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REPRESENTATIVE GOVERNMENT AND
THE "BIBLE COMMONWEALTH" IN
EARLY MASSACHUSETTS*

GEORGE L. HASKINST

The title of this article may seem somewhat paradoxical, or at the very least to require some definition of terms. If the government of the colony of Massachusetts Bay in early New England was indeed a "Bible Commonwealth," or even a theocracy, as it has also been characterized, is that not inconsistent with its being a "representative government" in any broad, or even literal sense? Alternatively, even if the government contained a recognizable representative element, was its voice so small, so insignificant, or so manipulated that it merely supported an entrenched religiously inspired oligarchy? The paradox, if there is one, can be resolved to some extent through an analysis of the degree to which the colony's governmental structure, as well as its laws, represented the desires, claims and interests of its small group of founders and leaders, on the one hand, and of the inhabitants generally, on the other. Such an analysis, tentative though it may prove to be, can at least suggest avenues for future research leading towards a more accurate understanding of the evolution of the instruments of government, and, more particularly, of representative institutions, in the colony.

A priori, it is conceivable that the colony's government in its vital formative period from 1630 to 1648, was either oligarchic, founded and framed upon biblical precepts, and supported by a small, God-fearing segment of the population, or that it was not a "Bible" commonwealth, but a democratic government with broadly based representative institutions. The problem, though deliberately oversimplified, was put to this writer not long ago by the former Solicitor-General of the United States, The Honorable Erwin N. Griswold, when he inquired thoughtfully: "Why did the early colony of Massachusetts Bay not become a Bible Commonwealth? Why did it not pursue the path of Moslem countries which for centuries drew upon religiously inspired ideals in framing their laws?"

Dean Griswold's question was undoubtedly based on two principal assumptions: first, that the laws and governmental institutions of early Massachusetts were not derived primarily from the Bible and interpretations thereof; second, that the colony's legal system, though partly formed by religious

* Revision and adaptation of an address by George L. Haskins presented at the 50th anniversary of the Institute of Historical Research, University of London.
† Algernon Sydney Biddle Professor of Law, University of Pennsylvania; Former President, American Society of Legal History; Fellow, The Royal Historical Society; LL.B., Harvard; M.A. (Hon.), University of Pennsylvania.
ideals, ultimately reflected English experience and institutions, as well as the
indigenous growth which resulted from the changed social and other needs of
the colonists. Both those assumptions, it is submitted, are essentially correct,
but they require considerable elaboration, and perhaps the suggestion of an
intermediate position, before answers to the basic question can be suggested.

Hopefully, the time has long since passed when informed historians of
Massachusetts' colonial law and institutions can refer to them as the product
of a theocracy, in which "the Scriptures were an infallible guide for both judge
and legislator." Unquestionably, the progressive and reforming elements in
the cause of early Puritanism had largely prompted the founding of a colony
in which men could build a purified "Citty vpon a Hill," and enter into a
covenant to live together, obedient to the world of God as revealed in the
Bible. However, no priestly caste within the colony had the controlling voice
of authority, and the primary functions of government were in the hands of
secular officers and civil courts. Church and state were separate, each indeed
striving for ultimately similar goals, each planted and brought up "like two
twinnes," but the authoritative voice in the colony's government clearly did
not lie with the ministers of the churches, who were distinctly subordinated to
the civil arm, both in doctrine and authority. It is true that the clergy were not
infrequently consulted on grave matters of general or special policy, but the
ministers were not permitted to hold legislative office, and they took no direct
part in framing or executing any civil laws of the colony. Indeed, the secular
authority and its courts promptly assumed, as part of the colony's "due form
of government," jurisdiction over many matters which in contemporary
England were within the exclusive domain of the ecclesiastical courts. Thus,
although in principle the partnership of the civil authorities and the clergy
was declared to be an equal one, and although they supplemented one
another's efforts, the secular arm was clearly the dominant one.

