positions in a ten year period. (See Appendix 1.)

Regarding both status and role then, one can expect to see the responsibilities of the judges carried out according to statute and according to the best "light" of these "better men." Kenneth Lockridge has called the government of Dedham, one of the Suffolk towns, a "corporate conservatism,"[4] and his description applies to the conception and operation of the county court.

Judges had administrative duties which are difficult to place. (See Fig. 12.) These duties are not evident from the paradigm of law, but they are entangled with the judicial powers of the court. Until one understands the interrelation



OVERLAY FOR
FIG. 12.

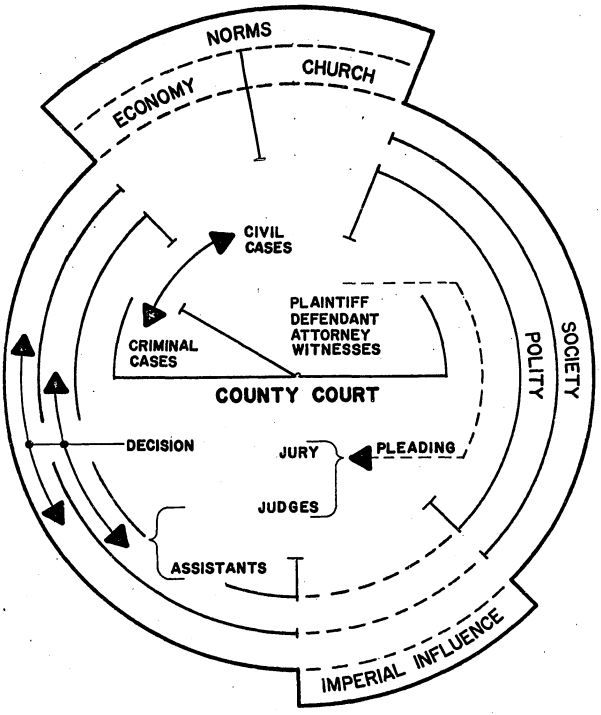


FIG. 12. Environmental setting for the County Court. (See overlay for statutes and for norms extended into the functioning court.)

of administration and decision making, the judicial function is not clear. These mixed duties involved cases coming to the court, disputes between towns (or an individual and a town), enforcement of the laws and appointive power over some public offices.

In civil cases the mixed function is clear in the power of the court to appoint arbiters or examiners who would audit books, take depositions from witnesses and do whatever seemed to them necessary to bring the case into focus. Although arbiters' findings were extra-judicial and unsupported by statute, their reports and recommendations were often used by both plaintiff and defendant in bringing suit and in pleading.[5]

Disputes between towns and between individuals and towns were fairly common and represent fully the administrative power of the county court. For example, between Roxbury and Dedham a single suit runs through the records for several sessions. The selectmen of Roxbury were unwilling to perform their statutory duty to "run the line," that is, to fix the boundary between the two towns. The Suffolk Court finally appointed a day on which the line must be fixed. Judges on the court were requiring the selectmen to perform their duty under penalty of fine.[6]

Acting in its administrative capacity, as in the case above, the court clearly hoped to avoid future suits whether about boundaries or about its other responsibilities such as keeping the roads in repair, selecting roadways, insuring

adequate bridges across the streams in the county, enforcing the provision that each town keep a proper school master, and so forth. Suits about some of these issues do exist, and in these cases the court seems to go to unusual lengths to see them settled amicably.[7]

Both administrative and judicial powers are again evident in the appointive function of the court. Not only could the court appoint administrators of estates and executors of wills, but it could also appoint special administrators if the estate were possibly insolvent. In addition judges appointed guardians for minors. (They generally looked after the rights of orphans and widows and other "incompetent" persons.) Their appointive power took a political turn whenever they acted to appoint commissioners of small causes for the towns in their jurisdiction.[8] Appointments were usually preceded by consultation with local authorities who gave to the magistrates nominations which seem to have been automatically accepted. During the period covered here, no rejection of such suggestions is recorded.

Because practice guides men and because the practice in the county court was administrative, criminal jurisdiction was not clearly set off from civil cases.[9] In part, of course, the failure to divide criminal cases from other duties stems from the function or structure of the broader legal system and the consequent restriction on the county court. Magistrates were representatives of the corporate

morality. They were not supposed to condemn individuals, merely judge their actions. Criminal cases, as I noted earlier, were usually individual rather than corporate. Only when a criminal charge contained a clear social importance did the court pursue it beyond proving the act and punishing it according to statute. In addition the court was limited by statute to those criminal acts which did not involve capital punishment, dismemberment or banishment.[10] Thus, its criminal jurisdiction was limited to fornication, petty theft, breaking and entering, and so forth. To be sure, these were punishable offenses, fornication by whipping or a fine, theft by threefold restitution (sometimes by imprisonment), but there was little concern in the legal system for these petty crimes. Fornication was so prevalent, comprising the single most prosecuted "crime," that one would be surprised if the Puritans punished it with more severe penalties than they did.[11]

That the court treated crime and the adjudication of criminal accusations matter of factly is evident from the preference which the accused persons exhibited for going before the magistrates rather than a jury. They had the right to request a jury, and some few did so,[12] but the general petty offender seems to have been satisfied to take what punishment the five judges meted out and let the matter go at that. The whole procedure has about it the flavor of administrative efficiency.

The other enduring role in the County court was juryman. As is the modern practice, jurymen were to determine matters of fact, and judges were to determine matters of law. As a consequence, jurymen had the duty to receive instructions from the bench. Judges had the unusual power not to accept the verdict if they deemed it contrary to the law.[13] Although no explicit law gave them such power, the jury seems to have set awards. Verdicts always read, "The jury found for the plaintiff (or defendant)" followed by the award if there was one and the assessment of costs. This right was circumscribed by the magisterial power of chancery, the right of judges to reduce awards which were strictly legal but which were excessive as far as the judges were concerned.[14]

Beyond the power to find fact and to make awards, the jurymen had other guaranteed powers in the court process, but these powers seem to have been little regarded or subverted by the dominance of the judges. For example, jurymen could bring a "special verdict" which ostensibly had to be based on a point of law but which was used to defer to corporate functions. Whenever the interpretation of a statute was involved or when the pleading had left the jurymen confused, they were allowed (one could read the laws as requiring them) to return the case to the bench for determination.[15] In fact they sometimes used this provision to avoid giving a judgment. Joy v Wharton illustrates what I mean.

Joseph Joy (or Jay), representing his father Thomas Joy, a carpenter, brought a suit against Mr. Richard Wharton, a prominent merchant of Boston who stood apart from the religious orthodoxy of the colony.[16] Wharton had apparently sold some land in Boston for Mr. Joy and had withheld the money from the sale. The case had already gone to arbitration under Deacon James Allin, Mr. John Saffin, and Mr. John Sunderland, and they had suggested the payment of the money. The jury brought in a special verdict; that if the money held by Wharton could be legally said to belong to Joy, Wharton should pay; if not, Wharton should keep the money. The magistrates, all belonging to the orthodox party, found for Joy. But on appeal to the court of assistants, with the five Suffolk magistrates removed from the bench the jury in the Court of Assistants reversed the county court verdict and allowed Wharton to keep the money.[17] In my opinion, Wharton's position in Boston had intimidated the first jury, but not the Suffolk magistrates. The "justice" of the case is not clear, but inasmuch as it is, Mr. Joy seems to have been denied the returns from his property.

A second case, Norman v Skinnar, illustrates a situational lack of clarity as to the "proper" corporate decision. William Waldron, through his attorney, sued James Skinnar, saying that Skinnar seized Waldron's goods from his home during an Indian raid and removed them without warning. This action was viewed by Skinnar as an act of heroism, and

in his depositions Skinnar asserted that he was perfectly willing to return the goods if Waldron would only pay him something in acknowledgment of his act. The special verdict in the case turned upon a point of law which was not covered in statute, whether "goods that are removed and secured from the common Enemy may be legally said to be unjustly seized or detained. . . ."[18]

All the colonials were uncertain of their values during and after this serious Indian war. Outside the court system, in the political give and take of colonial affairs, the magistrates had to deal with the realities of war as they affected the Puritan value commitment. In this case they listened to Abraham Milman who "judged" that "if Skinnar had not taken those goods and brought them away, they had been a prey to the Indians. . . ."[19] Even though the law and the facts were clearly with William Waldron, the true owner of the goods,[20] the jury returned the case to the magistrates. I submit that they knew the attitudes of the leadership and as evidence I submit the outcome of the case. Skinnar kept the goods.

These two cases illustrate a certain tenderness on the part of the jurymen for leadership or status-roles of the judges. Moreover, they seem to have been aware of case issues which were more important in the community than the outcome of single cases. Such an analysis is consistent with findings in the data section of this study. Thus, even though the power of special verdict was ostensibly a legal

power, the jurymen in cases involving questions of leadership or corporate values turned back to authority thereby placing themselves in a submissive role and turning this "right" toward corporate ideals.[21]

Jurymen also had the statutory power to dissent from the majority of the jury. Jacob Jesson, a juryman in Gibbs v Whetcomb, which came to the Court of Assistants on an appeal from the Suffolk County Court, Jacob Jesson, a juryman, tested the statutory guarantee and found it wanting. The case began in 1674 when Andrew Edmunds was brought before the court for theft of a silver "porringer" which he allegedly stole from Benjamin Gibbs. Joseph Waters was his alleged confederate in the theft. Edmunds was ordered to restore threefold the value of the stolen goods to Gibbs, and the matter would have ended there if the court had not then ordered Waters' horse delivered to Gibbs in restitution for the silver piece. At the time of this order regarding the horse, Waters was out of the colony, but he returned and being arraigned and testifying that he had indeed stolen the plate he was ordered to pay Gibbs the threefold restitution. Waters exonerated Edmunds and the order for threefold restitution from Edmunds to Gibbs was rescinded; Waters was ordered to pay threefold the value of the porringer to Gibbs.

Gibbs now had Waters' horse and bridle plus an order for threefold restitution which Waters could not pay. Even though he was unable to pay the order, Waters recognized

that at civil law his horse was now free unless Gibbs had it attached for satisfaction of the new fine. Gibbs failed to do so. Waters quickly assigned the horse to another party, one Josiah Whetcomb, with the condition that Whetcomb would pay Waters' fine to Benjamin Gibbs. Whetcomb paid the fine and demanded the horse, but Gibbs refused to give it up. Whetcomb brought a civil suit for recovery of the horse and bridle in the Suffolk County Court.[22]

Whetcomb won the first hearing of the case, and the Suffolk Court ordered Gibbs to hand over the horse or to pay L 6 damages. Gibbs secured a review of the case in the county court basing his allegations on "legal" arguments, but the jury again found against him. He appealed to the Court of Assistants, and at this point the "reluctant juryman" Jacob Jesson enters the picture.[23]

Jesson refused to sustain the verdict of the lower court even though his fellow jurymen found against Gibbs. Jesson was indicted for refusing to concur. On that charge he was ordered to appear before the General Court of Massachusetts Bay to explain his obstinacy. His "reasons" survive and include the following telling statements:

> . . . the premises being well considered I cannot consent to find against Gibbs and am thoroughly settled in my judgment that I should be absolutely forsworn if I should find otherwise; . . . wherein I am so culpable as to be so highly threatened by the Honored Governor and Major Clark either with a fine of neare a thousand pounds per annum or imprisonment, I can't see any reason or law for it: without there be a law that he that will not be forsworn shall pay more than he hath or else be imprisoned, but forsworne I must be if I find against Gibbs . . .

As far as Mr. Jesson was concerned he was being forced against his will and against his understanding of the case to bring a verdict in favor of Whetcomb. He went to the heart of the matter, the rights of a juryman:

> For the law sayth a jury of twelve men shall try cases and their verdict shall stand; although the bench doth not agree to it; and the reason is a jury are the plaintiffs and defendants peers; but the bench are not their peers: and therefore to make a jury say as the bench sayth is to mock the law and to make jury men but noses of wax . . .[24]

Samuel Eliot Morison, editor of the Suffolk Records, notes that the authorities wanted "to keep it out of the public records," probably because Jesson's reasons for withholding his judgment against Gibbs were both logical and legal if not just, and made the law look somewhat foolish, again, even though the original verdict appeared just. In any case, Jesson was fined ten pounds, not a "thousand pounds per annum," and was convicted of "wilfull and pertinancious opposing, and unreasonable refusing to concur with the bench and eleven of the jury" and with debasing authority in the colony. He was also admonished, a punishment which appears often in criminal proceedings and which apparently had meaning to the Puritans.[25]

With the exception of the final charge, Jesson's "crimes" were not statutory. They were created by the bench at his trial and illustrate the power the bench had over jurymen. The jury was in fact subordinate to the bench, and those jurymen who had the temerity to assert their "rights" against the magisterial power would be dealt with by that

power. Legitimacy of the actions in Jesson's case lay not in the statutory right of a juryman to dissent from a majority verdict but in the necessity of mutual subordination of all political actors, even jurymen, to the authority of the moral law.

Jesson, of course, was a lone juryman against the magistracy. If the whole jury brought in a verdict which was not acceptable to the bench, they would be sent out again, presumably to find a verdict more acceptable. In the Suffolk County Court if the jurymen could not come to agreement with the bench, the magistrates could dismiss them and send the case up to the General Court.[26] At the county court level, the jurymen could and did take a stand against the judges, but the judges had alternative powers. Juries rarely took advantage of their power to challenge the bench; that they challenged the magistrates so rarely argues for a deference from juryman to judge.

Judges and juryman, the two enduring roles in the county court system, display flexibility in the judge's role and subordinate rigidity in the jury's role. Judges' powers were flexible in part because the nature of their legal roles was so mixed. In a mixed power situation, flexibility is both necessary and inevitable because power tends to diffuse around the actors.[28] In Massachusetts no specific separation of powers existed. The role of judge was a high status role deriving its prominance from the multiplicity of internal roles which the actors who were judges played in the polity,

in the economy and in the legal system. Their status, gained from their diffused participation in all subsystems of the society gave legitimacy to their legal roles. They passed and interpreted statutes. Through their administrative power they "created" law and thus had the power to individualize punishments and awards within some statutory limits. They held these legitimate powers because in the value system of colonial Massachusetts they were the symbols of Christ's moral authority.

In contrast, jurymen played a rather narrowly circumscribed role. Their role was limited first by the corporate conservatism of the court system in which the magistrates were in almost unquestionable control. Corporate status-roles required great deference from jurymen to judge. Statutory procedure encouraged subordination to the judges, exemplified in the special verdict. In short, in any contest between the bench and the jurymen, the jurymen were almost certain to lose. They undoubtedly understood and accepted this hierarchical corporatism. By and large, the jurymen restricted their role to finding facts and making awards which were either reasonable or legal. They left the remainder of the court's functions to the magistrates.

Non-Enduring Roles

Non-enduring roles in the legal system are plaintiff, defendant, witness or deponent, and attorney. Plaintiffs instituted cases against defendants who came into court unwillingly. These principals drew support for their pleas

from witnesses and attorneys. Proper roles for plaintiff and defendant were provided by statute, at least in part. Statutes required a schedule of fees which the court collected usually from the loser. (These fees were collected both to defray expenses and to discourage litigation.) In addition litigants had the duty not to slander the court or other litigants in the cases or to use vile or abusive language against persons in court.[29] They were also required by statute to give bond for their appearance even in civil suits, and if the suit went to a higher court on appeal, they were required to bond the prosecution of the appeal.[30] Beyond these restrictions all persons were granted full access to the courts of the colony. All were free to prosecute their cases and to take full testimony from their witnesses. With the exception of fees and some few exceptions as to jurisdiction, then, principals in cases were free of statutory institutionalization. These roles thus differ from the enduring roles in that they were free floating, could be acted in a number of ways, but were tied to "propriety" by practice and statute. From a systems perspective, they were specifically active only within the court.

Witnesses and deponents in cases were under the same prohibition against "vile" language, but testimony was usually in the form of written depositions leaving the witnesses rather free of any actual participation in the court process. They could be questioned by the jury if the jury found such questioning useful, but as I noted above

this power of the jury seems to have been little used. Witnesses, of course, were under oath not to lie, and accusations for false testimony exist in the Suffolk Records. For instance two prominent men in the colony, Mr. Richard Collicott and Mr. James Everell, were accused and convicted of "swearing an ambiguous and uncertain and unsafe oath" and were admonished for it.[31] Perjury was not common although instances of it exist. One Cornelius White was convicted of perjury by contradicting his own testimony, and a man named Samuel Bennet, convicted for "not being careful of what he swears unto," was punished by exclusion from court as a witness.[32]

As in criminal actions generally the court was rather ascetically tolerant of such persons, but in one case the magistrates used the full force of their moral authority against a witness who was also a litigant. The case is instructive about the subordination required of major participants in the legal culture. Henry Lawton, master of the ketch Recovery, was presented "for forgery, perjury, and endeavouring to subborn witness," was convicted and sentenced to stand in the pillory on three lecture days, to give double the damages to the wronged party in the case, and to "be disabled to give any evidence or verdict to any court or magistrate" in any case whatsoever. Lawton had apparently forged a deposition and had attempted to make Francis Sciddall, a passenger on his ship, swear to lies in open court. Lawton had also perjured himself in giving testimony

in cases related to his own.[33] Obviously, Lawton's use of the system itself to forward "private" interests threatened corporate authority which rested on moral ideals. Again, the magistrates brought their power into play to protect the moral law which was basic to the constitution of Puritan Massachusetts. Witnesses were confined to interpreted truth because truth supported the legitimacy of the legal system and thus of the polity. Ultimately, witnesses, too, were subordinated to corporate values.

Attorney, the final role in the court system, had a special niche in Massachusetts. In theory attorneys were not well regarded. Puritans saw conflict in society and they saw law as a method of handling it not for creating it. By Puritan standards the role of lawyer was often corporately dysfunctional because it tended to concentrate on the procedural aspects of law in single cases, thus using law against itself. As far as the Puritans were concerned, then, lawyers exacerbated conflict. Their statute against barratry could be used against any excessive litigant, but it was aimed particularly at the lawyers (or at the idea of lawyering which came with the Puritans from England). It read in part, ". . . if any man be proved and judged a common barrater, vexing others with unjust frequent and endless suits: it shall be in the power of courts both to reject his cause and to punish him for his barratry."[34] Peter Lechford was the first attorney to be disbarred, but he was certainly not the last. At least two prominent attorneys who practiced

before the Suffolk County Court were disbarred: Peter Goulding, in 1672, for vexatious legal activity and Mr. Richard Wharton, in 1673, for his part in the famous litigation about Governor Bellingham's will.[35]

Wharton and Goulding were true attorneys, that is, they represented others at law. Many of the numerous references to attorneys in the Suffolk Records are merely references to individuals who temporarily held power of attorney. They were empowered to act at law and in business for a relative or business associate. Distinguishing between the two types of legal activity by using the colonial records is not always easy. Attorneys who were representing a client at law usually sued in their own names making the cases appear drawn on a power of attorney when they were not. No one who was active in the court distinguished between the two types of representation, and nothing indicates that such a distinction would have been necessary in the seventeenth century. In any case, the individual who had power of attorney filled the role of plaintiff or defendant rather than that of attorney, and his responsibilities were those of a litigant.

The attorney at law had only the responsibility for "proper" behavior required of all participants in the county court system. He could not appear to encourage law suits and thus did have a negative responsibility. Even though attorneys were supposed to be ill-regarded in Puritan Massachusetts, they seem to have functioned in the legal

system without serious interference from officials. They were often gentlemen of high states and seem to have been from the orthodox faction as well as from the "otherwise minded."

Enduring and non-enduring roles place legitimate systemic behavior in the legal system. Participants in the court system fall into patterns only when they are considered in the groupings which law operationally defined as founded by interests and when they submitted to the corporate ideal. The role of judge was obviously dominant in the court system because the system, from the General Court down through the county court to the lowest jural level, was tied to the corporate ideal and the moral law. Nevertheless, in both Fig. 11, p. 152, the flow chart and Fig. 12, p. 160, the structural functional diagram, a common dynamic element is evident. It is pleading as activity. Understanding how it activated the court system will make the internal role relationships clearer.

CHAPTER VIII

THE LEGAL SYSTEM--PLEADING, STATUTES AND MOVEMENT

Fig. 11, p. 152, shows the progress of pleading. Litigants entered the court from whatever status-roles they performed in the society and through their pleas they activited the legal process--comparison of their cases (acts) to values (laws or social norms). Pleading activated the roles in the paradigm. Such roles were expectations of role performance. In addition pleading activated the functional roles of the law in the administrative and judicial arenas. Doing so it brought into play statutes as they represent categories, procedures, and finally the plea itself as a cultural item. Thus, at a low level of abstraction, pleading served functions which were analogous to the general law jobs--integration and comparison of act to norm. Pleading was the catalyst for process and it integrated the environmental forces under the general overarching legal values of Puritan culture.

Unfortunately, even though a statutory requirement for written pleading was in force from at least 1641 forward, few actual pleadings survive in the records. A requirement that a written plea be filed three days before a case came to trial was included in the 1648 code but was omitted from the books of 1660 and 1672.[1] Zachariah Chaffee notes that

"the statement of the plaintiff's case in the summons probably served in most cases to give sufficient information to the defendant . . ." and furthermore notes that in the records as printed here only five actual pleas are included, with two actual defenses.[2] Yet pleadings, which set out the case for the plaintiff or the defendant, were very like reasons of appeal which appear throughout the records. For the purposes of this study the reasons of appeal have been considered pleading because they are all that survives in these records.

Appeals and reviews give scholars the best insight into the operation of the court in civil cases. They provide insight into those values which plaintiff and defendant could reasonably assume would move their cases through the court with the best possibility of a favorable outcome. As I discuss pleading and its relationship to values one should remember the earlier comment on Parsons' theory as a spiral. Individual acts occur at the most concrete level in society: one to one. From this level action and reaction move outward into the society gradually involving more individuals and groups or collectivities whose acts are more and more integrated with values and abstract role expectations until they finally reach the level of functional requisite, the most abstract level.

Actors (individuals or collectivities) thus act and react in a melange of causal relations. Linear description cannot do justice to the complexity of these relations.

They cannot be described because no one knows them. They merely exist theoretically. Calling Parsons' theory of action a spiral or group of interlocking spirals is merely a means of saying that acts move outward from the individual to the functional with widening possibilities of influencing both more abstract acts and less abstract acts. Again, such influence was not linear.

Pleading was activity in the court at the low abstract level of individual actors. These actors were dependent on the value system or shared symbols. Pleading thus represented individual interests, but the very fact that it was legitimate behavior meant that it was evaluative or moral since Puritan society was generally evaluative when one places it on Parsons' typical scale. It supported the same mutual subordination to corporate ideals which I described for theology, justice, politics and court behavior involving enduring actors. However, the subordination was qualitatively different.

Deference and care in addressing authority were typical of the court proceedings. This is clearly not the formal deference which goes with any stylized court ritual. Terms like "the honored court," "honorable judges" and so forth abound in the records and in the Suffolk Files. But the important deference lies in the plea procedure. Litigants believed that the deference had content. That they believed it is evident from their frequent efforts to put their opponents in the uncomfortable position of undermining

authority. Litigants in the Suffolk Court understood how to shade a case off into political issues; they understood, (often ineffectually) how the values of the community required the court to act against this chief sin and thus how to bring together their individual interest and the power interest of the community at large.

A good example of such pleading is the case Jones v Crisp.[3] John Jones sued Zecharaiah Crisp for breach of promise, charging that Crisp had engaged to support a child and had defaulted in his payments. The jury found for Jones, ordering Crisp to pay fifty shillings and costs. Crisp appealed giving three reasons: first, that he should be granted a non-suit on the basis of a mistake in the attachment (a purely legal reason); second, that no cause of action existed because no promise was ever proved; and third, that Return Wayte, the clerk of the court, added "false proof" to the depositions and thus caused Crisp to lose the case.

In answering these reasons, Jones very astutely took his clue from the last reason charging Crisp for taking upon himself "the power of the honored General Court to explain . . . the true intent and meaning of the law . . . which high presumption I humbly desire this honored court will consider . . ." and that Crisp, in accusing Return Wayte, has given an "accusation or exclamation against the honored County Court and jury expressly contrary to the law . . . which directed and commandeth all persons appealing

shall briefly in writing without reflecting on court or parties by provoking language. . . ." to give their reasons for appeal.[4]

Jones was successful, although probably for reasons other than his assertions about Crisp's verbal attack on authority. The jury in the Court of Assistants brought in a special verdict, that if a promise was proved, Crisp should pay the money. The magistrates, taking over the case, decided that a promise had been proved and that Crisp should pay up.[5]

Points of law based in statute were not the only sources which reveal the litigants' attitudes toward their culture. Other sources cited do so. For example, Puritans often cited as authority the Bible and the law of God. In addition they cited statutes in various combinations with the law of God and with the laws of England and in doing so revealed further their ideas about authoritative sources of law and their concepts of internal and external pressures on their system. Citations calling on the common law are ambiguous from a modern perspective and they sometimes seem to involve a combination of sources.[6]

One appeal from the Suffolk County Court is the best available in the records, and in it the efforts of the appellant are quite clearly pointed toward one goal: bringing about a combination of factors which would require those in authority to view favorably the appellant's case. Without the sources the "tone" of the appeal plea would be merely

legal or cognitive; with the sources in combination, viewed from the cultural perspective, the tone is moral or evaluative thus fitting the political theories of the Puritans. Clearly the plea was formulated for the two general functions of law in Puritan culture--the integration of cultural values and the comparison of act to norm. (In addition the case had an internal political implication which indicated some of the external systemic pressure on the Puritan system.)

Darvall v Dudson was dismissed from the Suffolk County Court in 1674 on the grounds that the General Court had established a court of admiralty by designating the Court of Assistants to sit without a jury. In this case William Darvall, acting for the owner or owners of the ship Expectation, had sued in the County Court for possession of the ship which Dudson retained. Isaac Melyen, a sometime resident of Holland and the principal owner of the ship, did not want an admiralty trial probably because he feared that the decision would go against him on the basis of his "citizenship." He petitioned the General Court to allow the case to be heard in the Suffolk County Court before a jury.

His first authoritative citation was his "right to proceed in common law" for the recovery of his ship, a right which had been denied and should not have been on the basis of a precedent, a case between the executors of Governor Bellingham's estate and Mr. Richard Wharton, attorney for one heir.[7] Melyen had been imprisoned for attempting to

take possession of the ship, and continued his plea by calling on the law established by the "honorable General Court's Act" and again on the common law in combination with a late proclamation by King Charles that any citizen of Holland should have equal protection of the law if he would declare for England, which Melyen had done.

His failure to achieve possession and his imprisonment as he saw them were both a product of his citizenship. He should have, he said, possession "without opposition, and without breach of any law, or contempt of any authority." He continued his plea by calling on right reason and the statutes, "our Magna Carte," by which he meant the first law of the law book (see below) which, he said, provided men equality before the law, and security from capricious expropriation. He finally noted in his plea that God was obviously on his side in the suit because Joseph Dudson had fallen aboard the ship "and broke his head" and that another "broke his thigh" not to mention that the ship almost burned during "the late fire" in Boston.[8]

In this one petition Isaac Melyen is playing the full orchestration of sources as an operative force in pleading. They are the common law (jury as opposed to admiralty trial), precedent in two cases, an act of the General Court, the first law of the law book on freedom from expropriation, the general principles of reason and equality before the law, and finally, empirical evidence that God is on Melyen's side.

In Melyen's case the Suffolk Court refused his plea and sent him for relief to the Admiralty Court in the colony.

This plea brought together the necessity of authoritarian moral law, common law, statute law, right reason in the law, and a distinction among men. Through it Melyen gave cultural life and meaning to judge and jury. (In terms of Parsons' theory at no other point is the spiral so clear. Melyen, an individual participant of the law, by acting his proper role required the judge and jury to act at higher abstraction in terms of social expectations; finally, in the decision, the whole legal collectivity acted. In social terms, then, the decision is the most abstract area of activity in the legal system.) Case, then, is not the unit of regard. Act is the unit of regard as Parsons explains, but the whole melange of acts is the arena of examination. Jurisprudence as a value system is embedded not in objective ideas about justice which involve litigants as individuals, but in social acts which allow theorists and historians alike to categorize individual cases and thus to utilize more legal material.

In pleading and appeals statutes were cited. Even when no specific statute was cited a general idea of statute seems often to have underlain the appeal.[9] At this point in my discussion of the court, statutes become important as classifiers of behavior. Through them the various cases may be separated into categories which were themselves important to the Puritans. Such categories provide insight

into the historical connection between constitutional law and the static civil and criminal statutes. This is to say that consideration of the statutes provides connective links between the legal norms as part of the value system and the merely legal. The "idea" of statutes as law was one pole of the continuum. Statutes were the legal postulates of Massachusetts Bay. They were the most important source for classifying cases.

The first concrete attention to a body of laws was John Cotton's tract, Moses, His Judicials, which was apparently too technically religious for adoption by the leaders of the Massachusetts Bay Colony. Parts of it were incorporated into Nathaniel Ward's Body of Liberties, published in 1641. Both works, but with Ward furnishing the predominant infusion, form the Laws and Liberties published in 1648. This publication was the first authoritative set of laws.

In Moses, His Judicials, John Cotton set the theme of Massachusetts statutes. Agreeing with William Ames' work, Cases of Conscience, Cotton noted that prohibitions in law must go beyond general rules because God has revealed specific commandments and punishments in scripture. Cotton was obviously moving away from the speculative, attempting to bring the Puritans down to specifics, and giving them a set of rules around which they could order their lives.[10]

Nathaniel Ward's Body of Liberties reflects the same attitude. It reads like a catalogue of what men ought to do, what they may do, and what they ought and may not do.

Laws and Liberties of 1648 were again a catalogue of precise guarantees, prohibitions, and regulations which reached into some of the minutia of colonial life. The Laws and Liberties appeared in the revisions of 1660 and 1672, the two authoritative editions which supplied the laws for the period under investigation. From these compilations the purpose of statutes is clear. In layman's terms they were a body of rules designed to tell people what to do and how to do it with a minimum of fuss. Even though these laws represent a morass of specific detail, they fall into several categories, and the categories reveal the dynamics of Puritan concerns with the economy, the polity, the church, and a diffusion of values which, as has been noted in Part Two, held the whole together.

Some of the laws were constitutive, bearing on the establishment of courts and various other political bodies under the General Court as head of the colonial government. These have been discussed already. (See Chapter VII.) Other categories which emerge from consideration of the statutes are as follows: freedom from and access to the law, economic objectives for the community, laws of personal injury and procedure for redress, ecclesiastical laws, laws regarding defense and the organization of the militia, and criminal laws. These categories remained constant for the colonial period and into the provincial period even though a shift to imperial concerns is evident in the economic

legislation of the later seventeenth century.[11] These categories underlie the distinctions as I divide cases into categories in Part Four.

Access to the law has already been discussed along with the role of litigant in the court system. The first statute in the law books of both 1660 and 1672, was the law granting freedom from the law. This statute was so important in the cases between 1670 and 1679 that a general quotation from it will be useful:

> Foreasmuch as the free fruition of such liberties immunities, priviledges as humanity, civility and Christianity, call for as done to every man in his place, & proportion, without impeachment and infringement, hath been and ever shall be, the tranquility and stability of Churches, and Commonwealth, and the denial or deprival thereof, the disturbance, if not ruin, of both.
>
> It is therefore ordered by this court and the authority thereof, that no man's life shall be taken away, no man's honor or good name shall be stained: no man's person shall be arrested, restrained, banished, dismembered, nor any ways punished, no man shall be deprived of his wife or children, no man's goods or estate shall be taken away from him nor in any ways damaged under color of law, or countenance of the country warranting the same, established by a general court and sufficiently published; or in case of a defect of a law, in any particular case, by the word of God. And in capital cases, or in cases concerning dismembering or banishment, according to that word, to be judged by the General Court.[12]

This statute, even though it is specific, had general application for cases. It was cited as applying to a variety of suits ranging in content all the way from its obvious intent, protection from arbitrary action by authority, to a case in which it was unsuccessfully cited as preventing the court from granting satisfaction against tools of trade.[13]

The guarantee from arbitrary governmental action, added to a general guarantee of the right of appeal, formed the statutory platform from which litigants began their legal acts. Zachariah Chaffee and other scholars blame the ease of appeal for the failure of the principle of "adjucata" and for the "litigiousness" of the colonials in Massachusetts. A review of the cases in the Suffolk Records reveals, however, that much of the litigiousness is illusory. The same people appear over and over in the cases, some because they have interest which necessitate their claiming the functions of the legal system and some because they looked to the system for what they viewed as justice. That the majority of inhabitants living within the jurisdiction of the Suffolk County Court never appear in the records is obvious.[14] In any case, freedom from arbitrary action and guarantee of access were meaningful in the course of litigation in the court.

Economic objectives fall into two definitive descriptions, the specific and the apparent. Specific economic statutes include the doctrine of the just price, protection of local industry, laws governing the place of Massachusetts in the rising imperial system, and so forth. These specific statutes are not particularly important for this study, but their subject matter and existence reveal a strong concern among the leadership with the colonial economy, especially with the progress of trade.[15] It was a concern balanced

between the drive to check the importance of the domestic economy while encouraging general economic expansion.

Apparent economic objectives become important when one considers civil cases. They combine here with personal injury when personal injury is defined as any civil suit for damages and/or recovery of something of value.[16] These objectives were statutory, but they involved a mixture of statutes which themselves represented economic norms, circumstances and persons. Clarification of the combination will emerge as other categories of statutes are discussed.

Personal injury or personal loss as a category of statute relates to most of the civil cases which in turn make up the bulk of cases in the records. In addition to the civil suits for recovery of debt and inheritance, the earnings from a ship, encroachment upon title and so forth, such cases exhibit a shading into public law. They may involve personal recovery for slander, speaking ill of authority or assult and battery. In the examination of civil suits for the recovery of money for debt or damage one can see most clearly the distinction between the routine and the political both because they are the largest numerical group of cases and because the nature of such disputes involves status and the authority of rank or office. Again, I explain these distinctions in Part Four.

Ecclesiastical statutes, combined with the defense provisions for the colony, were sources of equilibrium. The ecclesiastical statutes provided for the secular arm

of the state, in this case the county court acting in a mixed executive and judicial (criminal) role, to assure the continued prosperity and health of the church. Fig. 12, p. 160, suggests this role both through the church, the position of which in the display represents a diffusion of theology in the total culture of Massachusetts, and through norms operating directly on the court system. Except for the statute requiring church attendance prosecution under such laws was rare. They represented to the Puritans more an assurance of structural rectitude, or statement of legal clarity which bound them in the proper church/state relationship. Thus, they should be viewed as, in part, constitutive statutes, just as those which defined electors or duties of offices were constitutive.[17]

Defense statutes, depending upon statutory provisions for militia and a conscription system,[18] were designed to prevent the system from being overwhelmed by its enemies just as the church and the norms that run from it were designed to prevent the system from being subverted inwardly. The tie to the polity is evident in these two categories of statutes, and their importance cannot be overestimated. Of the two, the ecclesiastical category was more important for Puritan political culture because it did have constitutive implications. During that crucial period of King Phillip's War, defense statutes became paramount and were combined with ecclesiastical statutes in a ritualistic assertion of religious norms. Those responsible for the

ritual were the authoritative membership of the polity.[19] Even though these two categories of statutes were rarely cited in either suits or prosecutions, they formed an important element for Puritan political culture. For example, men appointed under the defense statutes were always politically and religiously prominent men in the various communities. Also political was the definition of certain activities as heretical or as ecclesiastically dangerous; such definition looked toward the survival of the polity as it was established by the Puritans as well as the survival of the church.[20]

Economic, ecclesiastical and defense statutes all operated under a diffusion of values which has been discussed earlier. But within the dynamic of Puritan legal culture the statutes served a static purpose. Through them the judge and jury were able to halt the case in time, that is, to tie it to a definition of an act--a statute which could classify the act. Barratry, for example, was a discreet act identified illegal by statute, but the man who was convicted became a "common barraster." Thus such a tie was momentary and was itself part of the central dynamic legal process.

In the internal dynamic of the legal model the product was merely the categorization of cases, often through statutes, always through some static determination. This determination as legal activity is the source of formal or law-word emphasis in the study of legal history. (Drawing on a

systems perspective of the Suffolk Court and of Puritan political culture, I suggest that although this internal dynamic is a fit subject for study and is revelatory of some social importance, it cannot bring the intellectual content of the law into social history. Study of the court moving into the community must do that.)

A final category was the criminal laws. From a functional perspective they served to define internally damaging activity. A certain mixture of criminal, private and public law has been noted by other authors,[21] and I suggest that such a combination was inevitable given the goals of the legal system and the importance of the polity in it. In fact, all categories of statutes--institutional, economic, personal injury, ecclesiastical and the defensive--shade off into criminal activity. For example, if a citizen of the colony criticized a magistrate he was acting criminally because Puritan values stressed authority. He was not criminal personally. The whole organization of the state was his victim, not the magistrate he criticized. One might almost say that he was acting apart from his own interest (as the Puritans did say in some cases, Roger Williams as a case in point), and the attitude of the proper representative of corporatism in Massachusetts would be that as a corporate person he bring the critic back to a consciousness of his important part in the total structure and culture of the community.

This is not to say that no activity was absolutely criminal. Rather it is to say, as has been noted earlier, that because certain men were in control of the legal process and because they were subordinate to the corporate ideal the most serious crimes were the diffuse crimes, those which have drawn so much attention from historians. These were the crimes against the established church, the crimes of conscience, threats to established authority; in short, simple dissent from the corporate ideal verbalized or acted upon.[22] Although criminal statutes receive little attention in this study, one should note that they too supported the corporate ideal as a static assertion of the relationships between man and man.

Statutes, then, in the functioning legal system, came down to this operation--the ability to stop movement in the case, to define it legally. They provided some indication of boundaries when interests met the corporate ideal. From the guarantee in the first law to the prohibition of destructive activity, the code had little other importance. Even though the laws have traditionally been viewed as the basis for the legal system in Massachusetts, they were actually a device providing for a minimum of fuss in the categorization of problems. Their place in the courty court system is defined in Fig. 12, p. 160, by a broken line. They were useful to the actors and came into play only as much as the litigants chose to depend upon them. Litigants provided for the diffusion of norms into the statutes. Only within

the institutional environment--the church, the economy, the polity, and the society at large--did the statutes have meaning. Within that environment they were drawn into the overall evaluation of Puritan culture.

Pleading began the movement from the environment by using the idea of statutes as law. As it moved into the court pleading defined the non-enduring roles and required movement from the enduring actors by citing sources as symbolic authority. It was the major input to the legal system. The output was decision. Through decision the legal collectivity acted with and on other collectivities and made an impact on the functioning of system and sub-systems as they are displayed in the modified societal interchange chart, Fig. 9.

CHAPTER IX

DECISION: THEORETICAL REVIEW AND LEGAL FUNCTIONS

A discussion of legal decision depends on two previous findings. First, that law in Puritan culture was a dominant force. Second, that law, as it circles through the social interchange system along the avenues of tensions which have been outlined, creates claims.[1] In doing so it operates at various levels in the spiral of theory which I have described.

Conceptually decisions move through the feedback loop which is part of political functioning. They travel two routes, one social and the other political, the social moving down from a social impact and the second moving down from the polity. The two come together in the legal system because law was a dominant value of Puritan culture. A description and an explanation of this circularity is an explanation of the theoretically unusual position that law can be active in culture, that it does create needs.[2] Thus, in describing the decision and its movement through the systems I am drawing together my systems perspective on Puritan culture and their own perceptions of their cultural values.

Circles of feedback are common in functional analysis,[3] but the feedback concept has particular applicability for

Puritan society and Puritan law. The close contact between capitalism and Puritanism has been treated theoretically. Authors who have treated it have groped through the documents of Massachusetts history looking for the source of such disparate drives as strong economic legislation forming a medieval core in Puritan law and the New Englanders' reputation for hard bargaining.[4] Far from being puzzling, these seeming contradictions are a clue to the functioning of Puritan legal culture. They represent no declining culture nor one torn apart by uncontained internal dissensions. The Puritans were in the process of integrating their legacy from the Age of Belief with the rising tide of commerce in the imperial world. Again, they used the tensions which were inherent in their system.

Integration was, of course, an important general social function of law. Contract was the legal means which the Puritans used for such integration. Individual assent was important for and necessary to contract. Thus, the Puritans naturally viewed decisions as specific or individualized. Yet, as I have shown earlier, through the law the Puritans sought balance between the individual and the corporate ideal. In legal decisions they achieved balance through feedback or the internal influence of legal activity. For instance, even when a decision at the court county level involved no direct social or moral issue, it carried behind it the moral weight of the legal collectivity and the overall polity. It rose from a culture which assumed or expected

social or moral issues. It was about individuals whose expectations were created out of their moral culture.

Their expectations were, thus, in part direct or social and in part indirect or political. If they were direct they were merely legal, that is, the moral component in them was largely ignored by the magistrates, and properly so. Such claims one may see as moving either up the spiral of theory or down it, either moving toward greater abstraction in their symbolic meaning or toward greater specificity. For example, precedent was one means of pleading. The more closely allied one case was to another the more likely a litigant was to use precedent. Use of precedent was an attempt to recreate specific impact of decision in terms of direct claims, legal or analytical in the usual sense of Anglo-American jurisprudence, and individual.

Yet, such claims in Puritan law could not escape a moral tone. In fact, given the theoretical statements up to this point, one would necessarily insist that litigants, even in social or direct claims, had to be concerned with the morality of Puritan culture. They were pleading before a court in which the judges were dominant.

Judges in the court were expected to behave corporately, not individually. After all, they held their judicial positions because they were corporate figures. They were elected to a rank in an ordered society. They wielded specific political powers and were held to them by the structure of government as well as by their submission to

corporate ideals. They were thus expected, in the judicial realm particularly, to support the corporate concept of law which was the ideological foundation of Puritan culture. Indirect or political claims, then, surrounded the very activity of judicial deliberation. In a classical conservative sense the judges considered the past, not as legal precedent the way Anglo-American jurisprudence usually conceives it, but as political. They were supposed to consider influence or person under corporate ideal rather than the mere legal precedent in a case. More important, again, they were to act as though they were doing so.

One of the best examples of their deliberate activity is the case of Captain Joshua Scottow, which I discuss more fully below, in which Captain Scottow was accused by several prominent persons of dereliction of duty during King Phillip's War. The magistrates were tender of Captain Scottow in a specific historical sense. He was a war hero, a highly political position in Massachusetts culture. Yet his accusers were also politically prominent. In suit and counter-suit neither Captain Scottow nor his accusers won or lost. Massachusetts law and the legal system pushed the case to the highest court of appeal where the final determination was that Edward Rushworth should pay costs. There was no decision when a decision either way would have damaged authority.

