

# BIRTH AND DEATH REGISTRATION IN MASSACHUSETTS

## I. THE COLONIAL BACKGROUND, 1639-1800\*

ROBERT GUTMAN\*\*

THE registration of births and deaths became a fairly regular practice in some parts of Europe during the sixteenth century. This fact is well-known. What is less often recognized is that a system for registering vital events was established in the New World soon afterwards. In 1639, thirty-two years from the date of the first white settlement in Virginia and nineteen years after the arrival of the Pilgrims, a law was enacted in the Massachusetts Bay Colony requiring that records be kept of the date of the birth and of the death of every inhabitant of the area. The discussion which follows charts the history of the first registration laws as well as those which were enacted in subsequent periods up to 1842, when a modern vital statistics system was established in the state of Massachusetts.<sup>1</sup>

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\*\* From Rutgers University.

<sup>1</sup> The reader familiar with the literature in the field of the history of statistics will recall that a history of vital registration laws in Massachusetts between 1639 and 1692 was written by Kuczynski over a half century ago. It has been thought worthwhile to repeat in the present paper a description of the events which he noted: in part, because historical research since 1900 makes possible a fuller interpretation of them; and also for the reason that these events take on a new meaning when they are seen in the context of the history of vital registration during the whole period. See Kuczynski, R. R.: *The Registration Laws in the Colonies of Massachusetts Bay and New Plymouth. Journal of the American Statistical Association*, 7 (1900-01), pp. 65-73.

More recently an historian of medicine and public health has discussed the development of the movement for vital statistics in Massachusetts, in both its private and public aspects. He does not, however, give much attention to the registration laws or the registration system as such. See Blake, John B.: *The Early History of Vital Statistics in Massachusetts. Bulletin of the History of Medicine*, 29 (1955), pp. 46-54.

For a brief discussion of the registration laws of 1842 and the following years of the nineteenth century, as well as for a discussion of the consequences of these laws for the accuracy of birth statistics, see Gutman, Robert: *The Birth Statistics of Massachusetts During the Nineteenth Century. Population Studies*, July, 1956, x, pp. 69-94.

THE COLONY OF MASSACHUSETTS BAY

As was the case with almost all the settlements established by the English in North America during the seventeenth century, the Massachusetts Bay Colony began, in part, as a trading corporation venture. The corporation was organized in Britain for the purpose of exploiting the great natural resources, especially the furs and fish, that were to be found on the American continent or in surrounding waters. However, the development of Massachusetts Bay differs from that of many other colonies because, from the inauguration of the venture, the trading company in London which supported the settlement voted to transfer the responsibility for governing and administering the Colony to those shareholders who migrated to the New World. One of the consequences of this decision was that only about six months after the first settlers arrived in the Colony in 1630, a General Court, or legislature, had been established. Although at the beginning the suffrage qualifications for electing this body were restrictive, within four years all freemen willing to swear loyalty to a Christian code became eligible to elect deputies to represent them at meetings of the General Court in Boston.<sup>2</sup> It was this body which in 1639 was to enact the first law relating to registration of births, marriages, and deaths ever recorded in Massachusetts.

The settlement over which the General Court of the Massachusetts Bay Colony acquired hegemony was an extensive land area extending from the Charles River to beyond the Merrimac and from the Atlantic shore far westward into the Continent. For about a decade, ever since Englishmen had begun to migrate to the New World, some of the more adventuresome among them had helped to form towns within the area now comprised by Massachusetts and Maine. When the Massachusetts Bay Colony was established these scattered towns attracted a substantial portion of the immigrants who came to

<sup>2</sup> Osgood, Herbert L.: *THE AMERICAN COLONIES IN THE SEVENTEENTH CENTURY*. New York, Columbia University Press, 1904, Vol. 1, Pt. 2, Chap. 1, p. 155 and *passim*.

the Colony after 1630. As a result, the population of Massachusetts Bay was soon dispersed so that within ten years after its founding, twenty-two towns had been organized.<sup>3</sup>

