

‘Chief Princes and Owners of All’: Native American Appeals to the Crown
in the Early Modern British Atlantic

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In the last twenty years, the history of legal and political ideas has experienced a renaissance as scholars in these fields have discovered important connections between many of the seminal theorists of the early modern period and empire.¹ While this new scholarship on the intellectual justifications of European expansion has brought the question of the rights of the indigenous peoples of the Americas to the center of our understanding of seventeenth and eighteenth-century political thought, it has, for the most part, ignored the *ideas* of the indigenous peoples themselves. Yet in these encounters, Native Americans were not merely passive objects of European discourses. Rather, they responded to European claims with their own conceptions of law, property, and political authority.

This paper uncovers these indigenous norms by looking at a little-studied legal genre: the appeals made by Native Americans to the British Crown in the seventeenth and eighteenth centuries.² These appeals show that they were aware of (and able to exploit) the complicated politics of the British Atlantic world for their own ends, turning the Crown against the settlers in ways they hoped would preserve their rights, and in the

¹ For a state of the art summary of this large literature, see Duncan Ivison, “The Nature of Rights and the History of Empire,” in David Armitage, ed., *British Political Thought in History, Literature and Theory, 1500-1800* (New York: Cambridge University Press, 2006), 191-211. I have attempted to refine this focus on prominent European political theorists by examining the arguments about empire made by the Anglo-American settlers in the crucial century before the revolution. See Yirush, *Settlers, Liberty and Empire: The Roots of Early American Political Theory, 1675-1775* (New York: Cambridge University Press, 2011). In this paper, however, I try to uncover the other side of these debates – the arguments of the indigenous peoples of eastern North America who stood in the way of this new Anglo-American empire.

² In doing so, it builds on the important work of Jenny Pulsipher on Native appeals to the Crown in seventeenth-century New England, as well as the related work of Katherine Hermes on Native use of colonial courts in New England. See Jenny Pulsipher, *Subjects unto the Same King: Indians, English, and the Contest for Authority in Colonial New England* (Philadelphia: The University of Pennsylvania Press, 2005); Katherine Hermes, “Jurisdiction in the Colonial Northeast: Algonquian, English and French Governance,” *The American Journal of Legal History* 43 (1999), 52-73; and “‘Justice Will Be Done Us’: Algonquian Demands for Reciprocity in the Courts of European Settlers,” in *The Many Legalities of Early America*, eds., Christopher Tomlins and Bruce Mann (Chapel Hill: The University of North Carolina Press, 2001), 123-149.

process becoming trans-Atlantic political actors.³ Focusing on three such appeals – the Narragansetts’ in the mid-seventeenth-century; the Mohegans’ which spanned the first three quarters of the eighteenth; and the Mashpee’s on the eve of the American Revolution – this paper explores the way that these Native peoples in eastern North America were able to resist the depredations of the settlers by appealing to royal authority, in the process articulating a powerful conception of their legal status in a world transformed by the arrival of the English.⁴ In doing so, it brings an indigenous voice to the debates about the legalities of empire in the early modern Atlantic world.⁵

[Insert map here. Caption: this 1676 map of New England shows the disputed territory in both the Narragansett and Mohegan appeals. The town of Warwick which Miantonomo sold to Samuel Gorton can be seen on the east side of Narragansett Bay

³ On which, see Alden T. Vaughan, *Transatlantic Encounters: American Indians in Britain, 1500-1776* (New York: Cambridge University Press, 2006).

⁴ A project like this raises a number of methodological difficulties, the most pressing of which is the veracity of the textual materials which form its evidentiary base. Given that they were often recorded by Europeans who might have known little about the indigenous peoples whose views they were taking down (or had interested reasons for distorting the record), these documents may tell us more about the biases of the English than about the ideas of the Natives themselves. In addition to bias, these texts also had to endure what James Merrell calls the “perils” of translation and transcription. James H. Merrell, “‘I desire all that I have said . . . may be taken down aright’: Revisiting Teedyusung’s 1756 Treaty Council Speeches,” *William and Mary Quarterly* LXIII (2006), 777-826 (quote at 783). While these are serious concerns, the legal records that this chapter is based on can, if used with care, yield important insights. As Daniel Richter, one of the leading New Indian historians, argues: “the most valuable clues to Iroquois perspectives come from the speeches native leaders made during diplomatic encounters with Euro-Americans.” Richter, *Ordeal of the Longhouse: The Peoples of the Iroquois League in the Era of European Colonization* (Chapel Hill: The University of North Carolina Press, 1992), 5-6. And despite his warnings about the perils of these texts, Merrell also contends that some of the difficulties of translation and cultural bias can be rectified by using multiple accounts of the same document, thereby achieving a “quadraphonic” or even “polyphonic” effect, allowing scholars to find “genuine echoes of a long-forgotten native voice and native sensibility.” Merrell, “‘I desire all that I have said’,” 819.

⁵ For one of the few accounts of this indigenous perspective, see Robert A. Williams, Jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800* (New York: Routledge, 1999).

across from Providence. The territory that the Mohegans controlled after the Pequot War is on the far west side of the map. But the territory the Mohegans actually inhabited by the time their case was heard by the first royal commission in the early 1700s was mainly between New London and Norwich on the Thames River – that is, to the east of where this map places their territory. The territory the Mashpee occupied during their appeal to the Crown lay just to the east of Dartmouth and Portsmouth on Cape Cod]

THE NARRAGANSETTS AND THE MOHEGANS' APPEALS were products of the complicated aftermath of the Pequot War in the late 1630s. Both peoples had allied with the English against the Pequots, as they coveted their territories, and the Mohegans in particular desired to get out from under the Pequots' control (they were a tributary of the Pequots).⁶ The subsequent defeat of the Pequots created a power vacuum, one which Connecticut, Massachusetts, the Narragansetts, and the Mohegans all sought to fill by controlling the defeated tribe's territory.

The nascent and aggressively expansionist colony of Connecticut beat Massachusetts to the punch by allying (through the offices of Captain John Mason) with the leader of the Mohegans, Uncas, who controlled the former territories of the Pequots. The alliance with Uncas allowed Connecticut (which still lacked a charter) a claim to valuable land to its west. As well, Connecticut, worried that if the Narragansetts got access to the Pequot territory, their allies, Massachusetts, would benefit, compelled both

⁶ By contrast, the Narragansett were powerful enough that the Pequots appealed for their help against the English. The tributary status of Uncas and the Mohegans is evidence that Algonquin societies recognized hierarchical forms of organization, and thus were able to put themselves under a European Crown, though as we will see they did this on their terms. On the Algonquins' pre-contact conceptions of political authority, see Kathleen J. Bragdon, *Native People of Southern New England, 1500-1650* (Norman; University of Oklahoma Press, 1996), 140-155.

the Narragansetts and the Mohegans to submit to them in the Treaty of Hartford (1638), even though the Narragansetts had already allied themselves to Massachusetts in 1636.

Miantonomo, the sachem of the Narragansetts, was less than happy about the *status quo post bellum*. He thought that the indiscriminate killing of Pequot women and children at Mystic during the war was unjustified. And he resented the claims of both Connecticut and the Mohegans to the former Pequot lands, where he wanted to be able to hunt. He also resented the demand (made by both Massachusetts and Connecticut) that the Narragansetts pay them tribute for each Pequot captive.⁷ Miantonomo was also displeased that his rival, Uncas, now allied with Connecticut, controlled land he coveted.⁸ To add insult to injury, he was angry about being compelled by Connecticut to sign a treaty at Hartford in 1638, the terms of which violated the agreement that Miantonomo had made with Massachusetts in 1636.

