

JOHN WINTHROP: LAWYER AS MODEL OF CHRISTIAN CHARITY

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On a small boat bobbing on the North Atlantic Ocean in the spring of 1630, a bearded man with a long thin face rose to speak. He addressed a group of people who, like him, had left behind home, friends, and family for an unknown world called New England. The man spoke from his heart and eloquently shared the vision that united them and had brought them to this place.

The man was John Winthrop. He called his remarks, "A Model of Christian Charity."¹ In them, Winthrop reminded his fellow travelers that they had left their home in England, not for riches or their own glory, but for the glory of God. They had left to establish a people devoted to the service of God and to model for all the world a people that lived in a holy covenant with their God. The travelers were to form a "city on a hill."

For the people to fulfill this daunting task, Winthrop was convinced that one thing was crucial: love. Winthrop told his listeners, "We must love brotherly without dissimulation; we must love one another with a pure heart fervently. We must bear one another's burdens."² Winthrop believed that as God did with Israel in the Old Testament, God would prosper and bless a nation that lived in obedience to Him and His covenant. But God would punish any nation that did not:

Now the only way to avoid this shipwreck and to provide for our posterity, is to follow the counsel of Micah, to do justly, to love mercy, to walk humbly with our God. . . . We must delight in each other, make one another's condition our own, rejoice together, mourn together, labor and suffer together, always having before our eyes our Commission and Community in this work, as members of the same body. So shall we keep the unity of the Spirit in the bond of peace.³

It was to this vision that Winthrop devoted the rest of his life. As a lawyer and governor he worked to achieve and preserve unity and love among the people. As a man Winthrop modeled these traits. In the face of constant division and sin, Winthrop consistently showed the way—not in harsh words—but by example. He at times nearly single-handedly

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¹ DARRETT RUTMAN, *WINTHROP'S BOSTON: PORTRAIT OF A PURITAN TOWN 1630-1649* 4 (1972).

² SAMUEL E. MORISON, *BUILDERS OF THE BAY COLONY* 73 (1958).

³ PETER MARSHALL & DAVID MANUEL, *THE LIGHT AND THE GLORY* 162 (1977).

kept this people together. He was loved, respected and revered, even by his enemies.

What brought John Winthrop to this place? He was born in 1588 into a family of wealth. Winthrop's grandfather had amassed a fortune in the textile industry and had bought a country estate manor in Suffolk. The manor necessarily involved the Winthrops in legal affairs. For one thing, the manor brought with it the Winthrops' right and duty to hold a manor court for their tenants. John Winthrop was therefore introduced to the law at an early age. In fact by age 18, Winthrop was a Justice of the Peace.⁴ He studied at Cambridge for two years as a teenager and then studied law at Gray's Inn. Winthrop spent much of his early life managing the estate. But in 1627 he was appointed Common Attorney in His Majesty's Court of Wards and Liveries.⁵ This court administered the lands of the King's wards, minors who inherited land held directly from the King. Anyone involved in a dispute regarding such wardships had to employ one of the Common Attorneys, of which there were only three. Winthrop's position as Common Attorney took him to London four times per year for court sessions that lasted three to seven weeks each.

That John Winthrop was an English lawyer does not fully explain him. Winthrop was also a Puritan. Puritans were members of the Church of England who believed that the Bible was the word of God and that they should live in accordance with it, both in church and state affairs. Regarding the church, Puritans believed that the Protestant Reformation should be carried to its logical conclusion in the Anglican church. Specifically, they wished to purge the church of forms and ceremonies that are not found in scripture. Regarding the state, Puritans believed that every nation is in a covenant with God and must obey God's laws. Puritans believed that if a nation obeys God's laws it will be blessed but, as Winthrop had noted in his shipboard sermon, if the nation does not, it will be judged.⁶

The 1620s were a difficult time to be a Puritan. Things seemed to be deteriorating rapidly. In 1625 Charles I ascended to the throne. This greatly concerned the Puritans. Charles' wife was Catholic and the Puritans viewed Charles as "soft on Catholicism." Charles also appointed to church office men who sought to retain church forms and ceremonies that the Puritans detested. Of greater concern, however, was that many of the new church officeholders believed that men could exercise their own free will and assist in their salvation.⁷ This was heresy to the Puritans, who believed that God alone could call and save a man.

⁴ EDMUND S. MORGAN, *THE PURITAN DILEMMA* 15-16 (1st ed. 1958).