The relation between the General Court of the Colony and these towns is of special interest to the historian of vital registration because the first registration law was an act passed by the Court but placing the burden for collecting vital statistics on the towns. The precedent for such a law was established early. Shortly after the Massachusetts Bay settlement was founded but before the General Court had been organized, the Governor and his Assistants undertook such diverse responsibilities as selecting the constables of the towns and approving the name the individual town had suggested for itself. Further orders of this sort were made by the first General Court ever convened, which met in the autumn of 1630; it was at this meeting that the General Court established its right to require that any person or group desiring to found a new town first obtain its permission.<sup>4</sup> In 1635 this system of town-colony relations was institutionalized by a general law which provided that towns could pass only orders that were "not repugnant to the laws and orders here established by the General Court."<sup>5</sup>

The original registration law built upon this tradition. It was enacted by the General Court convened in Boston on September 6, 1639 and it read as follows: "That there be records kept of all wills, administration, and inventories, as also of the days of every marriage, birth and death of every person within this jurisdiction."<sup>6</sup> The records were to be kept by the recorder of each town, an appointed official whose job also included making records of the place of each man's house and lands, the judgments in every Court and a record of all purchases by the Indians and from the Indians.<sup>7</sup> The law did not specify who was to inform the recorder of these events, but whoever the

<sup>3</sup> Sly, John F.: *TOWN GOVERNMENT IN MASSACHUSETTS, 1620-1930*. Cambridge, Harvard University Press, 1930, Chap. 1, *passim*.

<sup>4</sup> *Ibid.*: Chap. 1, *passim*.

<sup>5</sup> *Massachusetts: RECORDS OF THE GOVERNOR AND COMPANY OF MASSACHUSETTS BAY IN NEW ENGLAND*. Boston, William White, 1853, Vol. 1, p. 172.

<sup>6</sup> *Ibid.*: Vol. 1, p. 276.

<sup>7</sup> *Ibid.*: Vol. 1, p. 276.

person was, he was ordered to pay the recorder "for every death, one pence, for every birth, one pence."<sup>8</sup> The law also required that these records were to be certified once each year by the General Court, until which time they would have no legal status, and any town which failed to send up its records for certification by the Court was subject to a penalty of forty shillings.<sup>9</sup>

It seems fairly clear that the legislature was not motivated to register deaths by any interest in studying the public health nor to record births in order to predict the course of population growth. Rather, vital events were registered because they were among the fundamental facts which had to be known by any community intent upon preserving a record of itself—the same sort of impulse which makes some people today into amateur genealogists. Furthermore, and this was probably the more important motive, lists of births and deaths would be useful in cases of probate. Thus the text preceding the statement of the 1639 law in the Massachusetts Bay records reads: ". . . whereas many judgements having been given in our Courts, whereof no records are kept of the evidence and the reasons whereupon the verdict and judgement did pass, the records whereof being duly entered and kept would be good use for presentation to posterity, and a relief to such as shall have just cause to have their causes heard and reviewed, it is therefore by this Court ordered and decreed that hence forward every judgement with all the evidence, be recorded in a book to be kept to posterity."<sup>10</sup>

There are several facts which indicate that the operation of this law was not so successful as had been hoped. Lemuel Shattuck, one of the founders of the science of vital statistics in the United States, who examined those vital records of the Colony which had survived to the 1840's,<sup>11</sup> reported that they

<sup>8</sup> *Ibid.*: Vol. 1, p. 276.

<sup>9</sup> *Ibid.*: Vol. 1, p. 276.

<sup>10</sup> *Ibid.*: Vol. 1, p. 276.

<sup>11</sup> "Letter from Lemuel Shattuck, Esq." in SECOND ANNUAL REPORT TO THE LEGISLATURE . . . RELATING TO THE REGISTRY AND RETURN OF BIRTHS, MARRIAGES AND DEATHS IN MASSACHUSETTS. Boston, Dutton and Wentworth, 1843, p. 65.

were "very imperfect and unsystematic." Shattuck also tabulated and analyzed the vital records of Boston for this period, but the mortality functions derived therefrom suggest that the records of death in this town, too, were incomplete.<sup>12</sup> There is some evidence that the colonists of the time were themselves dissatisfied with the records. In a preface to the revision of the 1639 law, made in 1642, a reference is made to the neglect of the existing law,<sup>13</sup> and the final provision of the 1642 law instructs the recorders to "do their utmost to endeavor to find out who hath been born and who hath died since the first founding of their towns and to record the same."<sup>14</sup>