In addition to their judicial support the magistrates tendered behavioral support, as they were expected to do.

Even though their economic position in the community would have encouraged them to use the civil law, as data in Part Four reveals, those Magistrates who belonged to the orthodox faction in Massachusetts refrained. I use an index number to display legal activity and these prominent men carry very low legal indices compared to their non-orthodox counterparts in the economy. They acted as though they were supporting the corporate ideal.

Decision, based on social morality, had its most specific impact on the individual litigant. Yet, from his perspective the decision, once made, became a part of justice or social morality or the more generalized concept of law which was so important in Puritan society. This diffusion of decision I have already discussed in the chapter on pleading. From the perspective of the judges, however, placed as they were in a position to bring social morality into specific cases, decisions moved toward legal or individual claims. Judges, thus, in making their decisions were free to disregard their own political positions even though they could not escape the cultural demands which were political and which necessarily flowed through their decisions back to reinforce Puritan ideas of justice.

Such circularity of decision leaves the legal system at rest. It does not create needs. It was politically non-active from the magisterial perspective, allowing social roles to fulfill needs which were bounded by tradition and structure. The internal activity which was so important

from a social perspective has been called by other authors a dynamic of legal functioning.[5] It is, in my opinion, no more than the overall culture admitted to the legal system. Again, one can see the merely legal implications of the inactive legal system. Jurisprudence would be objective, the jurisprudence of equality. But the legal collectivity was the law as it acted.

If the theoretical statements are properly tied to Puritan theology, the law as I have defined it would call into the legal system participants from the culture. It would support the corporate idea and reaffirm the legitimacy of the peculiar judicial roles. Ultimately, participants would reaffirm the mystical tie between the polity and moral law. Thus, one can reasonably look for more than the abstract legality in the circle of Puritan legal functions. In summary, the legal system was itself integrated with the culture; in that integration lay fulfillment of cultural needs. I suggest that the creation of needs is evident from a systems perspective in a value analysis of Puritan legal roles. But the passive cultural functions of law and its creative functions must be separated analytically before the systems perspective for legal history can become completely clear.

Abstracted needs upon which the legal collectivity acted and which required participation may be expressed in a hierarchy: tension accommodation, legitimation, administration. Through these functions public interests could be

served. They required an unbroken circulating power flow unbroken from the court through decision as legal output, back into the polity, through norms, back to the corporate responsibility of the magistrate, and so forth. They picked up new impetus through pleading and through changes in cultural or structural relations, for example, in the relations between church and state or between elements of the structural environment such as the rise of imperial interests in the decade under investigation. These needs lifted the legal system out of its simple circular integrative functions and made the legal collectivity an actor or participant in the Puritan system.

Tension accommodation in Puritan law has been treated in an excellent study by Kai Ericson. His study is concerned with crisis situations and with criminal cases. He sees law as active; through the courts it defined the boundaries of "proper" or legitimate behavior. More important, it provided tension accommodation by assuring the Puritans that boundaries existed,[6] that the legal collectivity at some point would limit, control or release the tension built by conflicting values. Although, as I have stressed throughout this study, I believe that conflict between values in Puritan culture is illusory, I do think that tension accommodation was an evident function of Puritan law.

Theoretically, as long as law represented a social morality and drew individuals into its purview by demanding that they pursue moral questions through the legal

collectivity, the law was operating to uphold the corporate structure of the Puritan commonwealth. It was doing so not just from its broad legitimating function but also by providing the same type of tension avenues which I have described earlier.[7]

A series of projective articles and books have suggested that the corporatism of Puritan New England was in decline from about 1662 when the Half-Way Covenant was adopted until 1690 when William and Mary issued a new charter leaving the corporate factions of old-line Puritanism somewhat bewildered and not quite certain whether they had won or lost.[8] As I suggested earlier, the "decline" was simply an act of integration, the infusion into Puritan society of gradually changing interests at the imperial level. Within the setting of this change to a less corporate and less moral, more legal structure, the legal collectivity acted as a stabilizing force. It assured a forum to those who had social quarrels.[9] At the same time, through its corporate value configuration, it created the necessity for utilization of the forum in some form or another. Historically it responded to a "decline" in the ecclesiastical handling of affairs by functioning as usual as a secular arm of Puritan morality.[10] At the same time, it demanded that the morality be fulfilled by participation in the legal activity either at the collectivity level or at the more abstract level of assurance. The specificity of single cases and their decision is quite clear. The reciprocation between the

single impact and the return to the court system resulted in a diffuseness within the polity. Such diffuseness carried the support for and the parameters of political value boundaries. It defined power relations for part of the community. (See Fig. 11, p. 152, and Fig. 12, p. 160.)

Legitimation has already been discussed. It was important because law was a mature and thus an important element in the total societal interchange system as displayed in Fig. 11, p. 152. Tension accommodation provided a connection between the social impact and the political impact of decision in the feedback of the system. Legitimation was internal to the polity which included the legal system. Emphasis on protecting officers, including judges, reveals the moral (social and political) importance of legitimation. Legitimation protected the political power of the legal act. Within the corporate structure the legal collectivity fulfilled such a moral requirement. In addition, of course, it created the need for further reinforcement which was then fulfilled by the acceptance of (or a high level of acquiescence in) legal output.

The court both participated in legitimation and demanded legitimation from actors in the polity through their participation in the legal collectivity. It reinforced the need for legitimacy by enhancing its own necessity as a piece of the corporate structure of society, and, in turn, by enhancing the value of symbolic ties between law and the polity. Again, the legal output has an initial direct impact at the

individual level, but its important impact flows through the initial decision and moves back through the polity and into the court through its ties to corporate morality--the magistrates. (See Fig 11, p. 152.)

Tension accommodation and legitimation were highly abstracted functions of the legal collectivity. The final function, administration, was more specific, and through it one can see how the actual work-load of the court fit Puritan values. The court moved into administration through two important areas of Puritan legal life: family relations and land. The legal collectivity fulfilled certain specific requirements. These requirements were important in Puritan society because the family was so important to the Puritans.[11] Authority, a concept which existed at every level of Puritan values, had its counterpart in the patriarchical family. Consequently, in Puritan law heritability of things was emphasized. It consisted of the patrimony which was passed along to the children through a will. The interest in minute articles of inheritance, the careful inventories of estates, even attending to literally worthless articles, was based on more than Puritan frugality and attention to business to which it has been laid. It represented, in my opinion, this cultural orientation, the family, the things of the family, and of the next generation which had to have its ties to the past through these things.[12] Again, the corporatism or corporate conservatism looms very important in an analysis of legal documents. Inheritance

of old clothes was the inheritance of corporate, and thus moral or theological, authority. Family heritability and administration exhibits both specific expectations (for example, predictability in single cases which required appointment to administration, inventory of will, disposal of minor children or wards, and so forth), and diffuse or general expectations. General social expectation which diffused around authority was merely a more abstract rendition of familial authority. Both views of authority had the same outcome operating as they did from the same moral base. At the individual level inheritance claims were routine. At the general level they were always political and were rather uniquely predictable in Puritan case law.

At the general level inheritance cases exhibit participation of the legal collectivity in the creation of needs. Heritability fulfilled needs, of course, in the continued, almost ritual affirmation of the rights of inheritance, rights which took a peculiar turn in Puritan New England and gave rise to a system of partible inheritance.[13] In turn, the legal collectivity, including the plaintiffs in inheritance cases, had to have reaffirmation through continued access to the courts, and one does see cases running through several years of litigation, returning again and again for review or being retried on a trumped up point of law. These inheritance cases did not represent, as Zechariah Chaffee suggests, a failure of a principle--res adjudicata. The Puritans had no such principle. These cases were the

affirmation of a cultural need and tied the individual into the culture through authority which was dominated by the moral law.[14]

Such need is best illustrated by the now famous litigation about Governor Bellingham's will, litigation which used up the estate in court costs. Within a more confined time span the Suffolk Court suffered through a series of suits between the Robinson executors and Joseph Rock, one of their original number who held part of the estate. The children had been left minor orphans early in the decade of the 1670s, and the Suffolk Court had appointed a group of persons to handle the estate for the children. They began by suing debtors to the estate and ended squabbling among themselves. In their squabbles they disregarded court costs against the estate, suing for diminishing return, more for the right of inheritance than for the inheritance itself. (I suspect that the family suits, among members of the Usher family which included very large awards, were also suits in affirmation of a cultural right rather than for the actual exchange of money.)[15] In such cases, members of the community did not act rationally to conserve an inheritance as one would expect from Puritan reputations; they acted according to a cultural need to have the right of inheritance affirmed even at the expense of the inheritance itself.

Land was the second area of administrative importance. A drive for land ownership or "God Land" as Cotton Mather

put it, was assuming its eighteenth century importance during the ten years covered by this study.[16] In land heritability the agency of the legal collectivity was the same. It fulfilled a social need by handling, classifying and determining the important questions of title and inheritance. Reciprocation or feedback is again evident in the records. Single decisions about land had individual impact, but arising in the polity where control of land was vested, they quickly returned through the polity to the community and the legal collectivity.[17] In land law the law fulfilled functions set for it because it was reacting properly to systemic needs. In turn it demanded that actors outside the legal collectivity become part of it by participating in the demands on the law from the polity. Such a demand is probably best illustrated by the county court's legal activity in adjudicating between individuals and townships as disputes about possession arose. (Note that these are not title disputes.) County courts were general overseers of the granting of land, even though the grants themselves came by way of the General Court to townships and thence to individuals. The volume of disputes involving possession is indicative of the importance of the law in possession and heritability in Puritan New England (see Appendix 4). Many of these suits would be deemed unnecessary from a modern perspective, and I conclude that they were called forth by the dependence on legal culture.[18]

One can see in these three functional areas Talcott Parsons' functional attribute for the legal system--integration. One can also see the elements which make this description of law characteristic of Puritan New England--the diffusion of legal power within an undifferentiated power structure representing a diffuse political culture. Political culture there was based on an idea of corporate legality. Puritan corporatism was moral or evaluative in Parsons' terms. Legal power was meeting the need for legitimacy, for instance, but at the same time, because it both depended on and acted as authority, it was creating the need for more inputs of legal authority, inputs which could only be drawn from the legal system by participation in it through the legal collectivity or in the diffusion of decisions emmanating from it.

Theoretically, one should not be surprised to see role expectations following a similar pattern, those within the court, for example the judges, having a diffuse expectation and those moving into the court from the society having rather specific expectations. They would thus be supporting both the corporate interchange system of which they were a part and Puritan morality which dictated participation in social morality. From a legal perspective the Puritans turned to law, in theory and practice, not so much for the specific functions which it performed for them as litigants or participants, as for the sake of a diffuse social morality without which they could not have sustained their

set of attitudes. Balance, as Captain Scottow's case demonstrates, prevented either dynamic of the corporate legal collectivity from overwhelming the rectitude of social or individual claims. One must remember that the judges set the tone for the court, but they could not escape specific claims altogether because legal or individual amorality was part of the corporate value system. Decisions could be punishment for individual infractions of Puritan morality, and they could be the defense of the individual against a "misguided" corporatism.[14]

Tension accommodation, then, both reinforced the individual's position in the corporate structure of Puritan society and freed him from excessive personal responsibility for his position. The tension in this configuration may be explained in terms which have been employed throughout this study; it is between the merely legal and the socially moral. Whenever it was socially moral, the accommodation was diffuse because the magistrates were acting to "do" the accommodation and were acting according to diffuse role-expectations.

In summary, then, the magistrates' flexible roles led the legal collectivity toward Christian love of persons in the ordered community--universal, affective, ascriptive, and diffuse expectations. Within this context the process of social interaction between the legal collectivity and the rest of society grew around the same three needs which were discussed in the chapter on decision and which have been

interpreted here according to value expectations in the magistrates' role: legitimation, which provided knowledge and certainty of procedure and support for acceptable relationships among legal actors and other collectivities in the community; administration, which brought the court into contact with the important area of Puritan inheritance; and tension accommodation, which bound the participant into his civil action on the one hand, while on the other it released him from over-dependence on the corporatism if he was acting in the law where no discernible moral or corporate issue was involved. The crucial point was the one at which the magistracy had to ask, "Do interests and social morality clash in this case?"

This examination of the magistracy presents a general social-values orientation of universalism/ascription when the role of the judges is related to the broader community. This is to say, judges were expected to regard values and had great job security. Moreover, within the legal collectivity the general role expectation which was carried by the magistracy tended toward universalism, diffuseness, ascription, and affectivity. This is to say judges were expected to regard the general impact of their activity from a moral perspective which carried with it the acknowledgment of Puritan inequality. How these expectations affected legal behavior is revealed in Part Four. To the extent that the legal collectivity regarded power, this projective description of Puritan law and its ties to political culture

may be regarded as accurate. To the extent that the description is accurate the explanation of Puritan corporatism describes the real world in which the Puritans lived. Finally, to the extent that the ideology describes reality, the jurisprudence of inequality may be regarded as part of a yet unwritten Puritan legacy to American jurisprudence.

CHAPTER X

DECISION AND THE PURITAN MAGISTRATES

In the Puritan community the legal collectivity consisted of the roles which have been discussed earlier. Impact of legal decision depended on the expectations through which the roles moved and on how well actors met such expectations. Because the judges were dominant in the legal collectivity and were consequently able to set the direction for role fulfillment, placing them on the pattern-variable scheme will provide insights into the overall expectations which the legal collectivity faced.[1]

Placing the magistracy according to value-role expectations also provides a final theoretical direction for the output of the legal system. Again, a three dimensional model would be useful. Within the spiral of Parsonian theory the law functioned at various levels. I have already described the internal dynamic which represents the flow of social and individual claims. These were not active outside the legal system, and they represent a very low level of abstraction.

The dynamic outside the legal system, the legal collectivity's activity, also described earlier, fulfilled political needs and in acting created them. Its activity appeared in a descending level of abstraction from tension

accommodation to legitimation to administration. It accounted for public demands on the law.

The magistracy functioned in its roles not at any level but by diffusing its moral authority into the community. Within the institutional structures as they have been described, this role activity was like an alternating current flowing sometimes through the legal output and back to the magistracy through the polity, sometimes reversing, flowing back into the legal system and down to the level of social and individual claims. What this activity was will become clearer as the magistrates' roles unfold. Placing them according to pattern variables requires some repetition of earlier statements about the legal collectivity. (See Table 2.)

As I have noted earlier, magistrates had ultimate power over decisions. They could direct them as they pleased as long as they did not disregard the value systems which their positions represented. This is only to say that the judges, coming as they did from the polity and representing a fairly clear leadership position, were expected to maintain an orientation toward the Puritan ideal. That orientation was evaluative. As far as Puritan corporatism was concerned, the ideal itself was universal because it represented God's plan for material organization. Thus, at this court level the role expectation which judges had to fill was universalistic.

Table 2. Classification of Role Expectation on the Judges in the County Court According to their Historical Role Placed on the Parsonian Pattern Variable Scheme (see Table 1, Part 3)

		Universalism	
		Affectivity	Neutrality
Specificity	Ascription	9	10
Diffuseness	Ascription	11 Expectations on the Suffolk Magistrates: diffuse, affective expression toward objects-mutual love in subordination to the Puritan ideal	12

Universalistic Ascriptive Patterns

Their role expectation in other areas of operation was not quite so clear. As political leaders and judges, therefore Gods on earth, magistrates had flexible responsibilities.[2] Given specific cases at the level of social or individual claims, one could say that the judges moved toward specificity on Parsons' pattern variable scheme. But the abstract level of their activity and the flexibility of their responses would lead toward the opposite tendency. Given these more abstract levels plus the diffusion of power, one would more properly place them toward the diffuse role responsibility.

The achievement-ascription pair is again not very clear. The judges were a curious blend of achievement (they were elected and their election was based on a blend of piety and pre-eminence in the community) and ascription. Regarded as a role, however, not as individuals fulfilling roles, the elected judge becomes less important and the pre-eminent judge assumes greater importance. Moreover, the fact that they held their positions usually with little opposition makes their elected status less important and their ascribed status more important. They tended through time toward ascription even though at one point in time they were viewed as determined by achievement. Assuming that their own status was ascribed status and that the orientation was one they believed in, one could say that they would view others as falling into ascriptive patterns as well. In addition, assuming that the status role of the judges was culturally

typical, one would expect to find them making legitimate judgments which tended toward ascription. (This pair of variables demonstrates best that in placing the magistrates within the Parsonian table of variables I am placing them in the value patterns of Puritan corporatism as I have described it. See Table 3.)

At this point one can say that the general legal collectivity moved toward universalistic, diffuse, and ascriptive role fulfillment. The judges merely set the direction in a social order of almost medieval values. It tended toward corporate purposes.[3] Beyond these role-expectations, as one thinks of the remaining variables he should think in terms of the overall value-organization of legal functioning.[4]

Within corporate purposes the law functioned to create or draw to itself cultural needs. It did so on the basis of social morality; wherever social morality was not an issue, the law functioned as merely legal or analytical in traditional Anglo-American jurisprudence. The merely legal has been tied to individual morality which was also evident, but less important than social morality, in Puritan legal culture. Thus, wherever the legal collectivity performed a socially neutral act, it was both individual and amoral. Individual amorality of legal cases is thus neutral on the table of variables. Value orientation of the social role expectation for such cases would then be universal, diffuse, ascriptive, and neutral. There were many such cases in the Suffolk County Court; they were the routine cases.

Table 3. Placement of the Two Poles of Role Expectation on the Parsonian Value Orientation Chart (see Table 1, Part 2 and Part 3)

	Particularism		Universalism		
Particularistic Achievement Patterns	Affectivity	Neutrality	Affectivity	Neutrality	
Specificity	5	6 Expectation of amoral, individual regard in single cases by the legal collectivity	9	10	Specificity
Achievement					Ascription
Diffuseness	7	8	11 Expectation of moral, corporate regard in social or political cases by the legal collectivity	12	Diffuseness
					Universalistic Ascriptive Patterns

The norms of the system, however, led the magistracy in the opposite direction. The general expectation was for corporate morality. Even when the case had no demonstrable social implications, the community would tend to regard them from the moral perspective. Strict amorality would be the exception rather than the rule. Often political relevance is not apparent from the case records. Wherever it is apparent one can say that the Puritan judges, bringing the legal collectivity with them and reflecting the general value configurations of Puritan political culture, moved toward affectivity or moral considerations.

Social morality must be seen as corporate justice. One should not confuse this affectivity with a drive for individual justice which was a motivating factor for specific cases as they were brought into court. This affectivity of the legal collectivity was political within the ordered community. It would support inequality as a value.

The role expectations which the judges were expected to fill, then, tended toward universalism, diffuseness, ascription, and affectivity. A translation of Parsons' description (see Table 3) of such a tendency in Puritan society is that the Puritans expected their judges to regard them according to general moral principles and according to their placement in a ranked society. According to the Puritan value system, such expectations would describe the quintessential corporate leader, one who would set the tone for others. But

to stop here would make the whole area of legal activity more mechanistic than it was.

Within the model of the legal collectivity which has been developed thus far, the impact of decision is diffuse even though it had a certain specificity for individuals at the point where it entered the social system. This diffuseness depended in part on the expectations placed on judges as role. It depended as well on those needs the fulfillment of which fed back into the legal collectivity through the polity: tension accommodation, legitimation, and administration. As has been noted in comparing specificity of impact in social and individual interests and diffuseness in public interests, the impact moved back through the polity to the court; the diffusion of decision in impact occurred when decision, traveling its circle, drew on the general value systems of the community. In Fig. 11, p. 152, the model of legal functioning, this part of the circularity is depicted by norms lying across the polity. In the case of Puritan Massachusetts the value system was represented in the theology, and I have described earlier the coincidence between the theology and civil administration. Judges were the administrators.

Re-examination of the categories of function as they re-enter the court provides insight into this nexus between legal culture and Puritan theology. It also indicates that the legal collectivity, generating needs and thus influencing attitudes and values, had an impact on political ideals in

the community. Such impact, conceptually, is tied to the position of the law in the societal interchange system, to the general legal value orientation of Puritan culture and to the judges as individuals (as opposed to judges as roles.) Because the court exhibited these ties and influences, one can say that the diffuseness of impact, which up to this point has been circular, was also directional. It moved from the legal collectivity back into the polity in a direct flow of mutual creation of needs for the community. It also operated from the collectivity, carrying values outward to the community.

Thus, one can assert that specific decisions, in addition to their specific impact on the community and their internal circular diffuseness in the legal system itself, had a diffuse impact on the society influencing the quality of social and individual claims. This alternating movement provided the element of mix so that in single cases one can see both the dominant public diffuse role of the magistracy and the individual or social legal role influencing activity. Such a marbled internal and external concept of activity fits Edward Ross' concept of law as social control, but the theoretical diffuseness of it makes its impact less clear than Ross would have it.[5] It would create concepts of individual rights in the political context of society, but one should remain aware that the influence would be reciprocal, that it would occur all through the polity and other organized and formal elements of the total culture. The diffuse

role expectations moving from the overall culture to the magistrates prevented individual rights from moving into the polity as individual claims. Laissez faire was not part of the Puritan social value system. The magistrates maintained the corporate values for the community, and in so doing they "allowed" individual claims into the polity.

Property is the most obvious area for such claims. As Talcott Parsons points out property is the most generalized area of social/legal control in social systems. Property law guarantees or creates rights which are no more than stabilized alternatives to legal action. It is usually limited and thus fairly predictable.[6] The impact of decisions when property cases finally came to court, as they often did during this decade, is obvious: they support the "right" of an individual to hold a piece of property, to sell or "give" it away. The diffuse impact of such decision at civil law within the legal collectivity is the general allocative responsibility which the judges and jurymen have toward the community. One need only think about the importance of property to the Puritans to see the importance of such an illustration. Balance is obvious, but always under the canopy of corporate regard.

Direction of impact in decision at law depended in part on the systemic importance of inheritance. Estate related cases were more prevalent than any other type of case, comprising roughly 25 percent of the court's workload. These cases involved the descent of property, a will or death

intestate, debt charged against an estate, or insolvency.[7] One may say that estate cases placed the legal collectivity in the middle, not of the economy in any broad sense, but of the economy in a family or corporate sense. Decision regarding the descent of property whether "moveables" or real estate brought the court into an intimate relationship with the people who participated in legal activity and legal consumption. The structural and ideological corporatism of Puritan government underscored this intimacy by assuring individuals a secure place within the corporate boundaries. Thus, for example, the administrative aspect of the court's appointive powers over estates served to bring the towns into a closer corporate unity because the court usually appointed prominent members of the community to handle such family disputes.[8] Such appointments promoted the theological and political cohesion of communities. In administration as an area of sanctioning the magistracy in its expected roles participated in both the circular public movement of decision through the system and in the alternating impact. They did so through role tied to corporate values in which the legal collectivity took up social and individual interests.

The legitimating function of the court had about it the same alternating diffusion. Within the legal collectivity, its conservative nature derived in part from Puritan corporatism. The participants in cases were assured of the predictability of the <u>method</u> of participation. This is not

to say that they were assured of the outcome in particular cases, although some indication exists that participants believed in an underlying predictability. For example, in Bonner v Ashton, Mr. Humphry Hodges was charged with criminally "villifying and reproaching the courts and their proceedings," for saying that Mr. John Saffin had "prepossessed" the deputy governor, Mr. Leverett, who was also one of the judges of the Suffolk Court. Hodges was charging Saffin and the deputy governor with collusion outside the courtroom and certainly believed that collusion had resulted in the predetermination of his civil suit.[9]

The predictability which was important in this case, however, was that of interrelationship among the various parts of the system. It was one instance in which a gentleman, who was himself no minor litigant in the court, charged his opponent with influencing the deputy governor, and the reaction was not personal but systemic. Even though collusion between the deputy governor and Mr. Saffin was unlikely, it could have existed. But such a consideration was <u>never</u> part of the cultural perception of the case. There was no investigation of Saffin and Mr. Leverett. Indeed, there was only the individual value premise that judgment depended on evidence rather than on "prepossession" of the judges.[10] The assumption was that the court knew and would do what was best for the whole. It certainly could not be challenged in the way that Hodges had challenged it.

Both the Suffolk County Court and the Court of Assistants rose on this occasion to protect the already strong ties between Puritan social morality and the political structure of colonial leadership. Isaac Addington, clerk of the County Court, pressed the accusations against Mr. Hodges rather than having Leverett press them. It would have been beneath Leverett's dignity to acknowledge the political power of Hodges to accuse him of such a thing. In its legitimating function the court acted to protect an office rather than a man, a piece of the polity rather than an individual. The diffusion of the values in the case was backwards into the polity.

Leverett himself, acting as an individual, said in open court that he would be willing to let the matter go, but Addington, viewing Leverett from Puritan values, refused to withdraw his prosecution. Again, one can see the importance of corporate structural ties to Puritan social morality which in turn was tied to the theology of New England Puritanism. The value expectation on Leverett was diffuse, and he followed it by offering to withdraw his complaint yet not interfering with prosecution at the corporate level. Moreover, Leverett did not take advantage of his rights at civil law to recover damage for slander, a suit which would have sent the impact of the legal activity in Puritan law on its normal circulation through the polity.

That such an alternating pattern of political and legal powers was accepted and that the Puritans were comfortable

with their government and their court system should not surprise modern investigators. The combined theology, corporate structure and diffusion of legal decision converged in the value system--social morality--to support and legitimate the several elements of the structure. The legitimating function was thus also a part of both the circularity of decision and the alternating influence of the magistrates.

Tension accommodation through law also exhibited a dual impact. It was most clearly evident during the Indian war after the slow initial attacks by the Narragansetts on outlying settlements and the slow colonial victory over the Indians. One suit, for instance, Sanford v Orchard, involved a mundane quarrel about the death of a horse. Orchard had commandeered Sanford's horse and had unaccountably run the horse through with a pike during a battle. The civil question was whether the death was by neglect in the service of the country or whether it was unavoidable, in which case there presumably would have been no award. In the face of community responsibility and the psychological disruptions which lasted some years after the war, the jury found for the plaintiff requiring that he be compensated. In my opinion it was telling the community that the problems were over and that individuals who had taken advantage of a situation would have to pay.[11] This case exhibits both types of external functioning by the legal collectivity--the value-laden corporate output which filtered back through the norms

into the legal collectivity and the alternating dynamic, moving both directions, tying together value corporatism and individual social participation. (Of course, it also shows the internal dynamic of internal claims.)

A second case, Scottow v Shapleigh and Co., describes tension accommodation as it operated to support the legitimating function. This case exhibits the interrelationship of the elements of the legal system and provides the opportunity for caution against too strict a division into the three dynamics of the whole process. Captain Joshua Scottow, whose activities on the Maine frontier during the war were called "treasonous" because he abandoned settlers there and they lost private property of considerable value, was exonerated at proceedings in the General Court. But the group of citizens involved brought suit against him for the recovery of their property or its value. They lost. Captain Scottow countersued for defamation and slander. He also lost. At this point one should note that one of the defendants in Scottow's suit was Mr. Samuel Wheelwright, a commissioner at Blue Point, Maine, and an associate who could hear the causes in the absence of a magistrate. He was part of the corporate structure. Although the "justice" in the case is never really clear, the corporate impact of it is clear in the decision. Mr. Wheelwright was not convicted of slandering a man whom some considered a hero. His corporate manners were left intact. Captain Scottow was voted his expenses by the General Court which ordered Mr. Edward

Rashworth, another defendant in the case, to pay them. The legal collectivity, then, exonerated those men who held important corporate roles. One could say that both sides eventually won. One could also say that the corporate interests won. Only Mr. Rashworth seems to have lost.[12]

If one views the Captain as role, one can see the tension accommodation function of the legal collectivity at two levels, the individual role level in which a principle of "justice" was supported through the functioning of two officers in the corporate system and the community level, the community receiving from the ultimate political decision tension accommodation on questions of corporate importance. The legal collectivity (including the full political organization of government) assured the community that the value configurations which were generally fulfilled by the court and upon which individuals depended would continue to be fulfilled.

One cannot discuss the dynamic within the legal collectivity without coming again and again to questions of justice. That is, one must move down the spiral of theory to individual claims backed by legal proposition or procedures. The legal collectivity functioned politically, as the legitimation and tension accommodation show, but the individual was the ultimate recipient of the decision. As Max Weber reminded students, only the individual can actuate legal values,[13] and only the individual can prove the tie-in between justice as a concept and the political culture as a

religious-political corporatism. This social morality was their concept of justice and it was what specific litigants desired.

The very circularity of the functions performed by law through the decision makes almost impossible the normal separation of value from function in structural-functional theory. I do not agree, for example, with Robert T. Holt, whose separation of belief-value components from role certainly provides a cleaner theory, one more precise and thus more communicable. In Puritan political culture corporatism made the law value-laden. Active response to decision as part of a flow of corporate power was a response to value activity just as much as it was a part of value activity. Moreover, the diffusion around the power figures--the judges--in the legal collectivity makes the separation of legal structure from value, and of these two elements from the polity, an exercise in futility.[19] Unless one acknowledges the circularity and value-laden nature of the legal model for Massachusetts, one cannot fully understand the impact of decisions on the community.

Separation between enduring and non-enduring actors in the legal system, then, is an action separation. Non-enduring actors carried the individual and social claims within the system. Their role responsibilities as I described them earlier amount to this: they were not to disrupt the corporate function of the court. They brought an important element, pleading, into the court and were thus

a catalyst for movement. They reached into the court from the society and from their individual claims. Conceptually, they were part of the legal collectivity, but through their roles decision was contained.

On the other hand, the legal collectivity as a whole took its active role through the political ties of the court. Decision was output from the collectivity as actor, and it returned to the collectivity indirectly through the political ties of the court. These are represented by the functional needs which the court filled: tension accommodation, legitimation, administration. Decision returned through the corporate ideal and the necessity to maintain the ideal. It centered in authority as authority was subordinate to the ideal. In legitimating the power relationships in the community at several levels it facilitated the flow of power within these value boundaries. In administering inheritance and land law it tied the intimate needs of the individuals in Puritan culture to the polity through the theological values upon which authority and the polity were founded. It did these things through the agency of the magistrate.

Part Four

Data and Concluding Summary

CHAPTER XI

CASE VOLUME AND POLITICAL STRESS

Raw data from the cases must be used with some preliminary cautions. First, the absolute numbers of cases, expressed in various combinations in Graphs 1, 2, 3, and 4, may be too small to make the changes in numbers of cases by year statistically significant. For example, the category "title" in Graph 3 averages only about four cases per year, not enough to make the category significant. Second, in those categories of cases which do change significantly, the change must be tied to some power issue which was general in the community during the change. Otherwise, the change has no significance for power questions. Finally, the last numerical expression is a projection. It has been figured on the first half-year's data as if those data were one-half of the full year. (Data for the remainder of the year are not available.) For example, the sudden rise in injury cases (see Graph 2) for all of 1679-80 is actually based on one-half that number during the first half of the year.

Data for this study are a compilation of all civil cases including appeals (except repeat cases in the records and cases clearly involving two strangers to the colony) from the Suffolk County Court. As I noted earlier, this court was one of four county courts which the General Court

of Massachusetts established in 1644. The Suffolk Court sat at Boston, the seat of government as well as the center of trade in the colony, and thus this court drew cases from all geographical areas of the colony and represents all classes of interests. For a methodological study which must be limited in scope, it is the best choice among the four. I use a limited number of appeals from this court.

Taken alone, the data contain no mathematical "proof" that legal behavior responded to political stress "properly" according to theology and the political culture I have described. But the patterns which the data reveal strongly suggest that the behavior was "properly" responsive. Frankly, I have little doubt that when the laborious task is completed of identifying legal actors, classifying their activity and adding it to the material in this study, Puritan political culture will be revealed as legally oriented.

Legal Index and Public Visibility Index

I express interpreted data in two formulae, a legal index and a public visibility index. They consist of values assigned to certain types of participation in cases or to political offices which legally active persons held over the decade. They are not mysterious, nor are they arbitrary in their signification although at first they may seem to be.

The Legal Index (LI) I express in three numbers: first, the total cases which the individual won (not those he successfully prosecuted), second, the total cases the individual lost, and, finally, the aggregate of his legal activity.

Final numbers in LIs accrue from a formula which is as follows:

+1 for each case in which the person was a defendant
1 for each case against him withdrawn
1 for participation as an attorney
1 for each case continued
1 for each case dismissed
1 for each case deferred or a judgment confirmed
1 for participation as a surety

2 for each case in which the person was a plaintiff
2 for each case submitted to the bench

3 for each case withdrawn.

Rationale for the assignment of numerical value for participation as a defendant is that no individual places himself in the position of being drawn into court without at least some indication from the community that he is headed toward litigation. Other values assigned are self-explanatory except that the final assignment, +3, for withdrawing a case may seem odd. Withdrawing a case represents the highest participation in the legal process from a theoretical point of view. Cases may be withdrawn for several reasons; i.e., a defendant may have agreed to settle out of court, the plaintiff may have decided that he could not prosecute effectively, or the parties involved may have agreed to call the dispute. Systems perspective places the legal process in the community. Instituting a case was not punishment (or usually was not). From such a perspective, once a plaintiff had instituted his suit in Puritan New England, he had placed himself and his opponent in legal perspective. In doing so, he was operating most perfectly according to the values of the community. Since the LI is merely an expression of value

participation, the assignment of +3 for withdrawing a case makes the index more meaningful as an expression of legal participation.

Jonathan Tyng, a merchant and son of Edward Tyng, who was a magistrate during the decade under study, provides an excellent example of the LI. During the nine and one-half years of this study he prosecuted one suit, was sued three times, had two suits against him withdrawn, and withdrew his own single suit. His final number would be composed as follows: +3 for his participation as a defendant, +2 for participation as a plaintiff, +2 for having two suits against him withdrawn, and +3 for withdrawing his own suit--a total of +10. His index would be 1.0.10, meaning that he won one suit, lost none, and his participation in the legal activity of the community stood at the value +10.

LIs place those who participated in legal activity and provide a convenient means of stating comparisons between those who wielded power in the community. They also provide a concise expression which facilitates consideration of those whose legal activity seems significant relative to the role which law played in colonial society.

The public visibility index (PVI) is less complicated but performs a similar function in this study. It provides a means of rapid comparison among office holders and a mechanism through which power positions in the community can be compared with legal activity or its results. PVI is no more than the assignment of value numbers to the various

local and colonial offices held by those who participated in legal activity. The assignments are as follows:

+1 for local offices to the level of constable

2 for constable
2 for tithingman

3 for selectman

5 for deputy to the General Court

6 for commissioner to the United Colonies or other sub-magisterial office

8 for assistant

10 for governor and deputy governor.

Numerical assignments accrue to individuals by year; that is, each year the individual holds an office he receives an increment in his index number.

Numerical values do not represent "power positions" which belong to individuals. Their power position or the distribution of power according to legal activity and political office is the central question. They do represent public visibility within the power structure of the community, the thesis being that the greater the public visibility within the power structure the greater will be the integration between values and participation in the values. For example, Lt. Theophilus Frary had held the following offices by the end of the decade: hogreeve, +1, sealer of leather, +1, tithingman, +2, and had been selectman for Boston two times, +6. He thus had an overall PVI of +10. His legal index represents the single case he was involved in, filed against him, which he lost: 0.1.1. Cumulatively, then,

his activity in the colony may be expressed in a comparative statement of the two indices: 0.1.1/10. His indices, or the presentation of them, say that Lt. Frary was relatively inactive legally and active politically. He was publicly visible in the community. Compared to Edward Tyng, merchant/magistrate, with a full index of 7.0.19/80, Lt. Frary was very moderate in his political activity. This is the type of comparative placement in community activity which the indices provide. Raw case data become more meaningful after a historical synopsis of political crises during the decade, and, throughout the remainder of Part Four, I use the LI/PVI to examine further legal response to political stress in Massachusetts Bay between 1671 and 1680.

Cases and Historical Synopsis of Crises

Graph 1 is a display of the cases in absolute numbers beginning in October, 1671, and running through January, 1679-80 (old style). County Courts sat four sessions per year dated here according to the old style calendar with the division of the year coming in March rather than in January. Because the records run from October through July, that is, each represents a quarter court of the county court, the months covered are usually October, January, May, and July--the months during which the court usually sat. I have adopted a cross-calendar plan, 1671-72, 1672-73, and so forth. Elections for the colony and for the local towns were usually in May, and any political changes in the

Graph I. Cases per year, Suffolk County Court.

community would be revealed, in part at least, in the raw data by comparing the quarter sessions. This knowledge is useful when I discussed periods of stress by expanding the raw data into a display of quarter sessions. Thus the cases represent those cases which proceeded through the legal process, October through July, in the years given. Numbers of cases noted on the graphs are exclusive of those cases withdrawn or non-suited.

For the term 1671-72, the number of cases proceeding to judgment in the court was eighty-eight. The following year it was seventy-eight, and for the next three years it remained fairly constant, changing by an increase of three cases for the 1673-74 terms, remaining constant for the 1674-75 terms and decreasing by three, back to seventy-eight for the 1675-76 term.

A sudden erratic rise and almost equally sharp drop and rise again during the next few years is obviously an odd pattern for a court which supposedly represents continuity in the community. For 1676-77, the term shows a sudden rise of forty-seven cases in the court. In 1677-78 total cases ceclined steeply by thirty-eight. Following the decline was a second rise in 1677-78 of twenty cases. The projection for 1679-80, if it is correct, is a further rise of eleven cases.

In part, of course, the erratic changes can be explained by demographic changes occasioned by King Phillip's War. Douglas Leach points out that the war brought frontier

settlers scurrying into the relative safety of Boston and other seaboard towns. One should realize, though, that the towns menaced by the Indians were, in large part, towns which already belonged to the Suffolk group,[1] particularly Menden and several villages within the Suffolk group. Overall numbers of people who would bring cases to the court would have changed very little, in fact might have been reduced, due to the war. Such a simple demographic explanation does little to explain the erratic changes during the last four years of the 1670s. A comparative historical analysis provides a fuller explanation.

I have earlier called the decade of the 1670s a decade of crisis. Certainly the Half-Way Covenant and its adoption grew into a political crisis in the colony during the years 1670-71. King Phillip's War was a second crisis lasting through the last half of 1675 and into 1676. In 1676 the colony received another of the periodic letters from the Crown, this one informing the Puritan leadership that Edward Randolph would be arriving in the colony shortly. He arrived and began to send back his now famous critical dispatches to the Privy Council in England. In the midst of such an upheaval Increase Mather called a synod, and in 1679, the Reform Synod of the Congregational churches in New England published its list of "prevailing evils" which were bringing God's punishment down on the land. These crises were seen as political and then "religious" by the Puritans, each one testing the ability of Massachusetts to maintain

the New England Way. Their first crisis involved the church, but it was political.

Religious crises should theoretically provide more cases for the court: That is, they should activate the law to draw into itself more of the activity of the community. But the crisis of 1670-71 is somewhat peculiar in Massachusetts history. It grew out of a religious quarrel which had political implications--the quarrel over the Half-way Covenant. Who was capable of true baptism? The new covenant avoided the question by providing half-way membership for those individuals whose parents had not been among the elect and who were thus not fit subjects for baptism, but who led upright lives and were thus fit for recognition by the church even though they had not yet experienced the quickening of the spirit which would reveal the touch of God.[2] Half-way status was formally declared acceptable during the synod of 1662. Between 1648 when the covenant was proposed and 1670 when its adoption precipitated a political crisis, the religious questions simmered and boiled within the internal tension between church and state.

John Wilson died in 1667, leaving the First Church of Boston without a minister. First Church was one of the "conservative" churches where the half-way principle had been slowly eased into the church polity by the pastor although it had never been formally adopted by the congregation. When the members of the church met, they voted to issue a call to John Davenport of New Haven, a famous opponent of

the Half-Way Covenant and of the synod of 1662. Davenport had a vision of the original New Israel in the wilderness, a vision of the church and state much like that which John Winthrop had brought from England. He was acquainted with prominent members of the First Church, notably with John Leverett, who was one of his correspondents, and seems to have been most eager to accept the invitation to the most powerful church of New England. Robert Pope notes that Davenport planned to use the First Church for a base in bringing the New England congregations back to the reformist covenant which they had first adopted.[3]

Although a majority faction of Boston's First Church seems to have agreed to the choice of Davenport, a large minority faction seems to have disagreed principally because his ideas about baptism excluded any softening of the original prohibition on baptising or acknowledging the children of non-members of the churches. New Haven, on the other hand, saw no reason to release its pastor to the First Church of Boston. He arrived as a temporary pastor in the spring of 1668, still a controversial replacement for Wilson and still not released from the First Church of New Haven. He finally received his release in October and in December, 1668, was ordained along with James Allin, who was chosen teacher.

The dissenting minority asked to be released in order to form a new congregation. Davenport refused. The minority faction asked the First Church to call a council. Davenport refused. Finally, in desperation, the minority group

themselves called a council of the churches of eastern Massachusetts. Their council granted them the right to gather a new church, and under censure from the First Church, they performed the New England rituals which created a new congregation.

Davenport, a famous and now very prominent man, had been asked to preach the election sermon in May, 1669. During the sermon he attacked the gathering of the new Third Church of Boston and attacked the Half-Way Covenant as a decline in the vigor of the congregational way.[4] He thus catapulted the issue, already public, into the political arena. In a series of events it gradually became a power issue in the colony.

Nicholas Street representing the First Church of New Haven was in Boston to close affairs between Davenport and New Haven. He discovered that the letter of release which had been represented as definitive and which he, Street, had supposedly signed, was a forgery. Anthony Stoddard and John Leverett, two prominent political men and members of the First Church, expressed shock over the finding, but Davenport explained it away as an effort on the part of the elders of First Church, Boston, to avoid further discontent with the transfer. First Church congregation voted to accept his explanation. Other ministers of the colony could not accept it and sympathies went out to the members of the new Third Church.

In May, 1669, the town of Boston granted Third Church a plot of land on which to build a meeting house. Members of

the church felt that the land was too far from the center of town and decided instead to build on a plot donated to the church. During the summer, 1669, they began building, but Governor Bellingham and two other magistrates intervened and directed that work be stopped. They cited a colonial law under which the General Court

> doth not, nor will hereafter, approve of any such companies of men as shall henceforth join in any pretended way of church fellowship, without they shall first acquaint the magistrates and elders of the greater part of the churches in this jurisdiction, with their intentions, and have their approbation herein.[5]

Bellingham had interpreted the law to mean that the church must receive the approval of the town before proceeding. Third Church applied for and received approval, and by late fall they had finished their building. The majority of the ministers, standing against the powerful allied forces of the First Church and Governor Bellingham, had won the first round of a clearly religious/political battle.

