

Christopher W. Hannan, "Indian Land in Seventeenth Century Massachusetts" *Historical Journal of Massachusetts* Volume 29, No. 2 (Summer 2001).

Published by: Institute for Massachusetts Studies and Westfield State University

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Editor, *Historical Journal of Massachusetts*
c/o Westfield State University
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Indian Land in Seventeenth Century Massachusetts

By

Christopher W. Hannan

Land ownership and transfer were important and routine matters within the seventeenth century Massachusetts Anglo-Indian society. From the first decades of English settlement in the Plymouth and Massachusetts colonies to the end of the seventeenth century, norms of landholding were established and then maintained by both the English and the Indians. The seeds of this system of land ownership and transfer were sown by John Winthrop himself before he ever arrived in New England. Starting at different conceptions of landholding and use in the 1630's, Indians and English had forged an important and lasting understanding about this most important asset by the 1670's. Over the course of the seventeenth century, Indians fought to put forth their claims of natural and civil rights to retain their land, while the English gradually accepted a broader view of Indian land rights. Both got peace. King Philip's War, fought in 1675 and 1676, was an intense, short-lived conflict between Indians and English. It did little to alter the ways in which land was held and sold in Massachusetts or Plymouth. In fact, these colonies looked to restore the procedures by which Indians and English held and transferred land in the aftermath of war, rather than to change them. The war strengthened the Anglo-Indian community's faith in the system of stable landholding based on rule of law and due process. At the end of the seventeenth century, Indians continued to hold and use land within Massachusetts and Plymouth and would for years to come.

Land as the most important source of wealth for Englishmen in the seventeenth century, was a way to hold and produce wealth. It was also a magnet pulling Puritans to New England. Winthrop reflected in 1629 on

the new land that they hoped to settle: “Who knows but that God hath provided this place to be a refuge for many whom he meanes to save out of the general destruction.” New land was necessary because the land in England was worn out, tired and corrupted; a corruption which had infected man himself: “Man, which is the most precious of all creatures, is here more vile and base than the earth they tread upon.” “Why then should we stand starving here for places of habitation ... in the meane tyme suffer whole countryes as profitable for the use of man, to lye waste without any improvement?”, Winthrop asked. Later in this same letter, Winthrop wrote down common objections which had been raised to his plan for colonization. Among them was concern about the legal press of land ownership and land transfer from the Indians, “By what warrant have we to take that land, which is and hath been of long tyme possessed of others the sons of Adam?” Winthrop’s answer to his own hypothetical query is telling, as he set out important legal aspects of landownership for the Puritans:

This savage people ruleth over many lands without title or property; for they inclose no ground, neither have they cattell to maintayne it, but remove their dwellings as they have occasion, or as they can prevail against their neighbours. And why may not christians have liberty to go and dwell amongst them in their waste lands and woods (leaving them such places as they have manured for their come) as lawfully as Abraham did among the Sodomites? For God hath given to the sons of men a twofould right to the earth; there is a naturall right and a civil right. The first right was naturall when men held the earth in common, every man sowing and feeding where he pleased: Then, as men and catell increased, they appropriated some parcells of ground by enclosing and peculiar manurance, and this in tyme got them a civil right ... 2dly, There is more than enough for them and us ...4thly, We shall come in with good leave of the natives.¹

¹ Allyn B. Forbes, ed., *Winthrop Papers*, vol. II, 1623-1630 (New York, Russell & Russell), 118, 120. The author wishes to thank Professor Alan Rogers for all his help with this article, without whom it could not have been written. The quotations are taken from the standard edited versions of the Massachusetts and Plymouth County General Court records. These edited works retain the idiosyncratic spelling of the seventeenth century which are reproduced faithfully in this article.