Miantonomo was not alone in his dissatisfaction with the balance of power in New England after the defeat of the Pequots. Massachusetts was jealous of Connecticut's territorial gains in the former Pequot territories. As well, Massachusetts had designs on the land around the Narragansett Bay. As such, they were particularly angry that Miantonomo, their erstwhile ally, had sold some of this land to a radical sect called the Gortonists, whose leader, Samuel Gorton had, like Roger Williams, been banished from the Bay Colony.⁹ Because the sale gave these religious radicals safe haven from the

⁷ On this, see Pulsipher, *Subjects unto the Same King*, 25-6.

⁸ Uncas seized these lands; and when Miantonomo appealed to Massachusetts, he received no help.

⁹ There is little modern scholarship on Gorton. For a detailed (albeit somewhat hagiographic) account, see Adelos Gorton, *The Life and Times of Samuel Gorton* (Philadelphia, 1907). On the connections between his rhetoric and his religious beliefs, see Michelle Burnham, "Samuel Gorton's Leveller Aesthetics and the Economics of Colonial Dissent," *William and Mary Quarterly* 67 (2010), 433-458.

jurisdiction of Massachusetts, the Bay Colony's magistrates made two of Miantonomo's sub-sachems (Pumham and Sacononoco) subject to them, and were thus able to claim that Miantonomo's sale to the Gortonists was illegitimate.

The Gortonists resisted Massachusetts' land grab, insisting on the legitimacy of their deed from Miantonomo. For their pains, they were attacked by Massachusetts in the fall of 1643, some of them were killed, and the rest captured and put on trial.

Miantonomo, however, was less concerned by the attack on the Gortonists than he was with the threat from his foe Uncas, who had attacked a kinsman and tributary of his. So he sought permission (by the terms of the 1636 treaty he'd ceded war making power) from Massachusetts to retaliate, which he received. However, Uncas got the upper hand and took Miantonomo captive, after which the newly formed United Colonies, eager to get rid of a powerful sachem, connived with Uncas to kill Miantonomo.

The murder of their sachem, along with Massachusetts' assertion of its authority over them, led the Narragansetts to join the Gortonists in appealing to the Crown. In the spring of 1644, the Samuel Gorton took the Narragansetts petition to England to be presented to Charles I. For their part, the Gortonists benefitted from having the Natives join them as they could use Massachusetts' abuse of the natives to bolster their own case against the Bay Colony.¹⁰

THE NARRAGANSETTS' APPEAL was a direct challenge to settler authority, and in particular to that of Massachusetts which insisted that its decisions were not subject to

¹⁰ For Samuel Gorton's published defense of his actions, along with a detailed critique of the conduct of Massachusetts, see *Simplicities Defence against Seven-Headed Policy* (London: J. Macock, 1646).

royal oversight. Its authors, Pessicus and Conanicus, informed the King that they were the “chiefe Sachems, Princes or Governors of the Nanhigansets (in that part of America, now called New England),” adding that their petition resulted from “the joynt and unanimous consent of all our people and subjects,” who, the sachems held, did “freely, voluntarily, and most humbly . . . submit, subject, and give over ourselves, peoples, lands, rights, inheritances, and possessions whatsoever, in ourselves and our heires successively for ever, unto the protection, care and government of that worthy and royal Prince, Charles, King of Great Britaine and Ireland, his heires and successors forever.”¹¹

In doing so, the sachems insisted that they were to be “governed according to the ancient and honorable lawes and customes, established in that so renowned realme and kingdome of Old England.” And they acknowledged themselves “to be the humble, loving and obedient servants and subjects of his Majestie; to be ruled, ordered, and disposed of, in ourselves and ours, according to his princely wisdom, counsel and lawes of that honourable State of Old England . . .”¹² But despite this seeming submission, the Narragansett sachems went on to say that they were not “necessitated hereunto” – that is, they maintained that they did not have to submit to the Crown on account of their relationships with any of the “natives in these parts, knowing ourselves sufficient defence.” Rather, they were seeking the King’s protection because they had “just cause and jealousy of some of His Majesties pretended subjects” (i.e., Massachusetts). And as a result, they desired to “have our matters and causes heard and tried according to his just

¹¹ John Russell Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations*, Volume I, 1636-1663 (Providence, R.I., 1856), 134-6 (hereafter, *RCRP*).

¹² *RCRP*, I, 134-6.

and equal lawes.”¹³ Moreover, their appeal to the Crown was intended to put them on an equal footing with Massachusetts as both peoples would now be subjects of the same king. Or as the sachems put it, “*Nor can we yield over ourselves unto any, that are subjects themselves in any case . . .*” Indeed, the Narragansetts showed they were aware of the fraught politics of empire by informing the King that some of the settlers in New England were but “pretended subjects.”¹⁴

The sachems also insisted that this submission was only “*upon condition of his Majesties’ royal protection, and wrighting (sic) us of what wrong is, or may be done unto us, according to his honourable lawes and customes, exercised among his subjects, in their preservation and safety . . .*” In other words, theirs was not an unconditional surrender of authority to the Crown. Rather, the Narragansetts were seeking protection from the King, and in return were offering their allegiance. Moreover, this submission to the Crown was not meant as a submission to English authority *tout court*. On the contrary, it was designed to restore what they saw as a relationship of equals with the King’s subjects in the New World, a relationship which the settlers had subverted by assuming an unwarranted authority over them, denying them the right to wage war, for example, and demanding tribute, as well as encroaching on their territory. And finally, the Narragansetts’ sachems appeal to the Crown was predicated on the full sovereignty and rights of property they had exercised pre-contact. As they reminded the King in their

¹³ *RCRP*, I, 134-6. Francis Jennings attributes the tribe’s embrace of English law to their surprise that the Gortonists were released from custody by Massachusetts after appealing to common law rights, whereas their own leader was murdered. See Jennings, *The Invasion of America: Indians, Colonists and the Cant of Conquest* (New York: W.W. Norton & Co., 1975), 272-3

¹⁴ On which, see Pulsipher, *Subjects unto the Same King, passim*.

appeal, they had “been the chief Sachems or Princes successively of the country, time out of mind.”¹⁵

Having forged an alliance with the Crown, the Narragansett sachems sent a letter to the General Court of Massachusetts informing that body that they would not be appearing before it, nor submitting to its jurisdiction, for, they argued, “we have subjected ourselves, our lands and possessions, with all the rights and inheritances of us and our people, either by conquest, voluntary subjection or otherwise” to the “government of that Royal King, Charles, and that State of Old England, to be ordered and governed according to the laws and customs thereof.” That is, they were “subjects now . . . unto the same King and State” as Massachusetts, a condition they had entered into by “joint and voluntary consent.” As a result, they were not legally subordinate to Massachusetts in any way. And, they informed the colony, if there is to be any dispute between the two peoples both will now have “recourse” to the King and “repair unto that honourable and just Government.”¹⁶ By subjecting themselves conditionally to the English King, the Narragansetts intended to protect their land rights and political autonomy from the aggressive extension of the Bay Colony’s jurisdiction.