In earlier years the political implications of the Half-Way Covenant had emerged only during the election day sermons and then had resubmerged again. Deputies from the townships were responsible each year for inviting the minister who would give the sermon, and their invitation to Davenport shadowed a political alliance. In his sermon of 1669 he warned the political leaders of the colony that New England would have to return to her pristine state if God was not to disestablish His covenant among them. The deputies voted to thank Davenport for his effort and to print the sermon, but the

assistants refused to agree either to thank Davenport or to have the sermon printed. They sent back to the deputies a mild admonition that the deputies should desist from involving themselves in church politics. Battle had broken into the open, and the General Court was divided. Lt. Governor Francis Willoughby and seven other of the assistants were protecting and sheparding Third Church in its fight with Davenport and the deputies, while Governor Bellingham and five assistants stood allied with First Church.

As the time approached for the ordination of Reverend Peter Thacher as Third Church minister, John Leverett, an assistant, asked for delay, hoping that the deputies who were not sitting would, upon returning to Boston, support First Church and congregationalism. Davenport, carrying his fight into alliance with Leverett's group, turned the issue in the quarrel away from baptism to the autonomy of churches, blaming for the crisis the council which had finally given Third Church the "right" to divide from its "true" congregation. Thus, he and his political allies were able to draw the more conservative-minded membership of churches throughout the colony into a focused position, dividing a majority of the clergy from a majority of the second-line political leadership in the colony. The fight had come down to conservatives against liberals, purists against innovators among the religious leaders.

Samuel Danforth in his now famous sermon, A Brief Recognition of New England's Errand Into the Wilderness,

given before the General Court at the election of 1670, laid before the political conservatives the objections of the clergy. He condemned the laity of the churches, blaming them for the schism which was developing in the colony. In contrast the deputies answering a petition from the church at Hadley, laid blame for controversy and decline on the clergy of the colony. Charge and countercharge flew back and forth between the upper house of the assembly representing a majority of the clergy and the chamber of deputies. The controversy grew and the assistants, turning to a time-honored practice in the colony, asked the ministers to consider the issue and to return a suggestion for healing the wound in the body politic.[6] But the ministers were not content merely to consider the problem. They campaigned actively against the anti-clerical conservatives among the deputies, and in the election of 1671 they brought Massachusetts Bay into the decade of the 1670s by changing the old, slow-moving pattern of electoral representation.

Sixteen deputies were defeated. Eight towns which were remiss in sending their deputies to represent them at the General Court were represented that year; five, rather than sending their usual lone representative, sent their allotted two. Five members of Third Church had been selected as representative for outlying towns, and Thomas Clarke, Jr., a member of First Church and a prominent merchant, was replaced by Thomas Savage of Third Church. John Leverett in the upper house replaced Lt. Governor Willoughby, deceased,

and William Stoughton took Leverett's place among the assistants. The balance of power in the upper house remained the same, seven in favor of Third Church and the "new" covenant, five in favor of First Church and the "old" way, but the "liberal" elements triumphed when they placed so many men in the lower house.[7]

Massachusetts clergymen, successful in their political efforts were also successful in their attempt to have the deputies' charges against them dismissed. They presented a long defense of the Half-Way Covenant which was, they said, no innovation but a continuation of true reformation in the churches of God in Massachusetts. The deputies, they further charged, by preventing children from membership in the church were undermining the churches of the colony. On June 4, 1671, the deputies rescinded their former charges although they asserted their right to free debate.[8]

A religious/political crisis was ended, but it continued to rankle in the sermons of the ministers.[9] These men, who were interested in ecclesiastical peace as well as political power, identified three factions in the colony which had arisen during the quarrel--the conservative laity which was duly submissive after the clerical victory, the reasonable laity always allied with the clergy and its continuing reformation, and the "civil men" who were delighted to see the religious factions quarreling at the expense of religious power and prestige.[10] As often happened in the Puritan colony, the ministers defeated themselves in

their victory. Their identification of factions and their entrance into politics, astutely designed to retain their power in the state, actually opened up a political culture within which politics had to function.[11]

I suggest that the overall dip in the number of civil cases coming to the Suffolk County Court was in part a reaction to just this religious/political crisis. It was handled politically, unlike most crises in the Bay Colony, including a campaign for votes in favor of a faction and involving issues about which the whole colony had become exercised. Comparing the later years of the court with these years between 1671 and 1674, one cannot help being struck by the low level and evenness of legal activity. Even adding into Graph 1 the cases withdrawn and nonsuited from Graph 4, one still sees the same evenness and relatively low numbers of cases. Data at this point suggest that by handling the quarrel independently and internally through politics, an option not open during the other crises of the 1670s, ministers and politicians in the colony provided a new avenue of tension accommodation. It circumvented the need for the more traditional projected upsurge in legal activity which fits the concept of their political culture better than overtly political answers to crises. Legal activity as an avenue of tension accommodation reasserted itself during the other crises. A brief discussion of King Phillip's War, the introduction of imperial elements into the culture, and the Reform Synod of 1678-79 will help

explain my functional interpretation more fully.

Thomas Hutchinson in his History of Massachusetts Bay notes the single disturbance (aside from the Indian troubles within the Plymouth grant which I discuss below) during the four years between 1671 and 1675, the Dutch War of 1672. During the war the Dutch briefly reconquered New Amsterdam, Massachusetts declared war on the Dutch and raised a contigent of troops which never moved out of the colony, and, notes Hutchinson in a footnote, the Puritans subscribed £1,895.2.9 for rebuilding Harvard College.[12] These years were quiet in Massachusetts.

But terror lay in their immediate future. They had some indication that Indian trouble was possible. New Plymouth, to which Phillip, Sachem of Pawkamauket, gave his nominal allegiance, required him to sign an agreement, which is undated, not to make war on any group without the approval of the governor of New Plymouth.[13] Despite his promise, Phillip of the Wampanoags and several Narraganset leaders were scheming to bring together a force of some 4,000 Indians of various tribes in order to make war on the English.[14] Even though scattered reports of such plans had trickled into the colonial towns between 1673 and 1675, the people of Massachusetts, prepared at all times for defense, were unconcerned until the village of Swansea in New Plymouth was attacked by the Wampanoag Indians on June 20, 1675. After word had been sent to Governor Winslow of Plymouth, who informed Governor John Leverett of Massachusetts, general

alarm spread throughout New England.

On June 24, the Indians fired upon the village of Rehoboth, which was west and slightly north of Swansea. Massachusetts quickly raised a troop for the defense of Swansea. At the same time they sent representatives to treat with the Narragnaset Indians who lived principally in the area of the Connecticut patent but who were the most powerful Indian tribe and were most capable of launching attacks on the outlying towns of the three colonies--Plymouth, Connecticut, and Massachusetts.[15] The Nipmuck tribe, after the English had failed in their initial attempt to capture and subdue Phillip and his forces, attacked Mendon in Massachusetts territory, killing five people. They next attacked Brookfield about twenty miles west of Mendon and then joined Phillip in a swamp some distance from Brookfield. Fighting was concentrated in the Connecticut Valley at the Massachusetts frontier--Deerfield, Hatfield, Hadley, Northampton, Springfield--with battles at Bloody Brook and Hopewell Swamp hard by the Connecticut River and some fifty miles north of the Massachusetts-Connecticut border.[16]

In November, recognizing that the war was spreading and that the colonials were on the receiving end of most fighting, the General Court swung into action, taking up the New England ritual as it had so often during periods of colonial stress. It passed twenty articles of war, some of which were merely necessary in the face of a general war

and some of which were reaffirmations of the old faith. For example, the first was "Let no man presume to blaspheme the holy and blessed trinity, . . ." and the third was a reaffirmation of the law requiring inhabitants to attend public worship. Articles eight, nine, and ten were assertions of authority requiring complete submission to officials both civil and military. Twelve, thirteen, fourteen, and fifteen dealt respectively with drunkenness in officers, rape and "unnatural abuses," fornication and "other dissolute lasciviousness," and theft. Eighteen required any soldier "sinfully playing away their arms at dice or cards" to be kept as scavengers until they could rearm themselves.[17] Values and action were thus tied together by political authority.

A lull in the war between December and February ended with the Indians crossing Nipmuck country and attacking Lancaster, some fifteen miles west of Concord, where the celebrated Mrs. Rowlandson was captured. A few days later the Indians attacked Medfield, burning half the town and killing eighteen inhabitants. On February 25, 1675-76, they burned several houses in Weymouth, approaching, as Hutchinson says, the nearest they came to Boston during the whole war.

As the attacks grew closer to Boston the General Court acted again, calling fast days for December 2, 1675, and February 15, 1675-76. Early in November, 1675, the General Court listed the provoking evils of the inhabitants--failure to discipline children, the tendency to wear long hair,

excesses in apparel, not to mention their notice that Quakers were being tolerated among them bringing into the colony their "damnable heresies, abominable idolatreis" and that they would henceforth be arrested and fined. In addition worshipers in the meeting houses were turning from worship before the blessing was pronounced, thereby bringing profanation into the worship; the General Court passed provisions to prevent it. They also passed laws providing supervision for young men, making oaths and curses not only illegal (as they already were) but making it a like offense if one heard an oath or curse and failed to report it to a magistrate, and for "ordering" public houses to prevent drunkenness. At the same sitting the General Court struck out at the "woeful breach of the fifth commandment," the "contempt of authority, civil ecclesiastical, and domestical," noting that such contempt is a severe trial to God and provoked him to punishment of civil states in the past. The plain implication was that the present troubles in Massachusetts Bay were caused in part by a failure of obedience. Moreover, mechanics among the settlers were overcharging as were merchants and shopkeepers, and the court provided that any person who felt he had been overcharged by anyone should make complaint to the grand jurors who, if they found cause, could send the case to criminal jurisdiction requiring upon conviction the same triple restitution required in cases of theft. Inhabitants of towns under attack were not to leave and move into Boston, but to remain

in their towns upon penalty of forfeit of their land and goods. During the session of May, 1676, the court provided for the selectmen of the towns to care for the "distracted," the psychological casualties of the Indian war.[18] Authority, central power, values, and territory were clearly on the minds of Massachusetts legislators.

But the sudden rise in civil cases, of course, cannot be explained by prosecutions under new criminal statutes. (Criminal cases seem to have remained fairly constant during the "crisis" and I have seen in the Suffolk Records no prosecutions brought under these new laws except for some individuals arrested for meeting as Quakers.) An almost inescapable conclusion from reading these records and studying the war itself is that the Puritans were undergoing a period of great tension, but a tension quite unlike that which permeated the colony during the Half-Way crisis. This war crisis was precipitated not from within the religious center of the culture, but from outside the culture. It involved elements of the environment over which the Puritans had only marginal control, environmental elements which seemed, as the war progressed, to be encroaching on the very heart of the colony. Territorially, the commonwealth was threatened. Religiously, the Puritans grew defensive and reactionary, striking out against their own people, not against real evils but against those "evils" which the culture had already identified. Their assertions were a ritual reaffirmation of the legal religion, of authority,

and finally of the mutual submission to the ideals under which they labored. Lacking any "open" political solution to this crisis, they turned to the old legal solution, and people turned to the civil courts in greater numbers than at any time during the previous five years. Perhaps legal participation provided reassurance of the values, perhaps it reaffirmed social and political relationships. Whatever the ultimate functional reason, it was a form which followed Puritan legal orientation in their political culture.

At the same time the Puritan colonies were fighting King Phillip's War, they were informing London and their friends in England of their progress. Information as it was received in London was turned against them by their enemies there, and the messenger of the King, Edward Randolph, was being prepared for his mission in the New World. He arrived in June, 1676, bringing with him the old complaints by the Mason and Gorges factions against the government and the expansion of its jurisdiction into their land claims in New Hampshire and Maine. In August, 1676, Philip of the Wampanog tribe was killed at Mount Hope, and the General Court of Massachusetts appointed William Stoughton and Peter Bulkley to go to England to answer the charges against their charter.[19] From this point, the Indian menace ended, but the second external threat, from the imperial government in London, persisted.

Claims to territory held by Massachusetts were based on old grants made before the Puritans had settled at Boston

and begun to expand into neighboring areas. Thus, Randolph bore with him further threats to the territorial integrity of Massachusetts. In addition he brought less direct threats, having been instructed to send back the following information: which of their laws were contrary to English law, a census to establish estates presumably for the purposes of taxation, the number of men mounted and afoot which the colony could field in a crisis, what forts and munitions they held, a complete map of the boundaries of the colony, what contact they had with the French in the North and with the government of New York, and a list of persons most popular and either in or likely to be elected to the magistracy.[20]

Their charter had been confirmed in 1661 by Charles II, and at that time the Puritans believed their administration, if not actual ownership, of Maine had also been confirmed. Their reasoning ran that Charles II had given them liberty to show why they should continue to govern, and they had done so.[21] Upon a commission being issued for the government of New Hampshire, Massachusetts General Court declared that it would no longer exercise jurisdiction there.[22] Randolph's territorial "threat" thus became a reality.

He did not rest there, however. His letters back to London, when the Puritans received information about their content in 1677, led them to fear that this charter too, would soon be replaced by royal government. In his first letter of June 17, 1676, he wrote:

> The government of this place consists of a governor, 11 magistrates and a secretary all yearly chosen; most of them are inconsiderable mechanicks packed by the prevailing party of the factious ministry who have a fellow feeling both in the command and profit. . . .
>
> The clergy are generally inclined to sedition being proud ignorant and imperious, Owen & others--ejusdem ffarinae, are in great veneration here, yet there are some civil gentlemen among them that upon all occasions express their duty to his Majesty abominating the hipocracy of their Pharisaical Sanhedrim.[23]

He later gave a fuller account of the government, which was still too sketchy to please the Committee for Trade and Plantations and which only served to increase the apprehensions of the government in Boston that the colony was indeed in grave trouble.[24] Randolph proceeded to answer the inquiries one by one, and the answers accused Massachusetts. In answer to the query about their law, he noted:

> . . . laws and ordinances made in that colony are no longer observed than as they stand with their convenience. The magistrates not so strictly minding the letter of the law when their public interest is concerned, in all cases more regarding the quality and affection of the persons to their governement than the nature of their offese.[25]

Throughout 1677 and 1678, Mr. Randolph continued his attacks against the government, criticizing them most effectively in their legal administration and in their attitudes toward the King, but never reducing his attacks on their authority in Maine, thus continuing territorial attacks.[26] In June of 1677, Randolph struck out against general titles to land in a paper presented at Whitehall, an attack which understandably caused a flurry of activity in Massachusetts as the Puritans worked to avoid the

implications and consequences of his continued presentations against them.[27]

Domestically the General Court began to act to bring the government into accordance with the requirements or, from another perspective, to avoid further criticism. An oath of allegience to the King was provided in October, 1678, and at the same time a letter was dispatched to Charles II explaining that the colony had never meant any disrespect, that they believed Mr. Randolph's representations had been false, and that they had proved them so. In addition they communicated to the Solicitor General a letter setting forth their particular meaning for the term "commonwealth" and giving a defense of their laws against Quakers. At the same court they sent a letter to the Attorney General answering the specific complaints which Randolph had made against their laws, including the navigation acts and their local laws.[28]

William Stoughton and Peter Bulkley, the Massachusetts agents to London, had received and transmitted back to Boston the information that Randolph was pressing the attack against them. During the session of May, 1678, the court decreed a reduced session, putting off all petitions until the October session. I have already noted that at the October session the General Court transmitted to the King and his government their answers to charges. At the same session they appointed a day of humiliation, a usual effort on their part, but on this occasion appended to it six

considerations or supplications to God, supplications which asked his pardon for whatever they had done, asked Him to protect their liberties, asked for a spirit of conversion for their children, and for a union of all the colonies neighboring to Massachusetts thus bringing them into blame and praise for the ultimate repudiation or favor of the colony.[29] Randolph's attacks were telling on the magistracy, and the "seditious" ministers were beginning to come again into their own. During the May session of 1679, the General Court passed a series of acts relating to the customs by providing public accommodation for shipping and for public punishment for abuse of the customs collectors (Mr. Randolph having been appointed chief among them). Then the representatives of Massachusetts passed the following act:

> In answer to a motion made by some of the reverend elders, that there might be a convening of the elders and messengers of the churches in form of a synod, for the revisal of the platform of discipline agreed upon by the churches, 1647, and what else may appear necessary for the preventing schishmes, heresies, prophaness and the establishment of the churches in one faith and order of the gospel, this Court doe approve of the said motion and order their assembling for the ends aforesaid on the second Wednesday in September next, at Boston; and the secretary is required seasonable to give notice thereof.[30]

This was the famous Reform Synod of 1679, orchestrated by Increase Mather and faithfully reported by his son, Cotton, in the Magnalia Christi Americana. The report of the synod was one long jeremiad, listing the provoking evils which beset the colony.[31] Yet, even Hutchinson in his History notes that there is "no evidence of any extraordinary

degeneracy" among the people. Under the continuing attacks by Randolph, with the knowledge that their territory was shrinking and that their charter was imperiled, the Puritans turned again to their religious/political ritual, a ritual which had helped them overcome their enemies in the past.[32] As the ritual unfolded, cases increased. As the ritual and information made an impact on the colonials, cases rose from eighty-nine in 1677-78 to one hundred and nine in 1678-79 and to a projected one hundred and twenty in 1679-80. Again, a crisis involving the government led to a legal reaction.

Clearly, the law reacted to crises in colonial politics, especially when the crises involved environmental factors over which the Puritan political organization had no control. Table 4 gives numbers of persons involved in legal activity during the years under investigation. It corresponds to Graph 1 fairly closely as one might expect, but demonstrates more conclusively that the law drew activity to itself.

Table 4. Numbers of Individuals Involved in Legal Activity by Year

Year	Number	Year	Number
1671-72	295	1676-77	345
1672-73	282	1677-78	302
1673-74	263	1678-79	326
1674-75	270	1679-80	(398)
1675-76	245		

Between 1671-72 the general fall in activity is evident. Even though cases increased between 1672-73 and 1673-74, the number of individuals participating in legal activity continued to decline, more sharply than before. This trend means simply that fewer individuals were bringing suits but that personal legal activity was increasing. It continued a very slow increase into 1675-76, bringing the table up to the period of King Phillip's War.

Between October, 1675, and July, 1676, as one might expect of a colony engaged in war, the number of individuals going to law in the Suffolk County Court declined sharply. The number of cases during the same year remained fairly stable with an insignificant decline of two cases. Total decrease in individuals was twenty-five, enough to have subtracted twelve cases from the total if those persons remaining legally active had failed to take up the slack.

That the next year saw an increase of 100 individuals involved in the law is no accident of history. Again, the law as a drawing, tension-accommodating mechanism, was producing reaction to events. The obvious explanation is insufficient, that those persons account for the increase who were kept from court business by the war and that they were free after the war to bring in a backlog of business. The increase is too great. Nor do cases brought during these four sessions reflect claims growing from the war. Only six of all the cases between the outbreak of the war and the end of the decade involve such claims.[33] I submit that the actors

bringing this sudden increase of cases into the court were responding "properly" by bringing stabilization to the culture during a period of value uncertainty and serious political dislocation. Phillip's death and the end of the war account for the drop in individual legal activity as well as the steeper drop in total cases for the session of 1677-78. By October, 1678, the Puritans were more fully aware of the damage which Edward Randolph sought to do them, and they had begun to fight back. Again, the legal activity rose, steeply in the number of cases, less steeply in numbers of individuals. If the Reform Synod of 1679 represented an effort to take control of a society run amuck, as I think it did, the precipitous rise projected for the year 1679-80 represents further such cultural efforts called forth by the built-in legal mechanism. Control and authority, after all, in Puritan ideology lay in the law. The steepest rises in numbers of individuals who went to law came just when the crisis must have seemed most serious. It came as well just when the Puritan political apparatus had begun to act. Data suggest that the legal/political culture of Massachusetts was, in a general sense, acting in concert with the values and that members of the culture were playing their "proper" roles.

From this raw data one can state first that legal activity was functionally responsive. Such responsiveness creates for the historian of Puritan law a presumption in favor of simple comparison between courts and other

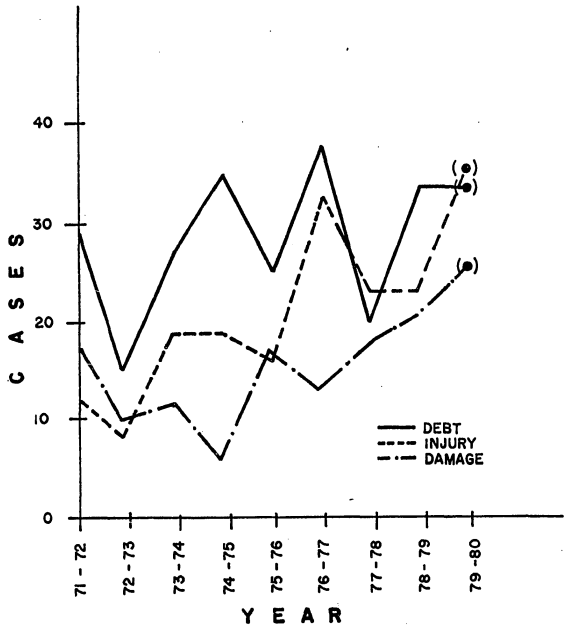
institutions of Puritan society. Courts were not a peculiar, objective place where societal pressures were relaxed. They were a place where individuals could come, under the maturity of Puritan law, and participate in their community, respond to its pressures as it responded to pressures from inside the culture and from outside it. In the first crisis, changes in the community were institutionally handled. Relative changes in case numbers seem small, but a reaction is evident. When the changes were not institutionally handled, were handled instead by violence or a separation of power from authority or from legitimacy as in the case of the war and the case of imperial intrusion, law acted to accommodate the tension. How it did so will be clearer after an analysis of the types of cases which increased and declined according to the same historical pressures.

CHAPTER XII

TYPES OF DISPUTES: RESPONSE

Cases in the raw data represent six types of disputes which came into civil court in Massachusetts Bay. I have divided these into two groups represented respectively in Graph 2 and Graph 3. Cases on Graph 2--debt, injury and damage--are similar types; they represent individuals suing for recovery of value--money for debt, goods or money for injury or damage. Cases on Graph 3 are also similar. Each of the three types--estate, public matter, title--has an inherent public importance, public matter being defined as official business either internal or imperial and estate or title having the intrinsic importance of heritables in Puritan values.

Debt cases are those, not involving official business or foreigners of imperial importance, in which an individual seeks, on the basis of book or bill, to collect money which he deems someone owes him. Most debt cases are fairly simple in structure, involving no complicated legal questions and requiring no complicated relations among the elements of the court. One should not be surprised that debt collection cases account for a larger portion of the routine cases in the court and that they comprise the greatest number of cases. They include suits for collection of debt owed to



Graph 2. Cases per year by type, Suffolk County Court.

estates and thus account for a large portion of those cases which indirectly involved inheritance.

A typical action for debt is reported in the records as follows: "Samuel Norden, plaintiff, against William Avis, defendant, in an action of debt, Ll1 or thereabouts, the jury found for the plaintiff Ll3.18.6 and costs of court 24s ld." In such a case the plaintiff probably produced either a book in which the debt was recorded and acknowledged by Avis or produced a bill either bonded or sealed under Avis' signature. Action is routine and the consequences of such a suit would be that Norden would have the right to attach the goods and estate belonging to Avis and to expect representatives of the government to assist him through the attachments in collecting from his debtor. Such actions could result in imprisonment, and imprisonment for debt was one means used for collection in Massachusetts. It was used sparingly, however, and one can tell from the arguments which William Lytherland used in attempting to secure his release from his debtor's cell that the Massachusetts debtor was familiar with the arguments like those now used against such imprisonment. Lytherland defended himself by saying that he could earn no money while he was in prison and thus could never pay his debts.

Other actions of debt are more interesting for this study and offer more insight into the law in colonial Massachusetts. These involve either value questions, obviously useful for this examination, or trouble spots in the

political structure and operation of the colony. For example, in Stoughton v Bishop, an action of debt for L300, William Stoughton, esq., representing Mr. Richard Saltonstall, plaintiff against Margaret Bishop, defendant and widow and her son, Samuel Bishop, executor to the will of Thomas Bishop of Ipswich, the jury found for the plaintiff, a prominent landowner and merchant in the colony. Mr. Bishop, owner of a mill which was the object of the action, appealed to the Court of Assistants.

In his reasons for appeal Mr. Bishop cited the law against taking any man's life without the agreement of two or more witnesses, and in a bit of adroit legal reasoning, went on to say that so much more should one's livelihood or estate not be taken from him under color of law, his estate being his life, and bringing into his arguments the most used law of the law book. He continued by saying that Saltonstall's witnesses "sware nothing but what Richard Saltonstall, esquire, requested them to do for him in his own case" and therefore that they were of "no value," meaning that Saltonstall had enough power to make witnesses say whatever was necessary for him to win the case. His final supplication was that "the defendant doth humbly crave and desire some relief from this honored court and jury for the reversion of that judgment granted against the widow and fatherless . . ." meaning the judgment against his mother and himself.

Mr. Stoughton, answering Mr. Bishop's pleas, began by noting that he would "not abuse the patience of this honored court, (as the manner of too many is) with any reply to many frivolous words and allegations. . . ." Stoughton was pleading against the tone of Bishop's plea for reversal. Rather than defend himself against Bishop's accusation that he used power to find his witnesses, Stoughton attacked Bishop's witnesses saying that one had died and the other lived with Bishop and his family and would not appear before the court "to give his testimony as in law and conscience he was obliged, how far the plaintiff had the contrivance hereof himself best knows." And again, acknowledging the social and political implications of the case but not to be outdone in it, Stoughton pled that the plaintiff was "endeavoring to make the honored court, (appointed for the relief of the oppressed), a patron of their so great a piece of injustice and fraud, the evil thereof being aggravated by the great oppression done to the helpless widow and fatherless children of so Reverend a man upon whom this wrong will finally center." He meant Saltonstall. Stoughton's plea was apparently successful because the appeal was never allowed to come before the court.[2] Such cases of debt have, as I noted earlier, more than routine significance involving as they do the social values of the community as well as politically prominent individuals.

Injury cases are those in which an individual sought to use the court to replevy some item of value from another

individual or in which some item of value was involved in an exchange wherein one party failed to complete the bargain. Thus, injury cases include any replevin, actions for the recovery of rent or wages due for labor, or any action for the recovery of any item of value. These cases, too, include both the routine and the value-oriented. For instance, in Riscoe v Miller, Robert Risco sued Thomas Miller for "unjust molestation" (which in admiralty law has its own separate category of action but which I have included with simple injury) alleging that Risco served an attachment against the brigantine Good Hope, sailing out of Albermarle, Risco master of the vessel. Miller sued Risco for damage and lawful possession of the ship, L100. The jury found for the defendant awarding him possession and costs of court.[3] This case is routine because the jury supports Miller in a case involving the attachment of a ship, an action which would have been dealt with by an admiralty court a year later and which involved the heart of the Boston economy--shipping. If the jury and the court had acted without the admiralty law, they would have been acting to damage the reputation of the colony abroad. Parties to the suit were not locally important, and thus any social significance, beyond the economic, must remain hidden.

On the other hand, injury cases could and did have value significance. Rawson v Glover and Company was one such case in which William Rawson, husband of Ann Glover, plaintiff against Habakkuk Glover of Boston and John Gurnell

of Dorchester, guardians to the children of Nathaniel Glover, accused the defendants of failure to account for their management of the Glover estate and of refusing to turn over to Rawson his wife's rightful share of her father's estate. The jury granted judgment L6.2.5, much short of the L20 which Rawson claimed was due from the estate, and Rawson appealed to the Court of Assistants.

At issue here was the income from the estate rather than the estate itself. This quarrel was a family quarrel, but Habakkuk Glover was a prominent merchant in Boston and the family had ties to its home community, Dorchester. Family was the first line in defense of Puritan authority. When the case came to action in the Court of Assistants, the two parties announced that they had resolved it among themselves and the plaintiff, Rawson, withdrew his action. Value orientations which involved external authority in the family were clearly involved in the case, authority supporting authority. Here the justice of the award was not important. In my judgment the important aspect of the case was that Habakkuk Glover, designated by his brother Nathaniel Glover of Dorchester to handle family affairs, was being challenged by his niece's husband.[4] Such a challenge to a head of family was a challenge to authority and thus the community. Rawson was wise to withdraw his suit.

Damage cases are those cases arising from some tangible damage which was predictable. They are frauds and bonded awards which as far as one can tell from the records were

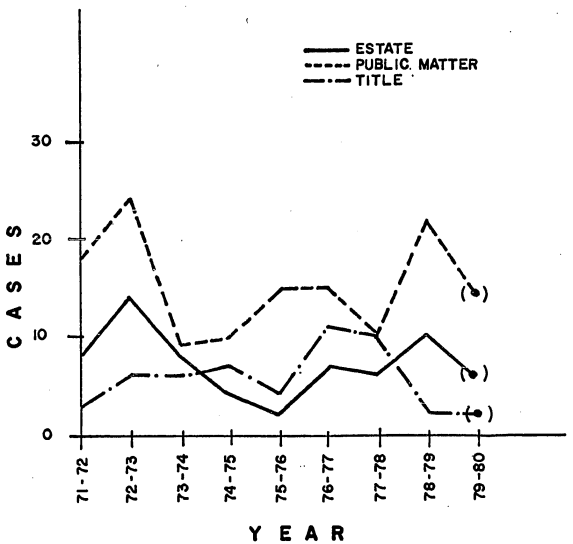
merely legal contracts, both parties agreeing to abide by an arbitration and the defendant in the case accused of failing to pay according to agreement. Such cases account for many of the routine cases, surpassed in the Suffolk court only by the number of routine debt cases. Damage cases also include most of the chancered awards and may be said to "allow" the court to act as a court of equity. Thus, even though they are usually routine cases when one considers the law, they involve the court in one of its important capacities. Again, most often the chancery is routine; that is, the forfeiture of a bond for arbitration may be for a sum greatly beyond the original case, whether it was for debt or for damages, and upon the forfeiture of the bond the court will chancer the award to the original sum and costs. For instance, in Nash v Gridley, Thomas Nash Sr. sued Joseph Gridley for failure to pay a sum of Ll00 due by bond, apparently proved the contract, and the jury found for the plaintiff that Gridley must forfeit the Ll00. In this case the two parties agreed in their application to the court for a chancer, and the magistracy chancered the award to the original debt, Ll3.8.5.[5] As I have pointed out, damage suits usually involved the enforcement of a contract. The very routine style with which the chancery was handled in the Suffolk Court suggests that the dispassion of Puritan contractualism was behind this reasonable approach to disputes. Thus, such cases represented contractual values or community values more than they carried or created value situations.

Of the three case types displayed on Graph 2, one could expect those which account for a high value-orientation and for social significance to react to historical pressure much the way the overall case distribution reacted. Debt and injury cases followed such a general reaction with an initial dip between 1671 and 1673 and a rise between 1673 and 1674. Injury cases leveled off between 1674 and 1675 while debt cases continued to rise in number. Both fell off in 1675-76, probably because King Phillip's War was beginning, and then both show a sharp rise for the year the war ended and Edward Randolph began his examination of Massachusetts government. During 1676-77, they decline sharply, as did all cases displayed in Graph 1. Debt cases bounced back near their previous maximum number and, curiously, leveled off during the last year when all cases reached a peak for the decade and when the number of individuals involved in the court was at its highest for the period. Injury cases, usually following both the direction of cases overall and debt cases, leveled off between 1678 and 1679 and caught up with debt cases again one year later in the projection for 1679-80.

During the same years damage cases dropped and then rose, probably insignificantly. They declined by six during a period when the other two types of cases, significantly debt, were increasing. For the year 1674-75, probably the least dramatic and least crisis filled year of the decade, damage cases decreased while debt and injury cases increased. Again, when general activity in the court was at its highest,

just as the war was ending, damage cases moved contrary to the others, decreasing by four, a change which is probably insignificant but which fills out an interesting pattern. In 1677-78, as the numbers of debt cases and injury cases fell significantly, the number of damage cases rose, this time by a significant seven cases. Between 1676 and 1679-80 when the damage and injury cases were following the general pattern set by the overall cases in the court, the number of damage cases was steadily rising, more slowly and less dramatically than the other tenth year upswing which one can observe in Graph 1, but rising nevertheless.

I suggest, from this limited sample for one of the county courts, that these three types of cases divide into the personal--debt and injury--and the impersonal--damage. They react during periods of value stress in the political system. When the stress was internal, personal cases tended to decline, as they did for 1672-73. Debt cases, always at a high level in Massachusetts, returned to their level during the non-crisis years, 1673-75, while injury cases, after an initial increase, leveled off. Debt cases fell dramatically during the war years, for obvious reasons, and then rose again to high levels. Injury cases fell slightly in numbers during the war but rose during the 1676-77 sessions. Both fell markedly for the 1677-78 sessions after which debt rose and leveled off while injury cases remained even and then rose. When the value system was under attack, the individual cases generally fell in number. When the



Graph 3. Cases per year by type, Suffolk County Court.

political arm of the community moved to parry the attack, they rose, moving with it. One should recognize that these cases were often value oriented.

Damage, the abstract or community-value cases, representing the value of Puritan contracturalism moved in an inverse pattern from the personal cases at least from 1674 forward. Such a pattern suggests that during periods of relative peace, contract cases replaced injury and debt cases in a simple reaffirmation of contract values. Taken together the patterns of both types suggest that during periods of crisis when values accepted and actively supported by the community seemed insufficient, personal litigants reaffirmed the values by drawing them to community attention through legal participation. Law, then, drew out of the community certain types of legal activity in response to political crises. It did so in affirmation of Puritan values as they were displayed in the chapters on theology and the corporate state.

The second group of case types--estate, public matter, and title--react inversely to the general reaction shown in Graph 1 and tied to historical events in Chapter XI. One should realize that all these cases are elements of the general pattern and that an inverse reaction, as in the damage cases, is particularly interesting in comparison to the other types of cases. All three types displayed in Graph 3 are few in number. Title cases, suits for actual title or possession or for the infringement of possession,

were so few in number throughout the 1670s that the irregular graph line is possibly meaningless. During the first four years of the decade, the number of cases about title fails to change significantly. A rise of seven cases during the 1676-77 session of the court and the decline to the former low levels of activity are probably significant historically in the same pattern terms that the cases of debt and injury are significant. For the Puritans, title to land was increasingly important and represented the quintessential tie between community power and private affairs. No title suits arose from the war itself, although one might speculate that the increasing concern with detainment of property represents a concern with possible "gains" in property which were legally remote but which many who suffered general economic decline were led to explore. Twelve of the twenty-one cases during this period involve illegal possession of houses and lands in Boston. Only four involve suits for deed and only four involve infringement of title.[6] The steepest change in such suits corresponds to the period when Randolph had brought land titles into question, but the change was, curiously, a reduction in legal activity regarding titles.

Estate and public matters, the remaining two categories of cases in the second group followed the inverse pattern I noted earlier. Estate cases as I define them here are suits for the right to possession of inherited real estate or inventory. Public matter cases are suits of any type as long as they reflected some cultural pressure on official or

corporate authority such as imperial or foreign implications, a government official acting in an official capacity, appeals coming from one of the lower courts, and slander cases. Slander cases I so categorize because they usually involve social relations and thus authority in a corporate ordered society.

Estate cases increased between 1671-72 and 1672-73 which is an increase pattern when compared to the general decrease shown on Graph 1. They then declined gradually through 1675-76, increased gradually through 1677-78 and, in a very unusual movement went into a projected decline for the final year's session. Such an inverse pattern again suggests an immediate negative reaction surrounding the religious crisis 1671-72, a gradual decline in the importance of inheritance litigation to a low in 1675-76 when the cases for debt collection were also declining. The subsequent rise of seven cases is probably significant, suggesting the same practical aspect of estate that title suggests--the existence of a state of war brought out an increasing concern with material security. (Again, the increase did not arise from cases caused by battle casualties.) The projected decline during the last year suggests, considering the low point during the three years of non-crisis, that once the society moved to control its problems, concern with estate would decline. For cases involving title and estate the numbers of cases are so low as to make speculative all statements about them in relation to historical patterns.

Public matter cases are important and occurred in numbers sufficient to provide a better analytical base. Numerical changes in public question according to the type of public involvement in the cases are displayed in Table 5.

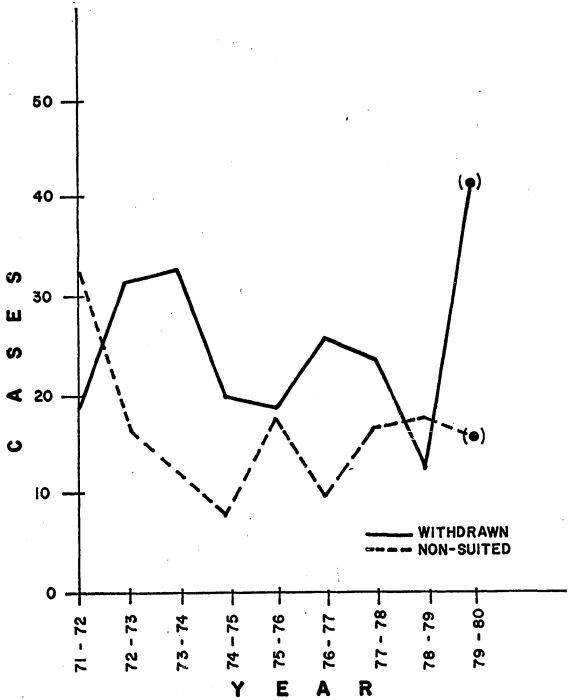
Table 5. Cases Involving Public Matters for Historically Significant Years

Year	Foreign	Public Official	Appeal or Review	Defamation Slander	Other*
1672-73	8	4	7	1	4
1673-74	2	2	3	1	1
1676-77	3	4	3	4	1
1677-78	0#	3	2	2	3

*This category includes two breach of promise cases, several battery cases, one case involving the power to tax, and one possible bankruptcy or its seventeenth-century equivalent.

#A sudden decline in "foreign" cases results from the introduction of an admiralty court in the colony.

Cases involving public officials in the exercise of their offices were stable throughout the period. Appeal or review cases, moving from a high of seven during the decline of the religious controversy to a low of two in the aftermath of King Phillip's War, coupled with the general increase of cases during the period, suggest a response toward the law which was political during the religious crisis and which turned into a strictly personal response--cases brought and verdicts accepted, at least at the lower level of the court system. Even though the number of cases in the



Graph 4. Cases withdrawn and non-suited, Suffolk County Court.

defamation category is small, the change is significant when one realizes that during the religious crisis of 1671-72, the cases numbered three, then fell to one for the two non-crisis years, rising to two for 1675-76, on to four for 1676-77, down to two for 1677-78 following a pattern which more closely fits the general pattern of raw data than other cases in the category of public matters. Such a reduction possibly "reflected" the effort of the government to move toward some settlement with England. The number rose to four again after Randolph's attacks on the colony were revealed, and a projection for the final year would keep the number of slander and defamation cases at four for 1679-80. Again, a coincidence could produce these numbers when the cases are so few that an increase of one might seem significant, but I suggest that no coincidence kept the defamation cases at their peak, even though it was only four per year, during the periods of most serious external threat to the colony.

Using defamation, the most personal indicator, as an index for legal activity among public matter cases, one may tie together changes in the number of debt and injury cases with the changes shown here, and may conclude that the law in periods of crisis was drawing into itself those individuals whose personal interests could be touched by political crises. Who they were and whether their group identification reveals anything about their individual legal and political

activity are questions which I examine in the next two chapters of this study.

Graph 4 represents the numbers of cases withdrawn and those non-suited. I have already explained that I regard the withdrawal of a suit theoretically significant. Parties who withdrew suits "used" legal theory at its highest or most submissive form. Such action at law was most in accord with the value system when it is explained from a systems perspective, a value system which made law social rather than individual, a mechanism for participation rather than punishment. For example, the three most frequently cited reasons for withdrawing a suit were that the defendant had confessed judgment against himself; that is, he agreed that he owed money or was guilty of whatever the plaintiff had charged him with, the individual involved in the suit submitted to arbitration (the source of a numerous body of chancered awards) and finally parties in a suit mutually agreed to withdraw. Two of these are clearly submissive or value reasons. They are anti-adversary, if one desires a statement in modern legal terminology.

Cases withdrawn follow generally the historical patterns in the colony, but the absolute numbers reveal less than the proportions these cases were of the whole number for each given year. Table 6 gives the proportions in percent for the years, the final very high proportion being, again, a projection based on one-half years' data. Low proportions occurred when the values were most directly under attack.

Table 6. Cases Withdrawn as a Percent of the Whole Number of Cases

Year	1671-72	72-73	73-74	74-75	75-76	76-77	77-78	78-79	79-80
Percent	13	26	26	19	32	16	18	9	25

Even though King Phillip's War was disorienting to the political community, a political crisis, it contributed to a strengthening of the values in the community. Withdrawal, as the most value-oriented legal activity, would theoretically change very little. It did not change in absolute numbers. Proportionally it rose probably because cases begun in court could not be prosecuted and because the values were strengthened, thus operating maximally in the community. Low points on both the graph and the table reveal, in my opinion, the uncertainty about values and thus less stability in attitudes toward the law. Value orientation, growing less certain during the religious crisis and during the height of Randolph's attack on the colony, could not come into play. Both low points are followed by a quick and rather startling recovery in the use of withdrawal as a mechanism at law, and assuming that withdrawal is a basic presentation of legal values as it would be deductively, the pattern in such cases point to a firm value orientation in legal activity generally.

Non-suited cases, after a high of thirty-three during the religious crisis, fall steadily, rise sharply, as one might expect during the Indian war when individuals could

not prosecute their suits after they had begun them, and then fall back to ten cases for 1676-77. They represent a slowly rising number during the final three years of investigation. Given their numbers they do not seem to have reacted to the historical pressure and probably represent the single category of cases which turned almost entirely on technical considerations during the suits.

Displayed in their reactions to historical events, the categories of cases reveal not only that, generally, the law both acted and drew action into the legal system, but also that a certain type of action--the personal--was more likely to be drawn into participation. Even discounting any single display because the numbers involved are so low that they could represent random changes, when the several displays are considered together, the patterns are evident. Differences exist, to be sure, between the reactions to the religious crisis, what one might call a controlled crisis, and the two external crises--the war and the attack on the colonial charter and way of life. Differences exist as well between the types of case reactions to the several crises. Overall, however, one can say that the law as seen in the case data reacted to general power issues, internal and external, which put stress on the system.