Therefore, to define the early colonial government of Massachusetts as
either a theocracy or as a "Bible Commonwealth" is to misconstrue or
misunderstand both its nature and its functions. While it is true that the actual

1 C. J. HILKEY, Legal Development in Colonial Massachusetts 1630-1686, in 37 COLUMBIA STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW 68 (1910).
2 G. L. HASKINS, LAW AND AUTHORITY IN EARLY MASSACHUSETTS 24 (1968) [hereinafter cited as LAW AND AUTHORITY].
3 Id. at 61-62.
4 See Epistle, as found in THE LAWS AND LIBERTIES OF MASSACHUSETTS (M. FARRAND ed. 1929).
5 LAW AND AUTHORITY supra note 2, at 62.
6 1 WINTHROP'S JOURNAL: HISTORY OF NEW ENGLAND 1630-1649, 116, 119, 128-29, 130, 143-44
(J. K. Hosmer ed. 1908) [hereinafter cited as WINTHROP'S JOURNAL].
7 H. E. WARE, COLONIAL SOCIETY OF MASSACHUSETTS PROCEEDINGS 151, 163 (1907).
8 Id.
migration and founding of the colony on New England Shores had been motivated largely by religious purposes,\(^9\) it must not be forgotten that the original organization of the colony was the result of the formation of a trading company which had received its royal charter in 1629 and which, like others of its day, was owned by shareholders, known as “freemen.”\(^10\) The latter, in the General Court of which they were the constituent members, elected the governing officers and the “Assistants,” who were similar in many respects to a present-day board of directors. Contrary to the usual custom, the Company itself, together with its general institutional structure, did not remain in London but was transferred to New England when the colony was settled. However, almost none of the freemen of the Company, except about a dozen who were the officers and Assistants of the Company, joined the emigration as colonists, in fact those few men also constituted the General Court, with the result that the matrix of government was necessarily oligarchical from the start, in that no other inhabitants of the colony had any legal right to a voice in its affairs.\(^11\)

Even the transmutation of the enterprise from a commercial undertaking into a body politic, which occurred in 1631, very shortly after settlement, through the addition of over a hundred new “freemen,” who were not shareholders in any commercial sense,\(^12\) had little effect at first upon the authoritarian nature of the government, and for the following reason. Six months earlier, a number of inhabitants had been asked to express their opinion upon the desirability of giving to the Assistants all the functions of the General Court. This they had done, affirmatively and informally, by erection of hands, and the powers of government therefore remained in the hands of the 10 or 11 officers and Assistants only.\(^13\) Although the original trading-company institutions persisted, at least in form, and became the framework of the new colonial government, the de facto “legal” powers of the leaders were bolstered by current political conceptions, which nurtured the ideal that civic duty required men to subject themselves to their rulers, and which taught that rulers, however selected, derived their authority from God.\(^14\) Hence, the government could remain essentially authoritarian at its core, even when the franchise was extended even further, for this Puritan society was viewed as an organism in which ultimately every part was subordinate to rulers whose duty was to lead, coerce and discipline.\(^15\) In the early 1630’s, therefore, both in

\(^9\) Law and Authority, supra note 2, at 9-24.
\(^10\) Id. at 9-10.
\(^11\) Id. at 26. See also J. Beranger, Nathaniel Ward (1969).
\(^12\) 1 Records of the Governor and Company of Massachusetts Bay 366 (N. B. Shurtleff ed. 1853-1854) [hereinafter cited as Records of Massachusetts].
\(^13\) Id. at 79.
\(^15\) See Law and Authority, supra note 2, at 43-44; P. Miller & T. H. Johnson, The Puritans 182-83 (1939).
theory and in practice, the small group of governing officers and Assistants—or magistrates as they were very soon called—were indeed "Gods upon earthe." ¹⁶

The introduction of representative government for the limited purpose of taxation was forced upon the magistrates in 1632, ¹⁷ and more generally for the election of deputies from the towns to the General Court in 1634. ¹⁸ Of at least equal importance was a vote by the town deputies in 1634 to transfer back to the General Court all powers and functions previously granted to the Assistants in 1630. ¹⁹ The General Court thereby became again an elective body, but now included also about 20 deputies who, in conformity with parliamentary tradition, were chosen by and received their mandates from the freemen of the colony's towns. ²⁰ Typically, the General Court thereafter met three times a year as a representative assembly, together with the Governor, the Deputy-Governor and the Assistants at the fourth, or election session. Every freeman was expected to be present and to "gyve his owne voyce." ²¹

This drastic alteration in institutional structure, by the introduction of representative government amounted to a constitutional revolution. However, the change had little immediate practical effect on the actual governmental functioning of the colony. Principally, this was because the 1631 law, which first extended the franchise to non-shareholders, contained a provision that no one should be a freeman of the colony unless he was a member of one of the congregational churches. ²² That law, though a clear violation of the charter, which permitted no such restriction on the franchise, confined voting to those who were acknowledged believers in the original Puritan cause, and in the religious tenets which had inspired the colony's founding. It was therefore no accident that the original officers and other official leaders continued, with few exceptions, to be elected year after year to the highest positions of governmental authority, ²³ and that, for the greater part of the first decade, the essentially authoritarian nature of the colony's government persisted to the extent that it did. However, as time went on, as the number of freemen increased, and as the town deputies became more active in enlarging business of the General Court, that authority was challenged—both from within and without the political organization—in the course of a series of episodes which threatened the very existence of the colonial establishment. ²⁴ This enlarged participation