The law of 1642 was enacted by the General Court on June 14th of that year.<sup>15</sup> It shifted the responsibility for collecting records of births and deaths to the clerk of the writs in each town. The clerk was an officer chosen by the town and approved by the County Courts whose primary task was to grant summons and attachments in civil cases and to keep account of the defendants in such actions.<sup>16</sup> The task of certifying the records was decentralized so that henceforth the clerk in the town had to send a transcript of his record to the *magistrate's* court in his town or country instead of to the General Court. The fee which the informant had to pay the clerk was raised to three pence, two of which he kept while he was required to send the other to the court along with the transcript to be certified. In order to further encourage the observance of the law, it was provided that the clerk was subject to a penalty of twenty shillings if he failed to comply.<sup>17</sup>

The laws of 1639 and 1642 established the form of a registration system and provided both incentives and penalties for the recording officers, but the laws did not specify how the

<sup>12</sup> Shattuck, Lemuel: *An Essay on the Vital Statistics of Boston from 1810 to 1841*. Boston, printed for the Registry Department, 1893, p. xi.

<sup>13</sup> Massachusetts: RECORDS . . . OF MASSACHUSETTS BAY IN NEW ENGLAND, Vol. 2, p. 15.

<sup>14</sup> *Ibid.*: Vol. 2, p. 15.

<sup>15</sup> *Ibid.*: Vol. 2, p. 15.

<sup>16</sup> Osgood: *op. cit.*, Vol. 1, p. 192.

<sup>17</sup> Massachusetts: RECORDS OF . . . MASSACHUSETTS BAY IN NEW ENGLAND, Vol. 2, p. 15.

clerk was to acquire the information demanded by them. Who was to notify him of births and deaths? Was the clerk supposed to conduct a census of births and deaths on his own initiative? Should he consult midwives to find out about the births which they had attended and the keepers of burial grounds for information about who had been interred? Although the law did not require that he do so, the clerk of the writs in Boston, William Aspinwall, apparently conducted an annual canvass of births and, in addition, interviewed midwives and burial superintendents. He found the task of "going from house to house" extremely burdensome.<sup>18</sup> In order to relieve him, the selectmen of Boston published the following order in December of 1642: "Parents shall give in a note of the names of their children and the time of their birth, unto the clerk of the writs . . . within one week after the birth under the penalty of six pence, for every defect, and he that has the care of the burying place shall give notice unto the said clerk of the names of such as are buried and the constable shall signify this order unto every family in the town."<sup>19</sup> In 1643 Aspinwall addressed a petition to the General Court suggesting that this order be enacted for the Colony as a whole, with the additional provision that midwives be required to report births.<sup>20</sup> The Court ignored the provisions relating to midwives and keepers of burial places but in 1644 it did pass a new law which stated that "all parents, masters of servants, executors and administrators, respectively, shall stand charged to bring unto the clerk of the writs the names of such belonging to them, or any of them, as shall either be born or die . . . and for each neglect the person to whom it doth belong shall bring in a note or certificate as aforesaid together with three pence a name, to the said clerk of the writs; to be recorded above one month after such birth or death, he shall then pay six pence to said clerk; if he neglects

<sup>18</sup> Massachusetts Records, 1643-1774, Vol. 9, No. 30. Manuscript volume in State House, Boston, Mass.

<sup>19</sup> SECOND REPORT OF THE COMMISSIONERS OF THE CITY OF BOSTON, 1877, p. 71, quoted in Kuczynski: *op. cit.*, pp. 66-67.

<sup>20</sup> Massachusetts Records, 1643-1774, Vol. 9, No. 30.

two months, twelve pence; if three months, five shillings, which forfeit shall be returned to the treasury [of the town] . . .”<sup>21</sup> The legislature also recommended that “we think it meet that the grand juries were minded to present such defaulters as they take notice of against the intent of this order.”<sup>22</sup>