As I noted earlier such reactions are made explicit when the cases are brought down to the individual level. The following chapter on legal index uses few routine cases and utilizes value oriented cases to identify those

individuals whose legal index will provide insight into legal functioning. A liberal sample of debt and injury cases appears along with the indices of individuals who participated in them. Drawn from the divisions and examination in Chapter XII, the cases and individuals presented next represent a cross-section of legal activity in the court.

CHAPTER XIII

LITIGANTS

Legal activity in the Suffolk County Court exhibited a response to the crises of the decade between 1670 and 1680. Moreover, the response lay in numerical changes in the type of cases brought into the court. Those cases involving "personal" activity--debt, injury, defamation and appeal--increased during the years of crisis and decreased during the "normal" years. That the law followed value patterns as they were outlined in the chapters on political and legal culture is suggested by the responsiveness of withdrawals in the court to the stress of political and social crisis. Turning to the litigants and others who were active in the court, one may expect to find similar changes which more precisely explain the role of legal activity in the Puritan community.

Table 7 is a numerical expression according to Legal Index of the individuals active in the court and of the percent of the whole number for each category. Legal Index groupings, with 0.0.0, the lowest, represent individuals who participated in cases in the court but who had no actual function in any case. The groupings are somewhat arbitrary. A natural break occurs between 0.0.4 as an index and 0.0.5 for two reasons: first, the 0.0.5 index designates the

activity number for a litigant who brings a case to court and withdraws it; second, a small cluster of these indices exists in the overall breakdown indicating that such activity was common. Beyond this one cluster the LIs are rather smoothly distributed through the 0.0.19 category, but at that point or near it the activity drops rather abruptly as one can see by reading Table 8. Explanation of data at times combines the groupings.

In the display of groupings I am not seeking individual personality profiles for the litigants. Proceeding on the assumptions which I have made explicit in the early part of this study, I am seeking a legal profile, first, and then a power profile in order to compare the two types of activity--legal and political--within the context of the historical synopsis and case activity as it has been presented. This section of the study, then, is an effort to identify stress responses and the value indicators which they create through groups of participants in legal activity.

One should be struck by a first obvious discrepancy. The proportion filled by numerical breakdowns of LIs is not the same as the legal activity. For example, Table 7 indicates that LIs between 0.0.0 and 0.0.4 are 74 percent of the total, but this group never makes up more than 60 percent of the total legal activity (Table 9). It averages roughly 50 percent or just half of the activity over the decade. Other LIs take up the slack, notably the 0.0.10-0.0.19 grouping, which, even though it amounts to only

Table 7. Legal Index by Numerical Groupings and Percent of the Total

Index Group	Number	Percent
0.0.0-0.0.4	865	74
0.0.5-0.0.9	209	17
0.0.10-0.0.19	77	6
0.0.20-0.0.29	14	1
0.0.30-0.0.39	5	-
0.0.40-0.0.49	3	-
Other	1	-

6 percent of the total numbers, averages about 18 percent of the total action. Similar statements are true of the groupings between 0.0.5 and 0.0.9, 0.0.20, and 0.0.29. The last three groupings are insignificant even though they represent individuals of high legal activity in the court. They do exhibit an interesting trend late in the decade, and I shall discuss it later in this chapter when I describe the profiles of the participants. Overall activity, then, tends toward the middle groupings if one considers it from the perspective of percent relative to absolute numbers.

Tables 8 and 9 reveal numerical participation of LIs and the percent of that participation in the total activity. They also show the significant changes and trends among participants in the law. For the year 1672-73, one of the crisis years, there exists an obvious percentage leveling of activity among the three most active groups--groups one, two,

Table 8. Legal Indices, Numerical Participation by Years

	Indices	Year 1671-72	72-73	73-74	74-75#	75-76	76-77	77-78	78-79	(1/2 yr.) 79-80
1.	0.0.0-0.0.4	181	104	131	161	138	186	177	223	222
2.	0.0.5-0.0.9	45	92	71	73	61	89	85	81	39
3.	0.0.10-0.0.19	71	94	63	42	41	73	48	47	37
4.	0.0.20-0.0.29	17	30	18	23	25	29	21	13	7
5.	0.0.30-0.0.39	8	20	17	9	4	7	15	7	11
6.	0.0.40-0.0.49	13	7	17	6	7	5	0	1	1
	Other	5	9	7	7	5	11	0	1	0
	Totals*	340	356	324	321	281	400	346	373	217

*These totals equal a greater number than the total numerical groupings in Table 6 because these include the total activity by the individuals holding the indices rather than the number of individuals in each group.

#Represents a significant percent change. The year 1674-75 represents the year when the colony was least concerned with any historical crisis.

Table 9. Percent of totals, Legal Indices by Years

	Indices	Year 1671-72	72-73	73-74	74-75	75-76	76-77	77-78	78-79	79-80
1.	0.0.0-0.0.4	53%	29%	41%	50%	49%	49%	51%	60%	56%
2.	0.0.5-0.0.9	13	26	22	22	22	22	24	22	18
3.	0.0.10-0.0.19	21	26	20	13	15	18	14	13	17
4.	0.0.20-0.0.29	5	8	6	7	9	7	6	3	3
5.	0.0.30-0.0.39	2	6	5	3	1	2	4	2	5
6.	0.0.40-0.0.49	4	2	5	2	2	1	-	-	-
	Other	1	3	2	2	2	3	-	-	-

and three. They move to such an anomalous position from an inversion of the usual position between group two and group three. Moreover, the following year, 1673-74, continues to exhibit an unusually low percentage of group one activity, but the figures for the year indicate a trend toward more "normal" relative proportions in the legal activity, a trend which is complete by 1674-75. King Phillip's War, coming in July, 1675, is reflected in the same phenomenon that one saw in the numerical explanation of cases--a general drop in numbers. Proportions among the LIs, however, remain close enough to suggest that the changes here are merely numerical. Proportional stability is also characteristic for the legal activity during the following year. Even though the number of cases shoots up, the percent of activity for each grouping remains much the same. In group two the single anomaly for the period of the war and Edward Randolph's attack on the charter is the slight rise of 3 percent from a steady 22 to 25 percent. Group three, on the other hand, exhibits an interesting rise and fall between the abrupt drop from 20 percent in 1673-74, to 13 percent in 1674-75, a swing back to a high of 18 percent and another fall. This trend is particularly interesting when one considers it in conjunction with the general downward trends among the high legal indices in group four. For most of these changes and trends my opinion is that no other explanation is more sufficient than the responsiveness of participants in legal activity to political or power stress in the community.

Using 1674-75 as the "control" year, the year in which the proportion of legal activity most closely reaches the general proportion of groupings to the total number of participants, one can hardly help observing a trend between the first year, 1671-22, and the year of rest, 1674-75, as a response to the political upheaval in the colony. The Half-Way Covenant was the issue, but the outbreak of politics and hence a change in civil/legal activity was its consequence.

Given the numerical preponderance of group one among the several groups of legal indices, one would expect that its proportion of activity would always be high. Given the assumption that economic interests (an issue which I shall discuss later) were more important to those who carried higher legal indices, one can expect their level of activity to remain fairly stable as it does throughout most of the decade. Yet, during 1671, 1672, and 1673, the relative positions change. Those who carried low legal indices failed to participate at their usual proportional level. Those in group two, for whom a participation rate of 22 percent was normal, participated at a higher proportional level. Together group two and group three usually take up about 35 percent of all legal activity compared to group one with a usual 50 percent. In 1671-72 this relation holds, 34 percent and 53 percent. In 1672-73 groups two and three account for 52 percent of the activity compared to 29 percent for group one. Recalling that during this same year, perhaps

for the first time in Massachusetts history, the "people" were called upon by the clergy for a commitment to the theological structure of the community, I suggest that this proportional switch reflects a drain on legal participation among those whose legal responsibilities were marginal in a practical sense, that the power issue gave them another outlet and that the growth of participation among the other two groups reflects a relative power shift. Those who traditionally use the courts for "economic" reasons were using them here as a political response. (With one preliminary caution, I suggest that the cases support my suggestion. Legal Indices are composed of numerical values which I assigned to types of legal activity. The value of suing is +2 and the value of being sued is +1. The difference of one point per suit could color the cases, but the evidence far outweighs the caution.)

Among the twenty-seven routine cases for the year 1672-73, fifteen involve litigants who carried an LI of 0.0.4 or less.[1] An extreme example of such cases is Wharton v Hudson, Joy and Owen, in which Richard Wharton, 3.3.30, acting as agent for Robert Bendish, 0.0.5 (one of Wharton's many business associates), was suing Captain William Hudson, 12.9.116 (Captain Hudson is the single "other" in the tables, and one can see that his LI is unusual), Thomas Joy, 2.4.45, and Robert Owen 0.1.4. Owen was participating at the law among the giants of Suffolk County business affairs, but the case was typical of seven others among the twenty-seven.

Five cases involved only individuals whose LIs lay in the lowest group. There remain two cases: Addington v Timberlake, 1.2.5, in a simple case of debt due by bill, decision for the plaintiff. In the second case Thomas Long, 0.2.4, was suing a family member, Joseph Long, 2.0.7, for a twelve acre lot at Dorchester, the decision was for the defendant who was in possession of the lot. These cases show a subordination of LIs in group one to those in the higher activity groupings, a paucity of legal initiative from these LIs during a period when they were inactive legally but were being courted politically by the clergy, and a numerically high level of activity by those in higher groups who exhibit a dominance of initiative, and who were inactive politically relative to the clergy.

Comparison with twenty-seven routine cases selected at random from the year 1674-75 is revealing. In the sample are seven suits involving both a plaintiff and defendant whose LIs are below 0.0.5, eight suits brought against those in group one by those in groups two, three, and four (five of which involve plaintiffs who carry LIs from group three or group four), and four suits initiated by those whose LIs are below 0.0.5.[2] These four suits are direct, unlike those in the 1672-73 records: Ball v Rigbee for a debt by failure to provide the proper quality merchandise, Holman v Briggs for a debt by bill, Noyse v Wayte for a computed share of an estate, and Scarlett v Long (the same Joseph Long who was awarded the lot at Dorchester) for the return

of a small boat which had been set adrift. All except the last case were decided for the plaintiff. Thus, in 1674-75, the group one litigants had regained their legal initiative, as expressed in Table 9, and, I suggest, had reestablished in their attitudes the "proper" value relation between law and politics.

These groups also were responsive during the years of King Phillip's War and its aftermath. Yet the numerical changes shown on Table 7, unaccompanied by any relative change among the individuals who represent the legal index groupings, suggest that this crisis was devoid of the internal stress which was evident during the Half-Way crisis. To be sure the impact of the war was uneven. Outlying towns such as Springfield and Northampton in the Connecticut Valley suffered more than the small towns close in toward Boston. But the difference drove no psychological wedge between towns nor among the people. Logistic problems, the necessity for cooperation through the United Colonies, and the refugee problem attended by severe psychological disruption for some members of the community rather acted to draw the colonials together. As a power issue, then, King Phillip's War was neither divisive nor political in terms of the power system in Massachusetts. Records from the period do suggest that the war crisis was viewed as a crisis of authority in the colony, and the upsurge of legal activity during 1676-77 sheds some light on the Puritan's perception of the crisis.

Graph 2 exhibits a steep rise in the number of debt and injury cases for the year 1676-77. Both types of personal cases fell the following year, then over the next two years again reached high levels of activity. Injury cases showed more response, more change, than the other category, debt. Among the thirty-four injury cases eleven involved questions of authority. Among the parties in these eleven cases were twenty-one people who carried LIs of under 0.0.5 and thirty who carried LIs between 0.0.5 and 0.0.29. In addition to these eleven authority cases, there were four which involved the matter of wages, a social matter in Massachusetts law and values, and two cases which involved matters of property in which the jury found against the possessor, an unusual decision in Massachusetts courts and one which was against general common law principles. Thus, by definition, over half of these cases were value oriented.[3]

First among the cases involving authority is Williams v Lake, John Williams in suit against John Lake for the failure to deliver a parcel of goods which had been attached previously by Return Wayt, deputy marshal, but the parcel, instead of being arrested, was delivered to Ezekiel Fogg and Company, representatives of Lake. The jury brought in a special verdict, that if the members of the company, John Morse, Joseph Webb, and Nathanael Williams could give valid testimony, the jury would find for the plaintiff, but if their testimony was not valid, they would find for the defendant. The magistrates found for the defendant.

Williams was suing for the delivery of the goods to another deputy marshal, Joseph Webb, who obviously had a conflict of interest but whose official responsibility was to secure the goods for Williams pending a determination of ownership in the courts. Thus, in finding for the defendants, the magistrates determined the issue in favor of possession, a common law principle and at the same time successfully avoided the question whether Wayte and Webb had properly performed their duties as deputy marshals.[4]

A similar issue was at stake in a series of cases, Waldron v Marshall, Waldron v Basset, Waldron v Jenkins, Waldron v Edmunds and Waldron v Muzzey. They were the civil actions in what must have been a raid by several persons on Isaac Waldron's farm (called Bennet's Farm) north and east from Boston several miles, near Lynn. Waldron leased the farm from the Bennet family. He lost to several persons, the defendants listed in the cases noted, several cattle, some andirons and other odds and ends. Waldron created an authority issue in the case by depending his testimony in appeals on two statements, one by Governor John Leverett given in court and the other by Simon Bradstreet soon to be elected deputy governor. The Governor noted that Waldron should certainly prosecute the defendants at criminal law (as was his legal duty), but Mr. Bradstreet stated in public (not in court) that the proper place for prosecution was civil court.

Testimony in the cases, particularly in Waldron v Marshall, was contradictory, and grounds exist for believing that Waldron lost his goods out of neglect of the farm and out of confusion about his lease. Nevertheless, in all instances the juries found for Waldron giving him the goods in question or the value of them. Upon appeal to the Court of Assistants the judgments were sustained. Bradstreet's advice was sound, at least from the vantage of hindsight. But Waldron's victories carried political implications. Governor Leverett had given him the advice to prosecute criminally. In victory Waldron refused to do so and was fined for it. He appealed to the Court of Assistants from this criminal prosecution, the court sitting under Governor Leverett. Not only was the criminal fine upheld, but the higher court assessed additional costs against him thus stressing the criminal disregard of his duty and of Leverett's authoritative statement.[5]

Williams v Woodbridge, another case involving figures of authority, was a suit by Nathaniel Williams, acting on behalf of Captain William Gerrish of Newberry, against Thomas Woodbridge for failure to pay an award handed down on an arbitration agreement by John Leverett, esq., Thomas Danforth, esq., William Stoughton, esq., Captain Nathanael Saltonstall and Mr. John Hubbard. Usually in such cases the decision went against the bond because it was so high (in this case it was for L500), but the court left the plaintiff free to reprosecute his original case.

Samuel Eliot Marison notes that the award seems to have turned on some technical considerations, but I suggest that it turned on the political implications of the award coming as it did from such a group of political luminaries as those who arbitrated the original case. This very high bond was upheld and renewed in the decision.

Williams was not a litigious man, as attested by his LI, 0.0.1, nor was Captain William Gerrish, 2.0.3, for whom Williams was prosecuting the case. On the other hand Thomas Woodbridge with an LI of 2.4.19 was an active participant at the law. Williams used Woodbridge's litigiousness against him when the appeal came before the Court of Assistants, noting that Woodbridge delighted in legal contention. Moreover, the politics of the colony found Governor Leverett and Mr. Bradstreet, if not on opposing sides of the imperial questions of the day, at least on opposing sides between domestic factions, exclusive of the "civil men" who were out and out imperialists. Mr. Bradstreet's son, Dudley Bradstreet, was a good friend of Mr. Woodbridge and was at Woodbridge's home in Newberry when the marshal came to arrest Woodbridge. Not that the personal differences between the two men would necessarily extend to their families, but the internal politics of the colony were at least tangentially involved in this case. On appeal the Court of Assistants, with Governor Leverett standing down from the bench, returned a special verdict, handing the final decision back to the magistracy. They confirmed the former judgment but

chancered the award to L240, a chancer which the Suffolk Court, oddly, had not performed.[6] Individuals who stood in high positions of authority in the colony were thus exonerated by this award and justice was tempered by mercy. Social morality and abstracted interests were thus balanced under the corporate responsibility of the magistrates.

A final case involving the political authority of the colony was Sweet v Gibbs. John Sweet, attorney to his brother James Sweet of Rhode Island and to Philip Sweet of Massachusetts Bay, sued Benjamin Gibbs for the return of twenty-five Indians who had been arrested by Gibbs on an island which belonged to the Providence Plantations. This Indian case may have involved a military action, but nothing in the records suggests that it did. It does not seem to have any official importance, and thus one may assume that Gibbs was either rescuing the Indians, an unlikely action, or that he was wresting them from their masters for his own personal interests. James Sweet, on the other hand, was probably involved in the Indian slave trade, these twenty-five men, women and children probably captives from the recent war. Imperial considerations were, of course, important in any such inter-colonial case especially one in which citizens of Rhode Island and Massachusetts Bay were contending. The jury found for the Sweet family enterprise, requiring Gibbs to pay satisfaction for the Indians, L37.10.0. Gibbs appealed to the Court of Assistants, Governor Leverett presiding, just as he was presiding over the fight against

Randolph, and the Court of Assistants reversed the former judgment.[7]

Other cases which involved authority were less public. One was a suit involving family authority--failure to educate an apprenticed daughter properly, Lidgett v Russell. A second, Orchard v Gilbert, was a suit by a master to regain possession of his servant who had been improperly levied against by another and thus imprisoned. A final case involved a citizen's arrest, Sutton v Woodcok, in which damages were awarded to the arrested person against the arresting citizen.

In all, these authority cases include fifty-one people who represent a fair cross-section of the community. Magistrates, feltmakers, servants, carpenters, ship captains and merchants are among the occupations of these litigants. New Hampshire and Rhode Island were residences of William Waldron and James Sweet respectively, and Massachusetts towns represented as residences were Boston, Lynn, Charlestown, Scituate, Dorchester, Hingham, Newberry and Cambridge. Suffolk Court sessions were always cosmopolitan, often including cases arising in the West Indies, Virginia, New York and the other New England colonies. Yet, that this group of eleven cases is so representative of the several towns in an arch of about twenty miles around Boston, possibly an accident of history, lends to the whole legal process during their litigation an air of geographical and social pervasiveness. I suggest that the cases represent a reassertion of

authority in the aftermath of the war. Again, the law was acting to draw legal activity in times of uncertainty or stress. Such activity in turn provided occasions for the legal system to perform its integrative function. It drew such cases not mysteriously through some operative "spirit," but through the pervasive adherence to Puritan theology among Massachusetts citizens. They expected during times of stress that their values would be supported in actions at law, not particularly in the outcome of cases, though that was certainly their conscious aim, but in the general acknowledgment of value relationships which were unarticulated at the law, but clearly outlined in the theology, first, and then built into both the formal and informal operation of the political system. By pulling the whole community together the war provided a situation--a crisis without the internal stress which accompanied the earlier political issues. Legal reaction during Randolph's attack on the colony presents further indication that those who lived in the colony acted according to their "proper" value positions during stress periods.

CHAPTER XIV

LITIGANTS AND POLITICAL ACTIVITY

Edward Randolph's attack on the colony found support within the Puritan community. I have already mentioned a nascent split between Governor Leverett and Duputy Governor Bradstreet. Neither man was sympathetic toward Randolph's objectives, the destruction of Puritan independence, but Bradstreet had a clearer vision of the future and what it must bring to Massachusetts. Around him gathered the hopes of the imperial interests in the colony, merchant families whose eyes were turned seaward from the interior of the colony, presaging the triumph of sail which was to carry Massachusetts through the next century and a half. Two groups in the colony took Mr. Randolph seriously: first, the orthodox whose membership was gathered from small shopkeepers, farmers in the rural areas of the colony and those whose families held them to the old-line Puritanism of John Cotton and Thomas Shepard; second, the rising merchants whose families were scattered around the trading world. Both groups were represented in the final crisis during the decade of the 1670s--the movement in England toward curtailing the "liberties" of Massachusetts Bay.

Sixteen seventy-eight saw the flow of bad news from England into the Puritan world. It also saw a numerical rise

in the litigants coming into the Suffolk County Court carrying an LI of less than 0.0.5, an increase in this one category of forty-six items of legal activity from 177 to 223. Proportionally, the share of total activity rose from 51 percent in 1677-78 to 60 percent in the following year. One must consider this increase in conjunction with a general trend, neither numerically nor proportionally significant in itself, toward a decrease in legal activity within the three highest LI groupings.

Each year legal activity occurred during quarterly sessions beginning with the October session and ending in the July session of the following year. Table 10 shows the quarterly divisions of the critical years in Massachusetts Bay and indicates the rise and fall of crisis responses. Such a rise is most significantly evident during the year of Randolph's greatest attack on the colony, coming in July after the news had reached the colony of his plan but before news of the full success of the colonial counter-plan had reached there. In fact, as one can see from reading Table 10, each crisis year shows a similar rise in legal activity during the July session. The year which historically was most free of crisis, 1674-75, shows a decrease in legal activity for that month to the unusually low level of sixty-six items, as low as the May, 1673, session, the first election session after the political upheaval of the preceeding year. Normal incidence of activity for any given session was about eighty so that one can suggest significance

Table 10. Numerical Display of Legal Activity by Quarterly Sessions

Year	Session 1	2	3	4
1672-73	81	95	64	121
1674-75	72	94	89	66
1676-77	110	85	91	136
1678-79	73	89	74	137

for the incidence of activity at the February session of 1672-73, the July session of the same year, the two anchor sessions, October, 1676, and July, 1677, and the session during the greatest circulation of information about Randolph's attack, July, 1679 (after the court had acted to combat him, but before their success was known). Significance of the earlier sessions I have suggested earlier. More than during the previous sessions the questions pertinent for the 1678-79 sessions are who these people were and why they responded as they did (or failed to respond). Answers to these questions are particularly interesting when one notices that relative numbers among groups two and three remained close to the previous year and that a downward trend continued for three years, including 1678-79, among the higher LIs.

Among the legal actors in the July session, 1678-79, there were sixty-eight people who carried LIs from group one. They won forty-one cases and lost twenty-eight; eight

of the actors participated in the court only as attorney, arbiter, auditor or surety. There were no western towns represented, but the geographical pattern spreads out from Boston into Suffolk County, as one might expect, and north and east to New Hampshire and Maine. The following is a list of towns and their frequency of representation:

Boston - 26	Milton - 1
Roxbury - 9	Salem - 1
Dorchester - 2	Watertown - 1
Hingham - 2	Ipswich - 1
Braintree - 2	Hadley - 1
Dover, New Hampshire - 2	Hull - 1
Weymouth - 1	Scarborough, Main - 1

Compared to other sessions, this one exhibits a low level of activity from the Suffolk towns. Actors in the court also exhibit a wide range of occupations:

Mariner	Keeper of a coffee house
Merchant	Landed gentleman
Ship captain	Prison keeper
Tanner	Miller
Dyer	Minister
Cordwainer	Tavern keeper
Cooper	

There is sprinkled among this group eleven individuals who carried political offices during the decade and who thus have Political Visibility Indices. Such a number is proportionally high for the participants in the court overall and is unusually high for those who carried the lowest LIs. A list of these individuals follows:

Jonathan Bridgham	2.1.4/3	John Kinsley	1.0.2/2
Thomas Daniel	1.0.1/30	Thaddeus MacCarty	0.0.1/1
Joseph Dudley, esq.	1.0.2/38	John Marion, Sr.	1.1.3/8
William Gilbert	0.3.4/3	John White	0.0.1/4
William Griggs	1.2.4/2	John Wing	0.1.3/4
Richard Hall	0.2.3/15	John More	0.1.3/3

If a liberal sprinkling of office holders means that this group was likely to be somewhat politically conscious, if the relatively high status of occupations indicates intensified consideration of economic conditions (only the tanner among them would have been regarded as low status), and if their relative success at the law is significant, this group of legal actors is unusual. Forty-two of these actors came into court only this one time out of ten years.

These sixty-eight actors were involved in thirty-eight cases during the July session, fourteen of which involved some value issue. Seven of the cases were debt cases, five estate, six public matter, six injury, six damage and three cases were suit for title. Five were suits withdrawn or litigants non-suited. Such an even distribution stands in contrast to the general distribution of cases shown on Graphs 1, 2, and 3, and even though the numbers are too low to be significant such an unusual pattern does suggest, again, that this group of legal actors was unusual. No single telling element explains their unusual numbers in this session of the court, but the overall distribution of characteristics, combined with the knowledge that actors responded legally to stress in the Massachusetts system, suggests a general community response to the pressure arising from imperial threats against the political independence of the Puritan state.

A decline in activity among the upper groupings of LIs also suggests such a response between 1676 and 1679. One

must exclude Captain William Hudson's bizarre LI, 12.9.116, the "other" category, out of hand. (Captain Hudson piled up such a history of legal activity by suing his family and business associates over these several years. He abruptly ceased activity after 1676-77. Because he was still alive I assume that he retired from his business during that year.) Excluding the "other" category, a steady decline proceeded in the legal activity of those persons who carried LIs in groups four, five, and six. Their total in 1676-77 was forty-one. In the following year it dropped to thirty-six, then to twenty-one. If the projections for 1679-80 are accurate and can be extended to actual legal activity, their proportional share of the legal activity would have stabilized during the last year although their total items of activity would rise. The steepest proportional decline during this general falling-off was in 1678-79, the year when Randolph's business became generally known in the colony. I suggest that the individuals involved in this activity were responding favorably to imperial pressure and were turning their interest outward from the colony and its local courts. Their occupations and interests are rather better recorded than those of the more numerous individuals who participated at a lower level in Suffolk legal affairs, and their several histories are instructive. They were not Puritans in the sense of adhering to the old-line values, and their legal responses show a trend away from adherence to those values. Puritan dual legal theology required <u>increased</u> participation; their participation decreased.

Table 11 is a list of individuals who carried LIs in the highest three categories. One should bear in mind that they represent those people in the colony who brought an unusual volume of business before the Suffolk County Court. As I noted in the discussion of case data, caution is necessary. Some of the individuals who carry lower LIs would possibly move into higher categories if this study were expanded to include the courts for Kittery in Maine and the Essex County Court. For example, a petition for submission to royal authority, tendered to the General Court in 1666 during the visit of royal commissioners, was signed by twenty-five prominent men several of whom appear among the highest LIs. Several others of the signatories appear before the court, but their business is sporadic and as a consequence their LIs are low. They belong to the "anti-Puritan" faction or party as it was sometimes called, and any categorization of them as persons who exhibit low legal activity throughout the colony is probably erroneous. On the other hand most of those who signed the petition were from Boston, the seat of government and place where the Suffolk Court sat so that it would be reasonable to assume that if these men had legal business they could easily have brought it to their own county court. Nine of the signatories carry LIs in group one, but only five of them appear during the crucial sessions of the court - Habbakuk Glover with 1.2.3, appeared in 1672-73, Samuel Bradstreet, 0.0.3, in 1672-73, John Conney 0.0.2, in 1677, Ephraim

Table 11. Individuals Who Carry Legal Indices in the Highest Three Groups and Their Political Visibility Indices

	LI/PVI		LI/PVI
Major Thomas Clarke, esq.	11.6.40/59	Thomas Robinson	3.2.21/0
Captain Benjamin Gibbs	4.11.44/1	Joseph Rock	4.6.24/3
Mr. Thomas Joy	2.4.45/0	Mr. Sampson Sheafe	8.4.21/0
		Mr. Samuel Shrimpton	2.2.21/0(2)
Theodore Adkinson, Sr.	0.1.30/1	Mr. Anthony Stoddard	3.2.20/48
John Dafforn	2.1.31/0		
Roger Rose	3.11.32/0	Isaac Waldron	7.3.23/2
		Lt. Richard Way	0.1.22/0
Mr. John Usher	5.4.33/0(2)	Mr. James Whitcomb	5.0.21/3
Richard Wharton	3.3.30/2		
Captain Thomas Brattle	4.1.26/53		
Mr. Thomas Deane	5.0.24/0		
Mr. Leonard Dowden	1.0.21/2		
Ezekiel Fogg	3.7.20/0		
John Giffard	4.5.24/0		
Captain Hudson Leverett	3.6.28/0		

This table includes all of the people who carried the highest legal indices. Of these, four, Brattle, Deane, Wharton and Whitcomb signed the petition of 1666. Of the remainder the "faction" of merchants could claim Stoddard, Clarke, Leverett, Usher, Shrimpton and Waldron.[7] Edward Tyng, 7.0.19, was somewhat sympathetic to merchant interests as was Richard Russell of Boston, 1.0.2, Thomas Kellond, 1.1.10, John Joyliffe, 0.0.10, Robert Gibbs, 2.0.11, Nicholas Page, 1.4.10, these last four having signed the Petition of 1666. Of those listed in the table only Ezekiel Fogg represents an occupation of low status--tanner. Most were merchants.

Turner, 2.1.3, in 1673, John Woodmancy, 0.1.2, in 1677. Any distortion of previous statement about these categories from the inclusion of these individuals would be very small.

As Bernard Bailyn has pointed out in his study of the merchant families of Massachusetts, these are not politically powerful men. Indeed, the three high PVIs among them are carried by three members of the "opposition" to orthodoxy. The remainder held only minor offices such as constable, fireward, hogreeve, sealer of weights and measures, and so forth. Some were appointed to offices, Usher and Shrimpton, for example, as constables for Boston, and refused to serve. Bailyn suggests that these men were happy as a group to see Edward Randolph come to Massachusetts,[2] and very probably many of them were, particularly men like Richard Wharton and Thomas Deane who engaged in running quarrels with the Puritan hierarchy even as they became prominent members of the community by connecting themselves with other, more orthodox merchant families.[3] Most significant for this group of individuals as litigants is the steady number of cases through 1676-77, twenty-five; 1677-78, thirty-one; and then a sudden drop during the year when Randolph's attack was circulating as news in the colony.[4] A rising trend in the half-year's records back to a projected twenty-two suggests that these merchants were again on the "defensive" legally and culturally. Even though the figures are too low to be statistically significant, the curious drop, coupled with other indicators (Table 8 and Table 9), supports the

suggestion that this group reacted according to its values which were material, just as the participants in group one reacted according to theirs which were theological.

Those litigants and participants in the court who best represent the general population of the colony, then, did follow the requirements of a political and legal system, the integration of which depended not on law as a categorizer of interests but on law as a creator of interest. Such a system has about it a certain air of abstraction, the mutual subordination to the law which was the basis of it requiring that participants hold themselves to rather narrow channels of participation. The common epithet "Puritan," which has often been applied to the "revolutionary" movements toward morality in the Soviet Union and in the People's Republic of China, suggest such a narrowing. Slogans in place of scripture should not disguise this historical similarity. Law narrowed the Puritan's choice at the same time it was providing him an outlet for systemic tension. Many merchants were not part of the system, as the ministers perceived when they categorized them as "civil men." Civil men fought for their material reality. Puritans, both the high and the low among them, obeyed their theological reality. Authority, the basis of the theological reality, was called into question during the religious crisis early in the decade and again during the imperial crisis.

What role did authority play in the legal process? Response within legal values to stress is a stepping off

point for answering this question. From it a comparison of PVIs to LIs will tell whether the legal collectivity of Puritan Massachusetts regarded power specifically as it did generally, in persons as it did in value. Table 12, a list of LI/PVIs, provides the information.

Again, from the diversity of occupations one can safely say that these men represented a cross-section of the community. Farmers are not represented in proper proportion to their numbers in Massachusetts, but one might well speculate that many of those not identified in any records as having any skill or following any business were farmers. In all there were 1,198 plaintiffs in the Suffolk County Court during the 1670s. (Multiple plaintiffs and defendants plus repetitive activity prevent these numbers from matching those in the case graphs.) In all cases filed, plaintiffs and defendants included, there were 871 individual litigants who won their cases and 815 who lost. Comparing the two, then, one must note a close balance among two groups the numbers of which are statistically significant. But a more startling statistic emerges when one compares these numbers minus the cases won and lost by those who held elective and appointive local and colonial offices in Massachusetts. Table 13 reveals these figures and an almost incredible balance after the figures of those who carry PVIs are subtracted.

Those who held political office in the colony won their cases more often than those who have no identifiable PVI.

Table 12. LI/PVI, Occupation and Number of Suits Instituted by Those Men Who were Politically Active During the Decade of the 1670s

Name	Occupation	LI/PVI	Plaintiff
Joseph Adams	Maltster	0.0.2/3	0
Nathaniel Adams	Turner	0.1.1/1	0
Bozoon Allen	Tanner	3.1.8/2	4
Henry Allen	Joiner	0.2.6/5	2
Deacon Henry Allen	Carpenter	1.0.1/13	0
John Anderson	Shipwright	1.0.5/4	2
Mr. John Appleton	(Merchant)	0.1.5/20	0
Peter Aspinwall	Farmer	1.0.2/4	1
Theodore Atkinson, Sr.	Feltmaker	0.1.30/1	8
Jonathan Balston, Sr.	-	2.1.5/2	2
Nathanael Barnes	Merchant	3.0.5/(1)	2
Samuel Bass, Sr.	-	1.0.2/20	1
John Bateman	-	0.0.1/2	0
Paul Batt	Glazier/tanner	1.2.5/6	2
Timothy Batt	Tailor/tanner	2.0.4/2	2
Nathaniel Beale, Jr.	(Farmer)	3.1.6/6	2
Jeremiah Belcher	(Merchant)	0.0.1/6	0
Mr. John Bicknell	-	0.1.4/10	1
Mr. Thomas Blighe, Sr.	Sailmaker	0.2.2/9	0
Captain Peter Bracket	Landed (speculator)	1.2.10/12	3
Mr. James Brading	(Merchant)	1.0.2/3	0
Mr. Samuel Bradstreet	Physician/(Merchant)	0.0.3/5	1
Simon Bradstreet, esq.	Merchant	1.0.7/98	2
Captain Thomas Brattle	Merchant	4.1.26/53	8
Joseph Bridgham	-	0.1.1/3	0
Jonathan Bridgham	Tanner	2.1.4/3	1
Mr. William Brown, Sr.	Fisherman	0.2.2/5	0
Nathaniel Byfield	(Merchant)	3.2.12/2	5

Table 12--(continued)

Name	Occupation	LI/PVI	Plaintiff
Richard Collicott	Landed (speculator)	2.2.16/3	2
Edward Carrington	Turner	1.0.1/2	0
Anthony Checkley	Merchant	0.1.15/1	1
Captain Roger Clapp	(Farmer)	1.0.2/15	1
Andrew Clarke	-	0.1.4/1	1
Mr. Christopher Clarke	Marriner/merchant	1.0.2/8	1
Thomas Clarke	-	1.1.3/4(6)	1
Major Thomas Clarke	Merchant	11.6.40/59	15
Lt. Thomas Clarke	-	0.0.4/36	0
Samuel Clements	-	1.0.1/1	0
John Conney	Cooper	0.0.2/2	0
Dr. Elisha Cooke	Physician	2.1.4/1	1
David Copp	-	0.0.1/4	0
Mr. Edward Cowell	Cordwainer	2.1.10/4	3
Joseph Crosby	(Farmer)	0.1.7/3	1
Jonathan Curwin	-	1.0.5/5	0
Mr. Humphry Davie	Merchant/landed	4.2.15/40	6
Major Benjamin Davis	Merchant	0.0.2/2	0
Samuel Davis	Mariner	1.1.5/10	1
Captain William Davis	Apothecary	3.1.17/15	3
Henry Deering	-	0.2.2/4	0
Fathergone Dinley	Butcher	1.2.7/1	3
Leonard Dowden	-	1.0.21/2	3
Joseph Dudley, esq.	Merchant	1.0.2/44	1
Paul Dudley	Merchant	2.0.4/5	2
Mr. Jeremiah Dummer	Goldsmith	1.0.2/4	1
Giles Dyer	-	2.0.4/6	0

Table 12--(continued)

Name	Occupation	LI/PVI	Plaintiff
Robert Earle	Prison Keeper	1.0.2/2	0
Obadiah Emmons	Shoemaker	1.4.14/1	2
John Endicott	Merchant	4.3.14/1	1
James Everill	-	2.0.2/2	0
Captain John Fairweather	Business/shipping	2.1.6/12	3
Lt. Theophilus Frary	Cordwainer	0.1.1/10	0
Mr. John Freake	Ship's master	1.1.13/3	3
Captain Benjamin Gibbs	(Merchant/trader)	4.11.44/1	9
William Gibson	Cordwainer	0.0.1/6	0
William Gilbert	Cordwainer	0.3.4/3	1
Captain Benjamin Gillam	Ship's master	1.0.7/1	2
William Green	-	2.4.11/1	5
William Greenough, Sr.	Mariner	1.2.19/5	4
Joseph Gridley	-	1.1.3/8	1
William Griggs	Cooper	1.2.4/2	3
Richard Hall	-	0.2.3/15	0
Mr. John Harrison	-	2.0.3/3	1
William Harrison	Bodice Maker	1.0.2/2	1
Samuel Haugh	-	0.0.1/2	0
Mr. William Hawkins	Butcher/surgeon	1.0.2/1	0
Mr. John Hayman	Ropemaker	0.0.2/2	0
John Hayward	Scrivner	0.0.1/2	0
Captain Daniel Henchman	Schoolmaster	1.0.7/2	2
James Hill	-	0.0.1/4	0
Thomas Hill	Tanner	2.3.9/2	4
William Hoare	Baker	1.1.8/2	2
Caleb Hobart	-	0.0.1/3	0

Table 12--(continued)

Name	Occupation	LI/PVI	Plaintiff
Captain Joshua Hobart	Mariner	0.0.2/10	0
Lt. John Holbrooke	-	0.0.3/15	1
William Hollowell	-	1.1.10/5	2
Joseph Homes	-	1.0.2/2	1
Captain John Hull	Goldsmith	1.3.17/47	3
Captain Edward Hutchinson	(Merchant)	1.0.16/14	4
Eliakim Hutchinson	Merchant	0.2.16/(2)	4
Captain Elisha Hutchinson	(Merchant/Mariner)	1.1.13/26	2
Mr. Samuel Jacklen	-	0.1.1/4	0
Jacob Jesson	Ironmonger/merchant	0.1.2/2	0
Samuel Johnson	Ship's master	0.4.7/4	1
Mr. John Joyliffe	(Merchant)	0.0.10/49	0
John Keene	Mariner/inn keeper	5.2.18/1	7
Mr. Thomas Kellond	Merchant	1.1.10/(2)	3
Ensign William Kent	-	7.2.17/2	4
Captain John Lake	Tailor	0.1.3/6	0
Captain Thomas Lake	Merchant/trader	0.0.4/30	0
John Leverett, esq.	Merchant	5.0.11/94	5
Peter Lidgett	Merchant	0.0.14/(3)	2
Edward Lilly	Cooper	1.0.7/1	2
Mr. Simon Lynde	Merchant/landed	4.1.17/1	6
Thaddeus Mackarty	-	0.0.1/1	0
John Marion, Sr.	Cordwainer	1.1.3/8	1
John Marsh	-	1.1.4/2	2
Mr. Arthur Mason	-	1.1.3/7	0
Samuel Mattock	-	0.1.1/9	0
George May	Ironmonger	1.0.2/1	1
James Meares	Feltmaker/landed	0.2.5/2	1

Table 12--(continued)

Name	Occupation	LI/PVI	Plaintiff
William Measure	-	1.1.5/5	1
Mr. Richard Middlecott	(Merchant)	3.1.9/2	2
John Moore	-	0.1.3/3	0
Thomas More	-	0.0.3/2	0
Captain Samuel Mosley	Trader	1.0.15/1	4
John Nash	Cooper	0.1.1/1	0
Andrew Neale	Tavern Keeper	0.0.2/1	0
Robert Noakes	-	0.0.5/1	1
Samuel Norden	Shoemaker	1.0.7/1	2
Mr. John Noyes	-	2.1.3/2	1
Elisha Odlin	-	0.0.1/2	0
Captain James Oliver	Merchant	2.1.8/32	1
Nathanael Oliver	-	0.0.5/2	1
Robert Orchard	Feltmaker/merchant	2.1.10/1	3
Nicholas Page	(Merchant)	1.4.10/2	2
Moses Paine, Sr.	-	1.2.5/7	0
Mr. Richard Parker	Merchant	1.0.5/3	2
Deacon William Parkes	-	2.0.4/30	1
John Parmiter	Housewright	2.1.13/1	5
Samuel Peacock	-	0.1.1/1	0
Thomas Peck, Sr.	Shipwright	1.1.6/6	2
Seth Perry	Merchant	0.2.7/3	0
John Phillips	-	0.0.3/2	1
William Phillips, Sr.	Landed	1.0.16/8	5
Zecharaiah Phillips	-	1.0.7/1	2
John Pool	(Merchant)	1.1.7/2	1
Abel Porter, Jr.	-	1.0.7/4	2
Daniel Preston, Sr.	-	0.0.5/12	1

Table 12--(continued)

Name	Occupation	LI/PVI	Plaintiff
Mr. Oliver Purchas	-	0.0.2/20	0
Lt. Edmunc Quinsey	-	0.0.3/41	0
Mr. Edward Rawson	-	2.0.6/45	2
John Raynsford	-	3.0.4/5	1
Solomon Raynsford	-	3.0.4/2	1
Lt. Nathanael Reynolls	-	0.0.1/5	0
Mr. John Richards	Trader	1.0.7/25	1
Nathanael Robinson	-	1.0.1/1	0
James Russel	Merchant	1.0.1/5	0
Richard Russel, esq.	Merchant	1.0.2/98	1
Mr. John Saffin	Landed/attorney	1.1.15/5	4
Jabez Salter	-	4.3.11/3	4
Robert Sandford	-	1.0.2/2	1
Ephraim Savage	-	0.1.9/6	3
Major Thomas Savage	Merchant/landed	2.0.12/47	4
John Scarlett	(Farmer/merchant)	2.1.8/3	0
Captain Samuel Scarlett	Ship's master	0.1.2/2	1
John Scottow	-	3.2.5/1	0
Edmund Sheffield	-	0.1.6/3	1
Edward Shippen	-	3.0.7/(2)	3
Samuel Shrimpton	(Merchant)	2.2.21/(2)	5
Benjamin Smith	-	0.1.2/3	1
Thomas Smith, Sr.	Shipwright	0.3.4/5	1
William Smith	-	0.0.5/6	1
Thomas Stanberry	Butcher	0.0.1/3	0
Mr. Anthony Stoddard	Linendraper/merchant	3.2.20/76	5
Simeon Stoddard	-	0.0.2/(2)	0

Table 12--(continued)

Name	Occupation	LI/PVI	Plaintiff
William Stoughton, esq.	Minister/merchant	3.0.8/124	3
Mr. Henry Taylor	Surgeon	1.0.2/3	1
Mr. William Taylor	Merchant	1.1.3/1	1
Benjamin Thompson	Physician/schoolmaster	2.0.7/1	3
Benjamin Thwing	Carpenter	0.1.3/2	1
James Townsend	Housewright	2.0.3/2	1
Ens. Daniel Turill, Jr.	-	1.0.2/2	1
Daniel Turill, Sr.	Blacksmith	0.2.9/16	1
Edward Tyng, esq.	Merchant/brewer	7.0.19/80	9
Hezekiah Usher, Jr.	(Merchant)	1.4.18/(2)	3
Hezekiah Usher, Sr.	(Merchant)	4.0.8/36	4
John Usher	Stationer/(merchant)	5.4.33/(2)	8
William Veazy	-	0.0.1/12	0
Hilliard Veren	Merchant	1.0.1/7	0
Isaac Waldron	Physician	7.3.23/2	11
Isaac Walker	Merchant	0.1.4/5	1
Samuel Walker	-	0.0.3/2	1
Thomas Walker	Brickburner	0.0.5/4	1
Mr. John Walley	-	3.0.8/5	2
Humphry Warren	Merchant	4.2.16/(2)	4
Joseph Webb	(Cordwainer)	1.0.3/1	0
Thomas Welds	-	0.0.3/5	1
Richard Wharton	Merchant/landed	3.3.30/12	4
Joseph Wheeler	Tailor	0.0.5/2	1
James Whitcomb	Merchant	5.0.21/3	5
John White	-	0.0.1/4	0
Sgt. Samuel White	-	0.0.1/8	0
John Wilkins	-	0.2.4/1	2

Table 12--(continued)

Name	Occupation	LI/PVI	Plaintiff
John Williams, Boston	Boatman	7.8.36/1	8
Nathaniel Williams	-	0.1.1/2	0
Mr. Edward Willis	-	1.0.1/2	0
Mr. John Wing	Tavern keeper	0.1.3/4	0
Waitstill Winthrop	Trader/landed	0.0.3/18	1
Elder John Wiswall	Ironmonger/trader	0.1.11/2	3
John Woodmancy	-	0.1.1/2	0
Mr. Peter Woodward	(Landed)	1.0.2/5	1
Isaac Woody	Mfg. gunpowder	1.0.3/1	0
The following names are from towns in New Hampshire and Maine which sent representatives to the General Court or from other outlying towns.			
Thomas Daniel	-	1.0.1/24	1
Robert Gammon	-	1.0.1/15	0
Maj. John Pyncheon	Landed	1.0.2/80	1
Edward Rushworth	Landed	0.1/2/10	1
Ralph Thacher	Minister/(farmer)	0.1.3/2	0
John Wadsworth	Landed	1.0.1/33	0
Maj. Richard Waldron	Landed	2.1.8/50	3
Mr. Samuel Wheelwright	Landed	1.0.1/47	0
Captain John Wincoll	-	1.2.4/79	1

Table 13. Numerical Presentation of Total Wins and Losses Compared to Those for Identified Office Holders

	Plaintiffs	Cases Won	Cases Lost
Totals	1,198	871	815
PVIs	-360	-255	-165
	838	646	647

An imbalance of eighty-seven cases is significant even though the political sample is incomplete and the numbers are much lower than the higher, more balanced wins and losses. A breakdown of wins and losses according to PVIs, shown in Table 14, makes clear which groups account for the imbalance. A PVI of +2, in almost all cases representing the offices of constable or tithingman, shows twenty-three more wins than losses. Other PVIs seem relatively insignificant, a difference of five out of ninety-six cases, for example, among those who carry a PVI of +1, an index which indicates one local office of relatively low importance. Between three and nineteen, a group which includes local offices as well as selectmen and representatives to the General Court who served four terms or fewer the overall difference is inconclusive--eight more wins than losses out of a total of ninety-nine. The significance of a PVI +2 is placed in question when one realizes that of these ninety-nine decisions those who held the offices of constable or tithingman without holding another, higher office won only thirty-eight. They lost forty-five. Those who held the

office of selectman, either singly or in conjunction with other, higher or lower offices won only seventeen. They lost twenty-two.