Winthrop's theory of land ownership was based on the Bible. First of all, he articulated the concept of *vacuum domicilium* -- the belief that uninhabited land was open to anyone who settled it. To the English, settlement included not only permanent houses, but improvement of the lands in visible ways such as planting or fencing. Secondly, Winthrop contended that Indians had only a "Naturall Right" to their lands as opposed to those with "civil right" to the land. These improvements created a right greater than the "natural right" to which they might have claim. Thirdly, he reasoned that since the Indians needed only a small part of the vast lands within the Massachusetts charter, "there is more than enough for them and us." Note that Winthrop did not base his right to land on conquest or European superiority, but on the concept of law and what was legal. The Indians had no civil right to the land, not because they were uncivilized or pagans, but because they did not use or improve the land. Finally, the Puritans would take the land "with good leave of the natives," that is by willing transfers of land by the Indians. This approach to the question of land ownership in Massachusetts touched many of the issues surrounding land transfer between the English and Indians in seventeenth century New England. These issues became more important and intense as land became scarce in the aftermath of King Philip's War.²

Indians in seventeenth century New England of course valued the land, although they used it in different ways than the English did. Land was owned by Indian communities and overseen by the leading members of the Indian group. While New England Indians did not hold land individually, different tribal groups to which individuals belonged used specific areas to hunt, fish and plant some crops. Indians also had areas to which they would move seasonally, following migrations of animals or the ripening of fruits and berries. The Indians did not fence or "improve" lands in the English sense of the word, but in fact they did use and have a sense of ownership of certain lands. For example, instead of manuring lands, the Indians would periodically slash and burn areas they wished to cultivate. Indians became increasingly successful at protecting their land over the course of the seventeenth century, as the General Court began to recognize

² For the best current study of one Indian community and its landholdings, see Jean O'Brien *Dispossession by Degrees: Indian Land and Identity in Natick, Massachusetts, 1650 -1790* (Cambridge: University Press, 1997).

their claims to both “natural” and “civil” rights to their land. This recognition was tied to individual Indians’ general relationship to the government.

After 1650, the Reverend John Eliot and Daniel Gookin, two leading figures in the Puritan missionary effort to the Indians, pushed to have lands granted to the Indians to establish praying villages devoted to converting Indians to Puritanism and the English way of life. Extensive land grants protected by the General Court were crucial to the entire praying village system envisioned by the Reverend John Eliot. Space away from English settlers was crucial to the development of true Puritan Indians. These towns would have a political organization similar to English towns and would be overseen by Gookin, as superintendent of the Indians. Ostensibly the land grants were made to make the Indians more like the English. Over the long run, however, these land grants allowed the Indians to control land and resist assimilation into the nineteenth century or beyond.

Land ownership was inextricably tied to political identity and the Indians possessed a range of political identities within Massachusetts. Four distinct groups of Indians lived within the colony, each with different relations with the Massachusetts government.³ Indians technically within the charter territory of Massachusetts Bay, but living outside English towns or Indian praying villages, had much of their contact with the Massachusetts government defined by treaties. These “allied” Indians who had treaties with the Massachusetts government were treated as sovereign nations, while still inhabiting territory within the Massachusetts charter. “Free” Indians lived in their own communities with their own leaders, but had sworn political loyalty to the king of England. They were free to live their traditional lifestyle, but they chose to have contact with some English fur traders and with the Indian praying villages. Indians in the praying villages were tied into the English society through their trade with English towns and villages, and through the English ministers and teachers who helped to preach and convert them to Christianity. They also held unchallenged grants of land within the colony. While the praying villages fostered Indians who were the first native converts to Christianity, at the

³ Yashuhide Kawashima defines three legally recognized forms of Indian existence within this larger Anglo-Indian community. See Yashuhide Kawashima, *Puritan Justice and the Indian* (Middletown, CT: Wesleyan University Press, 1986), chapt. 1. It is clearer to alter this model to describe four distinct groups of Indians within Massachusetts.

same time, they were ideally situated geographically and culturally to trade Indian goods into Boston and English goods out to “free” or “allied” Indians. Least traditional were those Indians who lived among the English in their towns.⁴ These Indians most often were servants, paid wage laborers, or slave laborers.

