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"The Best Title That Indians Can Claime": Native Agency and Consent in the Transferal of Penacook-Pawtucket Land in the Seventeenth Century

PETER S. LEAVENWORTH

ON an early September morning in 1675, a force of approximately one hundred Massachusetts volunteers under order of Captain Samuel Mosely approached the traditional winter village of Wonalancet, sachem of the Penacook Indians. At the outbreak of King Philip's War in southern New England earlier that year, Wonalancet and his followers had retreated from their summer habitation on the Merrimack at Pawtucket Falls (near Lowell, Massachusetts), to Penacook, upriver near the present location of Concord, New Hampshire, in order to maintain a precarious neutrality in the conflict. Without success, envoys from the warring Nipmucs of central Massachusetts attempted to persuade the Penacooks to join in the general Indian uprising of southern New England. When Indian families relocated in times of tension, the English generally interpreted the move as a prelude to hostilities, and so Massachusetts Bay authorities sent messengers to entreat the Penacooks to return to their homes on the lower Merrimack. When Wonalancet failed to heed the Bay magistrates, Moseley's force headed north.

Indian scouts had alerted the village to Mosely's approach, and the Penacooks withdrew to the surrounding woods and hills, where they watched the English set fire to their wigwams and destroy their winter stocks of corn and dried fish. Wonalancet barely restrained his warriors from ambushing the marauding soldiers, but having done so, he thereafter succeeded in maintaining peaceful relations with the English throughout the war. Mosely's unauthorized attack was immediately cen-

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sured by Massachusetts authorities, and apologies were sent to Wonalancet with the hope that he would return the Penacooks to Massachusetts. Instead, they moved further north to winter among the headwaters of the Connecticut River, where hunting averted famine.[1]

This incident represented the first forcible, armed incursion into the northern Penacook heartland. After fifty years of slow but unrelenting encroachment onto lands of the lower Merrimack family bands, the English accelerated their efforts during King Philip's War and its aftermath. When Wonalancet returned to his corn fields near Pawtucket in the spring of 1676, he found them already planted by English farmers, despite the war that raged around them. Within ten years of Mosely's raid, Wonalancet and other Penacook-Pawtucket leaders would sell the entire Merrimack Valley to English speculators.

The violence and desolation visited on both sides in the cause of the war created dislocation and social turmoil for years to follow. However, the loss of territory was permanent for Indians and had been accomplished much more often at the point of a pen than of a sword. The fifty years prior to Mosely's raid had witnessed a complex evolution in land transferal, an intercultural Gordian's knot that the abrupt confiscations of war had brutally severed.

The movement of Indian land to English ownership in seventeenth-century New England has often been referred to as dispossession. The term is accurate insofar as it identifies the process by which natives were inexorably displaced from their customary uses of the land, rights many English contemporaries acknowledged only as they purchased them. Dispossession, however, carries connotations of passivity; it grants the exercise of will and free choice only to the dispossessor. If we depict Indians simply as victims, though, we fail to take account of those instances when they successfully maintained their livelihood and self-identity in the face of cultural assault. One such instance centers on the Penacook-Pawtucket Indians as

[1]Daniel Gookin, "An Historical Account of the Doings and Sufferings of the Christian Indians in New England" (1677), in *Transactions and Collections of the American Antiquarian Society*, vol. 2 (1836; reprinted, New York: Arno Press, 1972), pp. 462–65.

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observed through the deeds of their land transactions from the 1630s to the 1690s.[2]

The Penacook-Pawtuckets were a culturally homogenous kinship network centered on the Merrimack and Piscataqua Rivers. Their principal sachem in the seventeenth century was Passaconaway, until approximately 1665, when he was succeeded by his son Wonalancet, who held the position until the late 1670s. Their group intermarried with bands centered around Chelmsford and Salem, Massachusetts. Passaconaway and Wonalancet's authority in family band territories was acknowledged not only in the upper Merrimack Valley (above modern Nashua) but in the lower valley and seacoast as well. Evidence in deeds confirms the familial interconnectedness of these bands and their territories deep on either side of the Merrimack River, from its mouth to Lake Winnipesaukee. This cultural and political cohesiveness disintegrated by the end of the seventeenth century.[3]

[2]My research draws on a database of over 110 deeds culled from provincial records and county deed registries in northeastern Massachusetts, southern New Hampshire, and southeastern Maine.

[3]Passaconaway was a tribal shaman, or powwah, as well as a sachem who commanded great respect among a loosely allied group of Western Abenaki bands in northeastern Massachusetts, southeastern New Hampshire and southwestern Maine. The Penacooks were both a western Abenaki band located at Penacook (Concord, N.H.) and Namoskeag (Manchester, N.H.) and an informal confederation of neighboring groups. The band's tributary to the Penacooks included groups at Agawam (Ipswich, Mass.), Pawtucket (later Wamesit, at Lowell), Nashua (Tyngsboro, Mass.–Nashua, N.H.), Souhegonock (Merrimack–Amherst, N.H.), and Winnipesauke (Laconia, N.H.). In addition, bands at Squamscott (Exeter, N.H.), the Piscataqua (Dover, N.H.), and Agamintes (York, Me.) paid allegiance to the Penacooks.

The larger Penacook confederation is usually divided between the lower Merrimack Pawtuckets (approximately to the Nashua River) and the upper Merrimack Penacooks. The upper Merrimack Indians were culturally tied to other Western Abenakis who included the Sokoki and Cowasucks of the Connecticut River Valley, the Missisquois on the eastern shore of Lake Champlain, the Pigwackets on the upper Saco River, and the Ossipees near Ossipee Lake in New Hampshire. The Western Abenakis were usually on good terms with the Eastern Abenakis of central and eastern Maine—the Canibas (Kennebec Valley), the Penobscots, and the Passamaquoddys. The Abenakis were hereditary enemies of the Maquas or Mohawks in New York and the Tarratines or Micmacs in New Brunswick. The Penacooks in particular were generally friendly with the southern New England Algonquins with whom they shared linguistic understanding

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English legal precedent and common law remained a guiding influence in the Puritans' errand into the wilderness even when they deviated from, or reacted against, its specific form in the old country. English buyers of land, especially later in the seventeenth century, craved legitimacy for their peculiarly American practices, and developments in New England jurisprudence that addressed Indian land ownership were usually responses to evolving circumstances within the English community. Even as the settlers plainly viewed Indian property rights as in a distinct category, they made efforts to extend to the natives the full range of legal options connected to European property ownership. These included lines of inheritance, widows' dower, rights of trespass for hunting on unenclosed land, and usufruct limited to specific uses such as firewood gathering, crop planting, timber harvesting, or fishing. Even though the English recognized these rights only to secure their own protection from conflicting claims, the act of entering into deeds with the Indians had the effect of honoring their consent. Many of the rights had similar forms in traditional Indian usage, not the least of which was inheritability, and natives easily made the transition to realizing their entitlements within the white system.