⁵ *Id.* at 22.

⁶ *Id.* at 19.

⁷ *Id.* at 28.

The Puritans were also very concerned about Charles politically. Charles came to power at a time when Parliament had achieved increased political authority. The Puritans supported Parliament's power, believing that Parliament was responsible for whatever progress England had made in enforcing God's laws. Charles, however, demonstrated a complete lack of respect for Parliament, calling and dissolving Parliament at will and raising money through a forced loan without seeking Parliament's consent to a tax. Puritans viewed Charles as a dictator. All of these developments as well as the general corruption of society led Puritans to believe that England had violated her covenant with God and faced impending judgment.⁸

In the late 1620's, these conditions led many Puritans, including Winthrop, to look west to America. In 1629, matters came to a head for a group of Puritan merchants who had organized themselves as the Massachusetts Bay Company. They had been granted a charter authorizing them to settle and govern a portion of Massachusetts. In 1629, Charles confirmed this grant and issued a royal charter. The Massachusetts Bay Company was one of several trading corporations with powers of ownership and government over specific territory in America. These corporations held their meetings in England and sent governors to America carry out their orders. The Massachusetts Bay Company, however, decided to try something new. In the summer of 1629, it determined to move the company's Charter and meetings to Massachusetts. Rather than operating a trading company from England, the company decided to establish a Puritan commonwealth in Massachusetts—governed and operated in Massachusetts itself.⁹

Winthrop was not a shareholder in the Massachusetts Bay Company. It is apparent, however, that he had become familiar with many members of the company through his law practice in London. It also appears that Winthrop had impressed them both with his character and skill. The company made a decision to move to Massachusetts, but under one condition: Winthrop had to be the governor of the new commonwealth. The company would not go without him.¹⁰ This was the type of respect that Winthrop would command his entire life.

The company's proposal came at a perfect time for Winthrop; he had just lost his position as Common Attorney in the Court of Wards because he was a Puritan. As he did throughout his life, Winthrop, in considering the proposal, diligently sought the will of God through prayer. While a Puritan, Winthrop was not a separatist, and he felt it would be wrong to abandon the Church of England. He instead felt that while he was not to be of this world, he was to be in it and to influence it for good.¹¹ Winthrop had to be convinced that he was not leaving England for the wrong motive—to escape. Winthrop went back and forth in his mind for some time. He later described his decision-making process: “[W]hen God intends a man to a work he sets a Bias on his heart so as tho’ he be tumbled this way and that yet his

⁸ *Id.* at 30.

⁹ MORISON, *supra* note 2, at 65-66.

¹⁰ *Id.* at 66.

¹¹ MORGAN, *supra* note 4, at 31-32.

Bias still draws him to that side, and there he rests at last."¹² Winthrop finally rested in a decision to go to the New World. He believed that the decision was not an escape. Instead, Winthrop was convinced that while he was a respected lawyer and judge in England, he could use his talents more effectively in the new world. It was Winthrop's great hope that the new colony, governed by the law of God, would be a shining example so that the English church and state would ultimately be restored along the same lines.

Although the Massachusetts Bay Company entrusted Winthrop with great authority, he did not seek power for its own sake. Instead, Winthrop sought to glorify and serve God in a public way with the talents that God had given him. Winthrop accepted the charge with characteristic humility. As he described to his wife, it "hath pleased the Lord to call me to a further trust in this business of the plantation, than either I expected or find myself fit for."¹³

Within nine months of his decision Winthrop arranged for the sailing of sixteen ships bringing approximately one thousand people to Massachusetts.¹⁴ He arrived on one of the ships, the *Arbella*, in June, 1630.

In Massachusetts, Winthrop diligently sought to establish the kind of commonwealth he had envisioned and described in his shipboard sermon—a commonwealth that would keep her covenant with God and live by His laws. Winthrop knew that perfect and complete fulfillment of this vision was impossible because men themselves are not perfect. Instead, as historian Edmund Morgan has noted, Winthrop viewed his mission as one "to found a society where the perfection of God would find proper recognition among imperfect men."¹⁵ Winthrop did not expect perfection—and he was not disappointed.