The seventeenth century Anglo-Indian community was dynamic as Indians and English sought a stable and understandable system for coexistence. The process of assimilation on both sides was complex and varied, but a community was established which was generally peaceful and acceptable to Indians and English. Indians came to understand the rationale behind English landownership. Over the course of the seventeenth century the Indians adopted some English legal language and methods and learned how to secure their own title to lands within New England. Indians used the Massachusetts courts to protect, transfer and at times regain their land. By the late seventeenth century, many Indians had come to appreciate the English sense of landownership and were often involved in complicated land transactions. Although the Indians did not have the same understanding of land title and transfer as the English early in the seventeenth century, after 1650 they developed and used English legal institutions to secure their own lands.

Clear title to land was the crucial aspect of seventeenth century landholding. The control of real property was a goal of the Indians as well as the English. A 1649 law encouraged Indian land claims by strengthening the legal basis for Indian claims to lands and encouraged the

⁴ There is much evidence to show that Indians constantly resided within English towns: “If any of the Indians shall be brought to Civility, and shall come among the English to Inhabit in any of their plantations and shall there live Civilly and Orderly, that such Indians shall have allotments amongst the English, according to the Custom of the English in like case,” Whitmore, William H. ed. *The Colonial Laws of Massachusetts*. Reprinted from the Edition of 1660 with the supplements to 1672. Containing also *The Body of Liberties of 1641*. (Boston: Rockwell & Churchill, 1889). Page 160. “Their resorting & living among the English townes... they be warned to observe our lawes, & also to shunn all offence and prejudice to the English ...that some principall Indian be appointed & declared to be the sachem, or cheife, or head of them, to whom the English may haue recourse vpon all occasions of wrong donne them by the Indians,” Nathaniel B. Shurtleff, ed. *Records of the Governor and Company of the Massachusetts Bay in New England*. (Boston: William White Press, 1853-1854), 4 (Pt.2): 359 [hereafter referred to Massachusetts General Court Records]

formation of Indian praying towns. The statute described the basis for Indian land titles “What lands any of the Indians in this Jurisdiction, have Possessed and improved by subduing the same, they have j[u]st right unto, according to that in Genesis, 1.28.” This same law went on to declare “If upon good experience, there shall be a competent number of the Indians brought to Civility, so as to be Capable of a Township, upon their request to the Generall Court, they shall have grant of lands ... for a plantation as the English have.”⁵

By the second half of the seventeenth century, Massachusetts Indians came to base their ownership of land on three concepts. First, they claimed lands as the descendants of ancient proprietors of the land -- the “natural right” concept to which Winthrop had alluded in 1629. For example, in 1682 Nipmunk Indians asserted, “Know yee that wee, Waban, Pyamboho, John Awasamog... Indian natives, and naturall descendants of the auntient proprietors & inhabitants of the Nipmug country... for and in consideration of the summe of thirty pounds currant money of New England to us in hand... grant ... and assure the above bargained premisses.”⁶ Second, they used English legal records of land grants given to the Indians by the General Court from the 1650’s onwards. Thus, the Marlborough Indians stated in 1679, “wee have due right ... and priviledge in lawe to give & grant the forementioned premisses, not only as it is our naturall right & possession according to Gods word and the lawes of ye land, but as it is confirmed to us by grant from the Gennerall Court of Massachusetts in New England.”⁷ Finally, the Indians began to include the language of land use and improvement, Winthrop’s “civil right” to land, in their deeds, making their land claims hard to ignore. So, in 1679 for instance, a group of Indians declared, “being all of us true proprietors, possessors, & improvers of the Indian lands called Whip Sufferage... do hereby freely and absolutely give, grant, & confirme unto him... one parcell of land, heretofore broken vp & being planted by vs and our predecessors.”⁸ These claims by the Indians were supported by a system which regulated land transfers from Indians to English. There were many

⁵ Whitmore, *The Colonial Laws*, 160.

⁶ *Massachusetts General Court Records*, 5: 362.

⁷ *Massachusetts General Court Records*, 5: 217.