No further revisions were made in the Massachusetts Bay registration law for thirteen years, until 1657. The law enacted in the latter year was passed by the General Court on May 6.<sup>23</sup> It made no changes in the basic details of the system and was concerned almost exclusively with penalty matters. First of all, it provided that all births and deaths had to be returned to the clerk of the writs within one month after their occurrence, after which date the clerk was given the right to demand the information along with twelve pence for “his care and pains.” In other words, the sliding scale of fees imposed by the 1644 law was abolished, and the authority of the clerk of the writs was enlarged. Secondly, in case any informant refused to agree to the demands of the clerk, the clerk was authorized to “return the name of such person or persons to the next magistrate or commissioners of the town where such person dwells, who shall send for the party so refusing, and in case he shall persist therein, shall give order to the constable to levy the same.” Penalties on the clerk were also increased: for neglect of making annual returns to the County Court, he was fined five pounds; and for failing to return the name of any person returnable by law who died more than thirty days before he made his return to the County Court, five shillings. Finally, it was provided in order “that no future neglect may be herein, the recorder of each County Court is hereby enjoined from time to time to certify to the County Court respectively, the names of such clerks as shall neglect to make their yearly return according to this law, who, upon notice given, shall send for such clerk and deal in the case according as the law requires.”<sup>24</sup>

<sup>21</sup> Massachusetts: RECORDS OF . . . MASSACHUSETTS BAY . . . , Vol. 2, p. 59.

<sup>22</sup> *Ibid.*: Vol. 2, p. 59.

<sup>23</sup> *Ibid.*: Vol. 3, pp. 426–427.

<sup>24</sup> *Ibid.*: Vol. 3, pp. 426–427.

Why was there a thirteen year lapse between the law of 1657 and the previous statute? Does it indicate that the Colony had lost interest in registration during the period? Is the lapse to be explained by the fact that registration was virtually complete in the 1640's but not in the 1650's? What happened, then, to bring about a decline in the quality of registration during the 1650's? Naturally, any answer to these questions must be largely speculative, but the writer is of the opinion that the long lapse and then the revived interest are to be explained as follows: Registration was virtually complete during most of the period, but the rapid expansion of the population and the area of the colony in the 1650's created new problems which could only be met by a stiffer law. Between 1642 and 1657 the number of inhabitants rose by more than fifty per cent,<sup>25</sup> and the number of towns was doubled.<sup>26</sup> If one were to suggest that the law was not amended because during the interim the colony had lost interest in keeping records, it would be difficult to account for the resolve which the General Court passed in 1647, ordering that "forthwith there be, by direction of the auditor general, a strong press made of very fine planks with rabbit joints one into another . . . to the end that all records, wills, births, letters, and other instruments which are of special and public concernment, may be safely preserved and improved to the good of the present and succeeding ages."<sup>27</sup>

Whether the 1657 law accomplished its purpose or not is unknown. There is no record of any attempt to revise it during the remaining thirty-five year history of the Massachusetts Bay Colony. It was incorporated in the statutes of 1660, and reenacted without amendment in the laws of 1672.<sup>28</sup>

<sup>25</sup> United States Bureau of the Census: A CENTURY OF POPULATION GROWTH. Washington, Government Printing Office, 1909, p. 9.

<sup>26</sup> Sly: *op. cit.*, Chap. 2, *passim*. This statement is based on an estimate derived from the statistics presented by Sly.

<sup>27</sup> Massachusetts: RECORDS OF . . . MASSACHUSETTS BAY IN NEW ENGLAND, Vol. 2, p. 28.

<sup>28</sup> Kuczynski: *op. cit.*, p. 69.



## THE NEW PLYMOUTH COLONY

The New Plymouth Colony was founded in 1620 and thereby has achieved fame as the first permanent settlement in New England. From the beginning it was small in area and in population: after the devastating cold of the first winter the population was only fifty-one. Five years later it contained about two hundred people and as late as 1630 there were only three hundred inhabitants.<sup>29</sup> It included seven towns by 1640 and these were less dispersed than the 40 odd towns which made up the Massachusetts Bay Colony at this date.<sup>30</sup> The general outline of its political organization was much the same as that of the latter settlement, except that during the first ten years of its history the shareholders, who resided in Plymouth, England, exercised considerable control over the affairs of the Colony. In 1630 the Colony was sold to William Bradford and other inhabitants of New Plymouth.<sup>31</sup> Between 1630 and 1641 the government was vested in an oligarchy ruled by Bradford, and then in the latter year he "laid down his trusteeship and resigned the patent into the possession of the freemen of the Colony assembled in general court."<sup>32</sup>