In fact, from the moment Winthrop set foot on Massachusetts soil, he faced difficulties and struggles that threatened to pull the commonwealth apart and destroy its love and unity. Winthrop's group was not the first to settle in the Massachusetts Bay Company's territory. Sixty-six men had arrived in 1628 and another two hundred had arrived the next year and settled in Salem. When Winthrop and his company arrived, only eighty-five of these men remained.¹⁶ Over eighty had died and the rest had gone back to England. The newcomers could see on the faces of those who remained the terrible toll the first years had taken. The men were gaunt, listless, and apathetic; they were ready to give up. Seeing this, many in Winthrop's group simply went home on the ships that brought them.

Winthrop worked tirelessly with enthusiasm to get everyone settled and prepared for the winter ahead. He never lost heart despite the misery around him and tragedy that struck his own family. Within days after Winthrop's arrival, his son Henry was drowned.¹⁷ Despite his trials, Winthrop's energy and faith were unflag-

¹² *Id.* at 3.

¹³ *Id.* at 49.

¹⁴ MORISON, *supra* note 2, at 70.

¹⁵ MORGAN, *supra* note 4, at 155.

¹⁶ MARSHALL & MANUEL, *supra* note 3, at 160.

¹⁷ MORISON, *supra* note 2, at 80.

ging, and they buoyed others. Winthrop wrote to his wife Margaret, who stayed in England to settle some affairs before joining her husband, "I thank God, I like so well to be here, as I do not repent my coming: and if I were to come again, I would not have altered my course, though I had foreseen all these Afflictions: I never fared better in my life, never slept better, never had more content of mind."¹⁸

Like the settlers who had come before, the Puritans in Winthrop's company faced a very difficult first winter. The newcomers battled freezing temperatures, malnutrition and scurvy. Many had not brought enough provisions. In addition, they had come too late to plant a crop before winter, so food became scarce. February was the most difficult month of all. With scarcity, the price of food rose dramatically. Winthrop, however, gave freely of what he had. He had given his last handful of meal to a poor man when a relief ship arrived.¹⁹ Two hundred died that winter and perhaps another two hundred returned to England in the spring.²⁰ It was due in large part to Winthrop's steadfastness and faith that the colony held together at all.

The first winter was the worst. From that time on physical survival of the colony was not in serious doubt. Of greater concern was the governing of the colony in such a way as to fulfill Winthrop's vision of a city on a hill. Governance of the colony was prescribed in the Bay Company charter. Members of the company (freemen) were to meet quarterly in a General Court. Each year, the freemen were to elect a governor, a deputy governor and eighteen assistants to manage the colony's affairs. The assistants met monthly. As probably the most respected man in the colony, Winthrop was chosen by the colony's freemen to be governor in nine of the nineteen years he spent in Massachusetts before his death in 1649.²¹ In the other ten years, he was elected to be either deputy governor or an assistant.²²

Winthrop's legal training and experience was extremely helpful to him in governing the colony. In addition to executive and legislative tasks, the governor, deputy and assistants handled many judicial matters, on both the commonwealth and town levels. They impaneled both grand and petty juries, tried felonies, misdemeanors and civil suits. They handled many matters informally. They also handled administrative matters such as land distribution and the fixing of wages and prices.²³

Winthrop exercised his power with gentleness and compassion. The greatest complaint about Winthrop was that he was too lenient and pa-

¹⁸ MORGAN, *supra* note 4, at 62.

¹⁹ MORISON, *supra* note 2, at 82.

²⁰ MORGAN, *supra* note 4, at 63.

²¹ MORISON, *supra* note 2, at 79.

²² *Id.*

²³ RUTMAN, *supra* note 1, at 43.

tient. He was accused of failing to levy strict enough fines and failing to have punishment fully and quickly executed. In keeping with his vision of love and unity, Winthrop always sought to reconcile, unify and bring consensus.

From the very beginning there were those who sought to divide the colony. One of the most difficult and saddest episodes of disunity took place in 1636 and 1637 and began innocuously out of a weekly Bible study. At that time Ann Hutchinson began holding weekly meetings to discuss the previous Sunday's sermon. These were quite common at the time, but Hutchinson began to go beyond the sermon to expand on doctrines herself.