Table 14. Breakdown of Wins and Losses According to PVI

PVI	Wins	Losses	Difference
1	51	45	5
2	64	41	23
3	21	18	3
4	6	9	-3
5	10	11	-1
6	7	6	1
7	3	3	0
8	4	2	4
9	3	0	3
10-19	15	14	1
20 and above	63	19	44

Legal participants carrying PVIs and winning the extra cases in this group were an amorphous collection of individuals which includes mostly local office holders who held office over a number of years. For example, Giles Dyer held the lonely, appointive office of clockkeeper six years in a row. Joseph Gridley held multiple local offices in Boston--hogreeve two years, town crier for one year, woodcorder for three years and scavenger one year.

Mr. Arthur Mason, whom Savage incorrectly identified as holding the office of constable from time to time, held two offices, surveyor of highways and overseer of woodcorders between 1672 and 1673 for a total PVI of +7. Among this group only James Whitcomb, merchant, who appears in Table 10 and was one of the anti-orthodox party, holds both a significantly high LI and a winning record at the law. He filed five cases and won five. One can say that the remainder of litigants in this group simply rather steadily won their cases when they brought them or were brought into court.

As one might expect given the Puritan concept of authority, those who represent the remainder of the imbalance are those whose PVI is high--over twenty. They represent the highest offices on the scale; assistant, governor and deputy governor, colonial treasurer, commissioners for the united colonies, and so forth. They were probably the best known men in the colony, certainly among the most respected as authority. They won forty-four cases more than they lost, winning sixty-three and losing only nineteen. They and those who carried PVIs of two constitute the majority of wins for the imbalance. Their activity during the years which exhibited legal response to crises--1672-73, 1676-77, 1678-79--are interesting.

There is obvious utility for this study in subtracting from both groups those merchants who were known to be anti-orthodox. For the PVI -2, the subtraction reduces the

imbalance between wins and losses from twenty-three to sixteen, reducing the losses to twenty-nine and the wins to forty-six. This reduction includes Isaac Waldron's raid cases and thus provides a conservative bias for the conclusions to be drawn from the data. The reduction includes Samuel Shrimpton, John Usher, Richard Wharton, and Leonard Dowden, all merchants and all economically prominent in the colony.

Only three of the anti-orthodox signatories of the petition of 1666 fall into the category, PVI +20 or above. They are Major Thomas Clarke, esq., PVI 59, Captain Thomas Brattle, PVI 53, and Mr. Anthony Stoddard, PVI 48. All three belonged to the pro-Imperial faction in New England, and they should be subtracted because they were not "authorities" in the sense the Puritans would have accepted. Such a subtraction leaves the number of cases won at forty-five, lost at ten. Those in high office, even with the subtraction of these well-known and economically most powerful people, still won roughly four times the number of cases they lost.

Did the crises contribute to this obvious bias in favor of political authority? Table 15 reveals the answer to this significant question.[5] Political Visibility Indices +2 present inconclusive results, but the information about them in Table 15 is still interesting. First, even though the categories of LIs most often represented in this low PVI grouping increased in activity during historically important

Table 15. PVIs of +2 and +20 and Above for the Significant Years as Revealed in Case Data Analysis

	Year			
	1672-73	1676-77	1678-79	Totals
PVI +2				
Wins	2	6	9	18
Losses	2	5	5	12
				30
PVI +20 and above				
Wins	5	5	5	15
Losses	2	2	1	5
				20

years, the actors who carry it are active only at the average; that is, proportionally as a group they show only the average amount of activity. The overall average is ten cases per year and the +2 PVI grouping met their average almost exactly with 10.5 cases during the three years under investigation. The final year, 1678-79, is clearly a year of higher activity, the year 1672-73 a year of lower activity, but the difference is insignificant. Of course, here I am using cases won and lost; that is, I am using only plaintiffs and defendants. Overall legal activity during these years was higher than average for all of this group as one can see by examining Appendix 4. Litigants carrying a PVI of +2 show only a slight improvement in their chances of winning their cases during the crisis periods.

Those litigants whose PVI is twenty or above had a much better chance of winning than losing during the crises, but their chance is still less than it was overall. Table 14 reveals that these prominent litigants stood to lose only about one case in four during the decade. Yet, during these crises years that chance worsened, one in three. Thus, on the face of it, the crises did not increase the deference toward authority which Puritan political values demanded. Instead crisis appears to have decreased deference (assuming, of course, that the figures are significant). Of course such a reading fits neither with the theory of Puritan life nor the other information available. A final question is important. Who from this group was before the court during the significant years? The answer provides deeper insight into the operation of Puritan values--political ideas and the mutual submission to corporate ideals.

Elisha Hutchinson brought a few cases during these years. Captain James Oliver, Deacon William Parks, Mr. Edward Rawson, Nathaniel Robinson and Captain Thomas Savage were active as were William Stoughton, esq., Edward Tyng, esq., Thomas Daniel of Maine and John Wadsworth of New Hampshire. Only Stoughton and Tyng were magistrates, and between them they won all five of their cases during the three years. Again, the numbers are not significant, but the general pattern is. (Major Thomas Clarke, the anti-orthodox magistrate, if he were added to these totals, would have altered the numerical balance, but only slightly.

The proportion of wins and losses for the years would have remained the same even if Clarke were added.) Real significance derived from this answer lies in who is not among those before the court during these important years of legal response.

Governor Leverett failed to file any cases during these years. Leverett was a merchant of some prominence who lived in Suffolk County and whose LI would logically be very high. It is oddly low. Joseph Dudley, a magistrate from 1676 forward, failed to appear before the court during these years and also exhibits an LI which is unusually low for so prominent a merchant. Hezekiah Usher, Sr., prominent in local politics for Boston and in Maine, does not appear, nor does Major Richard Waldron, sometimes speaker of the House of Deputies and representative for Dover, New Hampshire, throughout the period. Other politically prominent men whose interests would have brought them into the county court at Boston but who fail to appear except in auxiliary roles are Daniel Gookin, Thomas Danforth, and Eleazer Lusher. One could lay this general lack of legal activity for all crisis periods to press of business elsewhere and, for the three years under examination, to the press of public business. Yet one should bear in mind that these years are not the immediate crisis periods when the government was more active than usual. In each case they are the year following the immediate crisis when pressure was lessening. (Such placement is true except for the 1678-79 crisis which

involved a long sea passage and a very rapid reaction among the officials in colonial government.) Because the magistrates were already involved with the law when they sat as judges and because that involvement was diffuse in the community, I suggest that they had no real need to go to law. When they did, either because they were deferred to by the juries or because they were better able to prepare their cases, probably both, they had about a 50 percent better chance of winning than the general, non-political litigant in the court.

Here, then, in combination and pattern, is the place where the diffuse values represented in historical reactions to crises come into focus. Assistants and other politically prominent men, with few exceptions, failed to utilize the law as much as one might expect. Significantly, the exceptions, Clarke and Stoddard, were from the anti-orthodox faction. Even Governor Leverett, whose sympathies for orthodoxy were sometimes a little strained, subordinated himself in general to the values regarding the law. Those who were the law repaired to it as little as possible. Thus did they subordinate themselves to the overarching legal emphasis of Puritan political culture. But when they did present themselves, they could expect a better chance than others could expect. Because they were authority, they could expect the jury to find in their favor more often than not. The jury, finding in their favor, was also subordinating itself to the overarching ideal. Viewed from this

perspective the local offices embedded in Puritan political culture were relatively insignificant. A smattering of advantage seems to collect around those who held them, probably a higher rate than "normal" if one takes as normal the balanced overall wins and losses in Table 13 after those who carried PVIs were subtracted.

A designation of three groups--the obedient, the politically authoritative and the "civil"--is valid for Puritan political structure then. Data suggest that those who belonged to the orthodox, whether they were politically important or unimportant, responded to political stress "properly" from a value perspective. Those who were politically unimportant obeyed actively and were drawn into the law by their legal value orientation. Those who were politically important rarely acted at the law; certainly they exhibit less activity than their counterparts in the "civil" faction. Whether because deference made suits unnecessary for them or whether they were responding consciously to the cultural value expectations makes very little difference. They were authority and responses to them were obviously diffused "properly" throughout the community. Legal activity in the Suffolk County Court, then, reflected Puritan dual legal values as they were described by the Puritans themselves and as I used them in Part Two and Part Three to describe a social system dominated by the law.

CHAPTER XV

CONCLUDING SUMMARY

Methodology, Puritan Theology and Structure

This paper has been a methodological study of the law in Puritan society. In it I hoped to present the utility of social theory applied to local history in the study of American legal history. I also hoped that the study would make specific contributions to the study of Puritanism in American history and some general contributions to the study of legal history.

Legal history has usually been undertaken from a particular model. Such a model begins with the assumption that the rightful nature of the legal process is to seek equality at the law. Anglo-American jurisprudence has generally supported this model and, supporting it, has imparted to the study of Anglo-American law an abstract or objective quality. Historians have generally tested their examinations of law, from whatever perspective, against this qualitative concept. In Part One of this study I suggested that if scholars use alternative models of the law, they can examine not just the law as it has acted within the context of the dominant model but also the equalitarian theory itself. Toward this end I suggested one model which seemed particularly suited for an examination of law in Puritan society.

The model I suggested is representative of systems theory in the social sciences. I derived it from a loose acceptance of Talcott Parsons' theory of societies as modified by Robert K. Merton's concept of relative social maturity among elements of social systems. Because Puritan values consisted of a theory of both church and state and because the Puritans themselves stressed the political aspects of their society, I added David Easton's concept of political culture to my methodological orientation. It effectively gave scope to the arena of value activity in Puritan Massachusetts. Within the political arena my examination suggested to me that these values were not a rationalization for the hierarchical structure of Puritan society, that they were behaviorally acceptable to members of the society.

From a systems perspective in Part Two, I examined Puritan theology, the administrative structure of the church, and the structure of the state. Puritan theology was morally dominated, but it contained a legal emphasis. According to the Puritans' own statements about themselves, they emphasized law first as it flowed from the dominant moral authority of the church and second as it categorized individual behavior. This second emphasis in Puritan law I called the amoral or objective. Puritans subordinated it to the dominant corporatism of their theology, at least in theory. Thus, on Parsons' rating scale the society was typically evaluative or moral.

I recognize that individual amorality is an unusual term when one is talking about the Puritans of Massachusetts Bay Colony. They were judgmental people. Yet they insisted that no one could look into another's heart. In law they sought to judge individual acts according to the behavior, not the intent, of the persons who did the acts. Such an attitude accounts for the matter-of-fact "flavor" which one senses in reading Puritan criminal case records. More important, however, in my opinion this attitude has been a source of the concept of abstraction in Anglo-American jurisprudence.

On the other hand, Puritans emphasized the social nature of individuals, their corporate or moral responsibilities and their subordination to corporate interests. Thus, in theory the Puritans accepted not only the dominant Anglo-American idea of equality before the law, but also the idea of inequality before the law, the fulfillment of social responsibilities and thus the subordination of equal justice to social and political position.

Subsumed under Puritan corporatism these two legal emphases created a series of tensions. Using church and state structures I suggested that these tensions were functional in the Puritan community. The systems perspective led me to suggest further that the traditional idea of dichotomies in Puritan society could better be explained by seeing the polarities within the theology as tension creating, but seeing the tensions as useful. Again, this is an

unusual perspective on Puritan society, but it is consistent with their history.

In Part Three I suggested that a satisfactory cultural definition of law could be constructed from one of the areas of tension: that between sovereignty (authority) as a polar concept and will (liberty) as the other. In an evaluative or moral system sovereignty was dominant. But the tensions derived from this pair of polar concepts and the accommodation of that tension led the Puritans to stress behavior in the law. Whenever a legal act could be defined by Puritan judges as devoid of intent or will, it could be judged according to individual amorality--behavior. Whenever it had obvious political content it had to be judged along the lines of tension between sovereignty and will according to the standards of corporate morality--authority not liberty. Both the structure and the organization of formal and informal legal process supported such an idea of the law. From pleading which activated the legal process, through the dominant role of the magistracy, to the impact of decisions on the community and individual, the "flow" of legal activity fed back into the community at all levels. Drawing on this cultural description of legal activity, I suggested that law was no mere classifier of interests but that it was an active force in Puritan society. It acted to accommodate tension, to legitimate the system itself, and to administer law to the community in the important areas of inheritance and land title.

Puritan law presents investigators with several theoretical propostions, then. First, law dominated Puritan society. Second, the structure of church and state were clearly legal according to the theology. Given the inequality which was built into their structure, the Puritans were capable of using tensions which derived from a nexus between corporate dominance and the world of behavior. At this point in the study I suggested that the legal behavior of individuals who lived under the system and who nominally believed in it should also support moral dominance. Again, such a theoretical stance is unusual not in content but in perspective.

Data

Few jurisprudential thinkers would deny that civil suits arise out of values or that the values themselves are part of a shared systemic web called culture. Such values are the "sense" of justice, and few legal theorists would deny that such an "attitude" exists in culture. But few would agree that the sense of justice, being shared in the clash between history and communities, could result in periodic change in civil activity at the law.

My examinations of the Records of the Suffolk County for the period between 1671 and 1680 have led me to suggest that the crises of the 1670s, combined with the pervasive legal emphasis in Puritan culture and with the structural emphasis on legal authority, did draw litigants into court.

They behaved in support of corporate morality. The law in Puritan Massachusetts seems to have been functional as a systemic avenue for stress accommodation.

First indication of such function came in a religious/political crisis, the Half-Way Covenant question which agitated the Puritans between 1669 and 1672. Reaction to the crisis in the case materials revealed a reduction in legal activity at the time when the ministers were appealing to the Puritans in an unprecedented political campaign. The reduction suggested a functional alternative in Puritan political culture. Politics could support the value structure as easily as legal activity could, but the appeal for political support had to come from some authoritative group in the community--in this case the majority of the ministers. The response suggested something which scholars may have suspected: Puritans were responsive to political appeals when the appeals were conservative and authoritative. Among the orthodox in Puritan New England, politics was alive but dormant, subordinated to the theology as long as the theology subsumed political interests.

A second indication of legal response to political crises came during and after King Phillip's War, 1675-76. Reaction to this crisis lay in a surge in legal activity during the period when the Puritan leaders saw authority itself in question in the colony. The data here suggested to me that individual litigants moved into the court in support of an authoritative reassertion of power, again

a conservative support through legal participation in the authority which was ordained in covenant theology. Given such support and the response to the war, I suggested that the war brought the Puritans together by intensifying value commitments.

The third crisis, Edward Randolph's attack on the colonial charter, brought new legal reaction. As the news of Randolph's attack on authority in the colony spread, the Puritans came into court in increasing numbers. I again suggested that the increase meant that Puritans supported the system and its values and that their movement to law was indicative of such support. My interpretation was strengthened when data showed that certain merchants in the colony responded inversely. Even though they usually participated at law heavily, their legal activity fell as Randolph's attacks rose. Their values were not those of Puritan New England. Their values were material, and these merchants were imperially oriented rather than theologically oriented. As Bernard Bailyn suggests in his study of colonial merchants, they were happy to see Randolph come; they were sorry to see him fail.

Generally, then, Puritans in colonial Suffolk County Court responded "properly" to political stress. The response pattern holds when one divides the cases into the personal (debt, injury, damage) and the impersonal (estate, public matter, title). Cases in these categories follow the theology closely, supporting authority when it moved

to parry an attack, but falling back to individual or contract cases when the corporate system was free from stress. Patterns in individual indices of legal behavior (LIs) also support the conclusion that Puritans responded to political stress by increasing or decreasing their activity.

Puritans, then, were drawn into the law in times of crisis by an invisible net of culture, not predictably in any individual case but generally as they belonged to identifiable groups. Descriptions of their participation, whether in the raw case data or in the more refined divisions into categories and individual groups of legal activity, are descriptions of functioning political and legal values.

But what of the power relations inherent in such legal obedience? Patterns which were generally true of legal behavior were also true of legal behavior in relations to power positions in the colony. Puritan Massachusetts was an evaluative society in which authority regarded members from a corporate perspective. Power flowed from the top. In a classical sense, Puritans were authoritarian. That they were is not surprising. In the seventeenth century those who were to obey in the community listened to those who were to command. But those who were to command listened to community values. Magistrates who were orthodox went to law rarely. When they did go, they were more likely to win their cases than those who were not magistrates.

Equality before the law, a traditional ideal in almost all Western legal systems, was an abstraction for the Puritans. They lived in a society where structure and organization depended on inequality, as almost all societies do. They were honest, as most societies are not. They provided for the inequality both in theory and in practice.

In the Suffolk County Court the individual litigant could be reasonably assured of "justice" as equality. Probably "justice" declined as the political visibility of a litigant's opponent rose, but evidence of such a decline is inconclusive. With the magistracy, on the other hand, inequality or social justice was an operational fact. They won more of their cases because in the context of Puritan theology and social value, they should have won more. To be sure, they did not go to law as often as their counterparts in the "civil" world. They were the law, Gods on earth. Ultimately, they said what was just and what was not. Law as social morality, inequality, was their preserve.

Implications for Further Study

Historically this study supports Kenneth Lockridge's study of Dedham, A New England Town: The First Hundred Years, and Michael Zuckerman's Peaceable Kingdoms. It provides one more method for measuring the importance of theology in colonial Massachusetts. Moreover, it suggests that law was the most pervasive force or value component in

Puritan theology, just as Perry Miller believed it was, and thus this study invites similar studies of legal behavior in other courts. Eventually, it invites comparative studies of legal behavior in various colonies. Comparative studies, of course, can only be completed when local studies have been done. Again, local history, in my opinion, is the key to a full expansion of legal history, but legal historians should not be limited to it forever.

I believe that this study transcends seventeenth century America. First, it suggests that the dominant legal model, the model of equality, is time-bound. It cannot fit all of Anglo-American legal history (as my functional model cannot). It cannot accommodate those values which in history have been positive forces in communities but which are actually contrary to the touchstone of the dominant model--equality. The inequality of Massachusetts theology and law is one example of a functional value which positively contravened the value perspective of objective or analytical jurisprudence.

Second, and more specifically, this study leads me to ask just how closely theory and practice correspond in modern legal process? For example, the legislative branch of government enacts laws which are discriminatory in favor of minorities, but at the point of legal test, such laws must conform to the dominant theory--equality. Although I do not wish to dwell on this aspect of jurisprudence because it lies well outside my competence, I do believe that

we might begin to ask whether equality is as important as we believe it to be or whether it is more a holdover from the formative days of our legislative system. Were the Puritans more realistic about their legal system then we are today?

Finally, moving into courts which are the arena of legal activity this study suggests that even at a very low level in civil suits, courts can run on social law and that this impetus to go to law may itself be drawn from community values rather than individual interests. Merely regarding the expense of prolonged litigation is enough to say that a modern court is hardly an arena where distinction of social, political and economic power have no place. Again, I pose the question, Is the model of equality the best model? Should we base our assessment of law on whether or not it is equally available to all persons or whether it touches all persons equally? Would some distinctions in the legal process make the law more accessible to those who need it in American society? Do we want to make it less accessible to those who use it to their own advantage?

These are not new questions for jurisprudence. In my opinion legal histories which depart from the dominant model and look at American law from a more anthropological perspective can help answer such questions, first at a local level in early American history, then through the nineteenth century which was the formative period of the objective model, and finally, into the twentieth century. Such legal

histories would be qualitative studies; they would place values in legal behavior rather than examine the classifications of legal behavior. Ultimately, they could provide insight into American law and thus allow us to understand and use law more fully.

Notes

1. Robert G. Pope, The Half-Way Covenant: Church Membership in Puritan New England (Princeton: Princeton University Press, 1969); Kai T. Erikson, Wayward Puritans; a Study in the Sociology of Deviance (New York: Wiley, 1966); Chadwick Hansen, Witchcraft at Salem (New York: G. Braziller, 1969). Pope's study is closer to traditional narrative history than the others, but it is filled with insights drawn from theology and developments in social science. More than anything else these recent studies represent a change in the way scholars think about colonial history. Other studies which fall into the same category are: John Demos, A Little Commonwealth: Family Life in Plymouth Colony (New York: Oxford University Press, 1970); Kenneth Lockridge, A New England Town, the First Hundred Years: Dedham Massachusetts, 1636-1736 (New York: W. W. Norton & Company, Inc., 1970); Darrett B. Rutman, Winthrop's Boston: Portrait of a Puritan Town, 1630-1649 (Chapel Hill: University of North Carolina Press for the Institute of Early American History and Culture, Williamsburg, Virginia, 1965).

2. Three articles provide some aid for scholars confronted with this problem: David H. Flaherty, "A Select Guide to the Manuscript Court Records of Colonial New England," American Journal of Legal History, 11, Number 2 (April, 1967), 107-126; Erwin C. Surrency, "The Courts in the American Colonies," American Journal of Legal History, vol. 11, Number 3 and 4 (July and October, 1967), 256-276, 347-376; William Jeffrey Jr., "Early New England Court Records--A Bibliography of Published Materials," American Journal of Legal History, 1, Number 2 (April, 1957), 119-146. Unfortunately colonial court records for southern colonies have been neglected. North Carolina, like Massachusetts and Connecticut, has begun a program of filming manuscript records and collecting them in the state archives. Scholars interested in local court records for any of these jurisdictions should contact the state archivists, but before they do so they should have some specific local court for reference. Even then, the process of locating and/or identifying the records is extraordinarily time consuming.

3. The best examples are Edmund S. Morgan, The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England (New York: Harper & Row, Publishers, 1966); Richard B. Morris, Government and Labor in Early

America (New York: Harper & Row, Publishers, 1965); Abbot Emerson Smith, Colonists in Bondage: White Servitude and Convict Labor in America, 1607-1776 (Chapel Hill: University of North Carolina Press, 1947). The two most recent examples are Demos, A Little Commonwealth, in which Mr. Demos uses legal records for his examination of family life in Plymouth Colony and Lockridge, A New England Town, in which Mr. Lockridge uses court records to support a demographic analysis of Dedham, Massachusetts.

4. Ernest S. Griffith, History of American City Government: The Colonial Period (New York: no publisher given, 1938), 33. Approaching legal history from the administrative point of view, Mr. Griffith reaches a conclusion which is similar to that in Part Two of this study, reached here from an examination of intellectual history: " . . . in the Colonial Period it was the legal rather than the administrative or even the economic emphasis and approach which dominated men's thought forms concerning their municipal corporations."

5. Eldon R. James, "Some Difficulties in the Way of a History of American Law," Illinois Law Review, 23 (1929), 683. George L. Haskins, "Court Records and History," William and Mary Quarterly, S. 3, V (October, 1948), 550-551, makes clear why legal history will necessarily be local, even though elsewhere, "Codification of the Law in Colonial Massachusetts: A Study in Comparative Law," Indiana Law Journal, XXX (1954), 1-17, he stresses that students of legal history should be willing to examine formal influences. As I explain later, an emphasis on formal history has retarded the growth of legal history.

6. Again, I am speaking here of a way of viewing American colonial history. Perhaps as a partial reaction against both the filiopietistic tradition in American history and the progressive school of American historiography, and perhaps as a response to the needs of American during the post-World War II period, American historians in general began to find that national configurations were more important in development than regional or local differences. Conflict among regions and regional cultures was disregarded, for example, the agrarian-capital conflict which Charles and Mary Beard stressed in their scholarship. The result for colonial history was attention to those aspects of political organization which lead into the formation of the nation. It was valuable. For example, one contribution was a reassessment found in Edmund S. Morgan's A Puritan Dilemma: The Story of John Winthrop (Boston: Little Brown & Co., 1958), in which the traditional applause for the anti-authoritarian stances of Anne Hutchinson and Roger Williams was muted, and these two were shown to be disrupters of Puritan society. Because Mr. Morgan, Perry Miller in essays

too numerous to cite here, and Stowe Persons, American Minds: A History of Ideas (New York: Henry Holt & Co., 1958), 3-68, are regarded as "consensus" historians, they have been called neo-conservatives. A better way of understanding their contribution would be to see it as national, that they ask questions which have national significance and which in turn support the idea of national unity and authority. This idea is the sticking point for historians of the "New Left" like Stoughton Lynd and Jesse Lemisch. I do not agree with many of their objections to consensus history, but the foundation of their objections has some merit. For the concept of conservatism or "ambiguity" in post-war history see John Higham, ed., The Reconstruction of American History (New York: Harper & Row, Publishers, 1962), 23-24 and Robert Allen Skotheim, American Intellectual Histories and Historians (Princeton: Princeton University Press), 266-270. For the best statement of the "revolt" against neo-conservatism, see Stoughton Lynd, Class Conflict, Slavery and the United States Constitution (New York: Bobbs-Merrill Company, Inc., 1967), the essay titled "Beyond Beard."

7. Lockridge, A New England Town, the First Hundred Years; Demos, A Little Commonwealth; Rutman, Winthrop's Boston.

8. Most notable for Puritan scholarship is Edmund Morgan's suggestion in "New England Puritanism: Another Approach," William and Mary Quarterly, XVII (April, 1961), 237-238.

9. 2 Peters, U. S. Supreme Court Reports, 137 at 144 (1829).

10. 19 Alabama Supreme Court Reports, 814 at 829 (1851). See also J. Kent, Commentaries on American Law, 12th edition, Oliver Wendell Holmes, ed. (Boston, 1873), I, 472-473.

11. George L. Haskins, Law and Authority in Early Massachusetts: A Study in Tradition and Design (n.p.: Archon Books, 1969), vii.

12. The quarrel is outlined in Francis R. Auman, The Changing American Legal System (Columbus: Ohio State University Press, 1940), 8-10. On Justice Story's side are William H. Whitmore, A Bibliographical Sketch of the Laws of the Massachusetts Colony from 1630 to 1686 . . . (Boston: Rockwell and Churchill, 1890), and F. C. Gray, "Early Laws of Massachusetts Bay," Massachusetts Historical Society Collections, S. 5, vol. 8 (Boston: for the Society), 191-237. George L. Haskins discusses the quarrel in Law and Authority, 4-5. Mr. Haskins' book is a middle position between the two factions. A more recent scholar who supports Justice Story is Julius J. Goebels, "Kings Law and Local Custom in Seventeenth Century New England," Columbia Law Review, XXXI (March, 1931). Four scholars who have opposed

the theory are Charles J. Hilkey, Legal Development in Colonial Massachusetts, 1630-1686, Studies in History Economics and Public Law, XXXVII (New York: Columbia University Press, 1910); Richard B. Morris, "Massachusetts and the Common Law," American Historical Review, XXXI (Mar., 1926), 443-453; Harold G. Reuschlein, "The Anti-'Taught-law' Period in the United States," Virginia Law Review, 32 (1946), 955-979; J. Willard Hurst, Law and Social Process in United States History (Ann Arbor: University of Michigan Press, 1960). Hurst treats only the national period, but he has entered the quarrel on the side of "frontier" theorists of American history stressing, as do both Morris and Reuschlein, the freedom of American law from preconception.

13. Daniel Boorstin, "Tradition and Method in Legal History," Harvard Law Review, 54 (1941), 434-435. The professional divergence between lawyers and academic scholars is well covered in Lawrence M. Friedman, "Some Problems and Possibilities of American Legal History," in Herbert J. Bass, ed., The State of American History (Chicago: Quadrangle Books, 1970), 3-21. Mr. Friedman's essay includes several useful references for anyone who is interested in following up the professional differences.

14. Quoted in Haskins, Law and Authority, ix.

15. Boorstin, "Tradition," 434.

16. Julius Stone, The Province and Function of Law: Law as Logic, Justice and Social Control, A Study in Jurisprudence (Cambridge: Harvard University Press), 6-12, 16-17.

17. Oliver Wendell Holmes, "The Path of the Law." Harvard Law Review, 10 (1897), 474.

18. Columbia Broadcasting System, "Justice in America," three broadcast essays, II, was a program on the civil law in American society. The emphasis during this second essay was on the plight of consumers whose contracts are held to the letter of the law. Adhering to the letter of the law is in part adhering to the analytical view of jurisprudence, seeing justice according to precedent or case law rather than according to historically identifiable values.

19. Hurst, Law and Social Process, 28-29; Julius Stone, Law and the Social Sciences (Minneapolis: University of Minnesota Press, 1966), 5.

20. Karl N. Llewellyn, The Bramble Bush (New York: Oceanan Publications, 1960), 125.

21. C. Wright Mills, The Sociological Imagination (New York: Oxford Univ. Press, 1959).

Chapter I

1. This section of the paper concerns legal/sociological theory, and one should note here that much of the theory in the United States has been predicated on exactly this "disinterestedness" concept. See Edward Alsworth Ross, Social Control, A Survey of the Foundations of Order (New York: The Macmillan Co., 1929), 35-36, 111-113, who sees law as an honest search for reciprocity by "just-minded" people, and who depends heavily on a concept of justice drawn from the theory of reciprocity. Talcott Parsons uses much the same concept when he speaks of the courts and of law as closely connected to the political system, but largely apolitical in their functions. See Talcott Parsons, "The Law and Social Control," in William M. Evan, ed., Law and Sociology: Exploratory Essays (Glenco, Ill.: The Free Press, 1962), 57-61, 71. In contrast to this dominant concept of law this study proposes an action role for law in culture.

2. Parsons, "The Law and Social Control," 59, 61, makes a similar distinction between two types of juristic acts--the authority of norms and the identification of "classes of acts, persons, roles, and collectivities" to which the norms may be applied. Even though Parsons' basic theoretical construct is acceptable and useful for this study, he fails, in my opinion, to make his distinctions clear and to create an acceptable role for law in society. This failure is quite apart from his concept of law as norms in the integrative subsystem, a useful concept and an accurate one. See Fig. 1.

3. Floyd James Davis, et al., Society and the Law: New Meanings for an Old Profession (Glenco, Ill.: The Free Press, 1962), 55-58, 65-66. Mr. Davis sees law as derived from these sources. He notes the depth of interrelatedness among other aspects of culture saying that law acts within the cultural relationships of society. Of course, separation of these sources is artificial, but it does serve to indicate how law moves through the community, not just from a legal perspective but from any cultural perspective.

4. Eugen Ehrlich, Fundamental Principles of the Sociology of Law (Cambridge, Massachusetts: Harvard University Press, 1936), 121-124.

5. For example, Sir Henry Maine, Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas (London: John Murray, Albermarle Street, W., 1912), finds impossible the conception of organized law outside the power of the state. George Gurvitch, Sociology of Law (New York: Philosophical Library and Alliance Book Cooperative, 1942), 81-90, examines the distinction between state and society in the literature about law. N. S. Timasheff, An Introduction to the Sociology of Law (Cambridge: Harvard University Press, 1939), 194-212, discusses the implications of such a concept for the study of law. American scholars of legal history, as I have noted earlier, tend toward the formal and simply assume the organized state, for example, Roscoe Pound and Theodore F. T. Plucknett, Readings on the History and System of the Common Law (Rochester, New York: Lawyers Cooperative Publishing Company, 1927), 43-124, 132-134, for a stress on national history in legal precedent and civil procedure. With a few exceptions, notably Richard Maxwell Brown's "Legal and Behavioral Perspective on American Vigilantism," in Perspectives in American History, 5 (1971), the orientation of American historians towards legal history shows little change. See also David H. Flaherty, ed., Essays in the History of Early American Law (Chapel Hill: University of North Carolina Press, 1969), for an indication that American analysis is still set toward formal state law.

6. See Maine, Ancient Law, 91-105, for a discussion of this idea in law between states, and, 50-56, for a discussion of equality in early state law.

7. Charles A. Beard, An Economic Interpretation of the Constitution of the United States (New York: The Free Press, 1965), 11-13.

8. The two best expositions of functional theory are, of course, first, Talcott Parsons, The Social System (New York: The Free Press, 1951), and Don Martindale, ed., Functionalism in the Social Sciences: The Strengths and Limits of Functionalism in Anthropology, Economics, Political Science and Sociology (Philadelphia: The American Academy of Political and Social Science, Feb., 1965). The theory has been adopted by social scientists in an effort to bring both precision and, in some cases, predictability to social science theory. It has been repeatedly attacked as I note below; an interesting book against the concept is Robert Boguslaw, The New Utopians: A Study of System Design and Social Change (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1965.)

9. David Easton, A Framework for Political Analysis (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1965), 33.

10. Easton, A Framework, 34.

11. F. Kenneth Berrien, General and Social Systems (New Brunswick, New Jersey: Rutgers University Press, 1968), 4-5.

12. Robert K. Merton, "Manifest and Latent Functions," in N. J. Demerath and Richard A. Peterson, System, Change, and Conflict: A Reader on Contemporary Sociological Theory and the Debate over Functionalism (New York: The Free Press, 1967), 18.

13. Robert K. Merton, "Manifest and Latent Functions," 18.

14. Merton, "Manifest and Latent Functions," 28-29. The sub-heading within Merton's article is "Functional Analysis as Ideology."

15. Merton, "Manifest and Latent Functions," 24-25.

16. C. Wright Mills, The Sociological Imagination, 31.

17. Don Martindale, "Limits of and Alternatives to Functionalism in Sociology," in Martindale, ed., Functionalism in the Social Sciences, 159-160.

18. Martindale, "Limits of and Alternatives to Functionalism," 159-160.

19. Easton, A Framework, 32.

20. Berrien, General and Social Systems, 5.

21. Mills, The Sociological Imagination, 55-56.

22. T. Parsons, The Social System, 3. As I have already explained, I do not share Parsons' scientific optimism.

23. Parsons, The Social System, 4-5.

24. Parsons, The Social System, 5. See also Kenneth S. Carlston, Law and Structures of Social Action (New York: Columbia University Press, 1956), 21-23, on the concept of value in pattern maintenance specifically in the law. Carlston, like Parsons, stresses the creation of theory in the sociology of law positing a universality not in specific behavior but in the human reaction to the human condition which is itself amenable to classifications. Law, the social sciences and history come together at this point in theoretical development. Other names stand out in this theoretical development: Karl N. Llewellyn, The Bramble Bush (New York: Oceana Publications, 1960), and Karl N. Llewellyn and

E. Adamson Hoebel, The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence (Norman, Oklahoma: University of Oklahoma Press, 1941). In all three books the authors attempt to put together values as cultural items and legal behavior of some type.

25. Parsons, The Social System, 21-221

26. Parsons, The Social System, 26.

27. Parsons, The Social System, 27-39. I might note here that Parsons sees law as non-specific, an institution rather than a collectivity or collectivities: Talcott Parsons, "Law and Social Control," in William M. Evan, ed., Law and Sociology: Exploratory Essays (Glencoe, Ill.: The Free Press, 1962), 57, ". . . law is not a category descriptive of actual concrete behavior but rather concerns patterns, norms, and rules that are applied to the acts and to the roles of persons and to the collectivities of which they are members." I do not agree with him as I point out toward the end of this chapter and as will become evident when I discuss legal definition in Puritan society.

28. For a summary of the directional movement and of the importance of the pattern variables see Parsons, The Social System, 101-112.

29. Parsons, The Social System, 58. Parsons is talking about the institutionalization of the social system by which he means the relation of institutions to the structure of a social system.

30. Lockridge, A New England Town, 3-78, is the best description of the corporate orientation.

31. Unless otherwise noted the material on the societal interchange system is taken from Parsons, The Social System, 58-67.

32. Robert K. Merton, On Theoretical Sociology, (New York: The Free Press, 1952), 47.

33. Merton, On Theoretical Sociology, 63, 68, 147-148.

34. Talcott Parsons, Politics and Social Structure (New York: The Free Press, 1969), 457-458. Parsons notes that one should be able to find in such a backflow system a "tension" between moral leadership and political power. As the discussion of Puritan political culture proceeds, the tension and its function in the culture will become clearer.

35. For a discussion of various approaches see H. V. Wiseman, Political Systems: Some Sociological Approaches (New York: Frederick J. Praeger, Publishers), 21-32.

36. Easton, A Framework for Political Analysis, 25-26.

37. Easton, A Framework for Political Analysis, 38, 61-69.

38. Easton, A Framework for Political Analysis, 24-25, 124-128. For the flow chart in Fig. 2, see Easton, 110.

39. David E. Apter, "A Comparative Method for the Study of Politics," American Journal of Sociology, LXIV, No. 3 (November, 1958), 221-237. Although Apter overestimates the importance of government within the social system, his concept of a limited group is useful here. A brief summary of his article is in Wiseman, Political Systems, 117-120, and will suffice for an understanding of the ideas Apter presents. I follow Wiseman's outline for my presentation of the political system.

40. Apter, "A Comparative Method," 225. Apter's idea of recruitment and role-assignment I have left out of this list. It is only of marginal interest, if any at all, in this study.

41. Easton, A Framework for Political Analysis, 111.

42. Easton, A Framework for Political Analysis, 114.

43. Easton, A Framework for Political Analysis, 122-123.

44. Other definitions of political culture may be found in the following: Gabriel A. Almond and Sidney Verba, The Civic Culture, (Princeton, N. J.: Princeton University Press, 1963), 12; Lucien Pye, "Introduction: Political Culture and Political Development," in Sidney Verba, ed., Political Culture and Political Development (Princeton, N. J.: Princeton University Press, 1965), 7.

Chapter II

1. Perry Miller, The New England Mind: The Seventeenth Century (Boston: Beacon Press, 1965), 16. See also Lockridge, A New England Town, 23-30, for one scholar who insists that the doctrine of love was more important than the contract theory with its implications for individualism.

2. John Cotton, The Bloudy Tenent Washed, and Made White in the Blood of the Lamb (London: Matthew Symmons for Hannah Allen, 1647), 6-10.

3. Bernard Bailyn, The New England Merchants in the Seventeenth Century (Cambridge, Massachusetts: Harvard University Press, 1955), 119-126.

4. Cotton Mather, Lex Mercatoria, or the Just Rules of Commerce Declared and Offences Against the Rules of Justice in the Dealing of Men with one Another, Declared (Boston: n.p., 1705), 4-6.

5. The best explanation of the calling, in my opinion, remains Max Weber's in his The Protestant Ethic and the Spirit of Capitalism, trans., Talcott Parsons (New York: Charles Scriber's Sons, 1958), 79-92.

6. Mather, Lex Mercatoria, 12.

7. Miller, The Seventeenth Century, 16; Kenneth Lockridge, A New England Town, 23-30. For a harsher interpretation of Puritan ideas see Vernon L. Parrington, Main Currents in American Thought: The Colonial Mind, 1620-1800 (New York: Harcourt, Brace and World, Inc., 1927).