Kuczynski has discussed the question when the first registration law was enacted in the Colony, the discussion of which, as he admits, is made difficult by the loss of the earliest records of the settlement.<sup>33</sup> The first proposal on record for a law was put forth in 1645 and the earliest evidence of a law having been enacted appears in 1646. Contrary to the implication of Kuczynski's discussion, I am of the opinion that there was no registration of births and deaths legally enforced before this date, although there is some evidence that the town clerks were expected to record marriages at least as early as 1641<sup>34</sup>

<sup>29</sup> Sly: *op. cit.*, p. 4.

<sup>30</sup> *Ibid.*: p. 24.

<sup>31</sup> Adams, James T.: THE FOUNDING OF NEW ENGLAND. Boston, Little, Brown, 1930, p. 116.

<sup>32</sup> Osgood: *op. cit.*, Vol. 1, pp. 299-300.

<sup>33</sup> Kuczynski: *op. cit.*, p. 69.

<sup>34</sup> New Plymouth Colony: RECORDS OF THE COLONY OF NEW PLYMOUTH IN NEW ENGLAND. Boston, William White, 1855, Vol. 1, p. 170.

and the records of the General Court of the Colony begin to list marriages as early as 1633.<sup>35</sup> I take this view because of what seems to have been the motive for vital registration during this period. As I stated earlier, it had no demographic or medical purpose but was, on the one hand, the consequence of the natural desire of a community to preserve a record of itself and, on the other, the result of the need to settle probate cases speedily and accurately. The Plymouth Colony, however, did not become self-governing until shortly before the passage of the 1646 law and so was unlikely to have developed the self-consciousness which goes along with the development of an independent community. For the reason that it was not self-governing during its earliest history, its judicial system developed late.<sup>36</sup> This fact, too, may have limited public awareness of the values of accurate records of births and deaths.

The proposal of 1645 was made before the General Court of May 3 of that year. It stated simply "that the clerk, or some one in every town, do keep a register of the day and year of every birth and burial and do have three pence for his pains."<sup>37</sup> The law which was enacted on July 7, 1646 confirmed this proposal, except that it made no mention of a fee.<sup>38</sup> Still later in the same year, at the next session of the General Court, on October 20, 1646, the law was amended and elaborated. It now provided that the clerk was to be paid three pence by the informant for his labors. Every father, mother, or person next in relation was to certify to the clerk the name and day of birth of the child within one month after it was born and every master or mistress in the family where a death occurred was to do the same, except that no time limit was prescribed for the notice of death. Any person who failed to inform the clerk was to be fined three shillings, one half to go to the governor and

<sup>35</sup> *Ibid.*: Vol. 1, p. 13.

<sup>36</sup> Osgood: *op. cit.*, Vol. 1, Part 2, Chap. 6.

<sup>37</sup> New Plymouth Colony: RECORDS OF . . . NEW PLYMOUTH IN NEW ENGLAND, Vol. 2, p. 96.

<sup>38</sup> New Plymouth Colony: THE COMPACT WITH THE CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH. Boston, Dutton and Wentworth, 1836, p. 85.

the other half to the clerk "upon his complaint." Also, the clerk of each town was ordered to send a copy of his records for the previous year to the March Session of the General Court. The law was in many respects similar to that adopted in 1644 by the Massachusetts Bay colonists and may well have been copied from theirs.<sup>39</sup>

Twelve years later the law was re-enacted, with only a minor amendment which provided that henceforth the fine levied on recalcitrant informants was to be shared by the Colony and the clerk instead of dividing it between the Governor and the clerk.<sup>40</sup> In 1671 the law was approved once more, with a further minor alteration. This time the change related to the time allowed between the date of death and the date when it must be recorded, which was set at one month.<sup>41</sup> No other changes were made in the law before 1692, at which date the Colony was incorporated into the new province of Massachusetts Bay.

It is impossible to say with any degree of certainty how successful the laws of the New Plymouth Colony were, or, if they were not successful, why no attempt was made to revise them more fully after 1646. The vital records collected there may have been more complete than in Massachusetts Bay because the New Plymouth Colony was small and because the colony's control over the towns was more strict than elsewhere in New England.<sup>42</sup> On the other hand, the very concentration of the Colony's population may have led the inhabitants to believe that serious attention to registration was unnecessary. Given the lack of evidence, however, it is impossible to resolve these contradictory interpretations.