¹⁷ Winthrop's Journal supra note 6, at 79.
¹⁸ Records of Massachusetts, supra note 12, at 117.
¹⁹ Id. at 118-19.
²⁰ Law and Authority, supra note 2, at 31.
²¹ Records of Massachusetts, supra note 12, at 119.
²² Id. at 87.
²³ Law and Authority, supra note 2, at 41, 65.
²⁴ Id. at 35-41.
on the part of the deputies, as well as their extensive committee work for the General Court, is in itself hardly consistent with the conclusion that the colony was in any sense a theocratic state.

Although attention must be given to the continuing importance of the religiously inspired nature of the colonial enterprise, for present purposes of at least equal importance are: (1) the laws which were in effect and the institutions which were functioning during and towards the end of the first period in the colony's growth; and, (2) the composition and powers of the electorate in that period. Even a casual scrutiny of the colony's laws reveals conclusively that few of them were of Biblical origin. Moreover, the franchise was undoubtedly far more extensive than has been supposed, and the elected freemen in the colony participated in the functions of government to a far greater degree than parliamentary representatives in England during the early seventeenth century. Moreover, at the town level, non-freemen not only took part but many held office in town government. Consideration of the factors involved in these two major areas should help pave the way for concluding why the colonists failed to follow the course originally open to them, namely, to create, or to accommodate themselves to a "Bible" or even theocratic state in which there could be little room for innovation and development.

Turning first to some of the major characteristics of the Massachusetts colonial laws in the period under discussion, it may be stated with confidence that they were patterned and constructed partly after English ways, and partly upon the colonists' striving towards new horizons. As in architecture and methods of farming, so in law and in the instruments of government their varied heritage was transplanted across the western ocean in forms which were neither rude and untechnical, nor primarily Biblical, nor merely responsive to frontier conditions. An analysis of their first compendium and revision of laws, collected 18 years after settlement in the Code of 1648, reveals some elements of the common law and the statutes, some local customary law of the manors and boroughs in districts from which they had emigrated, and even some of the law of the ecclesiastical courts. Likewise, present, but chiefly in the area of capital crimes, were precepts and rules taken almost verbatim

25 Chiefly, laws relating to capital punishment which were specifically annotated to books of the Old Testament. See The Laws and Liberties of Massachusetts 5-6 (M. Farrand ed. 1929).
28 Law and Authority, supra note 2, at 113-40.
from the Mosaic code of the Old Testament. The adoption of various forms of English law with which the colonists were familiar was no slavish reproduction but was selective and creative. The process was one of syncretizing traditional English ideas with attitudes and convictions implicit in the Puritan way of life, on the basis of reason as well as experience, and of the urgency of fulfilling the dictates of God's commission to found a new commonwealth in the wilderness. The process, which included also rejection and adaptation, was peculiar to the legal systems of New England, especially of Massachusetts, and reflected not only tradition but design traced from the social, political and spiritual life which had formed within the community.

Some review and evaluation of the evidence supporting the conclusions just stated will follow shortly, but for the moment they provide a basis for a brief summary of the role of biblical authoritarianism, on the one hand, and representative institutions, on the other, in the evolution of the web of the colony's government from 1630 to 1650. Pervasive as was the Puritan emphasis on realizing the divine mission which the early colony leaders and their supporters were zealously bent upon accomplishing, the growing insistence on the part of the inhabitants for a larger voice in the colony's affairs became a factor of even greater significance. Central to this latter development were their continuing efforts to place curbs on the powers of the colony's officers and Assistants, first, in matters of general governmental policies; later, as time went on, in the administration of justice in the courts. Hand in hand with those efforts came the movement to reduce the laws to writing, which culminated first in the constitutional provisions which made up the Body of Liberties of 1641 and, seven years later, in the thorough revision and codification of the laws in the 1648 Code. These developments, which resulted in curbing the original broad powers of the elected magistrates, make clear that the locus of power in the government was not by any means confined to a supposed oligarchy of magistrates, much less to the clergy. To a substantial extent power was shared by the broadly representative body of freemen sitting in the General Court of the colony.