Legal imperatives thus provided two closely related reasons for seeking Indian consent: social custom and protection from challenges to one's title. A third motivation, especially in the crucial decade between King Philip's War and King William's War, initiated in 1689, was fear of violent retaliation. Ignoring Indian consent could have serious repercussions. During King Philip's and King William's War, Indians often had territorial associations with the settlements they attacked, associations most whites overlooked. For example, in 1686, Indian trader Peter Coffin of Dover, New Hampshire, purchased a large tract

and a larger horticultural dimension to their hunter-gatherer diet than other Abenakis. For the Penacook as a transitional group between southern New England Algonquins and the northeastern Abenakis, see Bert Salwen, "Indians of Southern New England and Long Island: Early Period," and Gordon M. Day, "Western Abenaki," in *The Handbook of North American Indians*, vol. 15, ed. Bruce Trigger (Washington, D.C.: Smithsonian Institute Press, 1978), pp. 160–76, 148–59.

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for £7 from the noted warrior Hoophood, or Wahowa. Four years later, after the outbreak of King William's War, Hoophood, whom Cotton Mather called "that bloody tygre," returned repeatedly to his lands in the Piscataqua region, attacking Salmon Falls and farms in the Newington-Greenland area.[4]

In the earliest period of contact, Indians believed they could share usufruct privileges with the scattered white settlers. Sachems living close to English settlements signed simplistic documents placing huge tracts of northern New England land under nominal English control. In 1644, Passaconaway became convinced that he should subject himself to Massachusetts authority, as other tribal leaders living much closer to English settlements had done earlier the same year. The Penacook-Pawtucket leaders clearly did not perceive these transactions in the same terms as their English originators, and so the "capitulations" should not be seen as definitive. The upper Penacooks continued their migratory habits, maintained or constructed forts for defense, and often presented the English with resistance just short of open defiance.

The lower Pawtuckets' and Massachusetts' circumstances were somewhat different from those of the upper Penacook. After having their populations decimated by as much as 90 to 95 percent in the unidentified coastal plague of 1616–20 and the smallpox pandemic of 1633–34, the lower Merrimack bands were in no position to assert themselves in the face of the 1630s massive English immigrations into the Bay Colony. The natives' tribal lands were largely unoccupied, and the survivors became "settlement" Indians within a decade.[5] Passaconaway's Pena-

[4]Cotton Mather, *Magnalia Christi Americana* (1702), ed. Kenneth B. Murdock (Cambridge: Harvard University Press, 1977), book 7, p. 73; Jeremy Belknap, *History of New Hampshire* (1831; reprinted, Bowie, Md.: Heritage Books, 1992), p. 133.

[5]For detailed information on early Northeastern Indian epidemiology, see Salwen, "Indians of Southern New England," p. 169, and Dean R. Snow and Kim M. Lamphear, "European Contact and Indian Depopulation in the Northeast: The Timing of the First Epidemics," *Ethnohistory* 35 (1988): 15–33. For a tentative identification of the early contact period plague as hepatitis virus, see Arthur and Bruce Spiess, "New England Pandemic of 1616–1622: Cause and Archeological Implication," *Man in the Northeast* 34 (1987): 71–83; and S. F. Cook, "The Significance of Disease in the Extinction of the New England Indians," *Human Biology* 45 (1973): 485–508. For a viewpoint that emphasizes native reactions to epidemic sickness as opposed to purely genetic fac-

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cooks weathered the later smallpox epidemic of 1634 and were able to maintain physical distance and relative cultural autonomy for several decades. This distance proved crucial for a number of tribes as they struggled to recover demographically from these initial epidemics.[6]

Because the recent epidemics had depopulated large sections of Penacook-Pawtucket territory, particularly on the lower Merrimack, developing powerful new friendships was a prudent policy. Under those conditions, the English were sometimes welcomed as neighbors. Micmac raids from the New Brunswick area on coastal areas of Maine and northern Massachusetts coincided with the 1616–20 plague, a convergence of external forces that may have convinced interior bands that English-inhabited coastal lands served as ideal buffer zones. Soon after Micmacs attacked villages in the seacoast region, Narragansetts briefly occupied Massachusett hunting territory. Tribes decimated by disease were prey to unaffected neighbors, and so English firepower became a valuable tool to be manipulated for self-protection in times of need. Massachusett sachem Chickatawbut cleverly orchestrated one such defensive maneuver in the 1620s. When a large group of Narragansetts moved into his hunting territory, Chickatawbut informed the English outpost at Wessagusset that they intended mischief. As the Englishmen armed themselves, posted guards, and donned armor, the Machiavellian sachem confided to the Narragansetts that the English were about to attack them. The Narragansetts soon departed.[7]

The benefits Indians realized from land sales were generally more tangible in the initial period, with the earliest conveyances usually paid in trade goods and cloth. Depositions

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tors, see A. W. Crosby, "Virgin Soil Epidemics as a Factor in the Aboriginal Depopulation in America," *William and Mary Quarterly* 23 (1976): 289–99. For a contemporary observation of the post-plague condition of Massachusetts tribes, see Thomas Morton, *New English Canaan* (1639; reprinted, New York: American Library Association, 1963), pp. 18–19.

[6]Peter Thomas, "The Fur Trade, Indian Land, and the Need to Define Adequate 'Environmental' Parameters," *Ethnohistory* 28 (1981): 375.

[7]Morton, *New English Canaan*, pp. 43–47.

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taken in 1684 from four aged men, two Indians and two Englishmen, recalled the circumstances of the sale of Concord, Massachusetts, in 1636. The Indians, headed by the squaw sachem Tohattowan, received hatchets, hoes, knives, cotton cloth, shirts, and a parcel of wompumpeag. Wompachowet, a powwow and second husband to Tohattowan, received a new cotton suit, linen band, hat, shoes, stockings, and a greatcoat. The white deponents testified simply that the sale of land had occurred. Jethro, a Christian Indian of Natick, remembered that "after the sd bargaine was concluded [Indian trader] Simon Willard, poynting to the four quarters of the world, declared that they had bought three miles from that place East, West, North and South." Jehojakin, the other native witness, noted that at the ceremony's conclusion, the Indians declared themselves satisfied and told the Englishmen they were welcome.[8]

The recorded observations convey two very different understandings of what had transpired. The white settlers obviously believed they had purchased thirty-six square miles of land even though no deed had been executed and even though the Indians almost certainly lacked any concept of an English mile. The sellers' response is significant: after receiving the trade goods, which they undoubtedly considered as an element in a ritual of greeting, the Indians announced only that the English were cordially received. They did not fully understand, nor assent to, Willard's impromptu surveying methods.