8. Samuel Willard, A Compleat Body of Divinity in Two Hundred and Fifty Expository Lectures, (Boston: B. Green & S. Kneeland, MLCCXXVI), 253.

9. Miller, The Seventeenth Century, 365-366.

10. Miller. The Seventeenth Century, 373.

11. Hungtingon Cairns, Legal Philosophy from Plato to Hegel (Baltimore: Johns Hopkins Press, 1849), 205-210, for a discussion of the struggle.

12. Charles Grove Haines, The American Doctrine of Judicial Supremacy (New York: The MacMillan Company, 1914), 27, 29.

13. John D. Eudsen, Puritans, Lawyers, and Politics in Early Seventeenth-Century England (New Haven: Yale University Press, 1958), viii, 116.

14. Roscoe Pound, Interpretations of Legal History (Cambridge: Harvard University Press, 1946) 2-3. See also James Truslow Adams, The Founding of New England (Boston: Atlantic Monthly Press, 1921), 366, for comments that the law in seventeenth-century New England was "non-moral" and "derived from sanctions other than divine."

15. Julius J. Goebel, "King's Law and Local Custom in Seventeenth-Century New England," Columbia Law Review, XXXI, No. 3 (March, 1931), 444-446; Edmund S. Morgan, "The Puritan Ethic and the American Revolution," William and Mary Quarterly, S. 3, XXIV, Number 1 (January, 1967), 3-43.

16. Indeed, the colonial experience may well have heightened the mutual cultural reinforcement; the uncertainty of early colonial life made fear of chaos an important political value. In legal matters such fear is transformed into concern with law and order rather than with justice or mitigation of the law, and thus places increased emphasis on a legalistic mode of interpretation, a mode which allows for few peripheral complications. See Lockridge, A New England Town, 16-22, for a discussion of these ideas.

17. As given in A. S. P. Woodhouse, Puritanism and Liberty (London: J. M. Dent and Sons, Ltd., 1938), 187-188.

18. William Ames, Conscience with the Power and Cases Thereof (London: n.p., MDCXXXIX), I, 5.

19. This concept caused more and more problems as the New Englanders moved into the eighteenth century. Finally, Jonathan Edwards in his discussion of freedom of the will did away with it entirely by making act and will one and the same. The process, however, was gradual. The continuing trouble was caused not by some flaw in Ames' perceptions, but by a failure of the common man and no few ministers to understand the separation of will from act. Jonathan Edwards, Freedom of the Will, Paul Ramsey, ed., (New Haven: Yale University Press, 1957), 149-152.

20. Miller, The Seventeenth Century, 374-375.

21. Miller, The Seventeenth Century, 377.

22. Edmund Morgan, Visible Saints: The History of a Puritan Idea (New York: New York University Press, 1963), is an excellent work which concentrates on the problems which the mixed world caused for the New England churches.

23. Willard, Compleat, 2.

24. Willard, Compleat, 15.

25. Willard, Compleat, 11-12.

26. Willard, Compleat, 20-22.

27. Willard, Compleat, 36. See also Nathaniel B. Shurtleff, ed., Records of the Governor and Company of the Massachusetts Bay in New England (Boston: William White, 1854), vol. IV, ii, 4, 282, 514,462; vol. V, 268, 301, 479, 484. (Hereafter cited, Col. Recs.)

28. Miller, The Seventeenth Century, 379.

29. Willard, Compleat, 75.

30. Willard, Compleat, 152-153.

31. Willard, Compleat, 157.

32. Willard, Compleat, 75.

33. Willard, Compleat, 76-77, 150-151.

34. Willard, Compleat, 76.

35. Miller, The Seventeenth Century, 387.

36. Willard, Compleat, 76.

37. This emphasis on individualism or the importance of the individual within the community formed the base from which some nineteenth century examinations of New England towns proceeded. For a discussion of this historiographical problem see Charles F. Adams, "The Genesis of the Massachusetts Town, and the Development of Town-meeting Government," in Proceedings of the Massachusetts Historical Society, 2, VII (Boston, 1891-92), 174-263.

38. Willard, Compleat, 39.

39. The actual distinction between "full" members and others ended legally in 1664, but the law ending it showed that the magistrates would not give it up without a struggle. The idea of "full membership" persisted into the last crisis decades. See Col. Recs., IV, ii, 117-118.

40. Miller, The Seventeenth Century, 395.

41. The best exposition of such terminology is in Miller, The Seventeenth Century, his chapter titled "The Covenant of Grace," 365-397. As Miller notes, the overall legal orientation of the Covenant of Grace is in part responsible for the terminology, but the emphasis on contract, which Miller brings out very well, is the actual source. Contracts in seventeenth-century law, just as they are in modern law, were highly stylized and formal, resting on a number of legal fictions which had grown up during the previous century. They were used as exclusive instruments, that is, they granted exclusive rights. The "private" nature of the covenant should not be surprising. The necessity of privacy between man and God is surprising if one considers Anne Hutchinson's punishment. But as Edmund Morgan points out in his Puritan Dilemma: The Story of John Winthrop, 140-154, her real crime was attempting to make a social issue of individual privacy. The same may be said of Roger Williams.

42. In Woodhouse, Puritanism and Liberty, 187-188.

43. Willard, Compleat, 150.

44. Willard, Compleat, 143; John Cotton, A Discourse about Civil Government (Cambridge, 1663), 1-2.

45. Willard, Compleat, 144-145.

46. Willard, Compleat, 153, 157.

47. Miller, The Seventeenth Century, 399. See also Michael Walzer, The Revolution of the Saints: A Study in the Origins of Radical Politics (Cambridge: Harvard University Press, 1965), for the general thesis.

48. Alice Felt Tyler's work Freedom's Ferment; Phases of American Social History (Minneapolis: University of Minnesota Press, 1944), provides insight into such cultural carry-over. Perry Miller, The Life of the Mind in America, from the Revolution to the Civil War (New York: Harcourt Brace and World, 1965), Book 2, specifically discusses the importance of legal ideas in American culture.

49. Miller, The Seventeenth Century, 403.

Chapter III

1. The best account of the Puritans during these years, at least of the "tone" of the life they were living is in Perry Miller, Errand into the Wilderness (New York : Harper and Row, Publishers, 1956), particularly the title essay.

2. Thomas Hooker, A Survey of the Sum of Church Discipline wherein the Way of the Church of New England is Warranted out of the Word (London: John Bellamy at the Three Goldon Lions, M.DC. XLVIII), I. 185-187.

3. John Cotton, The Keyes of the Kingdom of Heaven and Power thereof, according to the Word of God (London: Thomas Goodwin, Philip Nye, 1644), 1.

4. Cotton, Keyes, 1-2.

5. Cotton, Keyes, 2.

6. Cotton, Keyes, 3-4.

7. Hooker, Survey and Sum, I.46.

8. Hooker, Survey and Sum, I.46.

9. Cotton, Keyes, 10.

10. Cotton, Keyes, 4. See also, John Cotton, A Discourse about Civil Government (Cambridge, Massachusetts: n.p., 1663), 6-7.

11. Cotton, Keyes, 7.

12. Cotton, Keyes, 8.

13. Cotton, Keyes, 9.

14. Cotton, Keyes, 10.

15. Cotton, Keyes, 10-11.

16. Hooker, Survey and Sum, I.46.

17. Cotton, Keyes, 15; Hooker, Survey and Sum, I.187.

18. Hooker, Survey and Sum, I.188.

19. Hooker, Survey and Sum, III.38; John Winthrop, The History of New England from 1630-1649, 2 vols. James Savage, ed. (Boston: Little, Brown and Co., 1853), 380.

20. Cotton, Keyes, 23.

21. Willard, Compleat, 35, 37.

22. Hooker, Survey and Sum, I.185-186; II.1-2.

23. Hooker, Survey and Sum, II.4, with two modifications: I make the chart verticle rather than parallel and change the brackets he used to straight lines.

24. Cotton, Keyes, 21-22.

25. Hooker, Survey and Sum, III.35. See also Willard, Compleat, 205-206, for a rendition of the legal tone of such proceedings.

26. Hooker, Survey and Sum, III.35-38.

27. A Platform of Church Discipline Gathered out of the Word of God and Agreed Upon by the Elders (Cambridge, Massachusetts: 1649), 7-11 and passim. (Cited hereafter as Cambridge Platform.)

28. Miller, The Seventeenth Century, 413-416 for a discussion.

29. Cambridge Platform, 32-33.

30. Cotton, Discourse about Civil Government, 7.

31. Cotton, Discourse about Civil Government, 7-9, 23. In his essay Cotton notes that the civil power is concerned with mediate things--bodies, goods, estates, lands, honor, and liberties; the church is concerned with immediate things--souls, consciences, worship, doctrine, and the communion of the saints. Harmony is best maintained where a coincidence of officers is avoided, thus avoiding opposition between the two or coincidence of the two. He stresses a mutual subjection of the church in civil matters to the state and the magistrates who rule the state to the church.

Chapter IV

1. Cotton, Discourse about Civil Government, 5-7, noting that order is the "genus of them both." See also Urian Oakes, New England Pleaded with and Pressed to Consider the things which concern her Peace at least in this Day (Cambridge, Massachusetts: 1673), 55.

2. Miller, The Seventeenth Century, 399.

3. William Stoughton, New Englands True Interest (Cambridge, Massachusetts, 1670), 11. For a further statement on religion as the life of the political community see Samuel Torrey, An Exhortation unto Reformation Amplified by a Discourse concerning the Parts and Progress of that Work, According to the Word of God (Cambridge, Massachusetts, 1674), 7-8.

4. Stoughton, New England Pleaded With, 12.

5. Willard, Compleat, 574.

6. John Cotton, "Moses, his Judicials," S. 2, XVI, Proceedings of the Massachusetts Historical Society (Boston: for the society, 1902), 283.

7. Willard, Compleat, 597.

8. Willard, Compleat, 598.

9. Cotton, Keyes, 1-2.

10. William Hubbard, The Happiness of a People in the Wisdom of their Rulers Directing and in the Obedience of their Brethren Attending unto what Israel Ought to do (Boston: n.p., 1676), 2.

11. Willard, Compleat, 598.

12. Jonathan Mitchell, Nehemiah on the Wall in Troublesome Times (Cambridge, Massachusetts: n.p., 1671), 4.

13. Pope, The Half-Way Covenant, 152-184, for a history of the politics during this period.

14. Willard, Compleat, 600.

15. Willard, Compleat, 601-602, quotation on 603.

16. Willard, Compleat, 619.

17. Willard, Compleat, 620.

18. Willard, Compleat, 620-621.

19. Pope, The Half-Way Covenant, 169-180. The usual positions were reversed at this time probably because the magistrates understood what a serious complaint against the government could reveal and what such a revelation would mean in England. Pope finds that the deputies were conservative, desiring to maintain the more traditional lines of power as they had been organized around the theology. The ministers, of course, were allied with the deputies in the political fight. The alliance was what one would expect of an evaluative political orientation.

20. Thomas Shepard, Eye-Salve, or a Watchword from our Lord Jesus Christ unto his Church (Cambridge, Massachusetts: n.p., 1673), 12.

21. John Oxenbridge, New England Freemen Warned and Warmed to be Free Indeed, having an Eye to God in their Election (Cambridge, Massachusetts, 1673), 8-9.

22. Oxenbridge, New England Freemen, 12-17, quotation 17.

23. Willard, Compleat, 621.

24. Oxenbridge, New England Freemen, 25-26. The thrust of Oxenbridge's statement was made clear when he said that the freemen should make changes from time to time so that rulers maintain the proper humility and that the freemen's "right" to make changes would not be lost to them. This fight over the Half-Way Covenant most clearly reflected the domination of the moral law in Massachusetts political culture. It lends credence to my assertion that in the long run both the authorities or magistrates and the people had to submit to the moral law.

25. Willard, Compleat, 621, and Mitchell, Nehemiah on the Wall, 23-24.

26. Mitchell, Nehemiah on the Wall, 25-26.

27. Mitchell, Nehemiah on the Wall, 29.

28. Hubbard, The Happiness of a People, 7-8.

29. Hubbard, The Happiness of a People, 11-12.

30. Hubbard, The Happiness of a People, 21.

31. Willard, Compleat, 621.

32. Hubbard, The Happiness of a People, 44.

Chapter V

1. Col. Rec., I, 62.

2. For an explanation of these offices see Col. Rec., IV.i, 324-327, for the constable; for the minor offices see the excellent summation from various town records in John Fairfield Sly, Town Government in Massachusetts, 1620-1930 (Cambridge, Massachusetts: Harvard University Press, 1930).

3. Dorchester Town Records (Boston: Rockwell and Churchill, for the Records Commission, 1890), 63-138; Col. Rec., I, 73, 82. The question was important to Puritans who feared the loss of church autonomy if the towns took over payment entirely. The attendance laws raised the question of preparation, a theological dispute too involved to explain here, but a dispute which raised its own question: was attendance on the Word efficacious in promoting the movement of grace, that is, bringing an individual into the Covenant of Grace? The Puritans, emphasizing act after individual will had spoken internally, naturally resolved the question in favor of compulsory attendance. Once again one can hardly escape the law. It was operating at both the "prudential" level which was the very practical level of ties between church and state and the highly theoretical level through which the laws as statutes were justified (not rationalized) according to the complex theory of values which supported the tension-filled corporatism of the Puritan state.

4. Oxenbridge, New England Freemen Warned and Warmed to be Free Indeed, 23-25, for a discussion of this idea. The idea was written into the preamble of The Book of the General Laws and Liberties Concerning the Inhabitants of the Massachusetts (Cambridge, Massachusetts: 1648), 2.

5. Col. Rec., I, 87.

6. The Colonial Laws of Massachusetts Reprinted from the Edition of 1660, with the Supplements to 1672, containing also the Body of Liberties of 1641 (Boston: Rockwell and Churchill for the Records Commission, supervisor, William H. Whitmore, 1889), 35, Section 12. (Hereafter, this work is cited, Whitmore, Laws of 1660 or Body of Liberties.)

7. Bernard Bailyn feels that true destruction of the ideal was averted through inter-marriage between the old-line Puritan families and the new merchants, Bailyn, New England Merchants, 189-197

8. Col. Rec., IV.ii, 117-118.

9. Col. Rec., IV.ii, 221-222, 562.

10. Col. Rec., V, 307.

11. Col. Rec., V, 291-292. For the changes in voting procedure see Col. Rec., IV.i, 270, 347; IV.ii, 32, 468.

12. Col. Rec., IV.ii, 448, 449, 550; V, 1, 27, 43-43, 77-78, 98-99, 131-132, 183-185, 210-211 for returns in the period covered by this study. Magistrates are rarely left out. They die in office. Deputies, on the other hand, change from time to time.

13. Cambridge Platform, 2; Laws and Liberties, 2.

14. Col. Rec., IV.11, 455, 458, 489-493, 521-523, 554-555, 569; V, 6, 9, 13, 23, 25, 36, 104-105 (see also 121), 105, 251, 273, 296-297. The cases cited here represent the appeals to the General Court. Most of them display some legal discrepancy, represent a third appeal in the court system or involve some individual who was prominent in the affairs of the colony. I do not, of course, assert that all appeals to the General Court fall into the category of social questions.

15. See Samuel Eliot Morison, ed., Records of the Suffolk County Court, 1671-1680, in Publications of the Colonial Society of Massachusetts, 29 and 30 (Boston: by the Society, 1933), 531-536, 657-660, 709, 1006, for the cases involving the Lynn iron works which drew several prominent men into legal conflict with one another. Another series of cases which did the same were those about Governor Bellingham's estate, 221, 228-231, 237-238, 240-241, 248, 271-274, 325, 437, 457, 519, 547-548, 640. The Bellingham case dragged through the court system of Massachusetts into the national period, but it was particularly significant for the corporate ideal during this decade.

16. Whitmore, Laws of 1660, 144, for the procedure. After the Admiralty Court was established, the Strangers Court had less importance, and it was abolished in 1673. See The Colonial Laws of Massachusetts, reprinted from the Edition of 1672, with the Supplements through 1686 (Boston: for the Records Commissioners, 1890, supervisor, William H. Whitmore), 207. (Hereafter this work is cited, "Whitmore, Laws of 1672."

17. Whitmore, Laws of 1672, 20-21.

18. Whitmore, Laws of 1672, 3, 13, 21, 22, 331, 334.

19. Willard, Compleat, 622-623.

20. Willard, Compleat, 623.

21. Willard, Compleat, 624-625.

22. Willard, Compleat, 625-634, on the duties of judges and subjects.

Chapter VI

1. Current definitions vary from the formal definition which one finds in such authors as H. L. A. Hart, The Concept of Law (Oxford: The Clarendon Press, 1961), to the historical concept in James Willard Hurst, Law and Social Process in United States History, 3-5. The stasis in Hart's theory is evident throughout his work. That in Hurst's is less evident. He reaches for a dynamic, for example, in Law and Social Process, 12, where he states that nineteenth century law "operated with force not matched by any other major institution of social order to press men to define ends and means." But both ideas about law suffer from the seeming inability to move outside the legal system, to move into the circularity of impact which in my opinion accompanies law in Puritan New England. Hart's definition, or infusion of positivism into a philosophy of law, is even more circumscribed. For a brief assessment of Hart's contribution see Ronald M. Dworkin, "Is Law a System of Rules?" in Robert S. Summers, ed. Essays in Legal Philosophy (Berkeley: University of California Press, 1968), 31-34, and for Hurst's, see Harry N. Scheiber, "At the Borderline of Law and Economic History; the Contribution of Willard Hurst," American Historical Review, LXXV, No. 3 (February, 1970), 745, 751-753. For a general indication of the direction of jurisprudential thinking see Summers, ed., Essays in Legal Philosophy, 1-21.

2. Summers, ed., Essays in Legal Philosophy, 20-21, for the location of the philosophical quarrel involved in the creation of new perspectives.

3. Llwellyn and Hoebel, The Cheyenne Way, 20-21.

4. See Morris D. Forkosch, ed. Essays in Legal History in Honor of Felix Frankfurter (Indianapolis: Bobbs-Merrill Co., Inc., 1966), passim. See also Charles Gordon Post, An Introduction to the Law (Englewood Cliffs, N. J.: Prentice-Hall, 1963), 7-17, for a general perspective. The common law struggle which I mentioned in the introductory section of this study is important here because it sets the perspective by tying the law to a certain national pragmatism noted in Daniel J. Boorstin, The Americans: The Colonial Experience (New York: Alfred A. Knopf, Inc., 1958), 3-4, 20-24, and Roscoe Pound, The Spirit of the Common Law (Boston: Marshall-Jones, Co., 1921), 13-17.

5. Richard B. Morris, Studies in the History of American Law with Particular Attention to the Seventeenth and Eighteenth Centuries (New York: Columbia University Press, 1930), 9. For the concept of the "law-jobs" see Karl N. Llewellyn, "Law and the Social Sciences--Especially Sociology," American Sociological Review, 14, Number 4 (August, 1949), 454-455.

6. Miller, The Seventeenth Century, 90, 94-96.

7. See Roscoe Pound, "The Spirit of the Common Law," 21. For a discussion see Eudsen, Puritans, Lawyers and Politics in Early Seventeenth-Century England, 173-175 and M. M. Knappen, Tudor Puritanism (Chicago: University of Chicago Press, 1938), 269-271.

8. Richard Hooker, Of the Laws of Ecclesiastical Polity (London: J. M. Dent & Sons, Ltd., 1925), Book VIII. For a commentary, F. J. Shirley, Richard Hooker and Contemporary Political Ideas (London: S P C R, 1949), 186-198, which makes clear that Hooker and others were dealing with the same problem--the struggle between authority and "liberty" or between sovereignty and limitations on government.

9. Willard, Compleat, 205-206.

10. Max Weber, On Law in Economy and Society, edited and annotated by Edward Shils and Max Rheinstein (New York: Simon and Schuster, 1967), xlviii. See also Georges Gurvitch, Sociology of Law, 55-56, on the essential conservatism of jural values, a conservatism which is a result of seeing law as a logical system whether the civil (continental) or the common law. The civil law, of course, emphasized intent or will and thus could be considered moral on an individual basis, indeed, has the purpose of being so openly. The Anglo-American system, with its emphasis on case, is highly political rather than individual, and the rule of precedent is almost inevitably a rule of social engineering. Individual liberty under the law, the ancient cry of the common lawyers, thus, from a continental or civil perspective, becomes secretly subordinate to social or legal procedures, and justice in the system comes out a little tainted just because the system rests on the "objective fiction." Richard Niebuhr sees a similar relationship although from a less critical stance, when he notes that the inviolability of persons in Anglo-American contractual theory is nothing more than the failure of the legal system to apply moral standards to the individual's behavior. Richard Niebuhr, "The Idea of Covenant and American Democracy," Church History, 23 (June, 1954), 132-134.

11. Laws and Liberties, 2.

12. Weber, On Law in Economy and Society, 231.

13. Weber, On Law in Economy and Society, 11. An early controversy in Puritan New England illustrates the difference here. John Winthrop wanted the laws left unwritten so that the judges would have maximum discretion in their decision and/or punishment. The party which desired a codified law, on the other hand, wanted limited discretion. Winthrop wanted to apply moral standards to individuals, but at the same time was torn between his knowledge of the law and the knowledge that his best discernment of the heart of a man was not quite good enough. He was a more complex legal figure than has yet been presented in any biography.

14. Weber, On Law in Economy and Society, 61-62.

15. Weber, On Law in Economy and Society, 35.

16. Roscoe Pound, Social Control Through Law (New Haven: Yale University Press, 1968), 69.

17. Roscoe Pound, Social Control Through Law, 70.

18. Roscoe Pound, Social Control Through Law, 70-75; Stone Province and Function of Law, 490.

19. Huntington Cairns, Legal Philosophy from Plato to Hegel (Baltimore: John Hopkins University Press, 1949), 1, 237 where he cites a definition of law as "the operative satisfaction of effective demands," is typical of a seeming inability to provide any clear statement of legal definition for the study of legal history. The cases as I examine them are the situations through which legitimacy is sketched into the culture. As I note below in Part Four of this study, the cases often had hidden in them political implications even if one concentrates on those seemingly apolitical cases of routine monetary adjustment. Weber's sociological definition of law is important when one considers the lines or avenues of legitimacy.

20. Hurst, Law and Social Process, 16.

21. Stone, Province and Function of Law, 386, 717-718 and James Floyd Davis, Society and the Law: New Meanings for an Old Profession, 51, for a discussion on the importance of civil cases in a sociological investigation of the law.

Chapter VII

1. For a comparison see Laws and Liberties of 1648 and Whitmore, Laws of 1672. Such a comparison reveals that the Puritans changed their legal system by adding laws which changed the jurisdiction of courts, created new areas of "criminal" behavior, changed requirements for debt collection and inheritance, and so forth.

2. Bailyn, New England Merchants, 148-167.

3. Suffolk Records, 669-70, 683, 695, 804-6, 905, 1108-16 for related cases. Also see the records for 1675-76, passim.

4. Lockridge, A New England Town, 18-20.

5. Suffolk Records:

Kellond v Hudson	Adams v Bennet
Warren v Calley	Williams v Woodbridge
Bonner v Gibbs and Co.	Sheafe v Palmer
Bernard v Cock	Sheffield v Nitingale
Gibbs v Bonner and Co.	Scilley v Thayer
Winslow v Bendall	Griggs v Chock
Toton v Gibbs	Porter v Appelton
Woodman v Poole	

Most of these cases involve a bonded agreement to submit the case to three arbiters, and the suit is for forfeit of the bond rather than for failure to agree to the arbitration or to abide by it. No such provision exists in the statutes, but the court clearly regarded these agreements as having a special status beyond any mere private contract.

6. Suffolk Records, 409, 411, 628.

7. Suffolk Records, 23, 186, 228, 313, 345, 397, 598, 751, 866, 1150 for bridges; 182, 228, 463-4, for schools; 110, 181, 249, 331, 344, 397, 400-1, 442, 598, 629, 751, 783, 958 for roads and highways.

8. Suffolk Records, 226, 253, 314, 444, 477, 480, 642, 694, 779, 911, 914, 1151, 1159 for small causes.

9. This lack of clarity is noted by both Chaffee in his introduction to the Suffolk Records and by Haskins. I am suggesting here that it was not "provided" in the law but was a product of the structure and practice of the legal system. Chaffee, "Introduction," Suffolk Records; Haskins, Law and Authority, 204-205.

10. Whitmore, Laws of 1672, 46, 59, 61, 66, 133, 134, 215, 233, 236, 305, 352 for the actual criminal powers.

11. Suffolk Records lists 109 fornication cases and related bastardy cases. Assault with forty-four prosecutions, cursing with twenty-five, drunkenness with thirty-five, disorders of various types with thirty-six and illegal sale of liquor with fifty-three are other crimes which were prosecuted with some frequency.

12. Suffolk Records, 82, 145, 229, 258, 396, 626, 799, 866, 940, 992, 1153.

13. Whitmore, Laws of 1672, 87, 152; for instances see Suffolk Records, 328, 397, 424, 476, 517, 549, 595, 627, 641, 694, 749, 776 for dismisal of the jury; 60, 65, 156 for refused verdict.

14. Whitmore, Laws of 1672, 86. The awards are too numerous to cite here; see equity and bonds (chancered) in the index to the Suffolk Records. The court sometimes acted without a request which was unusual for the seventeenth century, Clarke v Holmes, 1079-1080. In other cases when the bench could have chancered according to the facts of the case, it did not. The reasons are not clear. See Chaffee, "Introduction," iii, and Massachusetts Archives, XLVIII, 116, as cited in Mark de Wolfe Howe, and L. P. Eaton, Jr., "The Supreme Judicial Power in the Colony of Massachusetts Bay," New England Quarterly, XX (Sept., 1947), 310, for a commentary on colonial courts as courts of chancery.

15. Whitmore, Laws of 1672, 87.

16. An excellent study on Wharton exists: Viola P. Barnes, "Richard Wharton, A Seventeenth Century New England Colonial," Publications of the colonial Society of Massachusetts, XXVI (Transactions, 1924-1926), 238-270.

17. Suffolk Records, Joy v Wharton. See also Suffolk Files, 1376, for papers in the case. The appeal is given in John Noble and John P. Cronin, eds., Records of the Court of Assistants of the Colony of Massachusetts Bay, 1630-1692, 3 vols. (Boston: For the Record Commission, 1901-1928), III, 48. (Hereafter referred to as Recs., Court of Assistants.) The magistrates in the case were

Leverett, Bradstreet, Tyng, Stoughton, Clarke. Stoughton and Bradstreet both served as lieutenant governor and governor under the Charter of 1691, but neither can be considered members of the anti-Puritan party in the colony.

18. Suffolk Records, 803-806 and Suffolk Files, 1635.6 for papers in the case. For special verdicts in which the points of law are clear, see also:

Clarke v Nichols
Buchar v Bastar
Checkley v Williams
Lidgett v Collins
Bellingham Executors v Smith
Middlecott v Scotto
Jones v Crispe
Hill v Robinson
Winslow v Bendall
Man v Wing
Paige v West

19. Suffolk Files, 1635.6.

20. Chaffee, "Introduction," Suffolk Records, lii, and Hutchinson v Paine, 530-536.

21. See the following cases in which a special verdict seems at least partially separated from legal questions:

Lidgett v Collins
Bellingham Executor v Smith (see Suffolk Files 1220)
Hutchinson v Blake,
Hutchinson v Pain (see Recs., Court of Assistants, I, 28)
Williams v Woodbridge (see Recs., Court of Assistants, I, 83)
Usher v Shapleigh

22. Suffolk Records, 486, 490, 493.

23. Suffolk Files, 1424.11, 1320.3.

24. Suffolk Files, 1424.10.

25. Suffolk Files, 1424.10 and Suffolk Records, 591. See also C. L. Lundin, "Jacob Jesson, Reluctant Juror," New England Quarterly, V (Oct., 1932), 812-18, for a full rendition of the case. Lundin makes Jesson out to be something of a hero, but my reading of the case casts some doubt on Lundin's interpretation.

26. Whitmore, Laws of 1672, 3, 38.

27. Suffolk Records, 328, 397, 424, 476, 517, 549, 595, 627, 641, 694, 749, 776.

28. For a further explanation of this concept, see Weber, Law in Economy and Society, 46-47.

29. Whitmore, Laws of 1672, 4.

30. Whitmore, Laws of 1672, 3.

31. Suffolk Records, 90, 786.

32. Suffolk Records, 302-304; Suffolk Files 1221.89, 1341.43, 1221.27.

33. Suffolk Records, 13, 53-54, 95.

34. Whitmore, Laws of 1672, 9.

35. Suffolk Records, 186, 248.

Chapter VIII

1. Laws and Liberties of 1648, 3.

2. Chaffee, "Introduction," Suffolk Records, xlii, n. 3 and 4.

3. Suffolk Records, Jones v Crisp, 457-459.

4. Suffolk Records, Jones v Crisp, 459.

5. Suffolk Files, 1324.4.

6. See Haskins, Law and Authority, 5-7, for the best commentary on this ambiguity.

7. Suffolk Records, Bellingham Executors v Smith, 248. See also 228-31, 237-38, 240-41 for a full rendition of this case and for an understanding of the precedent cited. It was hardly a case which the magistracy would have been happy to see cited as precedent.

8. Suffolk Records, 271, for the case in the Suffolk County Court and Suffolk Files 162130.2 for the petition to the General Court.

9. Suffolk Records, 1175-1176, for a list of specific references in the cases. Mr. Morison notes in his introduction to this case the many references to "indefinite references" to other laws. One can hardly read a case without making some such indefinite connection to some title or another, and any listing such references would be a monumental job.

10. See Whitmore, Laws of 1660, 30-61, for a copy of Nathaniel Ward's Body of Liberties. John Cotton's "Moses, His Judicials" is available in Publications of the Massachusetts Historical Society, S.4, XVI (Boston, 1902), 214-254, edited and with a commentary by Worthington C. Ford.

11. Whitmore, Laws of 1672, the following titles: Actions, Administrator, Appeal, Arms, Court of Assistants, Associates, Bakers, Ballast, Bills, Bonds, Capital Cases, Carpenters, Church, Clerk of Courts, Collectors of Ports, Contracts, County Courts, Creditor, Cullers of Bricks, Customs, Debt, Defamation, Estate, Fishermen, Freemen, General Court, Income from Trade, Inheritance, Innkeepers, Leather, Master, Merchants, Minister, Mortgage, Possession (title), Quakers,

Selectmen, Surgeons, Swine, Tradesmen, Weights and Measures, Workmen, as a representative selection. Again, one can see here and by looking at the laws under these titles that the Puritans used statutes as a catalogue.

12. Whitmore, Laws of 1672, 1.

13. Suffolk Records, Stoughton, esq. v Bishops, and Suffolk Files, 1234.3-7.

14. Lockridge, A New England Town, 65, notes that at most a male inhabitant of the town of Dedham would go to law once during his lifetime. Evarts B. Greene, American Population Before the Federal Census of 1790 (New York: Columbia University Press, MCMXXXII), 19, estimates that the total households in Massachusetts were 5,680, basing his estimate on "An Account of New England," in New England Historical and Geneological Register, XXXVII, 381. Even assuming that his estimate is high (given the fact that the population was clustered around Boston), the adult male population is not well represented in the litigants. Out of 1,163 cases averaging three litigants per case (a high estimate) or 3,489, subtracting roughly 1,000 as involved in more than one case leaves a maximum of 2,489, considerably below the figure even for adult males in the county. Half of these, almost by definition, can be said to have come into court unwillingly as defendants in the cases. All in all, such figures, assuming they are accurate, hardly lead one to the conclusion that the Puritans were so litigious. See Chaffee, "Introduction," Suffolk Records, xliv-xlv, xxxvi-xxxviii; Haskins, Law and Authority, 213. Puritans' reputations for litigiousness is based, in part, on two aspects of their records: voluminousness and voluminousness of probate records. Both are a product of their record keeping activity. For example, Suffolk Files contains as many as four duplicates of some documents and it is not at all unusual to find a full case duplicated two or three times. Such duplication is fine for the copyist, but it can lead scholars astray if they fail to pay close attention. Probate activity and activity involving inheritance is oddly high in Massachusetts because, I think, inheritance was so important to them. Probate records have been scrupulously kept and are available in the office of Clerk of the Probate, Suffolk County Court House, Boston. They should be used in full volume, along with inventories of wills, to test more thoroughly my finding that inheritance was of particular importance.

15. A comparison of economic and trade titles between Whitmore, Laws of 1660, and Whitmore, Laws of 1672, reveals a shift in emphasis from local to imperial trade; for example, under the title Vessels there are fifty-three entries in 1660 and 76 in 1672, many of the new entries having to do with customs and the requirements of the navigation laws.

16. The meaning I express here is for damages or loss; it excludes replevin as a category of suit.

17. Whitmore, Laws of 1672, constitutive titles such as General Court, elections, and so forth. Again, one is struck by the catalogue of duties, for example, under constable. The offices were literally built up over time into specific, clear statements of what offices were supposed to perform what acts.

18. Whitmore, Laws of 1672, titles, Militia, Military.

19. Whitmore, Laws of 1672, title, Ecclesiastical, protection of. See Col. Recs., 49-50, 59-63.

20. Whitmore, Laws of 1672, title, Ecclesiastical. In Col. Recs., 269. The General Court notes that it has asked several "gentlemen" to receive the vacant military commissions in the colony. The towns usually nominated military leaders for the companies which were raised by towns, for example, Col. Recs., V, 30. In this case more than in others the "environmental" nature of statutes should be clear; they were specific for general purposes.

21. See Mark de Wolfe Howe, "The Sources and Nature of Law in Colonial Massachusetts," in George Athan Billias, Law and Authority in Colonial America (Barre, Massachusetts: Barre Publishers, 1965), 9, for the Puritan unconcern with private law; John Dickinson, Administrative Justice and the United States (Cambridge, Massachusetts: Harvard University Press, 1927), 5-7; and in particular Goebel, "King's Law and Local Custom in Seventeenth Century New England," 435.

22. One need only read any account of the Anne Hutchinson or Roger Williams affairs in Massachusetts to discover what I am talking about here. One instance of atheism exists in the Suffolk Records, 86, in which bonds are set unusually high L200, one for blasphemy, 86, with the same bond. A list of capital crimes reveals also that the Puritans were concerned with authority. In addition to the crimes which were usually capital in the seventeenth century, they added cursing or smiting parents, stubbornness (repealed after one year) and obstinate persistence in heresy. Whitmore, Laws of 1672, 15, 291, 60.

Chapter IX

1. See Roscoe Pound, Social Control Through Law, 66, for contrary view. My analysis, as I have explained earlier, is that historians and sociologists of the law have tended to deal with the abstracted concept, the law as it should be operating given a cluster of modern values. My point here is that the law as a cultural force must take its place among other forces such as religion, politics, the family, and so forth. See also Davis, et al., Society and the Law, 74, Erwin C. Surrency, "The Courts in the American Colonies," American Journal of Legal History, XI (1967), 255, Ehrlich, Fundamental Principles of the Sociology of Law, 55-56, 67, 85, on separations between structure and social processes. See George L. Haskins, "Law and Colonial Society," American Quarterly, IX (Fall, 1957), 360, for a view that law may mold society.

2. Talcott Parsons, "The law and Social Control," in Evan, ed., Law and Sociology, for an explanation of the circularity of law.

3. For political culture and the feedback concept one should go to Easton, A Framework for Political Analysis, 24-25.

4. Most prominent among these is Weber, Protestant Ethic, 98-128, 155-183. Others who have grappled with the problem are James Truslow Adams, The Founding of New England (Boston: Atlantic Monthly Press, 1921), 366, Miller, The Seventeenth Century, 42, and Haskins, Law and Authority, for insights into the progress of legal disinterestedness.

5. Weber, Law in Economy and Society, 45-47, where Weber notes the development of administration in "patriarchical" systems which allow few legal restraints but which stress moral restraint. These systems develop a diffusion of political power and a coincidence of actors in undifferentiated power situations.

6. Ericson, Wayward Puritans, 27-29, for his idea of deployment patterns in the creation and certification of boundaries; 50-54 for the paradoxes in Puritan concepts. See also Talcott Parsons, "The Law and Social Control, in Evan, ed., Law and Sociology, 68, the idea that law offers a tension release mechanism in society. My idea of tension

accommodation fits Puritan culture better than the more mechanistic idea and is a combination of the two theoretical positions expressed respectively by Ericson and Parsons.

7. See 99-114 for a description.

8. Miller, Seventeenth Century, 466-473; Miller, From Colony to Province, 28-39, 53-67; Miller, "Errand into the Wilderness," in Errand into the Wilderness, passim; Pope, The Half-Way Covenant, 239-260.

9. Darrett B. Rutman, Winthrop's Boston: Portrait of a Puritan Town, 1630-1649 (Chapel Hill: University of North Carolina Press, 1965), n. 40, 155.

10. Cotton Mather, Magnalia Christi Americana, 2 vols., (New York: Russel and Russel, 1857), II, 316-338, for the best contemporary picture of the "decline" of the New England churches. See also Miller, "Errand into the Wilderness," in Errand into the Wilderness, passim, for the response to secularization of society, and Miller, From Colony to Province, 209-219, for the increasing secularization of society.

11. Such definition can be seen in family law particualrly, and is noted by William W. Haller, Puritan Town Planting in New England Colonial Development, 1630-1660 (New York: Columbia University Press, 1951), 21-22. The importance of place, beginning with the family, has been discussed above, but for a clearer understanding one need only examine the laws governing children; sumptuary laws also helped the law, in specific terms, describe power relationships in the community as did apprenticeship laws and the laws of guardianship. Whitmore, Laws of 1672, 26, 27, 141, 235, 236 for the children; 5, 6, 233 for apparel; 26 for apprentices; 1, 2, 211 for guardianship. This concept of power definition should not be taken mechanistically; it was tempered by the corporate ideal at all levels beginning with the family as Edmund Morgan shows in his The Puritan Family, 168-173.

12. The Suffolk Files abound in such inventories. See 1090.2, in which many articles are not given a value, such as an old box of bottles or jars. In contrast, see Suffolk Files 1350.11 for the inventory of Mr. John Glover, in which every item is given a value including "one old Cwilt," L 0:02:0. Other examples, Suffolk Files, 1965.9, 1911.2, 2060.10. In no estate have I seen a valuation under one shilling, and perhaps those articles lumped at the end of such inventories were considered valued at less than that amount.

13. George L. Haskins, "The Beginning of Particle Inheritance in American Colonies," Yale Law Journal, LI (1942), 1289. Haskins says nothing about the importance of heritability to Puritan corporate values.

14. The Puritans did require that the decision of the court should be final, Whitmore, Laws of 1672, 4, 201, but they were clearly more interested in access to the courts than in the letter of their statute.

15. For the cases about the Ribonson children, see Suffolk Records, 78, 155, and the following cases:

Robinson Guardians v Rock, p. 200
Stoddard & Co. v Rock, p. 211
Stoddard & Co. v Rock, p. 217
Stoddard & Co. v Rock, p. 241
Robinson Guardians v Rock, p. 243
Rock v Robinson, p. 243
Stoddard v Rock, pp. 466-468
Stoddard v Rock, p. 766

The Usher family dispute involved a legacy to John Usher's granddaughter who was the daughter of Samuel Nowell. The dispute seems to involve both the right of inheritance and of authority in the family. See the following:

Usher v Usher, p. 864, with an award granted of L7000.
Usher v Usher, p. 882, a counter suit for L3000 which failed
Usher v Usher, 946, action withdrawn
Usher v Usher, p. 948, action withdrawn
Usher v Usher, p. 948, for an award of L400, action successful
Usher v Usher, p. 949, L7000 award reversed.

16. Land and land law were subjects which the Puritans often spoke about, Oxenbridge, New England 29-30, and have been subjects of constant scholarly investigation: Melville Eggleston, The Land System in the New England Colonies, Johns Hopkins Studies in History and Political Science (Baltimore: Johns Hopkins University Press, 1886); Lockridge, A New England Town, covers land holding in several references; Rutman, Winthrop's Boston, 248-249, finds status tied to land holding.

17. Whitmore, Laws of 1672, 74, 147.

18. See particularly Suffolk Records, 508 and 530. Appendix 4, categories "estate" and "title."

19. See Gurvitch, Sociology of Law, 50-54, where he asserts that law, usually logically constructed so that it has no social reality outside its impact, may operate combined with its values, an operation which he calls "jural experience." He notes that it is both operative law and functional as a source of law. Law as moral experience creates its own needs which, then, one must suppose must be supplied if the law is to continue to function. J. Willard Hurst seems to acknowledge such a possibility in Law and Social Process, 81. See also Ehrlich, Fundamental Principles of the Sociology of Law, 82, and Robert T. Holt, "A Proposed Structural-Functional Framework for Political Science," 87-88, in Martindale, Functionalism in the Social Sciences, for an assessment of values and their importance in placing a legal system within functional theory.

Chapter X

1. See pp. 35, 36, 37, 38. I again call attention to the spiral nature of Parsons' theory and remind students that a three-dimensional conceptualization helps one understand the varying levels of abstraction through which the value orientations in Table 1 are applicable.

2. Samuel Willard, A Sermon Preached upon Exekiel 22.30, 31, Occasioned by the Death of the Much Honored John Leverett, Esq. (Boston, 1679), 4-7, for a rendition of these ge eralized duties. Cotton, Discourse, on the rulers' connection with God.

3. Haskins, Law and Authority, 84, notes the promotion of the "wider goal" which was the interest of the whole. Willard, Compleat, has election sermons during which this idea of corporate interests is often noted: John Higginson, The Cause of God and his People in New England (May, 1663), 21; William Hubbard, The Happiness of a People, 10, where he notes that most of mankind "are but as tools and instrument for others to work by"; Mitchell, Nehemiah on the Wall, 25.

4. J. R. Commons, The Legal Foundations of Capitalism (New York: The Macmillan Co., 1924), 91-92, suggests for Anglo-American law a three-way organizational conception of value-functioning or value-organization: individualistic or abstract in which the rule provi es a receptacle for any legal transaction, and the judge is powerful; righteous or the right in which the court grants a general right in a specific case; the pragmatic in which the social consequences of a rule are applied prior to the determination of a case. One might think at this point in terms of Parsons' value organization pattern scheme as providing a setting for a type of corporate pragmatism in Anglo-American Legal theory.