#### THE PROVINCE OF MASSACHUSETTS BAY

By 1680 the population of the territory which included the two colonies had reached forty thousand<sup>43</sup> and was distributed through approximately eighty towns.<sup>44</sup> This enormous growth

<sup>39</sup> *Ibid.*: p. 86.

<sup>40</sup> *Ibid.*: p. 271.

<sup>41</sup> *Ibid.*: p. 271.

<sup>42</sup> Osgood: *op. cit.*, Vol. 1, p. 296.

<sup>43</sup> United States Bureau of the Census: *op. cit.*, p. 9.

<sup>44</sup> Sly: *op. cit.*, pp. 45-46.

during the first fifty years of its history was accompanied by major changes in the political, social and religious institutions of both colonies, but especially in that of Massachusetts Bay. For instance, the latter had begun to develop an industry and trade of its own, apart from the control of the mother country. This independence often conflicted with England's interests. Although Massachusetts Bay was allowed a good deal of self-government by its charter, it was nevertheless subject to numerous restrictions as a colony of the King. These restrictions were often ignored.<sup>45</sup> The Colony's tendency to deny the limitations placed on its independence by the royal charter led to the revocation of its charter in 1684.<sup>46</sup> Less than a hundred years later, such action on the part of the mother country would have been sufficient cause for a war of independence, but at the end of the seventeenth century the New England colonists were not ready to stand alone and fight a battle to preserve their rights of self-government. Between 1684 and 1691 they agreed to a number of demands for concessions made by the King until their charter was restored in the latter year.<sup>47</sup> Under the new charter the boundaries of Massachusetts Bay were expanded to include the former New Plymouth Colony, the present state of Maine and the islands south of Cape Cod. The whole territory was named the Province of Massachusetts Bay.<sup>48</sup>

When the government of the Province was organized in 1692, it became a problem to determine what effect the new charter had on the statutes, including the registration laws, passed under the former rule. One of the first acts of the General Court, therefore, was to confirm the laws of the old Massachusetts Bay and Plymouth Colonies until the following November. In November, the laws were "renewed without

<sup>45</sup> Cook, Sherwin L.: *Governmental Crisis (1664-1686)*. COMMONWEALTH HISTORY OF MASSACHUSETTS, ed. by Albert B. Hart. New York, The States History Company, 1927-28, Vol. I, p. 563. Also Jernegan, Marcus W.: *The Province Charter (1689-1715)*, in same series, Vol. II, Chap. 1, *passim*.

<sup>46</sup> Osgood: *op. cit.*, Vol. 3, Chap. 10.

<sup>47</sup> Sly: *op. cit.*, p. 77.

<sup>48</sup> Jernegan: *op. cit.*, p. 11.

limitation.”<sup>49</sup> A few months later, however, partly because of the need to reconcile the laws of the two colonies, a registration law was passed which, in effect, repealed the existing statutes.

The new law continued the practice inaugurated in the New Plymouth Colony of placing the responsibility for registering births and deaths on the town clerks. The clerk was both empowered and required to do this, in the manner of the Massachusetts Bay law of 1657. There is some suggestion in the phrasing of this section of the law—“the clerk is empowered and required to take *an account* of all persons that shall be born or die” (italics mine)—that the clerk was expected to conduct a census for this purpose, a likely expectation in view of what we know of how the information about births and deaths was collected in Boston as early as 1642. For the first time the clerk was required to obtain the name and surname of the parents of the new born and the deceased and to note the time when the birth or death occurred. The informant had to pay a fee of three pence to the clerk for each event registered, as was stipulated in the earlier laws. One month after the event was allowed for registration. No mention is made of penalties for a town clerk who may have been derelict in his duty, but the penalty for neglect on the part of an informant was made more severe, as follows: “if any shall neglect or refuse to give notice to the town clerk of the birth or death of any person that they are so related to or concerned for, or to pay for registering as above said by the space of thirty days next after such birth or death, every person so refusing or neglecting, and being [upon the complaint of any town clerk] thereof convicted before a justice of the peace within the same county, shall forfeit and pay unto such clerk the sum of five shillings, to be levied by distress and sale of the offender’s goods by warrant from such justice, if payment thereof be not made within four days next after conviction as aforesaid.”<sup>50</sup>

<sup>49</sup> *Ibid.*: p. 15.