In the period of initial contact, Indians acquired the reputation of having no fixed habitation and no concept of land ownership. This erroneous view persisted among the English because it served the interests of legal-minded Puritans like John Winthrop and John Cotton in codifying an abridgment of native territorial rights.[9] The original miscommunication over land use lasted no more than a few years, however. Still, long after na-

[8]Deposition, Northern Middlesex County Registry of Deeds, Doubtful Book 1, p. 74, Lawrence, Mass.

[9]For example, when the heirs of George No-Nose were selling land along the lower Merrimack, his former living situation was referred to as "sometimes of Rumney Marsh & Sometimes at or about Chelmsford . . . Sometimes here & Sometimes there but deceased" (Southern Essex County Registry of Deeds, book 1, p. 7, Salem, Mass.).

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tives understood that English purchase did not accommodate cooperative occupation, chroniclers continued to depict them as naive.

The misrepresentation was perhaps also perpetuated by a failure of imagination on the part of the English. Because Indians privileged usufruct rights over habitation, the English assumed that they did not understand the concept of private property. A careful reading of provisions reserving Indians' rights to fishing, fowling, hunting, and planting, however, demonstrates that Indians realized that they could no longer occupy the tracts they had sold (and perhaps never had) even though they still could use certain areas for specific purposes, especially food procurement, a right recognized and, moreover, accepted by whites. Indeed, some unscrupulous English buyers used their understanding of how Indians valued their land to convince Indian proprietors of how little they had to lose by selling it. The continuation of usufruct rights was, therefore, a critical condition of Indian dispossession.[10]

Limitations to deeds were taken seriously by both parties. In 1646, the sagamore of Berwick, Maine, Mr. Rowls, sold to Humphrey Chadbourne land and the rights to a fishing weir in the Piscataqua River except "so much small Alewives to Fish Ground as I . . . shall have occasion to make use of for Planting . . . and likewise Fish for to Eat. . . . from Time to Time forever."[11] Deeds from the 1680s reveal an interesting shift in usufruct clauses from securing traditional subsistence activities to experimenting with English modes of food production. For instance, in 1681 Sarah Onnamug (Ossamug in other deeds) sold William Auger sixty-five acres for £60 in her original territory of "Whipsuffrage" (near Marlborough) after she had removed to the Indian town at Wamesit. Twenty pounds of the

[10] John Winthrop's doctrine of *vacuum domicilium* stated that New England's natives had "natural" rights only to land which they cultivated. The deeds bear witness that this was precisely the land English settlers most prized. See David Grayson Allen, "*Vacuum Domicilium:* The Social and Cultural Landscape of Seventeenth-Century New England," in *New England Begins: The Seventeenth Century* (Boston: Museum of Fine Arts, Boston, 1982), p. 1.

[11] York County Registry of Deeds, book 1, p. 6, York, Maine.

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payment was to be made in corn figured at 2s. 3d. to the bushel (approximately 165 bushels). By 1685, Sarah had moved to the Indian town of Natick where, with her sons Joshua, Samuel, and Amos, she was given permission by the General Court to alienate up to fifty acres of "upland meadow" to house carpenter Thomas Sawin "for his Encouragement to build a Corn Mill . . . in our Towne." Sarah and her sons gave only five acres to Sawin, but other Natick leaders sold him forty acres for £10 to ensure that a mill would be built "Convenient for them."[12]

The Indians also adjusted the usufruct rights of the English for their own advantage. In 1655, Thomas Henchman, an active collector of Indian lands, purchased deeded rights to cut firewood, timber, and free feed for his cattle throughout the Indian town of Wamesit. By 1686, the Indians wanted to eliminate these infringements. In exchange for a "slip" of land to own outright, Henchman was required to quit-claim his usufruct rights. Indians could easily engage in this formal quid pro quo, and deeded exceptional uses were not necessarily a source of confusion to either Indians or settlers at the time of their inception.[13]

Similar descriptions of specific uses were often employed between whites to assure continuation of rights.[14] Precisely defining acceptable use in large tracts of land held in common was not an unfamiliar practice for the English. English common law traditionally allowed access to certain unfenced land for hunting and other public uses. Thus, when Indian-white agreements reserved hunting and fowling rights in forests outside of enclosed land, the deeds were connecting Indian subsistence patterns with English precedent. By categorizing Indian and English land in terms of "waste ground" and "inclosures," the New

[12]Southern Middlesex County Registry, book 8, pp. 69 and 321, and book 15, p. 380, Cambridge, Mass.

[13]Middlesex County Registry of Deeds, book 10, p. 402, Cambridge, Mass.

[14]See, for example, a 1652 petition from Valentine Hill and Richard Waldron, town leaders from Dover, New Hampshire, to the Massachusetts General Court, in *New Hampshire Provincial Papers*, vol. 1, ed. Nathaniel Bouton (Concord, N.H., 1867), p. 202.

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England proprietors were self-consciously drawing parallels with the English estates and forests they hoped to replicate for themselves in New England.[15] Deeded reservation of usufruct clauses, which was not exclusively confined to Indian land use, represented the permeability of seventeenth-century concepts of trespass. The boundaries between cultures were self-consciously porous and became increasingly so with continued contact.

Cultural adaptation progressed each time natives initiated an appropriation of things European for their own perceived benefit. Some coastal bands launched this process as soon as European fishing fleets landed in the New World, well before the turn of the seventeenth century, and so New England tribes had long known about the trade goods Europeans had to offer. Of course, sustained settlement intensified the transformative potential for both cultures. This new era marked a process of Penacook-Pawtucket reappraisal of English association and revision of their resources, including the land itself. Especially after the devastating epidemics of the early seventeenth century, both Indians and whites in New England demonstrated a willingness to alter cultural norms to achieve a mutually beneficial accommodation. Place names offer one telling example.

The 1664 deed of James Paquamehood of Tollend in Dover to James Rawlings of Long Reach on the Piscataqua River is representative. It describes a tract of land bounded by three ponds and three hills, all referenced by their Indian names. The name of the third hill was written one way, crossed out, then rewritten, which conjures images of a dutiful scribe phonetically committing James Paquamehood's designation to English. The English were willing to have land described in native terms and

[15]Moors and wasteland in England offered customary public rights to fishing, pasturage, peat digging, and firewood collecting since the Middle Ages. These common law traditions had legal designations such as "husbote and haybote" for the privilege of collecting firewood (see Michael Williams, *The Draining of the Somerset Levels* [Cambridge: Cambridge University Press, 1970], pp. 26–34). Richard Wharton, an ambitious speculator in huge tracts in Maine and Rhode Island, repeatedly petitioned the Lords of Trade for manorial rights and privileges in the 1680s (see Theodore Lewis, "Land Speculation and the Dudley Council of 1686," *William and Mary Quarterly*, 3d ser. 21 (1974): 262.