5. Edward A. Ross, Social Control, 6, 11-15.

6. Parsons, The Social System, 40.

7. Of roughly 1400 cases in the records 509 involved some aspect of inheritance quite aside from the probate responsibility of the court.

8. For example, see Suffolk Records, Deacon William Parcks, whose record as guardian and arbiter runs throughout the cases which involved citizens of Roxbury; the Fisher family of Dedham was often appointed to such offices as well as holding elective office for the town. See also Lockridge, A New England Town, 45-46.

9. Suffolk Records, Bonner v Ashton; Suffolk Files, 2013.1-9 for papers in the case. For the criminal charge, Suffolk Records, 666 and 668, wherein the plaintiff could easily have pressed for the maximum award, but showed restraint by asking for a chancer of the award and thereby a predisposition in favor of equity at civil law. John Hull, "The Diaries of John Hull," American Antiquarian Society, Archaelogia Americana, 3 (1857), 136-137, notes that he is averse to going to law, but that he is not averse to using the existence of it as a threat. In a letter to Rev. Mr. Hubbard of Ipswich, he notes that, having lent Mr. Hubbard money out of a sense of duty, he expects Hubbard to reciprocate with the same sense, but that he will make use of the law if Hubbard does not pay the loan. The aversion from my perspective, and I think from Hull's, is toward specific legal action; such a threat depends on a diffuse appreciation of the existence of legal remedies.

10. Suffolk Records, 190-192.

11. Suffolk Records, Sanford v Orchard; Suffolk Files, 2013.1-9.

12. Suffolk Records, Scottow v Shapleigh and Co.; Suffolk Files 1828.1-18.

13. Weber, Law in Economy and Society, 288.

14. Richard L. Bushman, From Puritan to Yankee: Character and the Social Order in Connecticut, 1690-1765 (New York: W. W. Norton and Co., 1970), 36-38, for the idea of a misguided corporatism. The idea of tension which has been discussed at some length throughout this study is central here.

1. Leach, Flintlock and Tomahawk, 187-189; Col. Recs., V, 65, 79-80.

2. Pope, Half-Way Covenant, 8, Chapter 1, passim.

3. Pope, Half-Way Covenant, 152-155. The story as it unfolds here is taken from Pope's work, Chapter 6, 152-184, which is the best narrative explanation of the political and religious questions involved in the dispute. John Leverett's position in the whole matter has not yet been satisfactorally explained.

4. Pope, Half-Way Covenant, 168-169.

5. Col. Recs., I, 168.

6. In Pope, Half-Way Covenant, 168-169.

7. Pope, Half-Way Covenant, 174, points out that the ministers were the injured party in the case and implies that the assistants were trying to protect them, but I suggest that one could as easily read the records to say that the assistants were acting in accordance with the legal practice and political culture of the colony. See Col. Recs., IV, i, 490, and Hamilton A. Hill, History of the Old South Church Boston: 1669-1884, 2 vols. (Cambridge, 1890), I, 99-101.

8. Col. Recs., IV i, 448-449, 484-488, for a comparison of the make-up of the former and new houses.

9. Thomas Shepard, Jr., Eye Salve; Oakes, New England Pleaded With. These two sermons were responsible for many of the political statements made during the period.

10. Oakes, New England Pleaded With, 8-9, 24-26, 35-37, 58.

11. Thomas Hutchinson, The History of the Colony and Province of Massachusetts Bay, 3 vols., Lawrence Shaw Mayo, ed. (Cambridge, Massachusetts: Harvard University Press, 1936), I, 241. (Hereafter cited as Hutchinson, History.)

12. Hutchinson, History, I, 240.

13. Hutchinson, History, I, 242. See also Leach, Flintlock and Tomahawk, 28-29.

14. Hutchinson, History, I, 245-246.

15. Hutchinson, History, I, 248-253. See also Leach, Flintlock and Tomahawk, frontispiece and 94-100.

16. Col. Recs., V, 49-50.

17. Col. Recs., V, 69-131, 59-65, 79-80; Hutchinson, History, 258.

18. Hutchison, History, I, 263-265; Robert N. Toppan, ed., Edward Randolph's Letters, 5 vols. (Boston: The Prince Society, 1898), II, 196-197. (Hereafter cited as Randolph Letters.)

19. Randolph Letters, II, 197-198.

20. Col. Recs., IV, ii, 245, 247-248.

21. Hutchison, History, I, 269-270.

22. Randolph Letters, II, 206-207.

23. Randolph Letters, II, 226-229, and 226-229 for a critique of the churches.

24. Randolph Letters, II, 231.

25. Randolph Letters, II, 265-267.

26. Randolph Letters, II, 268-271, and Col. Recs., V, 157-164.

27. Col. Recs., V, 192-201.

28. Col. Recs., V, 196.

29. Col. Recs., V, 215.

30. Mather, Magnalia, 316-338.

31. Hutchinson, History, I, 274-275.

32. Suffolk Records, 669-270, 683, 804-806, 905, 1108-1116.

Chapter XII

1. Norden v Avis; Lytherland v Brown.

2. Stoughton v Bishop.

3. Risco v Miller.

4. Rawson v Glover and Co.

5. Nash v Gridley.

6. Deed cases:

   Allen v Emmons
   Billing v Rawson
   Yeales v Bronsdon

   Infringement of title:

   Woodcock v Sutton
   Raynsford v Green
   Leverett v Bullis
   Rose v Allen
   Green v Raynsford
   Leverett v Fox.

   Detainment:

   Deane v Gibbs
   Oughtred v Callicott
   Johnson v Hunt
   Gilbert v Obison
   Bennet v Floyd
   Stoughton & Co. v Gilbert
   Armitage v Franklyn
   Walker v Ellis
   Moon v Rawson
   Leverett v Dowden
   Alcock v Mean
   Thompson v Simons

7. 1672-73 cases:

   Foreign:

   Dinley v Steenwick
   Patten v Dyer
   Patten v Freake
   Dinley v Steenwick
   Hutchinson v Blake
   Ashton and Co. v Bonner
   Dinley v Steenwick
   Miller v Risco

   Officials:

   Usher v Timberlake
   Bill v Wayte
   Knight v Moulder
   Parmiter v Perry

   Appeals and reviews:

   Waldron v Smith
   Smith v Kent
   Waldron v Smith
   Waldron v Smith
   Woodcock v Shoare
   Shapleigh v Clarke and Davis
   Clarke v Bridgham

   Assault:

   Woode v Chantrell

Procedural:

Heaton v Oliver

1673-74 cases:

Foreign:

Ashton v Gibbs
Sharp v Rider & Co.

Appeals and Reviews:

Lawton v Peck
Bonner v Ashton
Saffin v Gibbs

1676-77

Foreign:

Davis v Floyd
Watts v Ballard
Proutt v Scarlett

Defamation:

Smith v Goulding
MacDaniel v Hale
Sedgwich v Rock
Bennett v Gridley

Defamation:

Parker v Miller
Patten v Woody

Officials:

Dudson & Co. v. Darvall
Jones v Naylor

Defamation:

Fayreweather v Melyn
Hutchinson v Sands

Appeals and Reviews:

Lidgett v Paige
Woodward v Aldrich
Goulding v Stanford

Defamation cases by session:

October, 1671 - Smith v Cartwright
January, 1671-72 - Marsh v Mackee
July, 1672 - Baker v Joy
July, 1673 - Parker v Miller
January, 1673-74 - Tay v Hawkins

April, 1676 - Bennet v Gridley
Smith v Broomhall
October, 1676 - Bennet v Gridley
January, 1676-77 - Sedgwich v Rock
July, 1677 - Macdaniel v Hale
Smith v Goulding

January, 1677-78 - Legg v Flood
April, 1678 - Clarke v Kent
October, 1678 - Arnall v French
January, 1678-79 - Barnes v Harwood

July, 1679 - Griggs v Chock
January, 1679-80 - Scottow v Shapleigh & Gridley

Chapter XIII

1. Routine cases for 1672-73:

Wharton v Hudson et al.	Smith v Waldron
Usher v Timberlak	Atwater v Bridge
Waldron v Smith	Savage v Hollingsworth
Calley v Warren	Pope v Minot
Smith v Waldron	Paddy v Weeden
Minot v Pope	Bundy v Tomlin
Stoddard & Co. v Rock	Sweet v Parmiter and Pike
Parmiter v Overman	Addington v Timberlak
Burnham v Hirst	Lilly v Prosser
Middlecott v Bodkin	Hawkins v Sheafe
Gross v Pearse	Lidgett v Freake
Anderson v Cox	Long v Long
Clarke v Jacklen	Hudson v Hunt
Hudson v Skinnar & Co.	

2. Suits with individual LIs:

Winslow 1.9.2 v Shakerly 0.1.1 & Co.
Ball 2.0.2 v Rigbee 0.2.6
Holman 2.0.4 v Briggs 6.2.16
Dafforn 2.1.31 v Holloway 0.0.1 and Butler 0.3.8
Chapell 0.1 2 v Marshall 1.1.2

Parkman 1.0.2 v Townsend 1.1.3
Wright 1.2.4 v Hall 0.3.3
Noyse 2.1.3 v Wayte 1.3.10
Smith 0.1.2 v Decrow 1.0.1
Briggs 6.2.16 v Cooke 1.2.4

Pearson 2.1.5 v Hilton 1.1.2
Legg 0.1.2 v Curtis 1.1.2
Gilbert 4.1.9 v Greenleafe 0.2.3
Kent 7.2.17 v Curveath 1.0.2
Edsall 0.3.12 v Travis 2.0.2

May 1.0.2 v Sutton 0.1.1
Scarlett 0.1.2 v Long 2.0.7
Salter 4.3.11 v Manning 0.1.3
Edwards 2.3.9 v Stone 0.3.4

3. Authority cases:

Williams 2.0.4 v Lake 0.1.3
Sweet 0.0.1 v Gibbs 4.11.44
Waldron 7.3.23 v Marshall 1.1.2
Waldron 7.3.23 v Bassett 0.1.1
Waldron 7.3.23 v Jenkins 0.1.2

Waldron 7.3.23 v Edmunds 0.1.1
Waldron 7.3.23 v Muzzey 1.0.11

Williams 0.1.1 v Woodbridge 2.4.19
Goulding 1.2.11 v Russell 1.0.1 (educ tion)

Orchard 2.1.10 v Gilbert 0.3.4
Norman 1.0.4 v Skinnar 1.0.1

Wage cases:

Allicett 1.1.3 v Skillion 0.2.2
Plaine 0.1.2 v Nash 1.0.1
Warren 4.2.16 v Moore 2.0.3
Rummin 1.0.4 v Somes 0.1.1

Property cases with unusual verdict:

Armitage 1.0.2 v Franklyn 2.1.4
Gilbert 4.1.9 v Obison 1.3.4

Gilbert v Obison represents two tanner families in Boston. They feuded throughout this period, Obison renting tools of trade from Gilbert and then failing to pay his rent or claiming ownership, and vice versa.

The remainder of the cases in this category are property cases which involve the routine transfer of ownership, replevin, and so forth. For example, Leverett v Somes, a suit for the transfer of molasses, Calley v Williams for delivery of sugar, Comer v Peck, replevin of a shallop.

4. The one direct suit against Return Wayte was Walley v Wayte in which John Walley sued for improper performance of office. Walley claimed that Wayte had imprisoned Walley for satisfaction in a civil suit despite Walley's having tendered sufficient estate to satisfy the suit. At issue in this case was whether the community could accept something other than money as security for an execution. Such an issue, coming in April, 1677, after the destruction of the war, clearly had to be decided in favor of goods. See Suffolk Files 1584.3 and Records, Court of Assistants, I, 99-100.

5. Suffolk Records, 783.

6. Suffolk Files 1554.1, 26681.

7. Records, Court of Assistants, I, 77-78.

Chapter XIV

1. Clarendon Papers, New York Historical Society, Collections (For the Society, 1869), 132-134.

2. Bailyn, Merchants, 108, 160, 175, 192. For a general discussion about these and other merchant families, see 112-142.

3. Bailyn, Merchants, 137, 143, "Elements of Change," passim.

4. These litigants and their cases for significant years are listed below:

Thomas Clarke

- Clarke v Yale
- Clarke v Willis
- Clarke v Yale
- Clarke v Kent
- Clarke v Kent
- Timmen v Rose

Richard Wharton

- Wharton v Walley
- Wharton v Gerrard

John Dafforn

- Dafforn v Crow
- Dafforn v Lattimore

Hudson Leverett

- Hudson v Leverett
- Giffard v Leverett
- Leverett v Somes
- Leverett v Lawrence
- Leverett v Bullis
- Leverett v Dowden
- Leverett v Winsley
- Leverett v Watts

Benjamin Gibbs

- Deane v Gibbs
- Sweet v Gibbs

Roger Rose

- Rose v Smith
- Meader v Rose
- Rose v Meader
- Rose v Allen
- Rose v Pitman
- Rose v Stowall
- Rose v Wells
- Rose v Stowall
- Salter v Rose

Thomas Deane

- Deane v Perry
- Deane v Gibbs*
- Deane v Hubbard
- Deane v Keene
- Deane v Whiting
- Deane v Woodbridge

*An appeal case.

Sampson Sheafe

Oughtred v Blackleidge
Oughtred v Callicott
Shaeafe v Palmer

Richard Way

Way v Pease
Way v Walker
Way v Knott
Alford v Way and Endicott
Kent v Way
Kent v Sheppard
Colemen v Way

Thomas Brattle

Brattle v Knight
Brattle v Woodbridge

Ezekiel Fogg

Fogg v Williams
Williams v Fogg

Samuel Shrimpton

Shelley v Deering & Co.
Dummer v Shrimpton

John Usher

Usher v Shapleigh
Waterhouse v Usher
Taylor v Usher
Allen v Usher
Usher v Usher
Usher v Usher
Johnson v Usher
Usher v Usher
Usher v Norwell
Usher v Pickering
Usher v Usher
Usher v Usher

James Whitcomb

Oughtred v Whitcomb
Whitcomb v Cosens
Purkis v Windner
Purkis v Corwin
Purkis v Corwin

The following is a list of cases in which these men were involved during 1679-80:

Clarke & Co. v Baker
Clarke v Holmes
Whitcomb v Ellis & Co.
Rose v Ellis
French v Rose
Leverett v Knight
Burden v Leverett
Shrimpton v Hudson
Sheafe v Salter
Whitcomb v Townsend
Whitcomb v Ellis

5. PVIs of +2:

Bozoon Allen 3.1.8/2

Allen v Emmons
Allen v Emmons

Edward Carrington 1.0.1/2

Smith v Carrington

Nathaniel Byfield 3.2.13/2

Byfield v Wallis

James Everill 2.0.2/2

Ashton & Co. v Bonner and Everill

William Griggs 1.2.4/2

Griggs v Chock
Griggs v Chock

Capt Daniel Henchman 1.0.7/2

Henchman v Rock

William Hoare 1.1.8/2

Hoare v Fogg
Fogg v Hoare

Jacob Jesson 0.1.2/2

Saffin v Jesson

Richard Middlecott 3.1.9/2

Middlecott v Scottow
Saffin v Middlecott
Giffard v Walter & Co.

Nicholas Page 1.4.10/2

Lidgett v Page
Lidgett v Page
Deane v Woodbridge

Daniel Turill 1.0.2/2

Turill v Phipps

Hezekiah Usher, Jr. 1.4.9/(2)

Usher v Usher
Usher v Usher
Usher v Bishop

Mr. Edward Willis 1.0.1/2

Clarke & Co. v Willis

William Harrison 1.0.2/2

Harrison v Cane

Thomas Hill 2.3.9/2

Hill v Emmons
Obinson v Hill

Eliakim Hutchinson 0.2.16/(2)

Hutchinson v Paine

William Kent 7.2.17/2

Kent v Curveath
Kent v Sheppard

Mr. John Noyes 2.1.3/2

Noyes v Wayte

Capt Samuel Scarlett 0.1.2/2

Scarlett v Long

Edward Shippen 3.0.7/2

Shippen v Bendall
Shippen v Davenport

Humphry Warren 4.2.16/(2)

Calley v Warren
Warren v Calley
More v Warren
Warren v More

Nathaniel Williams 0.1.1/2

Calley v Williams

Those with PIVs of +20 and above:

Samuel Bass Sr. 1.0.2/20

Bass v Belcher

Joseph Dudley 1.0.2/44

Parkes v Morris

Mr. Humphry Davie 4.2.14/20

Oxenbridge & Co. v Rice
Davie v Hudson (W/D)
Davie v Allicett
Davie v Skillion
Bennet v Muzzey

Capt. John Hull 1.3.17/47

Cooke v Wincoll

Capt. James Oliver 2.1.8/32

Stebbins v Oliver (W/D)
Heaton v Oliver

Deacon Williams Parcks 2.0.4/30

Robinson Guardians v Rock
Stoddard & Co. v Rock
Stoddard & Co. v Rock
Stoddard & Co. v Rock
Rock v Robinson

Mr. Anthony Stoddard 3.2.20/76

Robinson Guardians v Rock
Stoddard & Co. v Rock
Stoddard & Co. v Rock
Stoddard & Co. v Rock
Bellingham v Smith
Stoddard and Co. v Rock
Rock v Robinson

Edward Tyng esq. 7.0.19/80

Tyng v Searle
Tyng v Gilbert

Capt. Elisha Hutchinson 1.1.13/26

Hutchinson v Atherton & Co.
Savage v Hutchinson (submitted to bench)

Mr. Edward Rawson 2.0.6.45

Rawson v Hart

Nathaniel Robinson 1.0.1/24

Freake v Robinson

Capt. Thomas Savage 2.0.12/47

Savage v Hollingsworth

William Stoughton, esq. 3.0.8/124

Stoughton v Bishops
Stoughton & Co. v Gilbert
Taylor v Hews

Thomas Daniel 1.0.1/24

Daniel v Allison

John Wasdworth 1.0.1/33

Young v Skinnar

Bibliographies

Report on Primary Sources and Collections

Even though records are voluminous and collections abound, historical investigation for seventeenth-century New England is not easy. Most pressing among several problems for an investigation of this type is the identification of persons. Such identification is particularly difficult because the Puritans used common names over and over. General aids in the search for identification are Collections of the Massachusetts Historical Society and the Publications of the Massachusetts Historical Society. These do not run chronologically, however, and scholars are reduced to the use of an index which is printed in volume ten of each series. In addition, Publications of the New England Genealogical Society are useful in conjunction with Lawrence Shaw Mayo's three-volume edition of Thomas Hutchinson's History of New England. Of course, the Dictionary of American Biography is helpful as well as the publications of numerous local historical societies such as the Bostonian Society.

More specifically helpful for this paper have been William T. Davis' Professional and Industrial History of Suffolk County, vol. I, History of the Bench and Bar used in conjunction with the thirty-nine volumes of the Reports

of the Record Commissioners of the Town of Boston, published between 1876 and 1909, by Rockwell and Churchill for the town of Boston. These include Records of the Town of Boston, 1877, vol. II; Births, Baptisms, Marriages, Deaths [in New England], 1630-1699, 1886, vol. IX; Lists of Freemen [1630-91], vol. XXIX, which I believe from other evidence to be a truer list than the ones given in Nathaniel B. Shurtleff's editions of the Records of the Governor and Company of the Colony of Massachusetts Bay in New England. Also included in these reports are local records for the several towns within and close to Suffolk County: Charlestown Records, vol. III, 1877; Dorchester Records, vol. IV, 1883; Roxbury Land Records, vol. VI, 1881. These local records consist of minutes from the town meetings as well as registry of deeds and some court cases. In addition to these published records one should realize that there are numerous jurisdictions in Massachusetts which hold unpublished records in court houses and other public places. This is true of Dedham and Boston as well as Roxbury, Salem, Watertown, and Dorchester, to name only a few. These records are slowly being collected under a program begun a few years back, and scholars may order some of these records on microfilm from the Massachusetts Historical Society or through the Office of the Supreme Judicial Authority of Massachusetts in the Suffolk County Courthouse, Boston. Orders are filled on a first-come, first-serve basis unless one specifically requests legal records, in which case the filming must

be passed upon by the Supreme Court of Massachusetts, a routine action but one which must await the sitting of the court. Representatives of the Mormon Church have been in New England in recent years filming records completely, as I understand it. These are being collected at Brigham Young University in Salt Lake City, Utah, and as they are catalogued will be available to serious scholars.

Locating local records is made easier by Carroll D. Wright's study, Custody and Condition of the Public Records of Parishes, Towns and Counties (Boston: Wright and Patten Printing Company), 1889, but the study is out of date in part. A second newer study which is still useful is C.A. Flagg, A Guide to Massachusetts Local History (Salem: n.p., 1907), which may be used in conjunction with R. T. Swain, Churches, Parishes, Precincts and Religious Societies, Past and Present, in Massachusetts, vol. X, Reports of the Record Commissioner. Other published records which supply valuable genealogical information are Records of the Town of Braintree (Randolph, Massachusetts: n.p., 1886); Don Gleason Hill, ed., The Early Records of the Town of Dedham (Dedham: for the town, 1892; Muddy River and Brookline Records, 1634-1838 (Boston: n.p., 1875); Watertown Records (Watertown: for the town, 1894). Almost every small town has its local historian and many of these histories would undoubtedly be useful to scholars, but many of them are difficult to obtain, having been published in editions of only a few. Two of these have been useful for this study, again, for the genealogical

material they contain as well as for historical insights: Francis S. Drake, The Town of Roxbury (Boston: Municipal Printing Office, 1905), and Charles F. Adams, History of Braintree Massachusetts (Cambridge: The Riverside Press, 1891).

Most specifically valuable for the identification of persons in this study have been the following collections: William B. Trask, ed., Suffolk Deeds, 14 vols (Boston: Public Printing Office, 1880-1901); unpublished Probate Records of Suffolk County. These documents are available in the Registry of Deeds and the Office of the Register of Probate, Suffolk County Courthouse, Boston. Also valuable were James Savage, A Genealogical Dictionary of New England, 4 vols. (Boston: Rockwell and Churchill, 1860-1862), and William H. Whitmore, ed., Massachusetts Civil Lists, 1630-1774 (Albany, New York: J. Munsell, 1870). Savage's Dictionary contains serious errors and is most valuable for cross-checking or for providing a genealogical trail. One cannot depend upon it for statements about office holding or about individuals' status as freemen in Massachusetts Bay. Students of legal history who desire to investigate early New England will find useful the published and unpublished records noted above. They will want to consult, as well, the following bibliographies and catalogues of records: Catalogue of Records and Files in the Office of the Clerk of the Supreme Judicial Court (Boston: for Suffolk County, 1897); John H. Edmonds for Max Farrand, "Rough Draft of the

Legislation Relating to the Massachusetts Laws of 1660," Publications of the Colonial Society of Massachusetts, XXVI (Boston: for the society, 1927-1929), 194-197, the preface; David H. Flaherty, "A Select Guide to the Manuscript Court Records of Colonial New England," American Journal of Legal History, 11 (April, 1967), 107-126; Worthington C. Ford, and Albert Matthews, "Bibilography of the Laws of the Massachusetts Bay, 1641-1776," Publications of the Colonial Society of Massachusetts, vol. IV (Boston: for the society, 1903); Eldon R. James, "A List of Legal Treatises Printed in the British Colonies and the American States before 1801," in Harvard Legal Essay written in Honor of and Presented to Joseph Henry Beale and Samuel Williston (Cambridge: Harvard Press, 1934), 159-211; William J. Jeffrey, "Early New England Court Records: A Bibliography of Published Materials," American Journal of Legal History, 1 (July 1957), 119-147; Charlemagne Tower, The Charlemagne Tower Collection of American Colonial Laws (Privately printed for the Historical Society of Pennsylvania, 1890); Willard O. Watters, "Check List of American Laws, Charters and Constitutions of the Seventeenth and Eighteenth Century," 1936, located in the Huntington Library, San Marino, California.

For Suffolk County specifically, students may want to consult John Noble, "Early Court Files of Suffolk County," Publications of the Colonial Society of Massachusetts, vol. III (Boston: for the society, 1895-1897). Mr. Noble's

work provides an introduction to the Suffolk Files, a multi-volume collection of papers related to colonial legal cases which is housed in the Office of the Supreme Judicial Authority of Massachusetts, Suffolk County Court House, Boston. These papers may be supplemented by Massachusetts Archives, located in the State House, Boston, but one should be advised that the Archives contain no legal records. The archives are particularly useful if one wishes to determine the intent of legislation because they contain both correspondence and legislative records for the colonial period. Other supplementary materials are in "Massachusetts Miscellaneous Manuscripts, 1620-1864," six portfolios, located in the Library of Congress, Division of Manuscripts.

Records which contributed to this study and which would be useful to a further study of the Suffolk County Court or other county courts in Massachusetts are Samuel Eliot Morrison, ed., Records of the Suffolk County Court, 1671-1680, Publications of the Colonial Society of Massachusetts, vols. XXIX and XXX (Boston: by the society, 1932), the original of which is in the Boston Atheneum. Mr. Morison published the original records in full, adding references from the Suffolk Files and other sources relative to the cases. His work, in my opinion, provides an excellent example for other scholars who may wish to edit the records of colonial courts. The excellent "Introduction," to the Suffolk Records by Zachariah Chaffee, Jr., was invaluable to the final determination of case categories for this study. In addition

to the Suffolk Records, scholars would find indispensable John Noble and John F. Cronin, eds., Records of the Court of Assistants of the Colony of Massachusetts Bay, 1630-1692, 3 vols. (Boston: Rockwell and Churchill, 1901-1928). Of course, no examination of Massachusetts legal history could be undertaken without reference to William H. Whitmore, ed., The Colonial Laws of Massachusetts Printed from the Edition of 1660, with the Supplements to 1672, Containing also The Body of Liberties of 1641 (Boston: Rockwell and Churchill, for the Records Commissioners, 1889), and his second edited work, The Colonial Laws of Massachusetts, Reprinted from the Edition of 1672, with Supplements through 1686 (Boston: Rockwell and Chruchill, for the Records Commissioners, 1890). The 1648 edition of the laws is available in the American Imprint Series as The Book of the General Laws and Liberties Concerning the Inhabitants of the Massachusetts, which is organized differently from either of the editions of 1660 or 1672. These editions of the laws are also available in the AIS. Whitmore provides comparative statements among these three editions of the laws, and I suggest that one not bother to use the original law books for the editions of 1660 and 1672 because the additional work required to add the supplemental material has already been performed almost to perfection by Mr. Whitmore. Other useful articles and works are cited in the biliographies which follow.

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Appendix 1

Magistrates at Sessions of the Suffolk County Court, 1671-80, and Places on Jury of Trials, Suffolk County Court, 1670-1679

Magistrates at Sessions of the Suffolk County Court, 1671-80

Year:		1670-71	1671-72
Session	1.	Richard Bellingham, esq., govr. John Leverett, esq., depty. govr. Major Eliazer Lusher, esq. Edward Tyng, esq. William Stoughton, esq.	Bellingham Leverett Tyng Stoughton
	2.	Same as above	Leverett Tyng Stoughton
	3.	Same as above	Same as above
	4.	Same as above	Leverett, govr. Simon Bradstreet, esq., depty. govr. Tyng Stoughton

Year:		1672-73	1673-74
Session	1.	Bradstreet Tyng Stoughton	Leverett Bradstreet Tyng Stoughton Clarke
	2.	Leverett Bradstreet Tyng Stoughton Major Thomas Clarke, esq.	Same as above
	3.	Same as above	Leverett Tyng Stoughton Clarke
	4.	Leverett Bradstreet Tyng Stoughton	Bradstreet Leverett Tyng Stoughton Clarke

Year:		1674-75	1675-76
Session	1.	Bradstreet Leverett Tyng Stoughton Clarke	Leverett Samuel Symonds, depty. govr. Clarke Tyng Stoughton Joseph Dudley, esq.
	2.	Same as above	Leverett Bradstreet Tyng Clarke Dudley
	3.	Same as above	Same as above
	4.	Same as above	Same as above

Year:		1676-77	1677-78
Session	1.	Leverett Bradstreet Tyng Clarke Dudley	Leverett Bradstreet Tyng Clarke Dudley
	2.	Same as above	Leverett Bradstreet Tyng Dudley
	3.	Leverett Bradstreet Tyng Clarke	Same as above
	4.	Leverett Bradstreet Tyng Clarke Dudley	Bradstreet Tyng Dudley

Year: 1678-79

Session		
	1.	Bradstreet Tyng Dudley
	2.	Bradstreet, govr. Tyng Dudley Humphry Davie, esq.
	3.	Bradstreet Tyng Dudley
	4.	Bradstreet Tyng Stoughton Dudley Davie

Places on Jury of Trials, Suffolk County Court, 1670-1679

Total places to fill, twelve jurors per session, thirty-two sessions:		408
Jurors who served during the session:		- 335
Places filled by repeaters:		96
Repeaters on the Jury by terms:	2 terms	62
	3 terms	8
	4 terms	3
	5 terms	1
Total jurymen who served more than one term:		74

Appendix 2

Individuals with LI/PVI Who Participated in the Court, 1671-80

Individuals Who Carry Both an LI and a PVI

Name	LI/PVI	Occupation	Offices
Joseph Adams	0.0.2/3	Maltster	Selectman
Nathaniel Addams	0.1.1/1	Turner	Clerk of the Market
Bozoon Allen	3.1.8/2	Tanner	Constable
Henry Allen	0.2.6/5	Joiner	Rep. for Rowley
Deacon Henry Allin	1.0.1/13	Carpenter	Town Auditor Selectman
John Anderson	1.0.5/4	Shipwright	Water Bailiff Tithingman
Mr. John Appleton	0.1.5/20		Rep. for Ipswich
Peter Aspinwall	1.0.2/4	Farmer	Overseer of Fences Tithingman
Theodore Atkinson, Sr.	0.1.30/1	Feltmaker	Clerk of the Market
Jonathan Balston, Sr.	2.1.5/2		Tithingman
Nathaniel Barnes	3.0.5/(1)	Merchant	(Clerk of the Writs)
Samuel Bass, Sr.	1.0.2/20		Selectman
John Bateman	0.0.1/2		Tithingman
Paul Batt	1.2.5/6	Glazer/Tanner	Hogreeve Constable
Timothy Battle, Jr.	2.0.4/2	Tailor/Tanner	Hogreeve
Nathaniel Beale, Jr.	3.1.6/6		Selectman
Jeremiah Belcher	0.0.1/6		Constable Surveyor of Highways
Mr. John Bicknell	0.1.4/10		Rep. for Weymouth
Mr. Thomas Blighe, Sr.	0.2.2/9	Sailmaker	Surveyor of Highways Chimney Inspector Tithingman
Mr. Peter Brackett	1.2.10/12	(Speculator)	Selectman

Mr. James Brading	1.0.2/3	(Merchant)	Constable Tithingman
Mr. Samuel Bradstreet	0.0.3/5	Physician	Rep. for Andover
Simon Bradstreet, esq.	1.0.7/98	Merchant	Assistant Commander, UC Governor
Capt. Thomas Brattle	4.1.25/53	Merchant	Selectman Sealer of Weights and Measures Town Treasurer Commissioner Fireward
Jonathan Bridgham	2.1.4/3	Tanner	Constable Surveyor of Highways
Joseph Bridgham	0.1.1/3		Clerk of the Market Constable
Mr. William Brown, Sr.	0.2.2/5	Fisherman	Rep. for Salem
Nathaniel Byfield	3.2.13/2		Constable
Mr. Richard Callicott	2.2.16/3	(Speculator)	Tithingman Chimney Inspector
Edward Carrington	1.0.1/2	Turner	Tithingman
Capt. Roger Clapp	1.0.2/15	(Farmer)	Rep. for Dorchester
Anthony Checkley	0.1.5/1	Merchant	Fireward
Andrew Clarke	0.1.4/1		Hogreeve
Mr. Christopher Clarke	1.0.2/8	Mariner/Merchant	Constable Tithingman Chimney Inspector
Thomas Clarke	1.1.3/4(2)		Tithingman Constable (Constable)
Lt. Thomas Clarke	0.0.4/36		Commissioner Rep. for Boston
Maj. Thomas Clarke	11.6.40/59	Merchant	Rep. for Boston Rate Commissioner Assistant

Samuel Clements	1.0.1/1		Hogreeve
John Conney	0.0.2/2	Cooper	Clerk of the Market
			Chimney Inspector
Dr. Elisha Cooke	2.1.4/1	Physician	Fireward
Lt. Richard Cooke	1.0.5/12	Tailor	Commissioner
David Copp	0.0.1/4		Clerk of the Market
			Sealer of Leather
Mr. Edward Cowell	2.1.10/4	Cordwainer	Constable
			Hogreeve
Joseph Crosby	0.1.7/3		Selectman
Jonathan Curwin	1.0.5/5		Rep. for Salem
Thomas Daniel	1.0.1/24		Associate Magistrate for Dover and Portsmouth
Mr. Humphrie Davie	4.2.14/40	Merchant	Commissioner
			Assistant
Maj. Benjamin Davis	0.0.2/2	Merchant	Constable
Samuel Davis	1.1.5/10	Mariner	Woodcorder
Capt. William Davis	3.1.17/15	Apothecary	Selectman
			Commissioner
Henry Deering	0.2.2/4		Tithingman
			Constable
Fathergone Dinley	1.2.7/1	Butcher	Hogreeve
Joseph Dudley, esq.	1.0.2/44	Merchant	Assistant
			Commissioner for UC
Leonard Douden	1.0.21/2		Constable
Paul Dudley	2.0.4/5	Merchant	Collector of Customs
Mr. Jeremiah Dummer	1.0.2/4	Goldsmith	Constable
			Tithingman
Giles Dyer	2.0.4/6		Clockkeeper
Robert Earle	1.0.2/2	Prison Keeper	Sealer of Leather
Obadiah Emmons	1.4.14/1	Shoemaker	Sealer of Leather
John Endicott	4.3.44/2	Merchant	Constable

James Everill	2.0.2/2		Tithingman
Capt. John Fayrweather	2.1.6/12		Constable
			Selectman
			Fireward
Lt. Theophilus Frary	0.1.1/10	Cordwainer	Hogreeve
			Sealer of Leather
			Tithingman
			Selectman
Mr. John Freake	1.1.13/3	Ships Master	Hogreeve
			Constable
			Constable
			Commissioner
			Clerk of the Writs
			Associate Magistrate
Capt. Benjamin Gibbs	4.11.44/1	(Attorney)	Hogreeve
William Gibson	0.0.1/6	Cordwainer	Sealer of Leather
			Tithingman
			Constable
William Gilbert	0.3.4/3	Cordwainer	Clerk of the Market
			Constable
Capt. Benjamin Gillam	1.0.7/1	Ships Master	Water Bailiff
William Green	2.4.11/1		Scavenger
William Greenough, Sr.	1.2.19/5	Mariner	Clerk of the Market
			Constable
Joseph Gridley	1.1.3/8		Hogreeve
			Town Crier
			Woodcorder
			Scavenger
William Griggs	1.2.4/2	Cooper	Tithingman
Richard Hall	0.2.3/15		Selectman
Mr. John Harrison	2.0.3/3		Constable
			Tithingman
William Harrison	1.0.2/2	Bodice Maker	Constable

Samuel Haugh	0.0.1/2		Constable
Mr. William Hawkins	1.0.2/1	Butcher/Surgeon	Hogreeve
Maj. John Hayman	0.0.2/2	Ropemaker	Tithingman
John Hayward	0.0.1/2	Scrivner	Constable
Capt. Daniel Henchman	1.0.7/2	Landed	Fireward
			Surveyor of Highways
James Hill	0.0.1/4		Culler of Staves
			Constable
Thomas Hill	2.3.9/2	Tanner	Hogreeve
			Scavenger
William Hoare	1.1.8/2	Baker	Tithingman
Caleb Hobart	0.0.1/3		Selectman
Capt. Joshua Hobart	0.0.2/10	Mariner	Rep. for Hingham
Lt. John Holbrooke	0.0.3/15		Rep. for Weymouth
William Hollowell	1.1.10/5		Water Bailiff
			Tithingman
Joseph Homes	1.0.2/2		Tithingman
Mr. John Hull	1.3.17/47	Goldsmith	Mint-master
			Rate Commissioner
			Fireward
			Commissioner
			Colony Treasurer
Capt. Edward Hutchinson	1.0.16/14		Commissioner
			Auditor
Eliakim Hutchinson	0.2.16/(2)	Merchant	(Constable)
Capt. Elisha Hutchinson	1.1.13/26	(Merchant)	Keeper of Powder
			Commissioner
			Informer
			Selectman
			Fireward
			Sealer of Weights and Measures

Mr. Samuel Jackson	0.1.1/4		Constable Tithingman
Jacob Jesson	0.1.2/2	Merchant/Ironmonger	Constable
Samuel Johnson	0.4.7/4	Ships Master	Hogreeve Scavenger Tithingman
Mr. John Joyliffe	0.0.10/59	(Merchant)	Town Clerk Selectman Fireward Commissioner
John Keene	5.2.18/1	Innkeeper/Mariner	Hogreeve
Mr. Thomas Kellond	1.1.10/(2)	Merchant	Constable
Ens. William Kent	7.2.17/2		Hogreeve Clerk of the Market
Capt. John Lake	0.1.3/6	Tailor	Selectman
Capt. Thomas Lake	0.0.4/30	Indian Trader	Selectman Commissioner
Maj. Gen. John Leverett, esq.	5.0.11/94	Merchant	Assistant Deputy Governor Governor Commissioner in Reserve
Peter Lidgett	0.0.14/(3)	Merchant	(Commissioner)
Edward Lilly	1.0.7/1	Cooper	Hogreeve
Thaddeus Mackarty	0.0.1/1		Hogreeve
John Marion, Sr.	1.1.3/8	Cordwainer	Clerk of the Market Sealer of Leather Tithingman Chimney Inspector
John Marsh	1.1.4/2		Tithingman
Mr. Arthur Mason	1.1.3/7		Surveyor of Highways Overseer of Woodcutters
Samuel Mattock	0.1.1/9		Culler of Staves
George May	1.0.2/1	Ironmonger	Hogreeve

James Meares	0.2.5/2	Feltmaker	Hogreeve
			Clerk of the Market
William Measure	1.1.5/5		Rep. for Lynn
Mr. Richard Middlecutt	3.1.9/2	(Merchant)	Constable
John Moore	0.1.3/3		Clerk of the Market
			Tithingman
Thomas More	0.0.3/2		Water Bailiff
Capt. Samuel Mosley	1.0.15/1	Indian Trader	Hogreeve
Andrew Neale	0.0.2/1	Tavern Keeper	Hogreeve
Robert Noakes	0.0.5/1		Scavenger
Samuel Norden	1.0.7/1	Shoemaker	Sealer of Leather
Mr. John Noyes	2.1.3/2		Constable
Elisha Odlin	0.0.1/2		Tithingman
Capt. James Oliver	2.1.8/32	Merchant	Sealer of Weights and Measures
			Selectman
			Rate Commissioner
Nathaniel Oliver	0.0.5/2		Constable
Robert Orchard	2.1.10/1	Feltmaker/Merchant	Inspector of Wool and Skins
Nicholas Paige	1.4.10/2		Constable
Moses Paine, Sr.	1.2.5/7		Clerk of the Market
			Constable
			Tithingman
			Surveyor of Highways
Deacon William Parks	2.0.4/30		Rep. for Roxbury
Mr. Richard Parker	1.0.5/3	Merchant	Commissioner
John Parmiter	2.1.13/2	Housewright	Constable
Samuel Peacock	0.1.1/1		Hogreeve
Thomas Peck, Jr.	1.0.2/4	Shipwright	Constable
Thomas Peck, Sr.	1.1.6/6	Shipwright	Water Bailiff
			Tithingman
Seth Perry	0.2.7/3	Merchant	Constable
			Tithingman

John Phillips	0.0.3/2		Tithingman
William Phillips, Sr.	1.0.16/8	Landed	Magistrate at Sacco
Zecharaiah Phillips	1.0.7/1	Indian Trader	Hogreeve
John Pool	1.1.7/2	Merchant	Constable
Able Porter, Jr.	1.0.7/4		Tithingman
Daniel Preston, Sr.	0.0.5/12		Selectman
Mr. Oliver Purchas	0.0.2/20		Rep. for Lynn
Maj.. John Pyncheon	1.0.2/80	Landed	Assistant
Lt. Edmund Quinsey	0.0.3/41		Rep. for Braintree
			Selectman
Mr. Edward Rawson	2.0.6/45		Secretary for Colony
John Raynsford	3.0.4/5		Hogreeve
			Scavenger
			Engineer (Fireman)
			Constable
Solomon Raynsford	3.0.4/2		Hogreeve
			Clerk of the Market
Lt. Nathaniel Reynolls	0.0.1/5		Sealer of Leather
			Tithingman
			Inspector of Hides for Export
Mr. John Richards	1.0.7/25	Indian Trader	Rep. for Newberry, Hadley, Boston
Nathaniel Robinson	1.0.1/1		Hogreeve
Mr. Joseph Rock	4.6.24/2		Surveyor of Highways
			Scavenger
Edward Rushworth	1.0.2/5	Landed	Rep. for York
James Russell	1.0.1/5	Merchant	Rep. for Charlestown
Richard Russell, esq.	1.0.2/98	Merchant	Assistant
			Treasurer
Mr. John Saffine	1.1.15/5	Attorney	Constable
			Commissioner

Jabez Salter	4.3.11/3		Hogreeve Constable
Ephraim Savage	0.1.9/6		Surveyor of Highways Tithingman
Maj. Thomas Savage	2.0.12/47	Merchant/Landed	Rep. for Boston Rate Commissioner Fireward Rep. for Hingham Auditor Commissioner
Robert Sandford	1.0.2/2		Surveyor of Highways
John Scarlett	2.1.8/3	Landed	Constable Clerk of the Market
Capt. Samuel Scarlett	0.1.2/2	Ships Master	Constable
John Scotto	3.2.5/1		Hogreeve
Edmund Sheffield	0.1.6/3		Selectman
Edward Shippen	3.0.7/(2)		(Constable)
Samuel Shrimpton	2.2.21/(2)		(Constable)
Benjamin Smith	0.1.2/3		Scavenger Woodcorder
Capt. Thomas Smith, Sr.	0.3.4/5	Shipwright	Constable Chimney Inspector
William Smith	0.0.5/6		Sealer of Leather Tithingman
Thomas Stanberry	0.0.1/3	Butcher	Hogreeve
Mr. Anthony Stoddard	3.2.20/76	Linendraper	Rep. for Boston Commissioner Fireward
Simeon Stoddard	0.1.3/2	Carpenter	Tithingman
William Stoughton, esq.	3.0.8/124	Minister/Merchant	Assistant Selectman Commissioner for UC
Mr. Henry Taylor	1.0.2/3	Surgeon	Hogreeve
Mr. William Taylor	1.1.3/1	Merchant	Fireward