APPEALING TO THE KING in 1644-45 was not the best way to guarantee even a modicum of justice, for as England spiraled into Civil War, Parliament, which was sympathetic to the Puritan colonies, gained the upper hand.¹⁷ Indeed, in 1645, Massachusetts, aware that the balance of power in England was shifting in their favor, were able to extract

¹⁵ *RCRP*, I, 134-6.

¹⁶ *RCRP*, I, 136-138.

¹⁷ Though Cromwell was to prove more sympathetic to dissenters and Indians in the 1650s than the Puritans would have liked.

concessions from the Narragansetts under duress, gaining revenge for the fact that the previous year the tribe had rebuffed their envoys who had come to complain about the appeal, leaving them standing out in the rain for hours. To add insult to injury, the Narragansetts also had to mortgage their territories to a group of colonial land speculators in order to pay a fine to Massachusetts. Unable to do so, they lost some of this territory in 1662.¹⁸

Following the Restoration, however, the Stuart King, Charles II, intended to reassert royal authority in the face of Puritan intransigence (especially by Massachusetts). The subsequent arrival of a royal commission in 1664 to investigate the recalcitrance of the Puritan colonies gave the Narragansetts another chance to appeal to the Crown.¹⁹ In doing so, they were again aided by Samuel Gorton who had kept a copy of their original submission to the Crown in 1644. Gorton also published a letter recounting the travails that he and his followers (as well as the Narragansetts) had suffered at the hands of Massachusetts, the agents of which he claimed had acted like “subjects unto themselves.”²⁰ For its part, the Crown, always eager to hear evidence of Puritan malfeasance, instructed the commissioners “to examine any injuries done to” the Narragansetts “by our subjects” and to “doe them justice.” The Crown also promised the tribe that “wee will always protect them from any oppression.”²¹ After meeting with the Narragansetts, the commissioners voided the deeds of those settlers who had taken the

¹⁸ On the politics of this speculation, see Richard Dunn, “John Winthrop and the Narragansett Country,” *William and Mary Quarterly* 13 (1956), 68-86.

¹⁹ See Pulsipher, *Subjects unto the Same King*, 54-55.

²⁰ *Samuel Gorton's Letter to Lord Hyde in Behalf of the Narragansett Sachems* (1662; reprinted for the Society of Colonial Wars in Rhode Island and Providence Plantation by E.L. Freeman, 1930).

²¹ J.R. Brodhead, ed., *Documents Relative to the Colonial History of the State of New-York*, III (Albany: Weed, Parsons & Co., 1853), 56.

tribes' land.²² The commissioners then visited the Narragansetts who submitted themselves to the Crown and the two sides exchanged gifts.²³ So the Narragansetts had once again used their status as equal subjects, and their embrace of English law and jurisdiction, to protect their lands and their autonomy from Massachusetts. According to Francis Jennings, the decision of the royal commission bought the Narragansetts “a decade of reprieve from Puritan conquest.”²⁴ However, when Metacom's war came in the mid-1670s the Narragansett ultimately took the side of the Wampanoags against the English. As a result, they suffered the fate common to many once independent Native tribes, subjected to colonial law and placed on reservations.²⁵

BY CONTRAST, their old enemies the Mohegans fought on the side of the settlers against Metacom (King Philip). However, this did not protect them from Connecticut which had had designs on their land ever since the end of the Pequot war. Foreseeing this, John Mason, a settler in Connecticut who had forged an alliance with Uncas during the Pequot War, entailed a tract of land (approximately 20,000 acres, the bulk of it near New London) to the tribe in 1671. By doing so, Mason hoped to provide the tribe with a secure land base which could not be sold without their consent. As well, in 1681 Uncas signed a treaty with Connecticut, the terms of which guaranteed that the tribe would be retain

²² See *RCRP*, II, 59-60.

²³ *Calendar of State Papers, Colonial: America and West Indies*, #1103. Volume 5 (1665-1688), 342 (hereafter *CSPC*).

²⁴ *Invasion of America*, 282.

²⁵ According to Yasuhide Kawashima, in the aftermath of Metacom's war “independent tribal government virtually disappeared from southern New England.” See his *Puritan Justice and the Indian: White Man's Law in Massachusetts, 1630-1763* (Middletown: Wesleyan University Press, 1986), 234.

sufficient land to hunt and plant on.²⁶ But despite these attempts to codify their rights in law, by the early 1700s, the Mohegans' vast holdings were reduced to the land that had been entailed to them by John Mason in 1671. And when even this land came under threat, the tribe, with the help of disaffected colonists (including the heirs of John Mason), appealed to the Crown. So began what one eighteenth-century lawyer called "the greatest cause that was ever heard" before the Privy Council.²⁷

Pursuant to the appeal, Oweneco published a "Letter to a Gentleman now in London," which was conveyed to the Queen by Nicholas Hallam, a settler from Connecticut with his own grievances against the colony.²⁸ In it, Oweneco made his case to "the Great Queen Ann, and to her Noble Council" about the "Oppression" that he and

²⁶ For the text of the treaty, see *The Governor and Company of Connecticut and Mohegan Indians, by their Guardians. Certified Copy of the Book of Proceedings before the Commissioners of Review, 1743* (London: W. and J. Richardson, 1769), 39-41.

²⁷ Quoted in Joseph H. Smith, *Appeals to the Privy Council from the American Plantations* (New York: Columbia University Press, 1950), 418. Despite its importance, the Mohegan case has not been the subject of extensive scholarly discussion. Paul Grant-Costa's 2008 Yale dissertation (*The Last Indian War in New England: The Mohegan Indians v. The Governour and Company of the Colony of Connecticut, 1703—1774*) is the only book-length modern account. I discuss the legal claims made by both Crown and colony in "Claiming the New World: Empire, Law and Indigenous Rights in the Mohegan Case," *Law and History Review* (forthcoming, 2011). However, no scholar has yet tried to analyze the arguments made by the Mohegans in the case, although Amy Den Ouden's anthropological account of their internal politics provides important background. See Den Ouden, *Beyond Conquest: Native Peoples and the Struggle for History in New England* (Lincoln: The University of Nebraska Press, 2005), 91-141. For important treatments of (respectively) the arguments of the Crown and the lawyer for the Mohegans, see Mark D. Walters, "Mohegan Indians v. Connecticut (1705-1773) and the Legal Status of Aboriginal Customary Laws and Government in British North America," *Osgoode Hall Law Journal* 33 (1995), 785-829; and David Conroy, "The Defense of Indian Land Rights: William Bollan and the Mohegan Case in 1743," *Proceedings of the American Antiquarian Society* 103 (1993), 395-424.