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to have Indians thus define the extent of the sale so that a mutual understanding of the agreement could be assured. In the words of Thomas Morton, "[T]his is commonly seene where 2. nations traffique together, the one indevouring to understand the others meaning makes the both many times speak a mixed language, as is approoved by the Natives of New England, through the coveteous desire they have, to commerce with our nation, and wee with them."[16] Such accommodations would have been particularly useful among more remote Indian bands, like the Penacooks. Later, when English surveys were more common, both natural features and Indian conceptual frameworks were largely ignored.[17]

Indians' proprietary interests in specific pieces of land are, of course, understood in all deeds, but occasionally they are made explicit. A number of deeds refer to the grantor's land as a "sagamoreship," and many have attached depositions from older kin or band members testifying that the land in question has been associated with the grantor's family "time out of mind."[18] This identification of certain areas with specific family bands repre-

[16]Deed of John Paquamehood, Rockingham County Registry of Deeds, book 2, p. 111a (1665), Brentwood, N.H.; Morton, *New English Canaan*, p. 17.

[17]David Grayson Allen's contention that Indian names were used "because they served merely as boundary points" (*"Vacuum Domicilium,"* pp. 1–2) critically understates the value of a mutual understanding of boundaries as well as a comprehensive Indian system of toponomy bequeathed to the English. For example, the Indian town of Okonnokomesit, also known as Agogausit or Wixsuffrag, retained the English phoneticization "Whipsuffrage" for decades. In wilderness areas, if the English happened to have named a region on their own, it was often connected in legal documentation to Indian nomenclature. As late as 1701, a tract was sold in present day Wilmington named "Nenasaawa attawattocke commonly called by the English the Land of Nod." The land of Nod was the wilderness to which Cain was banished. See Northern Middlesex Registry of Deeds, book 9, p. 83.

[18]For example, the 1683 deed of Bagesson, alias Joseph Trask, transfers a two-and-a-half by ten-mile tract on the lower Souhegan River (near modern Amherst, N.H.) to trader Jonathan Tyng of Dunstable. The document identifies Bagesson as "first cousin of Metacompoyde sachem or sagamore, who was the ancient inhabitant upon & owner of the said tract." Some of the bounds of this tract are pine trees marked with a letter T. See Southern Middlesex County Registry of Deeds, book 9, pp. 23, 25. William Wood's map "The South part of New-England, as it is Planted this yeare, 1634," which appears in his *New England's Prospect,* shows a "Sagamore Mattacomen" located at Pennacooke (modern Concord, N.H.) while "Passaconowa Sagamore" is located further south on the Merrimack at Amoskeag (modern Manchester, N.H.).

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sents trap lines or hunting territories that were specifically allocated by sachems out of tribal lands.[19]

Some Indians were careful about reserving contingent rights to property considered expendable at the time of sale. In a 1660 deed of Wadononamin, the sagamore retained use of "one half (if Need be) of convenient planting land for & during my natural life." Clearly Wadononamin would not have sacrificed such valuable land—previously cleared alluvial plains or intervales, the customary growing areas of the riverine Abnakis—unless he had had other planting grounds, habitations, and hunting territory available to him elsewhere. The privileges of hunting and fishing are noticeably absent from the deed. As with Paquamehood's deed, the bounds of the conveyed tract are primarily conceived in the mutually understandable terms of natural features, for example, "being a Neck of Land." European square miles are loosely superimposed, but without survey references, they have far less meaning to either party than the river boundaries. The phrase "for & during my natural life" may indicate that Wadononamin had few, if any, family members upon whom to endow a continuation of use.[20]

By the 1650s Indians were no longer willing to accept payment in trade goods. With few exceptions, most land sales that mention price thereafter cite cash in hand. Payment in coin, in an economy where hard currency was prized, offered flexibility

[19]There has been some disagreement among anthropologists about the extent to which the family hunting band as the basic unit of Abenaki social organization predated European contact. The general consensus is that its previously less formal construction may have been crystallized by the accelerated trapping brought about by the European fur trade. The sedentary beaver had long been a dietary staple of the northern hunting tribes. Family hunting bands established proprietary trap lines often marked by family totems on trees near beaver habitations. Larger hunting areas surrounding the trap lines were similarly recognized as belonging to extended family bands "time out of mind" for procuring deer, moose, bear, and other animal food sources. An excellent survey of the debate among anthropologists is found in Dean Snow's "Wabanaki 'Family Hunting Territories,'" *American Anthropologist* 70 (1968): 1143–51.

[20]As Emerson Baker has noted in Indian deed activity on the Maine coast for the same period, similar phrasing was used by Indians known to be the last of their family band ("'A Scratch with a Bear's Paw': Anglo-Indian Land Deeds in Early Maine," *Ethnohistory* 36 [1989]: 242–43). For Wadononamin's deed, see Rockingham County Registry of Deeds, book 3, p. 12a.

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for further negotiation with whites. The English had been quite content using inexpensive trade goods as currency, but in time Indians grew adept at the practice of trading. Thomas Gorges, Maine proprietor Sir Ferdinando Gorges's kinsman and representative at York in the early 1640s, lamented that trade with the Indians was "utterly lost, the Indians understanding the value of things as well as the English."[21] This understanding of value included real estate.

The fur trade introduced bargaining strategies that later emerged in land deals. Leading the way into Indian territory in the Merrimack Valley, fur traders often became large landholders and proprietors in multiple townships. In 1657, Simon Willard, William Brenton, and Thomas Henchman paid £25 to purchase a license issued by the Massachusetts General Court for a fur-trading franchise on the Merrimack River. The three men knew something of the native language, acknowledged the customs of the Indians, and sometimes befriended them. In 1683, Peter Jethro gave land to trader Jonathan Tyng of Dunstable, "with whom I do now inhabitt & to whom I acknowledge myself very much obliged, having often times satisfyed me in my wants & paid many of my debts." Peter also mentions that neither he nor his sister was likely to have children (which suggests they were elderly and/or single), a contributing factor in his decision to give Tyng thirty-six square miles. Tyng later provided Wonalancet with food and shelter when, in the late 1690s, the aged sachem returned from Canada to his former lands, where he wanted to die. Tradition asserts that Wonalancet was buried in the Tyng family plot, which implies that friendship and regard were mutual.[22]

[21]Quoted by Emerson Baker, in "The World of Thomas Gorges," in *American Beginnings*, ed. Baker et al. (Lincoln: University of Nebraska Press, 1994), pp. 270–71.