Dilettante legal speculation has often insisted upon the generalization that in England, from the time of the Plantagenet kings, the crown was the sole fountain of justice. Careful historians of the law, however, have long realized that the processes by which this useful fiction became fact were slow, halting, and at times retrogressive. Even in the seventeenth century, a multitude of special and local courts still challenged the common law and retained ancient jurisdiction over various types of legal controversies. The ecclesiastical courts,
for example, still exercised wide powers over matrimonial and testamentary causes. In addition, the local courts of the manors and boroughs still possessed extraordinary vitality and were vigorous and active in cases involving petty crimes, trespasses and debts, sued upon by local people for whom those courts still remained the legal center of gravity. Those customary courts and the law they applied, in addition to the sessions presided over locally by justices of the peace, were far more familiar to most of the colonists emigrating to New England than were the central royal courts, at Westminster or on circuit, which administered the writ system of the common law. Scholarly research has demonstrated both from the court records and from the 1648 Code of laws how widely and effectively the early Massachusetts colonists drew upon the procedures as well as the substantive law of English manorial and other local courts; for example, in the law of descent, in provisions for the recording of deeds and mortgages, and in procedural and other remedies for violations of the elastic concept of nuisance. Punishments similar to those imposed by justices of the peace, acting pursuant to the statutes, and to those meted out by the courts of English archdeacons, are also common in the Massachusetts court records.

Likewise, the magistrates of the colony undertook to deal in the civil courts with other matters substantially reserved in England to the jurisdiction of the ecclesiastical courts, i.e., with probate, intestate distribution, marriage and even divorce; indeed, the records reveal familiarity with the technicalities of appointments of personal representatives de bonis non and cum testamento annexo. On the other hand, laws protecting a surviving spouse are clearly imitative, in nearly every detail, of English common law dower, while at least two of the colony’s criminal enactments are obviously copied from Elizabethan statutes. Along with such practices reflecting types of English law with which the colonists had been familiar in their homeland, there were nevertheless, specific enactments of biblical provisions from Deuteronomy.

54 Id. See also Law and Authority, supra note 2, at 167; Haskins, The Beginnings of the Recording System in Massachusetts, 21 Boston L. Rev. 281 (1941); Haskins, The Beginnings of Partible Inheritance in the American Colonies, 51 Yale L. Rev. 1280 (1942).
55 Law and Authority, supra note 2, at 183-84; cf. W. H. Hale, Precedents and Proceedings in Criminal Causes 1475-1640 (1847).
56 See Law and Authority, supra note 2, at 194-95; Haskins, The Beginnings of Partible Inheritance in the American Colonies, 51 Yale L.J. 1280 (1942).
57 1 Essex Probate Records 8, 24, 58 (1916); 2 Essex Probate Records 81, 90, 122, 190 (1916).
59 See records of Massachusetts, supra note 12, at 18, 180; 43 Eliz. I, c. 7 (1601); 1 Jac. I, c. 22 (1603).
omy, Exodus and Leviticus in the capital provisions of the criminal code.40

Although, in the beginning, the adoption of familiar English law, and to a small extent of biblical precepts, did not take place on a systematic basis, the process of codification—which extended over several years—presented an opportunity to select carefully what seemed suitable and expedient, and to eschew the cumbersome machinery and remedies of the common law insofar as the codifiers were familiar with it.41 Thus, although the laws of the colony seem to have been based largely upon the secular laws of England, the colonists, who were active in revising the laws and framing the Code, chose to reconstruct out of their varied heritage a legal system which not only accorded with their ideas of fair dealing, good faith and common sense, but which also comported with their sense of urgency to fulfill the mission of the colony.

The processes by which the body of laws were assembled and the instruments of government perfected in the course of the first 18 years of the colony’s existence have been related elsewhere.42 That the affairs of the colony were principally managed and overseen by a small, closely knit group of about a dozen of its elected officers and magistrates has been widely and properly acknowledged.43 Acceptance of that generalization, however, has frequently led to the misconceptions that the representatives of the towns, who were also members of the General Court, did not possess substantial powers, and that most of the remaining inhabitants, since they were not church members, had no voice whatsoever in the government.44

It is, of course, true that freemanship, and hence the franchise was ostensibly based on church membership and acceptance of orthodox Puritan principles, endorsed by the civil leaders and propounded and explained by the clergy from the pulpit.45 In the very early 1630’s, probably no more than five per cent of the colony’s total population had been admitted to the churches and could vote, and that fact, taken with the assumption just referred to, has further helped to perpetuate the fiction of a theocracy, or at least of a “Bible” commonwealth, as the central characteristic of the government.46 Even so thoughtful a scholar as Dr. R. W. Pole can be misleading when he writes that