²⁸ Hallam and his brother John were challenging the disposition of their step-father's estate by a Connecticut court. They were joined in their appeal to the Crown by Edward Palmes, the brother-in-law of Fitz-John Winthrop, who was also contesting the legality of a will. The Privy Council ruled against them, though it upheld their right to appeal to the Crown notwithstanding the charter. See Robert Taylor, *Colonial Connecticut: A History* (New York: KTO Press, 1979), 195-7. On the Crown's inherent right to hear appeals from all of its subjects, see J.M. Sosin, *English America and Imperial Inconstancy: The Rise of Provincial Autonomy, 1696-1715* (Lincoln: University of Nebraska Press, 1985), 179. The private colonies' denial of such a right was a

his “People” had suffered at the hands of the General Court. In addition, Oweneco warned the Queen that should he fail to obtain relief his “People” might “scatter from Me, and flee to the Eastern Indians,” who, he noted, were “the French’s Friends, and the English’s enemies.” In addition to pointing out the strategic significance of the Crown’s alliance with the Mohegans, Oweneco argued that his people had a “Hereditary Right to the Soyl and Royalties of our Dominions and Territories, before the English came into our Country.” Oweneco also claimed that his authority as sachem was “not confer’d . . . by the English, but by the gods.” His letter further bolstered the authority of the sachemship by relaying a story of a pipe which the gods had given his ancestors as “a Token” of “Our happy Reign.” He then spoke of gifts – a Bible and a sword – sent by Charles II which the tribe had kept in the same place as a sacred pipe given them by their “gods.”²⁹ In establishing the divine origin authority of his family’s rule, Oweneco sought to place himself on an equal footing with the English Crown, a status which the exchange of diplomatic gifts with Charles II reinforced.³⁰ Oweneco’s claim of equality with the English monarch was in marked contrast to the case Hallam made before the Board of Trade on the tribe’s behalf where he claimed that the Mohegans had always

central grievance in the Board of Trade’s case against the chartered colonies. On this, see Louise P. Kellogg, *The American Colonial Charter* (Washington: Government Printing Office, 1904), 267-272.

²⁹ *Owaneko, Chief Sachem or Prince of the Mohegan-Indians in New England, HIS Letter to a Gentleman Now in London* (London: Printed for Daniel Brown at the Black Swan without Temple-Bar, 1704), 1-2. The title page claims that Oweneco’s letter was “Faithfully Translated from the Original in the Indian Language.” It is a verbatim copy of a letter Oweneco wrote to Nicholas Hallam on July 14th, 1703, which bore the sachem’s mark, as well as a claim that it was “The true Interpretation of Oanhekoe’s Grievance & Narration, by me John Stanton Interpreter Gent.” Oweneco’s letter is reprinted (with an interpretive essay by David Murray) in Katrina Bross and Hilary E. Wyss, eds., *Early Native Literacies in New England: A Documentary and Critical Anthology* (Amherst: University of Massachusetts Press, 2008), 15-27.

³⁰ A point made by David Murray in *Early Native Literacies in New England*, 25-27.

“acknowledged the Kings and Queens of England as their Sovereigns and have been ever ready to pay all due obedience and to yield subjection to them.”³¹

Having established a claim to authority, property, and jurisdiction independent of Connecticut, or indeed of any English authority, Oweneco’s letter asked that the tribe’s “Hereditary Right to the Soyl and Royalties of our Dominions and Territories, before the English came into our Country” be made known “to the Great Queen Ann, and her Noble Council.” The letter went on to say that “Owaneko, and his Ancestors, were formerly Chief Princes, and Owners of All, or great Part of the Country now called Connecticut-Colony in New-England.” Furthermore, it claimed that “when the English first came, these Indians received them very kindly, and for a very small and inconsiderable Value, parted with all or most of their Lands to the English, reserving to themselves only a small Quantity of Land to Plant upon, and Hunt in.” In addition, Oweneco noted that the Mohegans had also “assisted” the colony “in their wars against the other Indians; and have, until of late, quietly enjoyed their reserved Lands.” However, Uncas complained, “about a Year or two ago” the colony annexed “these lands to the Townships of Colchester and New London.” As a result, “these poor Indians have been unjustly turn’d out of Possession, and are thereby destitute of all means of Subsistence.”³²

Oweneco’s letter met with a favorable response in London. The Board of Trade referred the question to the Crown’s legal advisors. On February 29th, 1704, the Attorney General gave his opinion on the merits of the Mohegans’ appeal:

It doth not appear to me that the lands now claimed by the Indians were intended to pass or could pass to the Corporation of the English Colony of Connecticut or that it

³¹ *CSPC*, #1353. Volume 21 (1702-1703), 856-57.

³² *Owaneko, Chief Sachem or Prince of the Moheagan-Indians.*

was intended to dispossess the Indians who before and after the Grant were the owners and possessors of the same, and therefore what ye Corporation hath done by ye Act mentioned is an apparent injury to them, and H.M., notwithstanding the power granted to that Corporation, there not being any words in the Grant to exclude H.M., may lawfully erect a Court within that Colony to doe justice in this matter, and in ye erecting such Court may reserve an Appeale to H.M. in Council, and may command ye Governors of that Corporation not to oppress those Indians or deprive them of their right, but to doe them right notwithstanding the Act made by them to dispossess them, which I am of opinion was illegall and void.³³

According to the Attorney General, then, the Mohegans were the original owners of the land in question. Furthermore, the royal charter had not dispossessed them, nor did it stop them from appealing to the Crown for redress. Following this opinion, the Queen authorized a royal commission to hear the dispute, informing the colony that “complaints have been made to us in behalf of the Mohegan Indians, that you have by an Act or Order of your General Court or Assembly taken from the said Indians that small tract of land which they have reserved to themselves.” In addition to its concern that the colony’s law was “unjust,” the Crown also warned the colony that, in the middle of a war with the French, its treatment of the Mohegans “may be of fatall consequence by causing a defection of the Indians to our enemies.” As such, the Crown instructed the colony “to pay all due obedience” to its commission, and, if “upon enquiry it be found that the said Indians have been deprived of their lands,” to “immediately cause them to be put into possession thereof . . .”³⁴

³³ *CSPC*, #146. Volume 22 (1704-1705), 60-61.

³⁴ *CSPC*, #181. Volume 22 (1704-1705), 76-77.

The language the Crown used in establishing the commission indicates that it viewed the Mohegans as allies, who, in addition to being the “chief proprietors of all the land in those parts,” had “entertained and cultivated a firm friendship by league, with our said subjects of Connecticut, and have, at times, assisted them when they have been attacked by their enemies.”³⁵ However, if the Mohegans were a separate people governed by their own rulers and capable of entering into treaties with the Crown’s subjects, they were also, in the words of the Board of Trade, “under your Majesty’s Dominion,” a status which gave them a right to appeal to the Crown for redress.³⁶

The Crown chose Joseph Dudley, the Governor of Massachusetts, to head the royal commission. For years, Dudley had been hostile to what he saw as the excessive autonomy afforded Connecticut by its charter, which had survived the Dominion of New England, and which still featured an elected governor.³⁷ Indeed, due to the lobbying of both Dudley and Lord Cornbury, the royal Governor of New York, Connecticut’s dispossession of the Mohegans was one of the charges in the 1706 Parliamentary Bill designed to annul the charters of all of the private colonies.³⁸

Given the threat to its charter rights, Connecticut refused to appear before the Dudley commission, claiming that the Crown had no legal right “to enquire and judicially determine concerning the matter in controversy.”³⁹ Such royal oversight, its lawyers argued, was “contrary to law and to the letters patent under the great seal.” In addition,

³⁵ *The Governor and Company*, 24.

³⁶ *CSPC*, #171. Volume 22 (1704-05), 72-3.

³⁷ On Dudley’s enmity towards the private colonies (which he shared with Hallam and Palmes and the others who supported the Mohegans), see Kellogg, *American Colonial Charter*, 301-2.