[22]For Massachusetts truckhouse licensing, see Ronald Oliver MacFarlane, "The Massachusetts Bay Truck-House in Diplomacy with the Indians," *New England Quarterly* 9 (1938): 48–65. For Peter Jethro's deed, see Southern Middlesex Registry of Deeds, book 8, p. 400. For Wonalancet's death and Tyng's petition for reimbursement of expenses, see Massachusetts Archives 30:426.

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In a 1660 New Hampshire deed, Wadononamin, "Sagamor of Wahsucke and Piscataqua," gave trader Edward Hilton, Jr., son of one of New Hampshire's earliest traders, approximately six miles square in consideration "for the love I beare to English-men & especially unto Edward Hilton of Piscataqua." "For the love I bear" is boilerplate language in the seventeenth century for establishing the terms of inheritability or sale in transferring real estate within families, particularly from parents to children. While our own jaded inclinations might suggest that Hilton had hoodwinked the sachem, the noteworthy phrase was not unique among extra-familial, inter-racial deeds. Moreover, Wadononamin appeared in court nine years later to confirm the gift, and had there been any problems with the original agreement, they would surely have surfaced then.[23]

On the other hand, John Cromwell's trading post built in Merrimack, New Hampshire, in 1665 was later burned and its owner banished when Indians decided he had cheated them. The trading post established at Penacook sometime before 1668 by Richard Waldron, Sr., of Dover, New Hampshire, in partnership with Peter Coffin, was plagued by problems.[24] An intrusive profiteer, Waldron became a focal point for Indian dissatisfaction, and at the outbreak of King William's War, he was singled out to die in the 1689 raid on Dover. Tradition asserts that the Penacook raiders "crossed out" their accounts on Major Waldron's body.[25]

European trade goods, some of which replaced traditional native implements, were part of the fabric of everyday native life. At first Indians considered non-essential land an acceptable

[23] "For the love I bear . . ." was used in Peter Jethro's deed to Tyng and in 1712 by Simon Negro of Billerica, who left his real and personal estate to the children of his master (Northern Middlesex Registry of Deeds, book 1, p. 509).

[24] For John Cromwell, see Charles J. Fox, *History of the Old Township of Dunstable* (Nashua, N.H., 1846), p. 18. In 1668, the sale of a large quantity of illegal rum to the Penacooks was followed by the murder of an Englishman at the truckhouse, resulting in an official inquest from Boston. For Waldron's petition and the murder investigation, see *Penacook Papers, New Hampshire Historical Society Collections,* vol. 3 (Concord, N.H., 1827), pp. 212–13.

[25] John Frederick Martin, *Profits in the Wilderness* (Chapel Hill: University of North Carolina Press, 1991), pp. 19–20, 74–75. For the circumstances of Waldron's death, see Belknap, *History of New Hampshire,* p. 127.

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variation on customary exchange. The Penacook-Pawtuckets along the lower Merrimack eventually turned to land sales to maintain their consumption levels of European goods when fur values declined in the late 1650s. This consumer activity was largely supported by traders offering liberal credit, a practice common among the English.[26]

While Francis Jennings cites indebtedness as one of the chief tactics of whites to obtain Indian land, Penacook-Pawtucket deeds betray little of the subterfuge Jennings found elsewhere.[27] Until the fur trade declined late in the 1650s, English creditors preferred to be paid in furs, not land. In 1652, Peckanamquit, or Ned Indian, mortgaged all his land near Andover "between ye lands of his Unkle William & his Brother Humphreys" for £30 to Henry Bartholmew of Salem. The condition of the indenture was as follows: if Peckanamquit

> shall pay . . . in Merchantable beaver unto ye sd Henery Bartholmew . . . ye full sum of thirty pounds at or before ye tenth of ye fourth mo. next ensueing . . . then this obligation to be void or else to stand in full power force and vertue and *ye land to be valued for payment of soe much of ye said sume as it shall be valued at.*[28]

[26]Daniel Vickers has observed the same process at work during the same time period in native land sales on Nantucket. "Because their numbers had been declining since the first European contacts at the beginning of the century, they [the Indians] were willing enough by 1660 to sell the rights to settle on what they saw as functionally surplus land" ("The First Whalemen of Nantucket," in *After King Philip's War: Presence and Persistence in Indian New England,* ed. Colin G. Calloway [Hanover, N.H.: University Press of New England, 1997], p. 99). Peter Thomas's analysis of trade in western Massachusetts along the Connecticut River reveals that inter-tribal warfare of the 1660s as well as overtrapping depressed the fur trade. Indians there as well as the Penacook-Pawtuckets along the lower Merrimack and the Penobscots in Maine eventually turned to land sales to maintain consumption levels of European goods ("The Fur Trade, Indian Land and 'Environmental' Parameters," pp. 364–77).

[27]Jennings lists several methods used by early settlers to obtain Indian land through some show of legality. These include allowing livestock to forage into Indian crops, forcing the Indians either to move or illegally kill the livestock; getting natives intoxicated and having them agree to and sign deeds they could not read anyway; buying land from an individual without the approval of recognized tribal authority; imposing fines for infractions of English law with lands forfeit if unpaid; and, finally, simply threatening violence (*The Invasion of America* [New York: W. W. Norton & Co., 1976], pp. 144–46).

[28]Emphasis added; Peckanamquit evidently did not meet the deadline and the mortgage was enforced (Southern Essex County Registry of Deeds, book 10, p. 16).

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Since Ned's land was an eight-mile square, it appears that Bartholmew did not believe that sixty-four square miles was worth the full £30. "Wilderness" land held lower value for settlers, who preferred improved and demarcated tracts closer to established villages. If the merchant Bartholmew was ultimately hoping to obtain Peckanamquit's land, he would not have given him such ample opportunity to repay him in furs, particularly in a period when the fur trade was at its peak and pelts were available.[29]

Alienation of land through debt is rarely mentioned specifically in the extant records of this area, although indebtedness may well have played a role that remains unrecorded. Indeed, indebtedness was the motivating factor in one of the earliest land transactions in the Merrimack Valley. In the late 1650s, Nanamocomuck, older brother of Wonalancet, was imprisoned in Boston for a debt of £45 due an Englishman. To obtain his brother's release, Wonalancet sold his summer habitation on the lower Merrimack near Lowell, an island called Wickasauke. Nanamocomuck fled to the safety of the upper Androscoggin, where he apparently died soon after. Meanwhile, Wonalancet received a grant from the Massachusetts General Court in Chelmsford but continued to plant on the island with permission of the new owner. In 1665, he successfully petitioned the General Court to grant the white owner of Wickasauke 500 acres nearby so that he might regain title to his land. It was unusual for an Indian to be able to buy back his land, but Wonalancet was making an offer the white owner couldn't refuse—500 acres for 60—an offer that once again illustrates Indians' willingness to take extraordinary measures to maintain connections to particular tracts of land.[30]

The medieval English practice of transferring land "by turf

[29]David T. Konig, *Law and Society in Puritan Massachusetts: Essex County, 1629–1692* (Chapel Hill: University of North Carolina Press, 1979), chap. 2, "Real Property Litigation," esp. p. 60, where Konig observes that the most valuable land in mid-century Massachusetts was "the largest, choicest, and already cleared tracts," whereas "county probate records indicate that 'wilderness' land . . . was of relatively low value."