40 See The Laws and Liberties of Massachusetts (M. Farrand ed. 1929).
42 Law and Authority, supra note 2, at 113-40.
43 See, e.g., Law and Authority, supra note 2, at 9-24; H. L. Osgood, The American Colonies in the Seventeenth Century (1904).
45 Records of Massachusetts, supra note 12, at 87.
46 See generally H. E. Ware, Colonial Society of Massachusetts Proceedings (1907).
the colony was a theocratic state with representation confined to "the faithful." It remains, therefore, to say something further with respect to the franchise.

Wide differences of opinion exist and have been expressed as to the extent of the franchise, purportedly restricted by the 1631 enactment to adult males who could qualify for church membership. A law of 1635, not apparently modified until 1647, was even more specific as to local elections: "none but freemen shall have any vote in any towne, in any action of authurite." If one relies on the lists of freemen printed in the colony's records and compares it with the probable colony population 10 years after settlement, it would appear that even by 1640 probably no more than seven or eight per cent of the inhabitants had any active or potential voice in the government. Studies of the town records, however, lead to vastly different conclusions. Although such studies have generally been concerned with office-holding and voting by freemen in the towns, they necessarily shed considerable light on the eligibility of townsmen to vote in the yearly elections of deputies for the General Court. The town records not only suggest but seem to prove either that the 1631 law was not meant to be as restrictive as its words indicate, or that the lists of freemen are incomplete, or that in practice the restriction was substantially ignored.

We know, of course, that freemanship was not restricted to any economic or social class, but was based upon individual spiritual worth as measured strictly by the church congregations. Indeed, Nathaniel Ward, presumed author of the 1641 Body of Liberties, expressed his concern to Governor Winthrop as early as 1639 about the great power and low social status of the freemen. We also know that many church members could and did avoid freemanship, out of choice, because of the responsibilities it entailed. Nevertheless, a survey of householders in the town of Roxbury in 1639-40, made by Admiral Morison, seems to prove that 84 per cent of the male residents were church members and voters. Time does not here permit

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48 Records of Massachusetts, supra note 12, the law of 1631. See the studies of Brown, Freemanship in Puritan Massachusetts, 59 Am. Hist. Rev. 865 (1954); Simmons, Freemanship in Early Massachusetts, Some Suggestions and a Case Study, 19 Wm. & Mary Q. 422 (1962).
49 Records of Massachusetts, supra note 12, at 161.
50 Law and Authority, supra note 2, at 29.
51 A New England Town, supra note 27, at 56; Wall, The Massachusetts Bay Colony Franchise in 1647, 27 Wm. & Mary Q. 136 (1970) [hereinafter cited as Wall].
52 Law and Authority, supra note 2, at 86-87.
53 See the letter from N. Ward to John Winthrop of 1639 which is preserved in 4 Winthrop Papers 162 (Mass. Historical Society 1944); Pole, supra note 47.
54 Records of Massachusetts, supra note 12, at 38.
55 S. E. Morison, Builders of the Bay Colony 341 (1930).
examination of surveys made for other towns, but they, too, appear to indicate that on the average at least 60 per cent of the male inhabitants in the colony were voters.\textsuperscript{56} Thus, although no precise conclusions can yet be formed as to the actual number of persons in the colony who were eligible to, and did in fact, vote, it seems clear that the franchise was far broader than most scholars have been willing to concede, and that Massachusetts "was not as aristocratic, as undemocratic, as we have been led to believe" by such historians as J. G. Palfrey, J. T. Adams and C. M. Andrews.\textsuperscript{57} It also seems clear that we still have much to learn about early Massachusetts government from careful study of the town records, particularly as to the significance attaching to what may be varied uses of the word "freeman."