Ralph Thacher	0.1.3/2	Minister	Constable
Benjamin Thwing	0.1.3/2	Carpenter	Tithingman
James Townsend	2.0.3/2	Housewright	Constable
Ens. Daniel Turill, Jr.	1.0.2/2		Constable
Daniel Turrill, Sr.	0.2.9/16	Blacksmith	Selectman
			Fireward
Edward Tyng, esq.	7.0.19/80	Brewer/Merchant	Assistant
			Suffolk Treasurer
Hezekiah Usher, Jr.	1.4.18/(2)	(Merchant)	(Constable)
Hezekiah Usher, Sr.	4.0.8/36	(Merchant)	Selectman
			Commissioner
John Usher	5.4.33/(2)	Stationer	(Constable)
William Veazy	0.0.1/12		Selectman
Hilliard Veren	1.0.1/7	Merchant	Clerk of Salem
			Collector of Port at Salem
John Wadsworth	1.0.1/33	Landed	Rep. for Farmington
Isaac Waldron	7.3.23/2	Physician	Constable
Maj. Richard Waldron	2.1.8/50		Rep. for Dover
Isaac Walker	0.1.4/5	Merchant	Hogreeve
			Constable
			Tithingman
Samuel Walker	0.0.3/2		Constable
Thomas Walker	0.0.5/4	Brickburner	Constable
			Clerk of the Market
			Surveyor of Highways
Capt. John Walley	3.0.8/5		Constable
			Fireward
			Rate Commissioner
Humphry Warren	4.2.16/(2)	Merchant	(Constable)
Joseph Webb	1.0.3/1		Sealer of Leather
Thomas Welds	0.0.3/5		Rep. for Roxbury
Richard Wharton	3.3.30/2	Merchant	Constable

Joseph Wheeler	0.0.5/2	Tailor	Tithingman
Mr. Samuel Wheelwright	1.0.1/47	Landed	Rep. for York and Wells
			Associate Magistrate
James Whitcomb	5.0.21/3	Merchant	Overseer of Woodcorders
John White	0.0.1/4		Surveyor of Highways
			Tithingman
Sgt. Samuel White	0.0.1/8		Commissioner
John Wilkins	0.2.4/1		Clerk of the Market
John Williams, Boston	7.8.36/1	Boatman	Hogreeve
Nathaniel Williams	0.1.1/2		Constable
Lt. Edward Willis	1.0.1/2		Constable
Capt. John Wincoll	1.2.4/79		Rep. for Kittery
			Associate Migistrate
Mr. John Wing	0.1.3/4	Tavern Keeper	Constable
			Tithingman
Waitstill Winthrop	0.0.3/18	Landed	Commissioner for UC
Elder John Wiswall	0.1.11/2	Ironmonger/Trader	Constable
John Woodmancy	0.1.1/2		Tithingman
Mr. Peter Woodward	1.0.2/5	Landed	Rep. for Dedham
Isaac Woody	1.0.3/1	Mfgr. Saltpeter	Scavenger

Identified, Political Status Unknown

Name	LI	Name	LI
Alexander Adams	3.0.5	Thomas Adkins	0.1.3
Jonathan Adams	0.1.2	Elizabeth Alcock	1.0.1
Nathaniel Adams, Jr.	1.2.3	George Alcock	1.0.1
William Adams	0.1.2	Joannah Alcock	1.0.1
Mr. Isaac Addington	0.0.1	John Alcock	1.0.1

Palsgrave Alcock	1.0.1
Sarah Alcock	0.1.2
Samuel Alderidge	0.1.2
John Aldis	1.0.1
Thomas Aldrich	1.0.1
Benjamin Alford	0.0.2
Abraham Allen	0.1.1
Benjamin Allen	0.0.1
Mr. James Allen	3.1.8
Joseph Allen	0.2.3
John Allicett	1.1.3
James Allison	1.0.1
John Andrews	0.0.1
Timothy Armitage	1.0.2
Joseph Arnal, Jr.	0.0.3
Joseph Arnal, Sr.	0.1.1
William Arnal	1.2.4
Joseph Arnold	0.1.1
Edward Ashley	1.1.4
Henry Ashton	2.2.11
Maj. Gen. Humphry Atherton	0.0.1
Jonathan Atherton	1.1.10
Watching Atherton	0.3.3
Theodore Atkinson, Jr.	0.0.2
Joshua Atwater, Sr.	5.2.22
William Avis	0.1.1
Samuel Bacon	2.0.4
Jonathan Badcock	0.0.2
John Baker	0.0.5
Nathaniel Baker	4.0.12
Thomas Baker	2.2.5
Francis Ball	2.0.2
Harvis Ballard	0.1.1
John Balston	0.1.1
James Barnes	1.1.3
William Bartholomew	4.1.9
William Bassett	0.1.1
Joseph Bastar	0.1.1
John Baxter	0.0.5
Gamaliel Beament	1.0.1
Andrew Belcher	0.2.2
Joseph Belcher	0.1.7
Joseph Belknap	0.0.1
Samuel Bellingham	0.0.1
Mr. Freegrace Bendall	1.4.7
Elisha Bennet	1.0.7
John Bennet	1.1.5
Samuel Bennet	1.2.5
Bartholomew Bernard	1.0.2
Goodman Roger Billing, Sr.	1.0.1
Roger Billing	1.0.2
Benjamin Bishop	0.1.1
Margaret Bishop	0.1.1
Samuel Bishop	0.4.5
Thomas Bishop	0.0.4
John Blackleidge, Jr.	3.1.10
Edward Blake	0.1.1
John Blake	0.1.1
Samuel Blake	0.0.1
John Blower	1.0.1
John Boden	1.0.1
John Bolt	1.0.2
John Bonner	4.2.32
Nathaniel Bosworth	1.0.2
Samuel Bosworth	1.0.2
Maj. Nehemiah Bourne	0.0.3
John Brackenbury	0.0.1
James Brackett	0.0.2

Richard Bradley	0.0.2
Edward Bragg	0.1.1
John Breck	1.0.5
Thomas Breedon	1.0.2
Matthew Bridge, Sr.	0.1.1
Mrs. Elizabeth Bridgham	1.1.2
John Bridgham	0.0.4
Thomas Bridgen	1.0.2
Abraham Briggs	6.2.16
Joseph Brisco	1.0.2
Robert Bronsdon	1.0.1
Thomas Broughton	0.1.1
Mr. Thomas Broughton	0.2.3
Job Brown	0.1.2
Samuel Browne	0.1.1
John Bull	0.0.1
Judith Bullis	0.1.1
Philip Bullis	1.1.2
Jeremiah Bumsteed	0.0.5
John Bundy	0.1.5
Edward Bunn	1.0.2
Mary Butcher	0.1.2
John Butler	0.0.2
Nicholas Butler	0.0.3
Stephen Butler	0.3.8
Henry Butterfield	1.0.1
Ralph Carter	0.0.2
Arthur Cartwright	0.1.1
Thomas Carter	2.0.4
Robert Carver	0.3.10
John Casey	0.0.2
John Chadwick	1.0.2
Josiah Chapin	0.0.1
Margaret Cheney	0.0.5
Thomas Cheney	0.0.5
Alwin Childe	3.0.6
John Childe	1.0.1
Peter Chock	3.3.9
Joseph Church	1.0.2
John Clapp	1.0.2
William Clapp	2.0.2
Hugh Clarke	0.1.7
Mr. John Clarke	0.0.1
Matthew Clarke	1.0.2
Thomas Clarke, Plymouth	1.3.11
William Clarke	1.0.1
Jane Cleare	0.1.1
John Clear, *Jr.*	0.1.2
John Clesby	0.0.1
Augustine Clements	0.0.2
Josiah Cobham, Sr.	2.1.5
Caleb Coggan	0.0.3
John Coleburn	1.0.1
William Coleman	0.0.7
Robert Collins	2.0.2
John Comer	1.0.4
Elizabeth Leverett Cooke	4.0.7
Robert Cooke	1.2.4
Henry Cooly	1.0.2
Josiah Cooper	0.1.6
Clement Corbin	1.0.1
Isaac Cosens	0.0.4
Henry Cowley	0.1.2
Edward Cox	0.2.3
John Cox	0.2.4
Margaret Cox	0.1.2
Robert Cox	0.2.2
Zecharaiah Crisp	0.1.1

Col. William Crowne	0.0.16
Solomon Curtis	0.0.7
Zecheus Curtis, Sr.	0.1.1
Elizabeth Curwin	1.0.3
Daniel Cushing	1.0.1
Jeremiah Cushing	2.0.2
Matthew Cushing	1.0.1
Samuel Cutler	2.1.5
Thomas Cutler	0.1.2
John Dafforne	2.1.31
John Daniel	1.1.4
John Daniel, Jr.	0.0.4
William Darvall	1.0.4
Eleazer Davenport	1.1.4
Elizabeth Davenport	0.1.1
Nathaniel Davenport	0.0.3
Richard Davenport	0.0.1
Robert Davis	1.0.1
Tobias Davis	0.0.3
Johanah Davison	0.0.1
Mr. Thomas Deane	5.0.24
Benjamin Dell	0.1.2
Joseph Dell	0.4.7
Thomas Dewer	1.0.6
Henry Dispaw, Jr.	1.2.6
Henry Dispaw, Sr.	1.2.6
James Dowell	0.1.2
Susana Down	0.0.2
Thomas Downe	1.0.6
Francis Dudson (Dodson)	0.0.1
Capt. Joseph Dudson	0.1.5
Robert Dutch, Sr.	0.1.1
Anne Dyer	0.1.2
Thomas East	0.2.2
Pheasant Eastwick	1.0.2
William Edmunds	0.1.1
Thomas Edsall	0.3.12
David Edwards	2.0.2
Thomas Edwards	2.3.9
Joseph Eldridge	0.0.2
Edward Ellis	1.0.1
Henry Ellis	1.3.5
Richard Ely	0.2.2
Agnis Evans	0.1.7
John Evans	0.1.1
Daniel Fairfield	0.1.1
John Farnum, Sr.	0.0.5
John Feno	1.0.2
James Flood	2.1.7
Ezekiel Fogg	3.7.20
John Foster	1.0.2
Jacob Fowle	0.1.2
John Foy	1.0.2
John Francks	2.0.7
Benjamin Franklyn	2.1.4
John Franks	0.1.2
Sarah Franks	2.0.2
Mrs. Elizabeth Freake	4.1.15
Stephen French	0.0.5
Capt. William French	0.0.1
John Frost	2.0.2
Matthew Gannet, Jr.	0.0.2
Peter Gardner	0.1.2
Prudence Gatliffe	1.0.6
Jonathan Gay	1.0.1
Joshua George	0.0.1

Richard George	0.1.1
Capt. Willaim Gerrish	2.0.3
Christopher Gibson	0.0.5
John Giffard	4.5.24
John Gilbert	4.1.9
John Gill	0.1.4
Thomas Gill	0.0.1
Anne Glover	2.1.6
Mr. Habbakkuk Glover	1.2.3
Mr. John Glover	1.1.8
Edward Gould	0.2.2
Peter Goulding	1.2.11
Abraham Gourding	0.0.5
Peter Grant	0.0.1
Mr. John Green	0.0.3
Mary Green	0.0.1
Nathaniel Green	1.1.4
Henry Greenland	1.1.3
Enoch Greenleafe, Sr.	0.2.3
Elizabeth Greenough	0.0.2
Nathaniel Greenwood	1.0.2
John Griffin	0.0.3
Clement Gross	1.2.9
Phillip Gross	1.0.2
Richard Gross	0.1.1
John Grosvenner	2.1.6
William Guard	1.0.1
John Gurnell	0.2.2
Robert Gutteridge	0.0.3
Ingeman Halgeson	0.0.5
Andrew Hall	1.2.4
Ralph Hall	0.3.3
George Hallit, Sr.	1.0.7
George Halsall	1.1.3
James Halsey	0.1.1
Alice Hambleton	0.0.2
William Hambleton	0.1.4
Abigail Hanniford	0.0.5
John Harbour	1.2.8
John Hardman	0.1.1
Elizabeth Harris (Herris)	0.0.1
Henry Harris	0.0.3
John Harris	1.1.2
Richard Harris	2.1.10
Thomas Harris	1.1.2
William Harris	1.1.8
Isaac Hart	0.1.1
Henry Harwood	0.1.1
John Harwood, Sr.	0.1.2
Thomas Haskings	0.0.3
Robert Haughton	2.1.6
Thomas Hawkins	2.5.13
Ebenezer Hawthorn	0.0.2
Eleazer Hawthorn	0.1.1
John Hawthorne	0.1.6
Ebenezer Hayden	1.2.4
Samuel Hayman	0.0.7
Samuel Hayward	1.0.7
Anthony Haywood	0.0.5
John Hazelden	1.0.1
John Hearcy	3.0.5
William Hearcy	0.1.1
Thomas Heath	0.0.1
Jabez Heaton	0.1.2
Daniel Henshaw	0.0.1
Ephraim Hewett	0.1.1

Joshua Hews, Jr.	1.1.3
Josiah Hilman	0.0.2
William Hilton	0.1.1
William Hirst	0.2.5
George Hiskett	0.1.5
Joshua Hobart, Jr.	1.2.4
Capt. Josiah Hobart	1.3.7
Daniel Holbrooke	0.0.1
John Holbrooke, Jr.	0.1.3
Thomas Holebrooke	0.0.5
Richard Hollingshead	1.0.2
William Hollingsworth	0.2.2
Benjamin Hollowell	1.0.2
Elizabeth Hollowell	1.0.2
William Hollowell, Jr.	1.0.2
Samuel Holman	2.0.4
Thomas Holman	1.0.2
Thomas Holmes	0.1.1
Stephen Hoppin	0.0.6
Thomas Hoppin	0.1.2
Hesther Houchin	1.0.2
Joseph How	0.1.1
Mr. John Hubbard	0.0.1
Mr. William Hubbard	0.0.2
Nathaniel Hudson	0.0.3
Samuel Hudson	0.1.1
Capt. William Hudson	12.9.116
William Hudson, Jr.	0.1.1
John Hughs	1.0.1
Ephraim Hunt	1.0.2
Capt. John Hunt	2.1.6
Mary Hunter	0.0.5
John Hurd	0.0.1
William Hurrey	1.0.2
William Ingraham	0.0.1
John Ireland	1.1.6
John Jacob, Sr.	1.0.6
Thomas Jenner	0.1.1
John Jennings	1.0.4
Jeremiah Jewett	1.1.10
Joseph Jewett	0.0.2
Benjamin Johnson	0.1.1
Francis Johnson	1.1.6
Humphry Johnson	0.1.1
John Johnson	2.3.8
Robert Johnson	0.0.2
John Jones	1.2.9
Robert Jones	0.2.2
Anne Joy	1.0.7
Joan Joy	0.1.2
Joseph Joy	1.1.5
Thomas Joy	2.4.45
Samuel Judkin	0.0.1
Mary Kemble	2.0.4
Robert Kemp	1.0.1
John Kent, Jr.	0.1.1
Thomas Kingman	1.0.2
John Kinsley	1.0.2
Mr. Richard Knight	3.3.14
Mr. Thomas Knight	0.0.6
Abiel Lamb	1.1.2
Joshua Lamb	0.0.1
Christopher Lattimore	0.0.2
Nicholas Lawrence	0.1.3
Benjamin Leads	0.1.2
John Lee	0.1.1
John Leech	1.0.1
Samuel Legg	3.4.15

Thomas Leichfield	1.0.6
Henry Leonard	0.1.1
Hudson Leverett	3.6.28
Deacon John Levit	1.0.1
Charles Lidgett	1.1.4
Elizabeth Lidgett	3.1.8
Elizabeth Long	0.0.2
John Long	0.0.5
Joseph Long	2.0.7
Mary Long	0.0.1
Michael Long	1.0.1
William Long	2.0.4
Zecharaiah Long	1.3.6
William Longfellow	1.2.6
John Loring	0.0.1
Thomas Loring	0.0.1
John Lowel	1.0.3
Joseph Lowel	0.0.2
William Lovering	1.0.2
James Loyd	0.1.2
Thomas Lund	0.1.1
John Lux	0.2.2
Dennis Macdaniel	2.0.4
John Macdaniell	1.0.1
Elizabeth Makespeace	1.0.1
John Mann	1.1.13
Anne Manning	4.1.9
Nicholas Manning	0.1.3
Paul Mansfield	0.1.1
Robert Marshall	1.3.12
Capt. Thomas Marshall	1.1.2
William Marshall	0.1.1
Capt. Richard Martin	0.2.2
John Mason	0.0.4
Robert Mason	0.0.2
Timothy Mather	1.1.10
Joshua Matson	1.0.2
Thomas Matson	1.1.4
James Matthews	0.1.4
Richard Mead, Sr.	1.0.1
Simon Messenger	0.0.1
Thomas Miller	2.2.8
John Mills	1.0.2
Samuel Minot	2.0.3
Thomas Mitchel	0.1.1
Richard More	0.1.1
Richard More, Jr.	2.0.3
John Morton	0.1.2
Nathaniel Mott	0.1.1
Nicholas Moulder	1.3.5
William Mumford	0.1.1
Benjamin Muzzey	0.2.2
Benjamin Muzzey, Sr.	0.1.1
Katharin Nanney	0.0.5
James Nash, Sr.	2.1.5
Edward Naylor	1.6.9
Phillip Nelson	0.1.6
Andrew Newcomb	3.1.11
Thomas Newman	0.1.1
John Nichols	2.0.6
Samuel Nile	0.0.1
William Nitingale	0.1.1
Thomas Norman	1.0.4
George Norton	1.1.4
George Nowell	1.0.3
Mr. Samuel Nowell	0.1.3

Nicholas Noyes	1.0.1
William Obison	1.3.5
Maudline Ofield	1.0.2
Thomas Ofield	1.0.2
Experience Orris	0.1.1
Mr. John Osbourne	0.1.2
Thomas Overman	1.0.1
Robert Owen	0.1.4
Mr. John Oxenbridge	3.1.8
Thomas Paddy	1.0.2
Edward Page	0.0.2
John Page	0.0.1
John Paine, esq.	2.2.5
John Palmer	1.0.3
Thomas Palmer	1.0.1
Elias Parkman	1.0.2
Benjamin Parmiter	0.1.1
Richard Parton	0.0.3
William Parsons	0.1.2
Moses Patrick	1.0.1
Justine Patten	2.0.4
Nathaniel Patten	2.0.4
Thomas Patten	0.1.10
Richard Pattishall	0.1.2
Samuel Paul	0.0.2
Samuel Payson	0.1.1
Samuel Pearse	0.1.3
John Pease	0.2.3
Samuel Pelton	0.3.3
William Penn	1.0.2
Robert Penny	0.0.3
Phillip Persons	0.1.1
Eleazer Phillips	2.0.9
Mr. Henry Phillips	0.2.8
Nicholas Phillips	0.2.2
William Phipps	0.4.9
Samuel Pierce	0.0.2
George Pierson	1.2.5
George Pike	0.1.1
John Pitcher	0.1.2
William Pitman	1.0.1
William Pond	0.0.3
Joseph Pool	1.1.7
John Pope	0.2.3
William Pope	1.0.2
Samuel Procter	0.0.5
Roger Prosser	0.1.8
Timothy Pratt, Jr. (Prout)	1.0.4
Timothy Prout, Sr.	0.0.2
William Proutt	1.0.2
Thomas Purchas	0.0.5
George Purkis	1.0.2
Samuel Ravenscroft	0.4.8
Joshua Rawlins	1.0.2
William Rowson	6.5.19
David Raynsford	3.0.4
John Read	0.0.5
Nicholas Rice	0.1.1
David Richards	1.0.2
Edward Richards	0.1.1
Samuel Rigbee	0.2.6
Henry Robey	0.0.2
James Robinson	2.3.14
Joseph Robinson	2.2.13
Thomas Robinson	3.2.21
Roger Rose	3.11.32

William Rowste	0.1.1
John Ruck	0.0.8
Capt. Thomas Russell	1.0.12
Eneas Salter	0.1.1
Richard Saltonstall	1.0.2
Martin Sanders	1.0.2
Henry Sandiford	0.0.10
Thomas Sanford	0.0.5
Thomas Savage, Jr.	1.0.2
Thomas Saxton	0.0.1
Thomas Scilley	3.0.6
Benjamin Scott	0.0.7
Capt. Joshua Scotto(w)	1.1.4
Capt. Daniel Searle, esq.	0.1.3
Robert Sedgewick	1.0.4
Samuel Sendall	0.0.1
Peter Sergeant	0.0.4
Thomas Sexton, Jr.	0.0.1
Samuel Sewall	0.1.1
Richard Sharop	1.0.2
Fearnot Shaw	0.1.1
John Shaw	0.1.1
John Sharp	1.0.2
Elizabeth Sheafe	1.0.2
Mr. Sampson Sheafe	8.4.21
Edmund Shefield, Jr.	1.0.2
Andrew Shepard	0.0.1
Jonathan Shoare	0.1.1
Sampson Shoare	1.0.1
Sampson Shoare, Sr.	0.1.1
LouAmmi Simpson	2.1.6
John Skinnar	0.1.1
Thomas Skinnar	0.0.1
William Smallage	1.0.2
John Smart	1.0.1
Christopher Smith	7.0.14
Edward Smith	0.1.2
Israel Smith	1.0.1
Capt. James Smith	0.2.3
John Smith	3.0.14
John Smith, Sr.	2.0.16
Lt. John Smith, Boston	1.0.10
Lt. John Smith, Jr.	0.1.1
John Smith, Lynn	0.1.1
Joseph Smith	2.1.6
Matthias Smith	0.1.2
Richard Smith	1.0.1
Thomas Smith	1.0.2
John Somes	0.1.1
Jonathan Sprague	0.0.5
Richard Sprague	0.0.2
Phillip Squire	1.0.2
Joyce Stanes	0.1.1
Robert Standford	0.1.1
John Staniford	0.1.1
Robert Starkweather	0.1.1
Robert Starr	0.1.1
John Stebbins	0.0.5
Vincent Stilson	0.0.2
Sampson Stoddard	0.1.3
Daniel Stone	0.3.34
Samuel Stowell	1.0.2
John Sutton	2.0.8
John Sunderland	0.2.9
Jeremiah Sweet	1.0.2
John Sweet	1.0.2

John Sweet, Jr.	0.0.1
Phillip Sweet	1.0.2
Obadiah Swift	1.1.4
Margaret Thacher	1.1.14
Peter Thacher	0.1.3
Thomas Thacher, Jr.	0.1.3
Mr. Thomas Thacher, Sr.	0.1.10
Nathaniel Thayer, Jr.	0.0.3
Richard Thayer	1.4.15
Richard Thayer, Jr.	0.0.3
Zachariah Thayer	0.1.1
John Todd	1.0.1
John Tomlin	1.0.2
William Tomlins	3.0.7
John Tower, Sr.	0.1.2
Joseph Townsend	1.1.3
Peter Townsend	0.1.1
Isaiah Toy	1.0.2
Richard Travis	2.0.2
Barnard Trott	0.0.3
John Trumball	0.0.4
Robert Tucker	1.0.2
John Turill	0.0.2
Ephraim Turner	2.1.3
Humphry Turner	0.0.5
John Turner	0.1.1
Joseph Turner	0.0.5
Jonathan Tyng	0.1.10
John Vaill	1.0.2
John Veering	0.1.3
George Vicars, Sr.	1.0.1
John Vinning	0.0.5
Jonathan Wade	0.0.1
Return Wait (Wayte)	0.1.1
William Waldren	6.0.14
Benjamin Walker	1.0.2
John Walker	0.0.1
Richard Walker	0.1.1
Thomas Walter	1.0.5
John Warner	1.1.4
David Waterhouse	1.0.2
Joseph Waters	2.0.3
Thomas Watkins	0.0.1
Marshall Richard Wayte	1.3.10
Lt. Richard Way	0.1.22
Christopher Webb	1.1.6
Nehemiah Webb	1.0.1
Thomas Webb	0.0.2
Joseph Weeden	1.2.4
Thomas Welch	1.0.1
John Wells	0.2.2
Thomas Wells	0.3.3
William West	1.1.2
John Whaley	0.0.6
Isaac White	1.0.2
Magnis White	1.0.1
Thomas White	2.0.4
Joseph Whiting	0.0.2
Zecharaiah Whitman	1.0.2
John Wibourne	1.0.3
Isaac Wilder	0.0.2
William Wilkerson	0.2.3
John Williams	2.0.4
Joseph Williams	1.0.2
Samuel Williams	0.0.5
Nicholas Wilmot	0.1.1

John Winsley	2.0.5	Ens. Richard Woody	0.2.3
Edward Winslow	2.1.5	Richard Woody, Sr.	0.1.1
Elizabeth Winslow	0.1.2	Edward Wright	0.1.1
Mr. John Winslow	0.0.1	Capt. William Wright	1.2.4
Samuel Winslow	1.0.2	William Wright, Jr.	2.0.3
Robert Winsor	1.0.2	Nathaniel Wyatt	1.0.1
Joseph Wise, Sr.	0.1.1	David Yale	0.1.3
John Wiswall, Jr.	0.2.10	Theophilus Yale	0.0.1
Thomas Woodbridge	2.4.19	John Yardley	0.1.5
William Woodcock	0.4.7	Timothy Yeales	3.2.11
John Woodmancy, Sr.	2.0.14	Capt. John Young	1.1.4

Identified, Residence in Outlying Areas

Name	LI	Name	LI
John Alden	2.1.4	Thomas Davis	1.2.3
Samuel Ambrose	1.0.1	Valentine Decrow	1.0.1
Peter Ayer	1.1.4	Robert Edmonds	2.0.4
Capt. Walter Barefoot	2.2.11	Matthew Edwards	0.1.1
James Bill, Sr.	0.2.3	Henry Eliot	2.1.10
William Brinsmead	1.0.2	John Ely	1.1.2
John Broughton	0.2.2	Richard Foxwell	0.1.1
William Caswell	0.0.1	Mr. Pelatiah Glover	1.0.1
Edmund Chamberlin	0.1.1	Lt. John Gould	0.1.3
Capt. Francis Champeroon	0.1.1	James Grant	0.2.2
Martha Clarke	0.1.2	Phillip Greeley	1.0.2
Joseph Cowell	1.0.7	Jacob Green, Jr.	0.0.2
Ephraim Curtis	1.1.2	William Henderson	3.0.4
Joseph Curtis	0.0.2	Walter Hickson	0.0.1

Charles Hilton	1.1.2	Phillip Read	0.0.1
Daniel Hoare	0.0.2	Samuel Severans	0.1.1
Samuel Holmes	1.0.2	Maj. Nicholas Shapleigh	2.2.5
Peter Hunt	0.0.2	Samuel Simons	0.1.1
George Hughs	0.1.1	Thomas Skellion	0.2.2
Henry Jackson	0.2.3	Samuel Snow	0.1.1
Samuel Jenkins	1.0.2	William Starling	0.2.2
Roger Kelley	0.1.2	Richard Sutton	0.1.1
John Lawton	0.0.6	Robert Taffe	0.0.5
Isaac Little	1.0.2	James Tayler	1.0.2
Samuel Marshfield	0.0.2	John Tinney	0.1.1
John Meader	3.1.11	Bartholomew Tippen	0.0.1
Thomas Nash	1.0.1	John Touton	1.0.2
John Nelson	0.1.2	Nathaniel Wallis	0.1.1
Nathaniel Pearse	1.0.1	Henry Wheeler	0.1.1
John Pell	1.0.1	Abraham Whitaker, Sr.	0.0.1
John Plumb	0.1.2	James Willet	0.0.5
		Thomas Wright	0.0.2

Unidentified

Name	LI	Name	LI
Samuel Adams	1.0.2	Benjamin Barter	1.0.2
John Alford	0.1.1	Abraham Bartholomew	0.0.2
Jacob Allen	2.0.4	Joseph Bartholomew	1.1.3
Josias Allen	1.0.2	Isaac Barton	0.0.6
Stephen Baker	0.1.2	James Barton	0.0.1
Samuel Ballatt	1.0.1	Daniel Baruh	1.1.2
Jonathan Barnes	0.1.1	Lawrence Baskervyle	0.1.2

Peter Baxter	0.1.2
Edward Beacon	1.0.2
Elizabeth Jackson Beale	1.0.2
William Beale	1.1.3
Katharin Belcher	1.0.1
Robert Bendish	0.0.5
Thomas Bendish	0.0.3
Francis Bill	0.1.2
John Bishop	0.1.1
Caleb Bleaze	1.0.2
Daniel Boarman	1.0.1
Dominick Bodkin	0.1.1
Mica Bouden	1.0.1
John Boudidge	1.0.1
Thomas Brentnall	1.0.2
Morris Brett	0.1.1
Francis Bridge	0.1.1
Robert Briganden	0.0.5
Sarah Briganden	0.0.1
Robert Brimsdom	0.0.1
Ann Broomhall	1.0.1
Hezekiah Browne	1.0.2
Darby Bryan	1.0.2
Richard Bulkley	1.0.9
Henry Bull	1.0.2
Stephen Burden	0.0.5
Jacob Bushe	1.0.2
John Buttolph	0.0.1
Hannah Calley	0.0.1
Joseph Calley	1.3.11
Esther Cane	1.0.2
Jonathan Cane	0.2.2
Margery Cane	1.0.2
Nathanael Cane	0.1.1
Samuel Casteen	0.1.1
John Chandler	1.0.2
Thomas Chandler	1.0.2
John Chantrell	0.1.1
Nicholas Chappell	0.1.2
Nicholas Chatwell	0.1.1
Thomas Claiborn	1.0.1
William Claiborn	1.0.1
Edward Clements	0.1.1
Elizabeth Clement	0.0.5
Thomas Clowter	1.0.1
Edward Cock (Cook)	1.0.1
Francis Cooke	0.3.3
Waitstill Cooper	1.0.1
John Corn	0.0.5
Thomas Cox	0.0.1
Thomas Craddock	0.0.2
Mordicai Crafford	0.1.1
William Crutchlow	0.1.1
Humphry Cumby	0.1.1
Ezekiel Curveath	1.0.2
Randall Dalley	1.0.2
George Danson	1.0.2
Henry Dedicott	0.0.2
George Dewit	1.0.3
Francis Dodson	1.0.2
Thomas Doughty	0.1.1
Thomas Doublas	1.0.1
Mehitabell Downes	0.0.1
Oliver Duncomb	1.0.2
William Dyer	0.0.1
Peter Egerton	0.0.5

Nathaniel Elkin	1.0.2
Martha Emery	0.2.2
Thomas Emery	1.0.2
Joseph Elliott	2.1.3
Patrick Evans	1.0.2
William Evans	1.0.2
John Figg	0.1.7
Mary Figg	0.2.3
Thomas Fitch	0.1.2
Ralph Fletcher	0.1.1
Noah Floyd	1.0.1
John Floyd	1.0.1
Miles Foster	0.1.1
Nathaniel Fox	0.1.8
Katharin Franklin	0.0.1
Phillip French	1.1.7
Thomas Frizell	0.4.5
Robert Gardner	2.0.4
John Gard	0.1.1
John Garland	0.0.2
Joseph Gatchell	0.1.1
Samuel Gatchell	0.1.1
John Gelliot	1.0.2
John Gent	0.1.1
Thomas Gent	1.0.2
Robert Gibbs	3.0.11
Sarah Gilbert	1.0.2
Charles Gosfright	1.0.5
William Gover	1.0.1
Thomas Gresham	1.0.2
Elizabeth Gridley	1.0.1
Mary Hale	0.2.2
Elizabeth Hall	0.2.4
William Hamlen	0.0.2
Elizabeth Hammond	1.0.2
Samuel Hawford	2.3.9
Rebecca Hawkins	0.0.1
Dorothy Hawley	1.0.1
Sara Hawthorn	0.0.3
John Hewman	0.0.3
Thomas Hewson	0.0.2
Edward Higgs	0.1.2
Humphrey Hodges	0.2.2
Elizabeth Holbrooke	1.0.1
Roger Hollet	1.0.2
Elisha Holloway	0.1.2
Robert Homer	0.2.3
Henry Homes	0.0.2
John Hornbooke	0.0.2
Alice Howard	1.0.1
John Howard	0.1.1
James Hughs	1.1.2
William Hukley	0.2.2
Susanna Hutchinson	0.1.1
Joel Jenkins	0.1.1
Manning (Johnson)	0.0.2
Thomas Joles	1.0.3
James King	1.0.1
Bethsheba Knight	1.0.1
Hannah Knight	0.2.2
Jonathan Knights	1.0.1
William Knott	0.0.2
Thomas Lacey	0.0.1
Mary Lake	1.1.4
Jane Lancaster	0.1.2
Thomas Lartyn	0.0.5

Henry Lawton	0.3.16
Daniel Legg	0.1.2
Mary Leichfield	1.0.1
James Lendall	1.0.1
Timothy Lendall	0.0.2
Walter Lewis	0.0.2
Robert Lisley	0.1.1
Richard Love	0.0.2
Mr. Richard Love	1.0.1
John Machee	0.1.1
Sarah Machee	0.1.1
John Manset	1.0.2
Henry Mare	0.1.3
Samuel Martin	0.0.2
Edward Master	0.0.2
Robert Mauey	0.0.4
Augustine Mellote	0.0.1
Thomas Merriweather	0.0.3
Edward Michelson	1.0.2
John Midgly	0.1.1
Thomas Milton	0.0.1
Ebenezer Moone	0.0.1
Thomas Morris	1.0.2
John Morse	0.1.3
Richard Mosely	4.0.6
Obadiah Moss	1.0.1
John Nethway	0.1.2
Frederick Newman	1.0.2
Charles Oughtred	0.0.11
Robert Oxe	2.1.5
Henry Paine	0.1.5
Francis Pallot	1.0.2
Lisle Palmer	1.1.6
Sarah Palmer	1.0.1
Noah Parker	1.1.0
John Parrick	0.0.2
John Peek	1.1.4
Moses Percheago	0.1.1
Sarah Phippeny	1.1.2
Sarah Pickering	0.2.2
Richard Pikeford	1.0.5
William Playsted	0.1.1
Rhoda Porter	0.1.2
Aron Pratt	1.0.2
Isaac Rand	1.0.1
Hillary Renew	0.0.5
John Rhodes	0.0.2
Mr. David Riddock	0.1.2
John Rider	1.0.1
Robert Risco	2.2.8
John Robson	0.1.1
Richard Rogers	1.0.2
William Rogers	0.1.1
William Rogers, Jr.	1.0.2
Josias Rose	0.1.2
Henry Ross	0.0.5
Mary Rouse	1.0.2
John Rummin	1.0.4
Robert Salmon	1.0.2
Capt. Richard Salter	1.0.2
Capt. Nathaniel Saltonstall	0.0.1
Henry Saltus	1.0.2
Elizabeth Sampson	1.0.2
Francis Sampson	0.0.3

Anne Sandys	0.1.1
John Sandys	0.2.3
Sarah Savage	0.0.3
Thomas Saxton, Jr.	0.1.1
Peter Sayer	0.0.2
Robert Scrape	1.0.2
Ephraim Seall	1.0.2
John Shakerly	0.1.1
Sarah Shelly	1.0.2
George Shepard	0.0.2
Christopher Size	0.1.1
Benjamin Sute (Shutt)	0.0.12
Samuel Sute (Shutt)	1.0.12
James Skinnar	1.0.1
Elizabeth Smith	0.0.2
Jeremiah Smith	1.0.2
Katharin Smith	0.0.5
William Sopwell	0.0.8
John Spry	0.1.1
Richard Stanes	0.0.3
John Starkey	1.0.3
Aaron Stevens	1.0.2
John Stevens	2.0.2
John Stone	0.0.2
Joseph Stoodlee	0.0.2
John Sweeting, Jr.	1.0.2
Alice Swift	1.0.2
Jonathan Syberry	0.0.6
Robert Tapril	0.1.1
John Tay	0.1.5
Caleb Taylor	0.2.4
John Taylor	0.0.1
Rice Thomas	1.0.1
Joseph Thornton	1.0.1
Rhoda Tidd	0.1.2
William Timberlak	1.2.5
James Throughbridge	1.1.4
John Trumble, Jr.	0.2.7
Mr. John Tryworthy	0.0.1
Francis Tucker	1.0.1
Jane Veren	1.0.2
Peter Janson de Vox	0.1.1
Mary Walker	0.0.1
Benjamin Walter	0.0.5
James Wardell	1.0.1
Elinor Watts	0.1.1
John Watts	1.3.6
Manning Watts	0.0.2
Phillip Watts	0.0.2
John Weaver	0.1.11
Daniel Weldon	0.1.1
Dr. Hardman Wessell	0.1.1
Giles Wightfoot	1.0.1
Owen Wilcocks	0.0.2
James Wilkins	1.0.4
Ann Williams	1.0.1
John Williams	0.0.3
Alexander Wood	1.0.1
Walter Woode	1.0.2
John Wright, esq.	0.1.1
Mary Wright	0.1.1

Appendix 3

Cases and Case Numbers

1671-72

1671-72-(continued)

1672-73

1672-73-(continued)

1673-74

1673-74-(continued)

1674-75

1674-75-(continued)

1675-76

1675-76-(continued)

1676-77

1676-77-(continued)

1677-78

1677-78-(continued)

1677-78-(continued)

1678-79

1678-79-(continued)

1679-80

1679-80-(continued)

Appendix 4

Case by Category and Number

Case by Category and Number

1671-72

Debt

5 73 142
12 75
16 76
24 77
36 89
37 97
38 101
59 108
65 117
66 123
72 138

Injury

1 50 120
4 52 121
7 57 126
10 58 120
20 64 130
21 71 131
25 80 135
32 82 135 (b)
35 100 139
40 111 143
43 114

Estate

42

Damage

2 110
3 115
4 116
11 118
17 119
18 140
63
86
103
109

Public Matter

14 124
19 125
23 127
29 128
39
53
54
81
84
106

Title

26
27
28

1672-73

Debt

146 223
156 229
162 251
176 268
177 273
192
194
195
203
222

Injury

149
161
183
220
242
245
247
256

Estate

150 225
151 241
154 250
163 253
184
186
196
198
215
219

1672-73--(continued)

Damage	Public Matter			Title
148	155	210	258	246
159	161	217	267	252
201	164	221	268	255
204	173	234	270	260
212	174	236		261
213	185	242		272
218	187	243		
235	188	244		
239	206	248		
266	207	257		

1673-74

Debt			Estate	Injury	
280	329	390	305	295	342
283	330	395	314	307	350
290	341	398	318	308	362
292	343	399	338	309	366
293	347	400	361	310	368
294	348	401	363	320	377
297	349	402	378	321	379
299	351		394	322	391
324	352			323	393
326	385			340	

Damage		Public Matter	Title
281	373	299	282
284	376	303	287
335		304	312
336		306	316
339		315	328
344		325	364
346		367	
355		388	
358		392	
351			

1674-75

Debt			Injury			Estate
411	457	495	410	504		445
412	473	498	421	505		447
113	476	500	424	506		464
414	478	510	427	507		516
417	479	511	431	508		
420	480	512	449	518		
425	481	513	466	518		
426	482	516	470	520		
430	483	517	488			
441	485	518	489			
450	486	521	496			
456	491		503			

Damage			Public Matter			Title	
431			409	469		423	484
434			415	471		436	
446			419	487		443	
463			439	514		462	
490			444			472	
502			451			475	

1675-76

Debt			Injury			Estate
524	560	627	527	611		599
538	565	628	531	615		629
540	573	631	533	622		
541	576	633	558	623		
543	595	634	568	624		
544	597	636	575	635		
549	606		583	642		
553	609		587			
557	621		594			

Damage			Public Matter			Title	
529	575	602	526	593	612	532	
536	582	604	539	598	618	547	
552	586	614	542	601	639	591	
562	588	625	545	605		637	
567	590	630	585	607			
569	592		589	610			

1676-77

Debt			Injury			Estate
644	683	748	647	696	774	705
646	685	749	649	712	775	711
648	695	757	653	722	779	724
650	700	767	659	736	780	730
655	706	777	660	738	784	733
657	707	782	661	741	791	754
663	710	783	664	746	792	762
666	719	785	669	752	794	769
669(b)	723	786	686	758(b)		772
672	727	795	687	764		793
677	728	800	688	770		
678	731		689	771		
680	732		691	773		

Damage		Public Matter			Title
653	743	652	740	796	645
658	752	660	745		651
679	768	665	746		656
684	770	676	755		703
699	774	698	756		761
708	775	715	759		
709	788	721	760		
714	794	725	765		
715		734	773		
720		735	778		

1677-78

Debt		Injury			Estate
816	892	807	847	919	844
819	898	808	854	920	855
820	902	809	865	925	863
828	909	811	879		883
850	911	817	881		923
851	917	822	897		933
852	921	824	901		
853	922	825	908		
880	932	831	910		
883	934	843	918		

1677-78--(continued)

Damage			Public Matter		Title	
802	870	928	806	924	805	935
803	872		821		823	
804	875		841		848	
814	886		856		849	
815	903		885		857	
818	906		888		867	
832	913		891		873	
835	915		900		878	
869	927		916		895	

1678-79

Debt			Injury		Estate
937	986	1027	940	1023	942
947	993	1029	948	1026	953
949	998	1033	976	1030	960
950	1000	1038	978	1041	973
953	1001	1053	980	1044	083
954	1002	1064	991	1052	987
955	1005	1068	996	1057	1032
959	1007	1071	999	1065	1042
962	1008	1073	1009	1074	1051
964	1018	1076	1012	1078	1061
667	1024		1014	1080	
972	1025		1019		

Damage			Public Matter		Title
939	1006	1067	938	1036	1059
946	1015		943	1037	1062
961	1016		957	1039	
966	1017		985	1043	
968	1034		988	1045	
974	1046		994	1048	
977	1049		1003	1060	
984	1054		1011	1069	
989	1056		1013	1072	
992	1066		1020		

1679-80

Debt		Injury		Estate
1092	1147	1095	1152	1093
1114	1151	1096	1153	1108
1115	1156	1097	1160	1131
1117	1159	1100	1161	
1118	1169	1104	1162	
1121	1170	1111	1166	
1122		1123	1167	
1124		1134	1172	
1136		1139		
1141		1142		

Damage		Public Matter	Title
1082	1149	1083	1113
1090	1157	1098	
1103	1158	1099	
1119	1171	1127	
1120		1129	
1128		1133	
1130		1135	
1132			
1137			
1138			