[30]Fox, *History of Dunstable*, p. 21; Kimball Webster, *History of Hudson* (Manchester, N.H., 1913), pp. 36–38.

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and twig," as it is represented in seventeenth-century Massachusetts deeds, reflects another effort by two cultures searching for common ground. By the terms of this vernacular legal agreement, the interested parties met for a brief ceremony during which the seller handed the buyer a clump of sod and a stick from the land being sold. Both the simplicity of this means of land conveyance and its ritualistic predication on memory must have appealed to English and Indian alike. In practice, the agreement also required a great deal of trust. Turf and twig was certainly used more frequently than we can determine since the written record became a competing and corrective method of transfer only by the late 1650s.

Dispensing with the native "encumbrance" to land was only one element in this unique construction of legitimacy. David Thomas Konig has demonstrated that "[i]n reality, early land use was characterized by inexactness in distribution, inattention to recording, and neglect of the most basic statutory requirements of occupancy and fencing."[31] In the imperfectly monitored free-for-all that took place in the coastal towns in the early decades of colonization, dissatisfaction with or contention over granted lands was often settled by simply granting other plots nearby. Frequently, the original lots were not actually relinquished in writing, and deeds went unrecorded for decades. In fact, many deeds were drawn up years after a transaction and only when the tract was to be resold. In the period between 1630 and 1650, many New England farmers held lands they used rarely, if at all. Joint usufruct of outlying tracts was common, and squatting was not only accepted but sanctioned by law. According to a Massachusetts statute of 1657, possession could be confirmed by an undisputed five-year term of occupation. In 1672, this ruling was extended to include land already granted by a town or the General Court to someone other than

[31]David T. Konig, "Community Custom and the Common Law: Social Change and the Development of Land Law in Seventeenth-Century Massachusetts," *American Journal of Legal History* 18 (1974): 137–38. Charles Hilkey had commented that "colonial conceptions of property rights were largely English, but when it came to rights in land there were wide departures from the custom and law of the mother country" (*Legal Development in Colonial Massachusetts, 1630–1686* [New York: AMS Press, 1967], p. 123).

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the occupier. Some deeds contain clauses that simply dismiss any previous grant without even specifying its location. For instance, in 1657 the Court confirmed an earlier grant of 300 acres "in any place not previously granted by this Court" to Cambridge printer Stephen Day to discharge a debt to him. Another debt was cleared by granting Day 20 acres of meadow from the sagamore of Nashoway "where he can find it free of former graunts." In 1664, Day purchased a parcel near Massapall measuring two miles square from sachems Atoohquonyake, Muttahanitt, and David Sagamore. No one, in the white records at least, seemed to notice that Day's land measured over eight times what had been granted him.[32]

Not only did aspects of early New England land use contradict basic tenets of English common law, but the county court systems were organized to enforce settlements honoring local variations. Essex, Middlesex, and old Norfolk country courts frequently made ad hoc decisions based on equity rather than common law in areas concerning division of commons, legality of fencing, and determinations of title without deeds. In 1672, Edward Colcord of Hampton, New Hampshire, brought a suit against Nathaniel Boulter and Francis Page. The defendants had been cutting grass on a meadow of Colcord's for twelve or fourteen years. When Colcord attempted to press his rights, his case was rejected. The absence of any proof of title or grant from either plaintiff or defendants forced the courts to improvise. Straying into areas of jurisprudence unusual in England, they found for the defendants based on uncontested occupation.[33]

Vague delineations of Indian purchases and prices and haphazard recording thus reflects customary English-American practice and does not necessarily denote a discriminatory policy directed against natives. While Indians did occasionally resell the same tract to different white purchasers, either through ignorance of prior sale or overlapping zones of perceived posses-

[32]Hilkey, *Legal Development in Massachusetts*, pp. 123–27; Isaiah Thomas, *The History of Printing in America*, ed. Marcus A. McCorison (Barre, Mass.: Imprint Society, 1970), p. 52; deed from Southern Middlesex County Registry of Deeds, book 3, p. 224. For the series of other Massachusetts grants in Dunstable and along the Souhegan to Amherst, see Fox, *History of Dunstable*, pp. 10–12.

[33]Konig, "Community Custom and the Common Law," pp. 155, 165–67, 169–79.

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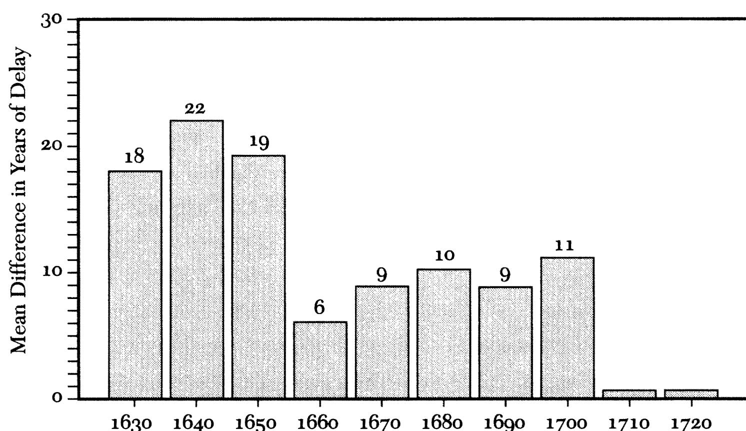
TABLE 1

CHANGE IN DELAY BETWEEN SIGNING AND RECORDING PENACOOK-PAWTUCKET DEEDS



Decade

*All tables are compiled from a database of deeds culled from provincial records and county deed registries in northeastern Massachusetts, southern New Hampshire, and southeastern Maine.

sion, they were not unaware of English significations of tenure. Moreover, white settlers frequently indulged in similar habits among themselves, through accident or design.

After 1660, important shifts in Massachusetts' political and economic context drew increased attention to uniformly obtaining and promptly recording all land transactions, Indian deeds in particular (see table 1). Since the mid-1650s, the availability of good, tillable land was becoming more scarce in the established towns of northern Massachusetts and southern New Hampshire. The former habit of resolving land disputes by simply granting nearby tracts to the aggrieved was no longer an option, and commons were being subdivided and fenced by original proprietors or their heirs. By the early 1670s, not only were more transactions being recorded, but litigation mounted over disputed titles. Old deeds retrieved from household strongboxes, when they existed at all, joined recently fabricated forgeries in a stream of

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documentary proof flowing into local courts.[34] The 1672 suit of Edward Colcord described above is significant for its timing as well as the legal opinion concluding it.