It is appropriate, now, to return to other aspects of the question of why Massachusetts did not become a "Bible" commonwealth. Obviously, between the religious and allied beliefs of the Islamic world, on the one hand, and those of Englishmen in the colony of Massachusetts, on the other, there are very wide differences and divergencies. This is not the forum, nor have I the knowledge or the expertise, to compare them. Nevertheless, comparisons between Islamic and early Massachusetts law are not wholly inapposite; for Islamic law, though derived from sacred sources, also evolved from customary law and administrative practise by a succession of jurists through a process of adoption, adaptation and rejection.\textsuperscript{58} Yet, from what has already been said of the evolution of early Massachusetts law, it seems clear that, devout as the early settlers were, and as intently as their minds and hearts were dedicated at the outset to the establishment of a new Israel through the institutions of government and activity of the churches, they remained, in their respective circumstances and backgrounds, Englishmen of their time. They brought with them outlooks and social attitudes which not only reflected contemporary England but much of the legacy and humanism of the Renaissance.\textsuperscript{59} Thus, except insofar as their daily life and intellectual tastes were affected by Puritan principles, and their institutions necessarily molded by the same driving concerns for which the colonial enterprise had been undertaken, they remained basically English in their outlooks, habits and understanding. Certain vital and inherited traditional beliefs and sentiments were never eradicated by the Puritan zeal to reform almost every aspect of human activity.

Reference has been made to the adoption and adaptation in the colony of familiar English law and also of representative government. Attention

\textsuperscript{56} See, e.g., A NEW ENGLAND TOWN, supra note 27, at 56; Wall, supra note 51, at 136.
\textsuperscript{57} Brown, Freemanship in Puritan Massachusetts, 59 AM. HIST. REV. 865, 883 (1954).
\textsuperscript{59} LAW AND AUTHORITY, supra note 2, at 113.
should also be directed to the colonists' ingrained ideals with respect to the separation of church and state, which stretched back to at least the first Plantagenets and which had recently been illuminated vividly by events under the Tudors and the first Stuarts, as well as by the continuing separate existence of secular and ecclesiastical courts. Important also were convictions about the so-called basic rights of Englishmen, which were believed to be enshrined in Magna Carta and its recurrent publications, as well as in the revered traditions of the common law. Not forgotten were recent challenges to that law by the king's prerogative courts, in particular the notorious High Commission, from whose determined efforts to suppress schisms and enforce uniformity so many Puritans had suffered. Exemplifying this concern for individual and private rights, for due process, and for resistance to authoritarianism were various episodes already alluded to in the colony's early history, including the 1632 Watertown protest against taxation without consent, the 1634 insistence on representation in the General Court, the antinomianism controversy, and the outcry against discretionary justice which helped to pave the way for the codification movement. 60

One of the most effective brakes upon the efforts of the early leaders of the colony to hold for themselves the reigns of government was the long and deeply rooted English tradition of self-government at the king's command. From the middle ages onwards, Englishmen had been educated—in fact, forced—to govern themselves at local levels, first, under the direct supervision and review of royal authority, later also as a result of long-observed custom in town councils and parish meetings. 61 The work of these local bodies and units in carrying out orders of the crown, directly by mandate or through orders of justices of the peace and others—a system so painstakingly delineated by the Webbs for a slightly later period 62—is paralleled closely by the functions undertaken by, or imposed upon, the towns of early Massachusetts, whose genesis as units of political obligation seem to have derived from the English parish. 63 There, the town quickly became the basic unit of government in which or near which most of the inhabitants lived, so that, unlike England, where the gentry had become the significant political element, 64 the township system became the core of the social and governmental organization of the colony and was broadly representative of the population as a whole. 65

60 Id. at 113-40.
62 B. WEBB & S. WEBB, ENGLISH LOCAL GOVERNMENT... THE MANOR AND THE BOROUGH 298 (1908) [hereinafter cited as Webb].
63 E. CHANNING, TOWN AND COUNTY GOVERNMENT IN THE ENGLISH COLONIES OF NORTH AMERICA 19-20 (1884).
64 NOTESTEIN, supra note 26, at 185.
65 Polty, supra note 47, at 39.
accepting centralized authority in which they became progressively involved, the colonists nevertheless continued, at least as effectively as in England, to govern themselves at the local level; and they did so through town officials whose names and functions were patterned upon English counterparts. Their insistence on local autonomy in areas too numerous to detail were progressively endorsed and supported by the colony's government, which—in the absence of anything akin to the French bureaucratic system of intendants—was far beyond the latter's competence to supervise closely.