⁸ *Massachusetts General Court Records*, 5: 216.

such sales of land which clearly acknowledged the Indians' firm title to land which they and their ancestors had traditionally inhabited.⁹

The transfer of land was an important part of landownership. Indians had the right to sell land if all their leaders agreed and they met the strict requirements set up by the Massachusetts government to protect Indian ownership of large areas of land.¹⁰ The General Court consistently worked to insure that the Indians' interests were protected whenever land was exchanged with Englishmen. At times these provisions to protect the Indians seemed almost excessive. Despite the pervasive myths of land being stolen from Massachusetts Indians through legal distortions, or the trick of getting Indians drunk and having them sign away their rights to land, land transactions in the seventeenth century had to be recognized by the General Court and acceptable to both the Indian sellers and the English buyers.¹¹ Indians who wished to sell or trade land worked out details with other townships or individuals first. The sale then had to be reviewed by a committee appointed by the General Court, which usually included John Eliot and Daniel Gookin, and one or two of the most important Indian chiefs of Massachusetts.¹² Finally, all sales were approved and recorded by the General Court. If any of these steps were missed, the sale could be invalidated. As a rule, the court accepted the recommendations of Eliot and superintendent Gookin. The General Court was not reluctant to nullify land sales by the Indians which did not conform to the regulations set out

⁹ For example, see Gookin, "Historical Collections," 179; *Massachusetts General Courts Records*, 5: 217.

¹⁰ *Massachusetts General Court Records*, 4 (pt. 2): 6, 284, 285, 340, 525, 526. When these requirements were not met, the Indians did not hesitate to use the legal system to right the wrong, see *Massachusetts General Courts Records*, 4 (pt. 2): 504-5, 526, 537-8.

¹¹ In fact there are cases where Indians cheated other Indians by claiming the rights to sell land and transferring all the land of another sachem or tribe to the English. In this case, both the Indians and English complained about the new English owner and the sale was nullified. *Massachusetts General Court Records*, 4 (pt. 2): 261-2.

¹² This committee most often consisted of John Eliot, Daniel Gookin, Chickatabut and other Indian chiefs.

above.¹³ Conversely, while the General Court had every right to invalidate a sale conducted irregularly, they could and did approve such transfers of land which were deemed to be fair for the Indians.

The proper transfer of land was a practical priority adopted by the Massachusetts government in order to avoid conflict with the Indians and to encourage the praying village system. By acknowledging the Indians' claims to land, the English would have to compensate them for it, but the legal transaction would also promote peace between Indians and Englishmen, a primary goal of Puritan society.

There were approximately twenty-four land exchanges involving Indians from 1660 to 1686 in Massachusetts. These transactions involved land formerly granted by the General Court to praying villages which was now being sold to Englishmen, as well as the purchase of new land from Indians outside the formal political control of the Massachusetts government. The large grants of land given to praying villages were often under-used by the Indians, and therefore a potential source of wealth for the praying villages. Indians who lived outside the direct political control of Massachusetts sold new land to the Massachusetts government, retaining large tracts for themselves.

Those Indians who sold land in the second half of the seventeenth century did so to address a number of different circumstances such as debt relief, money raising or land exchange. For example, Netus sold all of his land to pay off a debt, "In ansr to the petition of Mr. Eljjah Corlett, the Court ... graunt the petitioner liberty to purchase of Netus, the Indian, so much land as the sajd Netus ... is possessed of, according to lawe, for the sattisfaction of the debt due to ye petitioner from ... Netus."¹⁴

Records of land exchanges sometimes did not reflect the actual price paid for the land because illicit items, such as liquor and guns were exchanged, but were not recorded in the deed itself. Another unrecorded feature of land sales included Indian demands for an annual fee from the English, usually of food paid at the end of the winter, when food was at a premium. The English did not acknowledge these payments in the deeds because it would connote a leasing rather than outright sale of land. Indian awareness of the subtleties of English law and the ability of these Indians to compromise and get what they want from the English, satisfied both

¹³ *Massachusetts General Court Records*, 4: (pt. 2) 504-5, 526.

¹⁴ *Massachusetts General Court Records*, 4 (pt. 2): 6.

parties.¹⁵ Such complicated, unwritten agreements, however, were open to abuses if either side broke the implicit agreements. The fact that hostilities were not constant is telling. At the same time, it is easy to see how a relationship built on such trust in each other could break down quickly once hostilities began between Indians and Englishmen.