³⁸ Kellogg, *American Colonial Charter*, 303. For an example of Dudley’s complaints against Connecticut for – among other things – its treatment of the Mohegans, see *CSPC*, #69. Volume 23 (1706-08), 29-32.

³⁹ The colony also forbade individual colonists from giving testimony before the commission.

the colony maintained that the establishment of a juryless royal commission with authority over the private property would violate “the known rights of her majesty’s subjects throughout all her dominions . . .”⁴⁰

But Connecticut’s resistance was to no avail. On August 24th, 1705, the Dudley commission unanimously decided in favour of the Mohegans and the Masons. The commissioners held “That the said Mohegans are a considerable tribe or people . . . and cannot subsist without their lands, of which they have been deprived *and dispossessed* . . .” Furthermore, they “have at all times served the interests of the crown of England and the colony of Connecticut” and “have *faithfully kept their leagues and treaties* with the said colony.”⁴¹ However, the colony, “contrary” to these “reservations, treaties, and settlements,” had “*granted away considerable tracts of the planting grounds of the said Mohegans.*”⁴² As a result of the colony’s encroachments on their lands, the tribe has “been reduced *to great want and necessity*, and, in this time of war, are in great danger of deserting their ancient friendship.”⁴³ Accordingly, the commissioners ruled that the Mohegans “had a very good and undoubted right to a very large tract of land within the colony of Connecticut”⁴⁴; and it ordered the colony to return to them the tract that Mason had entailed in 1671 between New London and Norwich, as well as several smaller tracts of land.⁴⁵

⁴⁰ *The Governor and Company*, 32-3. The colony also accused Dudley and the other commissioners of having an interest in the land in question. On this point, see Richard S. Dunn, *Puritans and Yankees: The Winthrop Dynasty of New England, 1630-1717* (Princeton: Princeton University Press, 1962), 340.

⁴¹ *The Governor and Company*, 26-7

⁴² *The Governor and Company*, 28.

⁴³ *The Governor and Company*, 29.

⁴⁴ *The Governor and Company*, 27.

⁴⁵ *The Governor and Company*, 29.

Upon hearing the verdict, Oweneco pledged that he and his sons would be “ever under the allegiance and government of the queen and crown of England . . .” Captain Ben Uncas, his brother, also thanked the court, claiming that its favourable decision prevented him from “staining his hands with the blood of the English, notwithstanding the many and frequent provocations from them . . .” In reply, the commissioners thanked “the said Indians for their zeal and affection to her majesty, the crown, and the government of England, and the interests of the English nation,” assuring them that “her majesty would always be ready to take care of them and their people, both in protecting them and preserving of their rights and properties.”⁴⁶

The colony then instructed its agent, Henry Ashurst, to appeal the commission’s verdict. In doing so, Ashurst laid out a case for the settlers’ rights which contrasted sharply with the Mohegans’ vision of their place in the empire. According to Ashurst, Connecticut had conquered the land in question from the Pequots; they had then allowed the Mohegans (who were merely tributaries of the Pequots) to possess some of the land (but only enough to make a hunt). Ashurst insisted, however, that this did not mean that Uncas had “any right” to the land, but “only the *permission* of your petitioners, *the conquerors*, to *suffer* him to possess the same.”⁴⁷ In addition to conquest, Ashurst held that the settlers now had a right to the land in question by labor and improvement as well as by prescription or long usage.

Ashurst’s appeal was enough to get the Privy Council to call for the establishment of a commission of review. However, despite its willingness to reconsider Dudley’s verdict, the Privy Council upheld the legality of the Crown’s jurisdiction over the colony,

⁴⁶ *The Governor and Company*, 66-67.

⁴⁷ *The Governor and Company*, 154.

arguing that because “the Mohegan Indians are a Nation with whom frequent Treatys have been made, the Proper way of Determining the aforesaid Differences, is by her Matys Royall Commission.”⁴⁸ In his year-end letter to the Board of Trade, Governor Dudley seconded the Privy Council’s conclusion: “if H.M. cannot grant commissions to hear so apparent a breach between that Government and a Tribe of independent [Indians] . . . that Corporation must be beyond all challenge.”⁴⁹

THE MOHEGANS’ VICTORY before the Dudley commission did not stop the settlers in Connecticut from continuing to encroach on their land. Faced with the colony’s ongoing intransigence, the Mohegans resumed their appeals to the Crown. In the spring of 1736 one of Uncas’ descendants (Mahomet) along with one of Mason’s descendants (also called John) travelled to the seat of empire and were able to obtain a new royal commission to hear the case.⁵⁰

In his petition to the King, Mahomet stressed the tribe’s assistance to the settlers, noting that they had fought with them against the Pequots, after which Uncas had entered into a “firm League of Alliance and friendship with the English.” But faced with ongoing dispossession, as well as the colony’s disregard of the terms of the 1681 treaty, the tribe had appealed to Queen Anne for justice. The colony, however, had ignored the Dudley

⁴⁸ “Report of the Committee for hearing of Appeals from the Plantations touching ye Mohegan Indians Lands” [21 May 1706]. PC 2/81, p. 204-205. On the 1706 appeal, see also Smith, *Appeals to the Privy Council*, 427.

⁴⁹ CSPC, #1422. Volume 22 (1704-05), 659.

⁵⁰ The Mohegans were assisted by William Shirley, a powerful imperial figure whose protégé, William Bolland, would represent the tribe before the final royal commission in 1743. Shirley was able to get a copy of the Mohegans’ complaint to the Duke of Newcastle, then the Secretary of State with responsibility for the American colonies. See Shirley’s letter to the Duke of Newcastle in CSPC, #259. Volume 42 (1735-1736), 160. On the Mohegans’ journey to London, see Alden Vaughan, *Transatlantic Encounters*, 162-63.

commission and the tribe was now reduced to a land base so small “that they are not able to Subsist on it.” As a consequence, Mahomet was now turning to the King so that “he & his People may be restored to & protected in that part of their Ancestors’ Lands which they had reserved to themselves & their Tribe, for their Hunting& Planting.” And he was doing so because the Mohegans had been “for the Space of 100 years faithfull friends & Allies to your Colony of Connecticut,” and “true to your Matie, & your Royal Predecessors, against all Enemies.”⁵¹

In response to the pleas of the tribe, the Crown authorized a royal commission in 1738. However, the commissioners were drawn from Rhode Island and, as representatives of a colony which was also anxious to preserve its charter, were sympathetic to Connecticut. In particular, they refused to let the majority of the tribe testify, recognizing instead a rival claimant to the sachemship (Ben Uncas) who was willing to cede the land in question to Connecticut, despite the fact that a majority of the Mohegans insisted that he was not their legitimate sachem.⁵²

As a result, the Mohegans appealed again to the Crown in 1739, arguing that they had a right as a people to determine, *via* their own laws, the election of their leaders, a right which the 1738 commission had refused to recognize. “We made our Appearance in a Body, and we were denied to be heard.” Instead, Connecticut set up an “Impostor as Sachem” who was “made by said Government” to “evade Justice” and “to Deprive is of our Lands . . .” As a result of this injustice, the tribe claimed that they were now

⁵¹ Mahomet’s petition is in Mary K. Talcott, ed., *Collections of the Connecticut Historical Society*. Volume IV (Hartford, 1892), 368-72. For a discussion of Mahomet’s memorial at the Privy Council, see W.L. Grant and J.M. Munro, eds., *Acts of the Privy Council of England, Colonial Series*. Volume III (1720-1745), 531 (hereafter, *APCC*).