Another vital force which began to infiltrate the colonial government at an early date was that of English parliamentary traditions. Long vital to the political life of England, representative government had received, as we know, new impetus in Elizabethan and Stuart England, where vast social changes, and eventually clashes with the crown, had helped to unleash forces which led to the “winning of the initiative” by the house of commons. As already noted, representation in the colony's government was demanded at an early date, and the town deputies became a progressively important feature of the government as the first decade advanced. Struggling directly, as well as through their deputies, the freemen began to combat certain aspects of what they viewed as excessive authoritarian power in the hands of their leaders, so that their own power in the General Court became one avenue to their own “winning of the initiative.” Indeed, Governor Winthrop, on one occasion, quieted angry voices by conceding that the colony's government was “more in the nature of a parliament” than that of a trading company. Moreover, many of the colonists were men of education and substance, familiar with parliamentary tradition both as an instrument of government and as a curb on asserted rights of the crown. Many, too, had also undoubtedly possessed the necessary property qualification for participating in shire or borough elections. As the 1630's progressed, the influence of English parliamentary theory and practice became steadily more evident, both in the election of town deputies and in their work in the General Court. The famous case of Sherman v. Keayne, the "case of the missing sow," which led ultimately to making the colonial legislature bicameral in 1644, also suggests the inspiration of parliament. Town authorizations and instructions to their deputies provide further instances of the influence of more ancient, though displaced, ideas of individual consent,

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68 See Law and Authority, supra note 2, at 75; Webb, supra note 62, at 9, 13-30, 70.
67 Law and Authority, supra note 2, at 74.
68 See Notestein, supra note 26, at 185-201.
69 Law and Authority, supra note 2, at 113-40.
70 Winthrop's Journal, supra note 6, at 74.
when parliamentary representatives were given *plena potestas* as attorneys for their communities.°

Again, the work of committees, which were extensively used by the General Court, paralleled—even if they were probably not adaptations thereof—similar units in the house of commons, providing cohesiveness and strengthening the growing power of the representatives in the machinery of government.° Among the most important of the colony's committees were those successively appointed to study and revise the laws, and whose work culminated in the preparation of the 1648 Code. For over a decade, the freemen had been insisting that written, published laws would not only put a curb upon the threat of arbitrary government but, by enacting them in comprehensive form as a code which incorporated selected traditional English law, would prevent for the future, as did representative government itself, the establishment of a commonwealth where secular law could be based primarily on biblical text and precept.

It should also be noticed that in Massachusetts, as in England at a somewhat earlier period, the elected deputies were rapidly transformed from a body of local men, locally minded, who presented local grievances to the central government, into an aspiring partner in the general government of the colony. Many features, other than mere forms, which characterized the English house of commons at the end of Elizabeth's reign, as described by Sir John Neale—ability, maturity and assertiveness, which nurtured political skill and leadership on a national scale—seem to have been transplanted to help make the Massachusetts house of deputies representative of broad colonial interests. At the same time, older parliamentary conceptions of attorneyship and of individual consent persisted and appeared sporadically in the instructions which they were given by their electors. It is curious, as Dr. Pole has remarked, that Puritan ideas of contract seem to have afforded the opportunity for resuscitating and translating into practice in the colony, the "old, shadowy English notion of individual consent" to enacted law, despite the fact that in England the theory of consent, enunciated by Sir Thomas Smith, had already passed into the oblivion of fiction.

One vital feature of outstanding importance in the system of representative government in Massachusetts, in contrast with that of England, should be emphasized, and that is the backgrounds of the elected deputies. Because of

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° *Parliamentary Aspects, supra* note 26, at 218; *Pole, supra* note 47, at 4-5.

° *Parliamentary Aspects, supra* note 26, at 219.

°° *Id.*

°°° *See generally J. E. Neale, Elizabeth I and Her Parliaments (1953); J. E. Neale, The Elizabethan House of Commons (1949).*

°°°° *Parliamentary Aspects, supra* note 26, at 218-19.

°°°°° *Pole, supra* note 47, at 35; cf. T. Smith, De Republica Anglorum 46 (1906).
lack of thorough genealogical studies, almost as little is known of the background of the Massachusetts deputies as of the members of parliament at this time.\textsuperscript{79} Yet, one distinction stands out very clearly. While in England, as Professor Notestein has pointed out, members of the House of Commons tended—both in shire and borough elections—to be drawn from the gentry, men “from prominent families who were in touch with London, and who were likely to be more than usually intelligent,”\textsuperscript{80} this was not true of early Massachusetts. A few of the deputies were well educated, and of those few, many were university graduates;\textsuperscript{81} several were prominent and well-to-do. The majority, however, were drawn from what may be described as the colonial middle-class — merchants, innkeepers, tanners, carpenters, shipbuilders, clothiers and tailors; more humble trades were also represented by blacksmiths, shoemakers, millers and weavers.\textsuperscript{82} Their trades and occupations, however, are probably less significant than their individual experience in town government, where many had proven their abilities; indeed, several served concurrently as deputies and as town selectmen.\textsuperscript{83} In any event, the representative element in Massachusetts government was characterized by diversity and had a far broader base than did parliament. Because the colony was a small, closely knit community, with the towns not far distant from one another, this broad base made for greater cohesiveness among the deputies and for larger representation of general social and economic interest. So, too, did the fact that most deputies served for successive terms, with the result that even in the 1640’s there were veteran legislators among them with extensive committee experience.