The increasingly formalized and extended use of the written word in land deals was a significant source of the Indian dissatisfaction that led to King Philip's War. Indeed, conflict over tribal land between Plymouth and Metacom (King Philip) was at the heart of his warriors' decision to make war. In the final third of the seventeenth century, many of the avenues of mediation between white and Indian culture started to collapse. Indians throughout New England were beginning to realize that English intolerance of native ways had become nearly total. The Penacook-Pawtuckets' initial exposure to English literacy may have been as magical as James Axtell depicts it among the Indians living along the St. Lawrence River. There, Jesuit priests reported natives were initially as mesmerized by their ability to communicate by writing as they were by other European technologies. Whatever their attitude, however, Indians knew they were complicating English title to their lands when they confiscated the book of records from the town of Kittery, Maine, sometime before 1700.[35] An invisible, but very real, line that demarcated cultural toleration had been crossed by the English, and Indian political integrity fractured as different bands and individuals pursued separate strategies in response.

Even for those not inclined to attack the English, land transferal was a lens through which the Indian future could be glimpsed. The will of Mr. Rowls, sachem of Newichewanock (Berwick, Maine) is indicative of changing sensibilities in the early 1670s. He had previously signed deeds in the 1640s recording the sale of a portion of fields along the Great Works River and half the fishing rights to weirs at Great Falls. He now requested that the town sell or give a tract of land to his children so that they would not be destitute after his death. He asked that the transaction be recorded as a public act since he

[34]Konig, "Community Custom and the Common Law," pp. 155, 165–67.

[35]James Axtell, "The Power of Print in the Eastern Woodlands," *William and Mary Quarterly*, 3d ser. 49 (1987): 300–309. Petition to the Massachusetts General Court, Nathan Nelsene [*sic*] vs. Sheppard, 7 June 1706, Massachusetts Archives 40:858–59.

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predicted that after the war, which he saw as imminent, Indians would no longer be permitted the hunting, fishing, and planting rights reserved in so many Indian conveyances.[36]

Rowls's will reveals a clear understanding of the shifting terms of intercultural accommodation in the period between 1670 and 1690. It portrays a firm native grasp of the utility of certain white legal procedures, specifically the transcendent authority of the publicly recorded act, at the same time as it betrays a deep distrust of the enforceability of routine usufruct rights that recognized Indian patterns of land use.

Rowls almost surely had good cause to be suspicious. Seventeenth-century records are largely silent about the reliability with which Indians' usufruct rights were honored, but one incident on the Piscataqua River in the early 1670s is telling. The Associate Court of Norfolk County, which included all towns between the Merrimack and the Piscataqua Rivers, records the

> Compl[ain]t of Wahanamanet Sachem of Piscataqua that he is mollested by Summe Englishmen in his Lawfull employment of fishing in the Rivers, Coves & other places & his Cannooes taken from him & his people contrary to the lawes & Liberties allowed to every Inhabitant. . . . It is therefore ordered by this Court that noe Inhabitant ever shall mollest the sd. sachem or any of his people in their lawful employment and if any shall due contrary hereunto, upon his complaint to the Associates, they are desirous to give him relief according to Justice.

Although the court's language appears to support Indian prerogatives, the lack of specifics does not speak to a vigorous enforcement of Wahanamanet's entitlements. It is possible that Indian fishing with traps and weirs was viewed by whites as too effective. The complaint was recorded before King Philip's War, and although the court does not appear to have learned the names of Wahanamanet's persecutors, the Indians undoubtedly remembered who they were.[37]

[36]William Hubbard, "A Narrative of the Troubles with the Indians in New England from Piscataqua to Pemiquid," cited by Baker, in "Scratch with a Bear's Claw," p. 245.

[37]Rockingham County (N.H.) Court Records, vol. 2, p. 91b.

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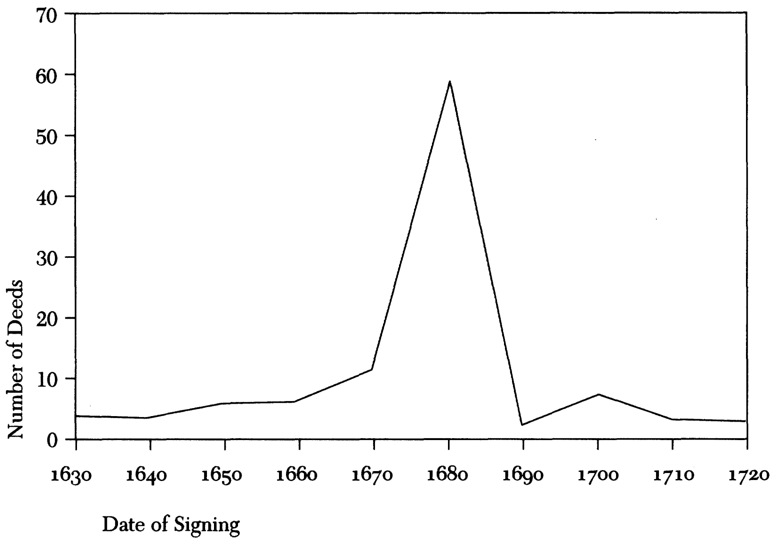
TABLE 2
NUMBER OF PENACOOK-PAWTUCKET DEEDS BY DECADE



A very large percentage of the entire area of the Penacook-Pawtuckets moved into English hands in the ten years between King Philip's War (1675–76) and the decades of conflict initiated by King William's War and Queen Anne's War (1689–1713) (see tables 2 and 3). During the latter period of war, many remote villages in Maine and western Massachusetts were abandoned, and English settlement entered a period of retrenchment, not to resume until after the Peace of Utrecht in 1713.[38] Yet even as opportunities for peaceful adaptation were coming to an end, traces of Indian prerogative can be discerned, even though most of these choices involved natives abandoning their traditional homelands, if not their way of life. In the early period, Indians sold tracts they believed they could

[38]See, for example, "Account of People Dispossessed by the War in Massachusetts Colony," *Collections of the New Hampshire Historical Society*, vol. 3 (Concord, N.H., 1824; reprinted 1871), p. 101; Yasuhide Kawashima, *Puritan Justice and the Indian* (Middletown, Conn.: Wesleyan University Press, 1986), p. 87; Belknap, *History of New Hampshire*, p. 133.