Often the General Court had to distinguish among conflicting Indian parties, to find out which Indians had the best right to sell the land to the English, “In ansr to the Pettion of Alquot & Wallump, sachems of Poyasacke, neere Westfeild, complayning in that an Indian called Amoakisson sold a parcell of their land at Woronoake to left Cooper... wtout giving them, the true ounors of ye land, any allowanc, though often desired & demanded, humbly desiring this Courts favour to releive them.”¹⁶

In the wake of King Philip’s War, fought in 1675-1676, the Massachusetts government needed new land for two reasons which encumbered unsettled land in Massachusetts. First of all, it had promised land grants to soldiers who had fought in the war against Philip. Secondly, the government had sold substantial land grants to investors in London which further fueled the need for purchases of heretofore unsettled land.¹⁷ To meet these needs, the Massachusetts government adopted policies to restore the complex land settlement scheme which had been established over the course of the seventeenth century. Much newly recorded land was land which had belonged to enemy Indians during King Philip’s War. Still, these parcels were not taken by acts of war, but purchased from Indians and duly recorded in the General Court Records. At the same time, the Massachusetts government was prompted to record land sales because of the legal battle over the land rights of the descendants of Fernando Gorges, an early patentee of New England. The General Court began to account for as much land within the boundaries of Massachusetts as possible. The Court left as few parcels of un-owned land as possible, to

¹⁵ Emerson W. Baker, “Trouble to the Eastward: The Failure of Anglo-Indian Relations in Early Maine,” (Ph. D. dissertation, William and Mary, 1986), 165.

¹⁶ *Massachusetts General Court Records*, 4 (pt. 2): 504.

¹⁷ John Blackwell and others from England purchased lands and wished to move to Massachusetts. The General Court encouraged the settlement of Blackwell and set out strict regulations for a new township within the Nipmunk purchase. See *Massachusetts General Court Records*, 5: 467.

discourage the claims of Gorges' descendants to large portions of Massachusetts and Maine. The threatened revocation of the charter by Charles II and James II also made clear records of land ownership imperative. This Charter controversy, which would end only in 1686 with the loss of the Massachusetts Charter, made it necessary to record all titles to lands within Massachusetts. The Massachusetts government attempted to face both controversies with a clear record of all land transferred from Indians to the English government.

After the war Indians also made complicated, multifaceted land exchanges which involved trading of lands as well as purchases.¹⁸ These exchanges involved land or money or food or any combination of these. Indians understood the value of land and had a sophisticated and subtle understanding of the exchange of land and material goods. The Court saw no reason to oppose these complicated land transactions, "In ansr to the petition of Nobstow, Wanalancet, Nonatomenut Indians, the Court ... grant Mr. John Evered ... five hundred acres of land adjoining to his lands now in his possession, vpon condition that he release ... an island in Merrimake River, called Wiscosuck, wch was purchased by him of the Indian petitioners, with the Courts approbation."¹⁹

In another example, a land transfer between the English town of Sherborn and Natick Indians in 1679, the sale of land is combined with land trading and delayed payments:

Artickles of agreement betweene Daniel Morse, Senior ... of the toune of Sherborne ... and Waban, Pyambow... and ... Peter Ephraim ... of the toune of Naticke ... agreed upon this sixteenth day of Aprill, 1679 ... The people of Sherborne ... do desire about fower thousand acres, as it is plotted, described, & bounded, on the north east with Naticke.

This sale extended the lands of Sherborn to the border of the town of Natick on one side, and touched private land owned by a Mr. Danforth on another. The terms of exchange were carefully spelled out:

¹⁸ *Massachusetts General Court Records*, 4 (pt. 2): 285.

¹⁹ There were approximately 25-30 land exchanges involving Indians from 1660-1686 in Massachusetts.