Taken in conjunction with earlier expressed conclusions as to the extent of the franchise, these circumstances suggest that the sense of oligarchy within the colony’s government had distinctly faded as the second decade of its existence drew to a close. It is true that many of the colonists remained outside the church, largely by choice, but the interests of such persons—many in the merchant class—were nevertheless recognized, either formally through the interchange of views in town meetings or informally through propinquity of residence. Most townsmen, though non-freemen, had extensive, wide secular interests in common with the “faithful”—for example, land allotments, property disputes, licensing, defense, to mention the more obvious; indeed, non-freemen not only took part in town affairs but even voted for and held town offices before the enabling act of 1647.\textsuperscript{84} Nevertheless, although the

\textsuperscript{79} \textit{Parliamentary Aspects}, supra note 26, at 220.
\textsuperscript{80} Notestein, \textit{supra} note 26, at 185.
\textsuperscript{81} \textit{Parliamentary Aspects}, \textit{supra} note 26, at 220.
\textsuperscript{82} Id.
\textsuperscript{83} \textit{Cf.} Wall, \textit{supra} note 51.
\textsuperscript{84} \textit{Law and Authority}, \textit{supra} note 2, at 73-74.
power of official action was substantially confined by law to freemen, every inhabitant, freeman or non-freeman, was accorded the right to attend any session of any court or town meeting and "either by speech or writing, to move any lawfull, seasonable, or material question; or to prevent any necessarie motion, complaint, petition, bill or information. . . ." Thus, one of the basic constitutional guarantees of modern democratic governments was assured to every resident of the colony.

One factor in the development of Massachusetts institutions which is frequently overlooked is the economic depression which befell the colony at the beginning of the 1640's. The onset of the civil war in England, with its attendant shifts in Puritan opinion and strategy, brought emigration to a virtual standstill. Every effort was immediately required to stimulate trade and local industry, as well as to regulate prices and wages, to save the colony's economy from disaster. Those efforts succeeded to a degree which could scarcely have been foreseen, so that even within a decade, the entire basis of the Massachusetts economy was radically altered. Wealth succeeded subsistence-living, and with that change necessarily were born new ideals which shook and eventually undermined the old religious foundations of the colony's government. New horizons, new wealth and undreamed of commercial rewards began to, and ultimately did, as the century progressed, change the primary focus of men's attention from the soil and the pulpit, as the descent into the marketplace revealed the glitter of wealth to be reaped from coastal and ocean commerce.

CONCLUSION

Hopefully, the foregoing exposition, while explaining certain aspects of the relationship between the central government of the Bay Colony and its representative element, has provided some evidence as to why the colony never became, in literal terms, a "Bible" commonwealth. Further evidence could be adduced to support this conclusion, as could wider and painstaking search in the records of the Massachusetts towns and detailed inquiries into the English background and experience of their representatives before emigration. Nevertheless, the available evidence seems to justify the statement that although the Bible and its interpretations provided an indispensable touchstone for Massachusetts colonial law and institutions, it was not, and never became, the cornerstone of Puritan legal and institutional thought. Herein, perhaps, lies a basic distinction between legal development in Islamic countries and in colonial Massachusetts. For centuries Islamic law has been regarded as derived principally from divine revelation, and, since there is no power to change the Koran, one of its current problems now is how such an authoritarian
law can be adapted by interpretation to resolve the typical conflicts of modern Mohammedan society.87 The Massachusetts colonists, on the other hand, though guided and inspired in the formation of their society by biblical rules which they likewise had no power to change were nevertheless able, on the basis of deep-rooted secular traditions, to make needed adaptations quickly and easily, by relegating divine law to a position subordinate to those accustomed ways. Despite their deep reverence for the Scriptures, and a will, at first, to be guided by them, the colonists almost never enacted literal biblical precepts into law, even in limited areas, before they had been carefully and eclectically scrutinized and had passed logical justification. Central as the Bible was in Puritan life and thought, it was only one influence among many in a rich cultural heritage which was quickened by the challenge of secular as well as religious problems in a new land.