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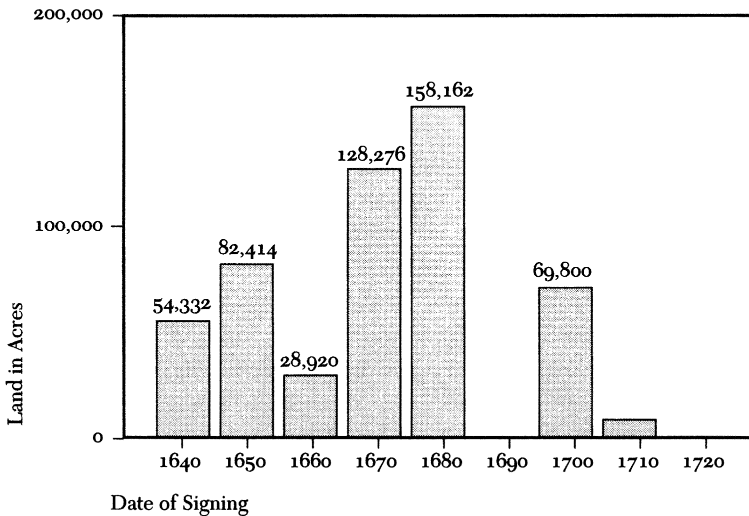
TABLE 3
PENACOOK-PAWTUCKET LAND
TRANSFERRED IN ACRES BY DECADE



do without, and they retained well-defined areas for planting, fishing, and hunting as needed. After the defeat of King Philip's insurgents, whole villages and surrounding regions were abandoned as Indians were forced into Indian towns organized by the English.[39] Many of the transactions that appear in the registries of this period as simple land transfers were actually clearance sales as refugees sought to gain whatever they could before choosing among options that did not necessarily include living in the midst of English settlers.[40]

[39]Order of the General Court, October 12, 1681: "it is ordered by this Court . . . that all Indians that belong to this jurisdiction, except prentises or covenant servants . . . are to live among . . . the goverment of the Indian rulers of Naticke, Punkapauge, or Wamesit which are places allowed by this Courte & appropriated for the Indians to live in, where there is land sufficient to improove for many families more then are of them; and if any shall refuse to comply with this order, it is refered to the selectmen of every toune . . . to send such Indian or Indians to the house of correction or prison untill he or they engage to comply with this order" (*Records of the Governor and Company of the Massachusetts Bay in New England*, vol. 5: 1674–86 [Boston, 1853], pp. 327–29).

[40]Jean O'Brien examines the continuation of Indian assertiveness in retaining control of their land after King Philip's War in *Dispossession by Degrees: Indian Land and Identity in Natick, Massachusetts, 1650–1790*, esp. chap. 3, pp. 65–90, but most of this legal maneuvering was confined to lands within these designated Indian towns.

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Teleologic assessments of historical processes can be deeply ingrained and represent the greatest challenge to appreciating the contingency of events in the past. Our perspective on the loss of Indian territories in the first century of colonization has tended to collapse the development into its eventual result. As accurate as this overall assessment of dispossession may be, the perspective of the native participants over the course of what was an extended process must be considered. There is no question that English traders, magistrates, and speculators increasingly dictated the tenor of intercultural dialogue. However, when the circumstances and context of many Penacook-Pawtucket land transactions are understood in their own terms, a more complicated picture emerges. By the mid-1600s, every Indian had known for years how the English used the land they acquired and how slim were the chances of whites sharing that use. Most Indians well comprehended the implications of their land sales, but they saw their transactions as beneficial for their future as well as compellingly expedient. A framework of collective defeat has been applied by historians only with the benefit of hindsight.[41]

Appeasing Indians was a vital concern for all Englishmen living in Massachusetts who valued their investments and their lives, and so the theory and ethics of formulating land policies with the natives was a pressing issue of the day. Noted Indian sympathizer Roger Williams was critical of Puritans who believed they had a right to native lands, and Puritan traditionalist John Cotton responded with a disclaimer in his tract *The Bloody Tenant, Washed and Made White in the Blood of the Lambe:*

[41]Recent historiography in Native American studies has begun to emphasize a much finer examination of inter-societal exchange in very specific contexts. Close attention to legal, religious, and goverment documents has frequently revealed initial periods, of varying duration, where Europeans and Indians coexisted on much more even terms of power. See, e.g., Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (Cambridge: Cambridge University Press, 1991); Daniel Usner, *Indians, Settlers, and Slaves in a Frontier Exchange Economy* (Chapel Hill: University of North Carolina Press, 1992); and Colin Calloway, *Dawnland Encounters: Indians and Europeans in Northern New England* (Hanover, N.H.: University Press of New England, 1991).

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[I]t was neither the Kings intendment, nor the English Planters to take possession of the Countrey by murther of the Natives, or by robbery: but either to take possession of the voyd places of the Countrey . . . or if we tooke any Lands from the Natives, it was by way of purchase, and free consent.[42]

Cotton's appraisal of New England was binary—some land was owned by the natives and some land was not. But even in his thinly veiled declaration of manifest destiny and his characterization of natives as violent, subordinate, and unchristianized, Cotton nonetheless stresses the doctrine of native consent.

Indians' sale of their traditional territories constitutes, after disease, the most crucial aspect of their contact with English settlers. Alienation of native lands was more permanent and invasive than any other adaptation such as converting to Christianity or learning English artisan skills. The various bands of the Penacook-Pawtuckets experienced this disruption at different times. In general, the bands of the lower Merrimack came into sustained contact with settlers before the bands of the upper Merrimack, resulting in a lesser degree of autonomy and different tactics of adaptation. During the first half-century of English occupation, these Indians exercised their option to sell land they thought expendable at the time and for which they secured certain rights of ongoing importance. Thus, Indian land conveyances, which at the time Indians considered self-interested attempts at stabilization and survival, in later years appeared to be signposts of eventual dispossession. As the ensuing decades of the seventeenth century brought new European immigrants, new generations, and widespread racial tensions, the legal acknowledgment of Indian rights grew increasingly superficial. In the final analysis, the question of how the Penacook-Pawtuckets understood the new relationship to the land forced

[42]John Cotton, *The Bloody Tenant, Washed and Made White in the Blood of the Lambe* (London, 1647), in *Roger Williams and the Massachusetts Magistrates*, ed. Theodore P. Greene (Boston: D. C. Heath, 1964), pp. 8–9. Roger Williams dissented from Cotton's opinions by publishing *The Bloody Tenant Yet More Bloody by Mr. Cotton's Efforts to Wash it in the Blood of the Lambe* (see *The Complete Writings of Roger Williams*, vol. 2 [New York: Russell and Russell, 1963]).

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upon them resolves into a question of to what degree, when faced with rampant violations of previous agreements, they were surprised.

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