⁵² On the conflict over who was the legitimate sachem, see Den Ouden, *Beyond Conquest*, 132-135.

“Exposed to the Utmost Limits of Poverty and Want . . .”; and they pleaded with the Crown to “receive us under your Protection” and “Restore us to our Lands and Libertys.”⁵³

After entertaining these pleas, the Privy Council determined that the case should be heard again on the grounds that the proceedings of the 1738 commission had been “very irregular.”⁵⁴ In January, 1743, George II set aside its verdict and issued a new commission, this time composed of the Governors and councilors of New York and New Jersey.⁵⁵ It was to be the fullest airing of the legal arguments for and against indigenous rights in the eighteenth-century Anglo-American world.

THE MOHEGANS WERE REPRESENTED before the 1743 commission by William Bollan, who had been involved on their side in the ill-fated 1738 commission. Although Bollan has been portrayed as working mainly for the Masons, the case he made before the royal commission adopted many of the legal arguments that the tribe had advanced in previous iterations of the dispute – in particular their inherent rights to the soil, their autonomy as the original inhabitants of the land, and their long-standing alliance with the English.⁵⁶

⁵³ For the Mohegans’ petition, see *Collections of the Connecticut Historical Society*, V, 159-164.

⁵⁴ *APCC*. Volume III (1720-1745), 536.

⁵⁵ For the text of the 1743 commission, see *The Governor and Company*, 5-8.

⁵⁶ I have been influenced by David Conroy’s account of Bollan’s role in the case, especially his claim that Bollan adopted an indigenous perspective before the 1743 commission. However, I disagree with his assumption that Bollan was acting for the Masons and not the Mohegans. Although we appear to have no record of who Bollan consulted with (or was paid by), his forceful defense of the Mohegans is closer in substance to the position of the tribe (expressed in Oweneco’s 1704 letter, as well as their petitions to the Crown in the 1730s) than the less robust claims of the Masons (which held that the tribe were subjects of the Crown rather than allies). See Conroy, “The Defense of Indian Land Rights.”

Bollan began by claiming that the Mohegans “were the original only owners of a large tract of land in these parts,” and called for the Dudley commission’s verdict to be “affirmed by this honourable court.” According to Bollan, when the English arrived, the Mohegans, believing them to be “a just and honest people, received and entertained them as friends, and entered into a strict alliance with them.” This was an alliance, Bollan insisted, that the Indians had, despite “the severest trials,” “at all times observed and kept.” Furthermore, “in order to promote the settlement of the English,” the Mohegans had “from time to time spared them divers parcels of their lands,” save for “the lands in controversy (a small portion compared to what they owned when the English first settled here).” However, having “admitted the English to settle in their country,” the Mohegans found some of them to be “full of craft and guile” and so had made an alliance with John Mason and his family “to prevent their being cheated by any fraudulent or unfair purchase.” By doing so, they hoped to preserve “a sufficient portion of lands for them to plant and hunt in, which were absolutely necessary for them, in order to their continuance as a people.”⁵⁷

The Mohegans’ claim to these lands was strengthened, Bollan argued, by the 1681 treaty, which he called a “league of perpetual peace and friendship.” According to its terms, “the Mohegans propriety in lands, and their having countries and territories” was “directly acknowledged by the said colony.”⁵⁸ As such, it would be a great “injustice” if the colony were to now “depart from their treaties with their old and constant friends and allies.”⁵⁹ In construing the terms of the treaty, Bollan urged the commissioners to understand it from the Mohegans’ perspective. According to Bollan, “the Mohegans beg

⁵⁷ *The Governor and Company*, 87.

⁵⁸ *The Governor and Company*, 91.

⁵⁹ *The Governor and Company*, 91-2.

leave to observe, that they are a people unskilled in letters.” What’s more, “their adversaries have had the penning this treaty, and all the records of their other transactions with the said Indians.” Since Connecticut “doubtless took care to express matters favourably to their own interest,” Bollan urged the commissioners to put “the most favourable construction for the said Indians . . . upon these writings.”⁶⁰

For Bollan, the political autonomy that enabled the Mohegans to sign binding treaties was necessary in order for them to protect their “antient territories.”⁶¹ As Bollan reminded the commissioners, the Mohegans were “a free and independent people” who were governed by an “ancient established constitution.”⁶² Responding to Connecticut’s claim that they were better off under its jurisdiction, Bollan insisted that the Mohegans’ “policy, customs, and manners differ widely from those of the English (which they neither despise nor can approve) so they, by no means, like to be so mingled with them, which the Indians find, by experience, has a direct tendency to drive them away from their ancient possessions.”⁶³

Indeed, Bollan contended that when the two peoples first met in the 1630s, it was the settlers and not the Mohegans who lacked a polity. Given that the settlers were effectively stateless until the grant of the charter to Connecticut in 1662, Bollan argued that there could have been no valid land transfers between them and the Mohegans prior to that time. As he told the commissioners, “it is impossible any lands should pass to

⁶⁰ *The Governor and Company*, 92.

⁶¹ *The Governor and Company*, 91.

⁶² *The Governor and Company*, 94.

⁶³ *The Governor and Company*, 93.

them by force of any conveyance whatsoever, until they were enabled . . . by the incorporation of their prince.”⁶⁴

In making this argument, Bollan once again adopted an indigenous perspective. As he explained to the commissioners: the “Indians say that surely that prince, when he granted a charter to some of his own subjects, never intended thereby to pass to them the lands of his friends and allies.” After all, “If the English colonies be permitted” to “depart from their treaties with their old and constant friends and allies, the Mohegans cannot but say, that the English interest must finally suffer among the Indian nations . . .” For Bollan, then, the only effect of the royal charter was “to make such of their lands become part of the English colony as should from time to time be fairly purchased of them.”⁶⁵

DESPITE BOLLAN’S ADVOCACY, the commissioners ruled in favor of Connecticut on the narrow question of whether the colony had set aside a sufficient amount of land for the Mohegans. But the commissioners held that the Mohegans had every right to appeal to the Privy Council, thus endorsing the tribe’s long-standing contention that they were not subordinate to Connecticut, but were rather a co-equal part of the empire with them. And in supporting their right to appeal, one of the commissioners, Daniel Horsmanden, even held that “the Mohgeans,” “though living among the king’s subjects in these countries, are a separate and distinct people from them.” After all, Horsmanden noted, “they have a polity of their own” and “they make peace and war with any nation of Indians when they think fit, *without controul* from the English.” Furthermore, according to Horsmanden, the “Crown” in both “Queen Anne’s and his present majesty’s commission by which we now

⁶⁴ *The Governor and Company*, 90.