In compensation for the same, they agree to give, by way of exchange, the like quantity of land, bee it fower thousand acres ... which land was granted unto Sherborne by the Gennerall Court ... Moreover, they doe promise ... to pay unto the persons above named, their heires or assignes, the full and just quantity of two hundred bushells of Indian graine, to be paid one halfe in hand, or at demand, and the other halfe the last of March next.²⁰

Thus the Natick Indians received an equal amount of land in another location as well as two hundred bushels of corn. They chose to be paid the second half of the agreed upon corn at the end of the winter when supplies were at their lowest. The Natick Indians also included a provision directed at a particular individual, another common feature of such land transactions, “Moreover, they are willing that Peeter Ephraim doe enjoy the land he hath broken up within that tract of land they are to have of Naticke, at that place called Brush Hill, and to add therunto more, as may make the lott twelve acres ... to enjoy to him, the said Peeter Ephraim, and his heires, & assignes forever, but to be under the government of the tounship of Sherborne, as the English are.” In addition to this provision for Peter Ephraim, who was one of the leaders of Natick, another demand was set forth by the Indians: “There be a lott of forty acres set out where the commissioners of the colonies, Major Gookin, & Mr. Eliot, and Indian rulers, shall choose within that tract of land, to be appropriated forever to the use of a free schoole, for teaching the English & Indian children there the English tongue & other sciences.” The vital institutions of education and religion were recognized and protected with this provision. Finally, all the Indian leaders signed off on every deed, most with their own signatures, in the presence of Daniel Gookin.²¹

Often Indians chose to retain ownership over their land by leasing to Englishmen rights to cut lumber or build mills, rather than selling the land outright. Thus in 1680, the Marlborough Indians leased land to Daniel Gookin’s son, Samuel, and also contracted with him to sell lumber for them. The younger Gookin was an excellent choice. As a close friend of

²⁰ *Massachusetts General Court Records*, 5: 227-8; see also *Massachusetts Archives* 30: 247-8.

²¹ *Massachusetts General Court Records*, 5: 227-8; *Massachusetts Archives* 30: 247, 248.

the General Court, he was in an ideal position to assist the Indians in any court battles. Of course, the Gookin family personally benefited from the land sales but, at the same time, were trusted as friends of the Indians. Thus they gave Samuel Gookin a lease on lenient terms:

Wee, whose names are underwritten, proprietors of the Indian plantation neare Marlborow... have right to the land and priviledges there, doe freely consent, upon consideration of a valuable summe of money ... paid to us by Samuel Gookin ... doe grant to him ... free liberty to erect a saw mill vpon any brooke or runn of water within the said Indian plantation, with so much land as is usefull for damming, wharfing ... not exceeding three acres, and use any timber that is suiteable to saw, expecially pine timber; to have & to hold the same, during the space of thirty yeares, to him, his heires and assignes.²²

The Indians of Marlborough received money, help in selling their lumber and legal protection for their land from other speculators, “Wee ... doe empower the said Gookin to preserve our interest in wood & timber during the said tyme and to sue ... in our names, all such as shall trespass upon our land in the said place.”

Often the Court had to distinguish among conflicting Indian parties, to find out which Indians had the best right to sell the land to the English. More than once the Massachusetts General Court declared sales of land illegal because the Indians selling the land were not allowed to sell it: “In ansr to the Pettion of Alquot & Wallump, sachems of Poyasacke ... complayning ... that an Indian called Amoakisson sold a parcell of their land ... to left Cooper... wthout giving them, the true ounors of ye land, any allowanc ... humbly desiring this Courts favour to releive them.” In this case the General Court ordered the County Court of Hampshire to grant the petitioners satisfaction and report back to the General Court.²³

A more important intervention by the General Court arose over the sale of Marlborough land. At stake were 5,800 acres of land which the Indians were prepared to sell to a group of Marlborough residents in June of 1685. This case was important because the Court asserted its right to

²² *Massachusetts General Court Records*, 5: 352-3.