At first, Hutchinson's teaching was quite orthodox, but eventually she propounded a view that caused tremendous division in the commonwealth. It was her position, and the position of her brother-in-law, John Wheelwright, that righteous living was not evidence that a man was saved.²⁴ In theological terms, they believed that sanctification was not evidence of a person's justification. To Hutchinson, the sole evidence of justification was the inner testimony of the Holy Spirit. This would not have caused more than an interesting theological debate had Hutchinson and Wheelwright not propounded a corollary to their belief. They concluded that any justified person could discern, based upon the Holy Spirit's direction, whether any other person was justified. Hutchinson, Wheelwright and a rapidly growing group of followers began on this basis systematically to evaluate people they knew as being either under the covenant of grace (saved) or under a covenant of works (deluded and lost—relying on good works, not the grace of God, for salvation).²⁵

Hutchinson sought to have this view officially taught in the Boston church by having Wheelwright appointed to the office of church teacher. A highly divided church voted down the appointment, but dissension lingered. By 1637 the colony became divided into hostile camps. In response, the General Court called for a fast so that people could repent of their disunity. But on the day of the fast, Wheelwright rose up at an afternoon lecture to condemn the enemies of the Lord, making it clear that he was speaking of most of the existing colony leaders and ministers who were under a covenant of works and should be put aside. "We must lay load upon them, we must kill them with the word of the Lord."²⁶

Someone reported Wheelwright's words and Wheelwright was convicted of sedition at the next meeting of the General Court. The sentence was deferred until the next meeting which also happened to coincide

²⁴ MORGAN, *supra* note 4, at 138.

²⁵ *Id.* at 140.

²⁶ *Id.* at 43.

with next election of officers. At the next meeting in May 1637, many Bostonians turned out to protest Wheelwright's conviction and engaged in disruptive behavior. In the election, the freemen chose as governor Winthrop, the best qualified peacemaker. He had been out of that office for three years. Exercising his customary discretion, he decided not to crush the opposition or immediately charge and punish numerous Bostonians for sedition and rioting. Instead, he decided to put off Wheelwright's sentencing and he declared a day of humiliation. He also asked the ministers throughout the commonwealth to come together in late summer to discuss the doctrinal differences and reach a consensus.²⁷

Until that meeting, Winthrop was treated with indignity by many in Boston and particularly the Boston church (who viewed him as an enemy of God under the covenant of works). He held his tongue and waited, never abandoning the fellowship with those who spoke against him. The ministers' meeting in late August and September went well, resulting in near unanimous agreement. Only Wheelwright dissented, continuing to teach what the rest of the ministers determined was heresy. In November he was banished from the colony.²⁸ In one of the least pleasant events of the early Commonwealth, Hutchinson, too, was tried and banished.²⁹

During course of these proceedings most of those who had supported Hutchinson and Wheelwright changed their views. Within a year, there was great unity not only in the colony but in the Boston Church. While it is likely that many could have been tried, convicted and banished for sedition or rioting, this was not necessary to regain unity. Although it was a painful episode, the colony was preserved.

In the course of his governing of the colony, Winthrop faced many crises and difficulties that threatened to divide the colony. Winthrop almost always responded with patience, love and gentleness. His first impulse was always to persuade and to reconcile rather than to punish into submission. As result, he was respected, not only by friends but by those who disagreed with him.

One of those who respected Winthrop despite differences was Roger Williams. Williams was a Puritan minister who came to Massachusetts in 1631 and was offered a position in the Boston Church. Williams refused the position and refused even to fellowship with the Boston Church—not because of impurity within it, but because it refused to separate from the impurity of the church of England.³⁰ He went to Salem and urged the church there to separate from all other Massachusetts churches. Williams caused not only religious but civil unrest. He chal-

²⁷ *Id.* at 144-45.

²⁸ *Id.* at 147.

²⁹ *Id.* at 152-53.

³⁰ *Id.* at 117.

lenged the validity of the Massachusetts Bay Colony itself by questioning the validity of its royal charter. He also challenged the civil authorities' jurisdiction over certain matters. For causing division Williams was banished in 1635, a year when Winthrop was not the Governor.³¹

Winthrop vehemently opposed Williams' separatism knowing that it caused schism and destroyed the unity of God's covenant people. Despite his strong disagreement and the fact that Williams had been banished from the colony, Winthrop sought reconciliation and frequently wrote Williams trying to bring Williams back into fellowship and to convince Williams that his separatism was not of God. Although Winthrop did not succeed, he maintained William's respect and admiration.³²

This was Winthrop's way. Even his journal reflects that Winthrop viewed evil and opposition with sadness, not malice. He wrote in kind, generous terms of those who most grieved him and most challenged his authority. Of two men who challenged the existing structure of Massachusetts government, Winthrop wrote, "[T]hese gentlemen were such as feared God, and endeavored to walk by the rule of his word."³³ Of one who caused great religious dissension, Winthrop wrote that the man "showed himself a true friend to New England, and a man of noble and generous mind."³⁴

In the end, there was no way that a commonwealth of sinners, even Puritans, could truly carry out the vision Winthrop had set forth in his "Model of Christian Charity." Selfishness, distrust, jealousy, and self-righteousness destroyed unity and kept men from sharing each other's burdens. Eventually the population of the commonwealth increased exponentially, and many did not share Winthrop's Puritan vision. But this did not discourage Winthrop, nor did he seek to separate from his fellow settlers in hopes of achieving perfection somewhere else.