⁶⁵ *The Governor and Company*, 91-2.

sit” “looks upon them not as subjects, *but as a distinct people*” who have “the property of the soil of these countries.”⁶⁶ So despite ultimately losing the case, the Mohegans had, beginning in 1704, succeeded in convincing a number of royal officials (in London and the colonies) of their view of indigenous rights. And in the following decade, influenced in part by the complaints of Native groups like the Mohegans, the Crown would embark on a policy of centralizing land distribution in the New World, providing a modicum of protection for the indigenous peoples of North America at the cost of alienating an increasingly expansionist settler population.⁶⁷

THE MOHEGANS CONTINUED THEIR STRUGGLE in the decades following the 1743 commission ruling, obtaining another hearing before the Privy Council in 1773 as the empire was on the brink of revolution. Although the Mohegans lost their final appeal to the Crown,⁶⁸ the Mashpee Indians, a Christian tribe on Cape Cod, had more success in the fateful decades before the Revolution, successfully appealing to the Crown over repeated attempts by Massachusetts to curtail their political autonomy and interfere with their ability to control the resources on their land. However, their victory proved short-lived as in the decades after the Revolution, Massachusetts, now a state in a republican union with no Crown oversight, once again undermined their autonomy. The long

⁶⁶ *The Governor and Company*, 126-7.

⁶⁷ A policy that included the appointment of two Indian commissioners in the mid-1750s, and the announcement of the Royal Proclamation in 1763. On the strength of the settler opposition to the Crown’s desire to protect indigenous rights, see Daniel Richter, “Native Americans, the Plan of 1764, and a British Empire that Never Was,” in *Cultures and Identities in Colonial British America*, ed. Alan Tully and Robert Olwell (Baltimore: The Johns Hopkins University Press, 2006), 269-292

⁶⁸ For the decision, see *APCC*. Volume V (1766-1783), 218. The decision was issued on January 15th, 1773, based on a December 19th committee report.

simmering discontent of the Mashpee led to a revolt in 1833, and the restoration of a measure of self-government.⁶⁹

The Mashpees were Christian Wampanoags who inhabited resource-rich territory on Cape Cod.⁷⁰ Unlike the Narragansetts and the Mohegans, they stayed neutral during Metacom's (or King Philip's) War and were able to remain largely self-governing into the eighteenth century, despite the presence of a minister on their territory and the encroachment of settlers from nearby Barnstable. In response to threats to their lands they repeatedly petitioned the legislature, reminding the government of Massachusetts that they "chose officers among ourselves and appointed men to oversee our lands and marsh and take care that everyone had his share and no more."⁷¹ But in 1746, this period of self-government ended when Massachusetts enacted a law which placed white guardians in charge of all legal and financial matters, including control over resource allocation and land sales. Although intended to protect Natives from unscrupulous whites, the guardianship law ultimately reduced their collective ability to control the resources – fish, timber, pasturage – necessary to provide subsistence. Unable to get the colony's General Court to remove the guardians, the Mashpee appealed to the Crown, sending Rueben Cogenhew, the schoolteacher at Mashpee, to London in the spring of 1760.

⁶⁹ As with the other two appeals, little has been written on the Mashpee's struggles with Massachusetts. I have relied on the following: Daniel Mandell, "We, as a tribe, will rule ourselves': Mashpee's Struggle for Autonomy, 1746-1840," in Colin G. Calloway and Neal Salisbury, eds., *Reinterpreting New England Indians and the Colonial Experience* (Boston: The Colonial Society of Massachusetts, 2003), 299-340; Jack Campisi, *The Mashpee Indians: Tribe on Trial* (Syracuse: Syracuse University Press, 1991); Donald M. Nielsen, "The Mashpee Indian Revolt of 1833," *The New England Quarterly* 58 (1985), 400-420; and Kim McQuaid, "William Apes, Pequot: An Indian Reformer in the Jackson Era," *The New England Quarterly* 50 (1977), 605-625.

⁷⁰ They are often referred to as the Marshpee in these documents, but modern scholars usually refer to them as the Mashpee.

⁷¹ Quoted in Campisi, *The Mashpee Indians*, 82, who also remarks on "the vigor with which the Mashpees prosecuted their claims and defended their rights."

Cogenhew had a harrowing journey across the Atlantic, surviving an attempt to sell him into slavery, a subsequent shipwreck, and impressment. Upon finally arriving in England, however, he was able to present his petition to royal officials. In it, Cogenhew contended that

the English Inhabitants of the said province of Massachusetts Bay have of late years unjustly encroached upon the said Lands and have hindered and obstructed the Indians in the Exercise of that just Right they have to fish in the River Mashbee within the said Limits, and though several attempts have been made by the said Indians to obtain redress for these Injuries by a proper application to the General Court of the Massachusetts Bay; Yet such attempts have been constantly frustrated by the Art of Deceit of such Agents⁷² as they have been obliged to employ in this affair

Given “this unhappy Situation,” Cogenhew maintained that the Mashpee “found themselves under the necessity of laying their Case at the Footsteps of Your Majesty’s Sacred Throne, where alone they could hope from Your Majesty’s known Justice and Equity, to find that Redress which Your Majesty is at all times so ready to give to the Just Complaints of all that live under Your Royal Patronage and Protection . . .”⁷³

As Cogenhew was crossing the Atlantic in the spring of 1760, the colony’s House of Representatives, led by its speaker James Otis, defended the guardianship system to the royal governor, Francis Bernard. The House conceded that the guardians did control the Mashpee’s land and natural resources, but argued that this was because the tribe were “at all times of an indolent slothful disposition, and averse to any kind of labour for their support.” As such, “from mere compassion towards them and to prevent them from

⁷² A reference to the guardians the colony had imposed on them.

⁷³ Cogenhew’s petition is in the Colonial Office Papers at the Public Record Office (now the National Archives), C.O.5/890, pps. 31-32. I am indebted to Daniel Mandell for bringing this document to my attention.

falling into the lowest indigence the General Court many years since by an Act of Government restrained them from making sale of their lands to any English subjects, and upon the same principles by subsequent Acts restrained them from leasing out their lands without the consent of guardians appointed by the Court and made accountable to it.” The House also informed the Governor that the only basis for the Mashpee’s complaint was “the desire that some of them have of being restored to as full liberty of disposing of their real Estates as His Majesty’s English Subjects.” But this was a liberty which, the House insisted, “the most sensible part of the Indians themselves are averse to [,] knowing it must be an occasion of their speedy ruin and destruction.”⁷⁴

Despite the protestations of the Massachusetts legislature, the Mashpee’s appeal to London was successful. The Board of Trade, desirous of centralizing the empire in the wake of the Seven Years’ War, ordered the colony to redress the tribe’s grievances.⁷⁵ In 1763, the Massachusetts assembly passed an act allowing the Mashpee (at annual meetings) to elect their own overseers who were then empowered to decide on the allocation of the community’s resource.⁷⁶ But despite that fact that the Mashpee fought with the colony during the revolutionary war, this autonomy was not to last long. In 1788, the new state’s legislature passed a law overturning the 1763 act and reinstating the system of unelected guardians. This in turn led to decades of conflict as the majority of

⁷⁴ Letter of the House of Representatives, April 28, 1761, to Governor Francis Bernard [PRO, C.O.5/891, 29-30].

⁷⁵ On the Board’s desire for reform of Indian policy, see Daniel Richter, “Native Americans, the Plan of 1764, and a British Empire that Never Was.”