<sup>50</sup> Massachusetts: ACTS AND RESOLVES, PUBLIC AND PRIVATE OF THE PROVINCE OF  
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The most surprising feature of the law is that it did not require clerks to send copies of their records to a central agency or to have the records certified by a court. There are at least three reasons which may be offered to explain this change which, from the viewpoint of modern vital statistics, represents a retrogressive step in the history of vital registration in Massachusetts. First of all, since there was no interest at this date in the statistical or public health implications of vital records, there was no legitimate reason to have them collected by a central agency because they would not have been tabulated or analyzed anyway. Secondly, under the new charter the appointment of the town clerks was, for the first time in the history of state-local government relations in Massachusetts, made subject to the approval of the General Court. Thus it was possible to consider the town clerk an official who possessed delegated responsibility from the Court and whose records thereby automatically acquired the status of legal evidence. Since the major use of vital records during this period was as evidence in disputes before the local courts there again was no need to have them collected by a central agency. This particular explanation of the peculiar feature of the law is supported by a new provision which for the first time allowed the *clerks*, rather than the central government, to issue the certified copies of their records for use in courts of law. This provision reads: "And every town clerk shall give forth from the registry a fair certificate under his hand of persons born or dying in the town, to any who shall desire the same; and he shall receive six pence and no more for every certificate so given."<sup>51</sup> A third factor which possibly led to the abandonment of the collection of records is that between 1630 and 1692 the towns had become so numerous and so widely scattered that it became impracticable, given the crude means of transportation and communication available at the end of the seventeenth century, for the central government to maintain the kind of supervision of town

THE MASSACHUSETTS BAY. Boston, Wright and Potter, 1869, Vol. I, pp. 104-105.

<sup>51</sup> *Ibid.*: Vol. I, p. 105.

affairs implied in requiring the General Court to certify the legality of local records.<sup>52</sup>

The law of 1692 remained the registration law of the Province of Massachusetts Bay as long as the Provincial government survived. In 1742, however, a minor revision was made. The fee for recording births and deaths was raised to four pence and the fee for a certificate of birth or death was set at three pence.<sup>53</sup> However, in 1750, the fees were lowered again to three and two pence respectively.<sup>54</sup> To the best of our knowledge the General Court did not even consider making further changes in the law during this period.

#### MASSACHUSETTS IN THE FEDERAL UNION

The Province of Massachusetts Bay disappeared as a political entity with the American Revolution. In 1774, the last General Court to convene at the direction of the Royal Governor met.<sup>55</sup> For the next five years, until a constitutional convention was organized in the autumn of 1779, a temporary government reigned.<sup>56</sup> Out of the deliberations of the convention a commonwealth was formed, which was inaugurated in October of 1780, with John Hancock as the first governor.<sup>57</sup> At this date, Massachusetts was made up of 239 towns with a population of about three hundred thousand persons.<sup>58</sup> The form of government of the Commonwealth was very similar to that of the Province. Its legislature retained the name General Court and was divided into two houses, the Senate and the House of Representatives. The power to make laws was vested in the Court and the Governor was given a power of veto,

<sup>52</sup> Whitten, R. H.: *PUBLIC ADMINISTRATION IN MASSACHUSETTS*. Columbia University Studies in History, Economics and Public Law, Vol. VIII, No. 4, New York, Columbia University Press, 1898, Chap. 1.

<sup>53</sup> *Massachusetts: ACTS AND RESOLVES . . . OF THE PROVINCE OF MASSACHUSETTS BAY*, Vol. III, p. 17.

<sup>54</sup> *Ibid.*: Vol. III, p. 530.

<sup>55</sup> Braley, Abner L.: *Provisional Government of Massachusetts*. *COMMONWEALTH HISTORY OF MASSACHUSETTS*, ed. by Albert B. Hart. New York, The States History Company, 1929, Vol. III, p. 65.

<sup>56</sup> *Ibid.*: Chap. 3, *passim*.