Instead, Winthrop continued to model the virtues of love and unity in his own life. Unlike many, Winthrop demanded much more of himself than he demanded of others. His character is shown by how he responded to two incidents of personal discord. One took place in a church meeting in 1633. At the meeting, William Coddington rose to complain that Winthrop was exercising too much authority over local affairs—particularly in the distribution of land. Although Winthrop had been told to appoint a committee to make land distributions, Coddington now challenged the distribution. Winthrop's temper flared and he spoke harshly to Coddington. On the next Sunday, though, both Coddington and Win-

³¹ EDMUND S. MORGAN, *VISIBLE SAINTS: THE HISTORY OF A PURITAN IDEA* 102 (1965).

³² MORGAN, *supra* note 4, at 128.

³³ MORISON, *supra* note 2, at 93.

³⁴ *Id.* at 87.

throp stood before the congregation, confessed their sins and declared that they had been reconciled.³⁵

The second incident, too, arose out of an accusation that Winthrop exceeded his lawful powers as governor. Thomas Dudley, then an assistant, and frequently Winthrop's chief rival for the governorship, accused Winthrop of having engaged in certain acts—such as loaning 28 pounds of powder to Plymouth and allowing Watertown to erect a fish weir—without a vote of the assistants. The men spoke angrily and nearly came to blows. However, they reconciled over the marriage of their children. In fact, to publicly and permanently signify their reconciliation, they erected on a plot of land two large stones, which they called the Two Brothers.³⁶

Winthrop also modeled love by putting the needs of others—and the commonwealth—above his own. Winthrop was described as “almost recklessly charitable.”³⁷ In 1634, after four years as governor, Winthrop was demoted to the position of assistant. The General Court then demanded an accounting of his public expenditures while in office. Instead of malfeasance, the accounting showed that Winthrop had paid commonwealth expenses out of his own pocket.³⁸ Besides personally subsidizing the commonwealth, for many years he refused to accept a salary.³⁹

Winthrop was the model of Christian charity throughout his life. He died at age 61 in 1649. William Hubbard, the earliest historian of Massachusetts wrote of him: “A worthy gentleman, who had done good in Israel, having spent not only his whole estate . . . but his bodily strength and life, in the service of the country; not sparing, but always as the burning torch, spending . . .”⁴⁰

There is a great temptation for lawyers to become legalistic and self-righteous. Speaking to a group of specialists in the mosaic law, Jesus repeatedly said, “Woe to you, teachers of the law and Pharisees, you hypocrites.”⁴¹ Regarding them Jesus warned others, “The teachers of the law and the Pharisees sit in Moses’ seat. So you must obey them and do everything they tell you. But do not do what they do, for they do not practice what they preach. They tie up heavy loads and put them on men’s shoulders, but they themselves are not willing to lift a finger to move them.”⁴²

³⁵ RUTMAN, *supra* note 1, at 62.

³⁶ MORISON, *supra* note 2, at 89-91.

³⁷ *Id.* at 101.

³⁸ MORGAN, *supra* note 4, at 114.

³⁹ MORISON, *supra* note 2, at 101.

⁴⁰ *Id.* at 104.

⁴¹ *Matthew* 23:13, 15, 23, 25, 27, 29 (New International).

⁴² *Matthew* 23:2-4 (New International).

John Winthrop was exactly the opposite kind of man of law. He sought throughout his life to remove burdens from other mens' shoulders, even at his own expense. He was tender, patient, and kind, always hoping to bring men to God and to reconciliation with each other. He was a good and respected lawyer. But more than that, he used his legal skills for the service and glory of God. He was no hypocrite. The vision he declared from the deck of the *Arbella* was not a series of words to him—it was a description of his life. Despite the failures of those around him, he consistently modeled a life of love, unity and self-giving. He is a tremendous example for all those who follow him in the law.