⁷⁶ For a more detailed discussion, see Mandell, “‘We, as a tribe, will rule ourselves’,” 304; and Campisi, *The Mashpee Indians*, 85.

the tribe, dissatisfied with the conduct of the guardians, repeatedly petitioned the legislature for relief.⁷⁷

The spark which led to revolt came in the spring of 1833 when William Apess, a Pequot preacher, came to live among the Mashpee. The tribe soon adopted him as one of their own and he in turn encouraged them to once again present their grievances to the General Court.⁷⁸ On May 21st, 1833, a large majority of the tribe met in an assembly and passed a series of resolutions, the first of which proclaimed that “we as a tribe, will rule ourselves, and have a right to do so; for all men are born free and equal, says the Constitution of the country.” The second resolution stated that the tribe would not allow any “white man to come upon our plantation” and “carry off” “wood or hay” or any other “article, without our permission.” And the third and final resolution informed authorities in Massachusetts that after July 1st any person found to be in violation of these terms will be forcibly evicted from “the plantation.”⁷⁹

The Mashpee then elected a tribal council and discharged their guardians. And on July 1st, Apess and a small group of armed Mashpee stopped two settlers from carrying a load of wood off tribal land. Concerned that the Mashpee were in effect nullifying Massachusetts law, local authorities arrested Apess. The revolt and subsequent arrest stirred public debate, and put pressure on the legislature to deal with the Mashpee’s grievances. William Lloyd Garrison, the abolitionist, was a strong supporter of the tribe,

⁷⁷ On which, see Mandell, “‘We, as a tribe, will rule ourselves’,” 309-319.

⁷⁸ On Apess, see McQuaid, “William Apes, Pequot,” 605-625; and Barry O’Connell, ed., *On Our Own Ground: The Complete Writings of William Apess, A Pequot* (Amherst: University of Massachusetts Press, 1992), xiii-lxxvii. On the revolt, see Nielsen, “The Mashpee Indian Revolt of 1833,” 400-420.

⁷⁹ The resolutions are in William Apess, *Indian Nullification of the Unconstitutional Laws of Massachusetts relative to the Marshpee Tribe; or the Pretended Riot Explained* (Boston: Press of Jonathan Howe, No. 39, Merchants Row, 1835), 21.

remarking sarcastically in his newspaper the *Liberator* that Massachusetts, “believing they were incapable of self-government as free citizens,” had “placed” the Mashpee “under a servile . . . dependence.”⁸⁰ The Mashpee cause was also taken up by the Jacksonian Democrat and newspaper editor Benjamin Hallett who made arguments on their behalf before the legislature.⁸¹ And in early 1834, the Mashpee made their own case to the state government. In their memorial, they accused the people of Massachusetts of being “filled with the fat of our fathers’ land,” and reminded the legislators that it was the tribe and not the settlers who “were the original proprietors of the soil.” They also contended that the “Marshpee government is unconstitutional, and far transcends the Constitution of the country, and of course is extremely defective and injurious to us as a people.” On the latter point, they declared that a failure to abolish the guardian system would be akin to “murdering us by inches.” As a remedy, they called for “a grant of the liberties of the Constitution, to form a Municipal Code of Laws amongst ourselves, that we may have a government that will be useful to us as a people; for sure we have never had any since our original Sachem fathers fell asleep.” They also invoked the memory of the revolutionary war in which “our fathers fought, bled, and died for the liberties of their now weeping and suffering children.” This sacrifice, they insisted, meant that Massachusetts was obliged to “break the chains of oppression, and let our children go free.”⁸²

⁸⁰ See the issue of January 25th, 1834.

⁸¹ See Hallett, *Rights of the Marshpee Indians: argument of Benjamin F. Hallett before a Joint Committee of the Legislature of Massachusetts* (Boston: J. Howe, printer, 1834).

⁸² “Memorial of the Marshpee Indians,” January, 1834. Ayer Manuscripts collection, the Newberry Library (Ayer, #251). It was signed by 78 males and 92 females on the “Plantation”; as well, it stated that there were those “who are absent, and will not return to live under the present laws – in all 287.” The Memorial was also reprinted in William Lloyd Garrison’s newspaper the *Liberator* on February 1st, 1834.

In response to the petitions of the Mashpee and the pressure of non-Natives like Garrison and Hallett, the Massachusetts legislature abolished the guardianship system and incorporated the members of the tribe as a township with the ability to elect its own government. The victory of the Mashpee, a small, isolated group surrounded by powerful settlers, was the last successful resistance of these southern New England tribes to the sovereignty of the Anglo-American settlers, a lonely exception to the fate of Native Americans in the new republic in the following decades.

HOW THE INDIANS LOST THEIR LAND is one of the central questions of Anglo-American history.⁸³ The appeals that Native Americans made to the Crown are an important if understudied part of the answer to this vital historical question, for they demonstrate that Natives had a significant degree of political agency in the empire, able to recognize (and leverage) the tensions between colonial and metropolitan authority in a bid to maintain control over their traditional territories. As well, these appeals show that the Natives were able to respond to European arguments for dispossession with their own conceptions of law, property and authority. Indeed, as the three examples discussed in this paper indicate, the Algonquin peoples of southern New England had a compelling vision of their place in the empire. Faced with the incursions of the settlers, they appealed to the Crown, arguing that they were both the original owners of the land in question as well as its paramount rulers. And it was on this basis that they had voluntarily subjected themselves to the Crown in return for protection from the settlers.

⁸³ To borrow Stuart Banner's succinct statement of the question. See Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Harvard University Press, 2005).

In doing so, they saw themselves as both subjects and as allies of the Crown. That is, they were under the dominion of the Crown, but were also “friends” and “allies” who had made leagues and treaties with the English. It was in other words a conditional subjection in which they ceded some of their original rights in return for being treated as co-equal polities in the empire, with autonomy over their own affairs, a claim which the Mashpee carried into the era of American independence.⁸⁴ Moreover, these New England Native peoples saw a close connection between their claims to property and their collective right to govern themselves, which in turn suggests that the debate over indigenous rights in the eighteenth-century Anglo-American world was about more than just the ownership of land. Rather, property rights and political capacity were intertwined, for whichever group – the settlers or the Natives – could successfully assert its status as a polity was also likely to be the one in control of the distribution of land under their jurisdiction.

THE SOPHISTICATED of the Natives’ legal and political arguments did not, of course, stop their dispossession in the aftermath of the American revolution and the subsequent removal of royal authority in the thirteen rebellious colonies, the result of which was to transfer power to new governments controlled by the settlers on the ground.⁸⁵

Nevertheless, these appeals remind us that this process of dispossession did not go

⁸⁴ Jenny Pulsipher suggests in a recent article that in the early eighteenth century the Wabanakis viewed the English King as a “paramount sachem” who offered protection in return for loyalty, but without interfering in the tribe’s “local governance.” According to Pulsipher, this was not inconsistent with indigenous claims to be subjects of the Crown. See Pulsipher, “‘Dark Cloud Rising from the East’: Indian Sovereignty and the Coming of King William’s War in New England,” *The New England Quarterly* LXXX (2007), 592.

⁸⁵ On the rise of settler sovereignty across the Anglo-American world in the early nineteenth century, see Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge: Harvard University Press, 2010).

unchallenged. Rather, there was an indigenous critique of the claims of the settlers, one which originated in the first decades of contact, and which continues to influence legal arguments about the justice of dispossession in the empire's successor states to the present day.⁸⁶

⁸⁶ On which, see John Burrows, "Sovereignty's Alchemy: An Analysis of *Delgamuukw v. British Columbia*," *Osgoode Hall Law Journal* 37 (1999), 537-596.