<sup>57</sup> Edmonds, John H.: *Massachusetts and Independence (1629-1780)*, *COMMONWEALTH HISTORY OF MASSACHUSETTS*, ed. by Albert B. Hart. New York, The States History Company, 1929, Vol. III, p. 116.

<sup>58</sup> United States Bureau of the Census: *op cit.*, p. 9.

which, however, could be overridden by a two-thirds vote of the Senate.<sup>59</sup> In 1788, Massachusetts ratified the Constitution of the United States and joined the federal union as the State of Massachusetts.<sup>60</sup> Except for occasional changes of boundaries and minor constitutional reforms it has retained the same form of government to the present day.

The war-time government of Massachusetts took no interest in registration—it was too busy supervising a war and founding a society. The State government first became concerned about registration in 1796 when it passed a law to replace the measure enacted by the Province of Massachusetts Bay in 1692.<sup>61</sup> The new law raised the fee which was to be paid to the town clerk for the recording of births and deaths from two pence to eight cents, and for providing a certificate of the event, from three pence to ten cents.

The law spelled out in greater detail than heretofore which persons were responsible for reporting births and deaths. "It shall be the duty of parents to give notice to the clerk of the town or district in which they dwell, of all the births and deaths of their children; and it shall be the duty of every householder to give notice of every birth and death which may happen in his house; and of the eldest person next of kin to give such notice of the death of his kindred; and it shall be the duty of the master or keeper of any almshouse, workhouse, or prison, and of the master or commander of any ship or vessel to give notice of every birth or death which may happen in the house or vessel under his care or charge, to the clerk of the town or district in which such event shall happen."<sup>62</sup> Finally, another provision of the law changed the penalty for failing to report

<sup>59</sup> Bacon, Gaspar G.: *The State Constitution. COMMONWEALTH HISTORY OF MASSACHUSETTS*, ed. by Albert B. Hart. New York, The States History Company, 1929, Vol. III, Chap. 7, *passim*.

<sup>60</sup> Holcombe, Arthur N.: *Massachusetts and the Federal Constitution of 1787. COMMONWEALTH HISTORY OF MASSACHUSETTS*, ed. by Albert B. Hart. New York, The States History Company, 1929, Vol. III, Chap. 13, *passim*.

<sup>61</sup> Holcombe, Arthur N.: *Massachusetts and the Federal Constitution of 1787. COMMONWEALTH HISTORY OF MASSACHUSETTS*, ed. by Albert B. Hart. New York, The States History Company, 1929, Vol. III, Chap. 13, *passim*.

<sup>62</sup> *Massachusetts: THE LAWS . . . PASSED FROM THE YEAR 1780 TO THE END OF THE YEAR 1800*, Vol. II, p. 725.



a birth or death from five shillings to one dollar, the length of time for registration from one month to six months and ordered that the penalty for neglect was to be paid to the person or the town who would prosecute for the same.<sup>63</sup>

In its original version, the bill which led to this law would have continued to require parents and kin to return births and deaths and to pay the clerk for recording the event. In order to cope with the deficiencies in the registration system it would have provided further that the clerks be required to conduct an annual census of births and deaths. The latter provision was eliminated from the bill as enacted. In its place, a provision was added that required the town, rather than the parents and kin, to pay the registration fee. Thereby it was hoped that the completeness of registration would improve without adding to the burdens of the town clerks.<sup>64</sup>

The 1796 law was incorporated without revision in the General Statutes codified in 1835.<sup>65</sup> No further legislation relating to registration was considered by the General Court until the modern registration system was inaugurated in 1842. The law of 1842 did not repeal any of the provisions of the 1796 law. It only added to them, by requiring that the town records of births and deaths be collected by the central government. A total revision of the registration law was not effected until 1844. Consequently, the 1796 law remained the basis of the system for registering vital events for two years after Massachusetts had become the first American state to organize a modern vital statistics system.

<sup>63</sup> *Ibid.*: Vol. II, p. 725.

<sup>64</sup> Massachusetts State Archives Act 1796, chap. 69. Ms. State House, Boston, Mass.

<sup>65</sup> Massachusetts: THE REVISED STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS. Boston, Dutton and Wentworth, 1836, p. 182.