²³ *Massachusetts General Court Records*, 4 (pt. 2): 504.

nullify unfair sales, even sales agreed upon by both sides. Presumably, the two parties had drawn up their deed and made the exchange of land without consulting representatives of the General Court or confirming it with the General Court itself. The Court nullified the sale and took this opportunity to reassert the regulations regarding sale of Indian land: “Indeans shall not sell, give or lett to lease any plantation or touneship granted unto them by this Court, or any part thereof; neither shall any English man or men, or any other person...purchase, take to lease, or receive a gift from any Indean...any of the forementioned lands & touneships, or any without license from the Generall Court first had ... all such sales, aljenations, leases, or guifts are hereby declared null & voyd in law.”²⁴

While the General Court voided land sales by Indians not recognized to sell land, they affirmed the unique place of Indian women chiefs and their rights to transfer land in their own names. As leaders in their communities, Indian women followed the unusual practice, for women, of signing land deeds. For example, in a sale of land to Edward Rawson in 1685, Abigaile Awassamog signed away any future claims to land sold: “Abigaile, the wife of the sajd Thomas Awassamog, doth also hereby surrender, give up, and quitt all hir right, title, & interest in and unto the premisses, and every part & parcell thereof, that she might, would or could clajme, demand, or challenge by way of dowry otherwise. In testimony whereof, the sajd Thomas Awassamoag, & Abigaile, his wife, have hereunto sett their hands & seales.”²⁵

At other times, Indian widows were routinely granted leave to dispose of their husbands’ estates, a right similarly and routinely granted to English widows.²⁶ For example, Sarah Onnamaug was given permission

²⁴ *Massachusetts General Court Records*, 5: 486-7.

²⁵ *Massachusetts General Court Records*, 5: 534-5.

²⁶ The laws of Massachusetts established that widows were to be left “competent portions” of their husbands’ estates in order to be solvent and not a burden on the town in which they lived. See Whitmore, 51, 201. The instances where widows were granted permission to sell lands from their husbands estates are manifold. For instance, see *Massachusetts General Court Records*, 5: 174, 175, 207, 235, 275, 279, 483; one widow actually bought out the other heirs to her husbands estate. *Ibid.*, 245.

to sell her deceased husband's property. Sarah had claims to much land in that she was

widdow & relict of Onnamaug, deceased, late ruler & sagamore of Whip Sufferage, the Indian plantaion nere Marlborow, hath liberty from this Court to sell & alienate unto any English person that will buy the same, hir late husbands home lot & orchard, with about sixty acres of woodland & meadow adjoyning to the same, so that the whole exceed not one hundred aces, provided Major Gookin & Mr. Elliot consent and approve the bargaine on behalfe of the Indian woman, & order assurance to lay out the land, & the payment to be secured for the said widdow, for the maintenance of herself & children.²⁷

Sarah was allowed to sell the lands of her husband, much as English widows were allowed to make sales of their husband's lands as a matter of course. Again, Eliot and Gookin were enlisted to insure that the sale was a fair one and that the widow and her children were cared for from the proceeds of a sale. Thus Indian women were granted the standard exception to the strict law prohibiting women from owning property, given to most English widows at this time. At the same time, they were protected from exploitation by the established system overseen by Gookin and Eliot.

Despite a rush to buy land after King Philip's War in 1676, Indians retained large portions of land well into the eighteenth century. For example, Indians of Hassanemessit, one of the oldest praying villages and one of the first four to be reestablished after King Philip's War, retained a significant proportion of their lands for more than fifty years after the war. Not until the late 1720's did Hassanemessit sell a large proportion to a group of private individuals, who established the town of Grafton with the land. Yet even after selling a large portion of land, Hassanemesit retained 500 acres which allowed them to support their meetinghouse and their teacher. In fact, one of the provisions of the sale was the payment of an annual fee to help support these institutions.²⁸ Clearly, the concerns and priorities of the 1720's were different from those of the late 1670's, but

²⁷ *Massachusetts General Court Records*, 5: 315.

²⁸ *Acts and Resolves of the Province of Massachusetts Bay, 1714-1741*; v. 2: 467.

just as clearly, the sale of land in the 1720's was governed by laws that were respected by both English and Indians.²⁹

The experience of Indian land ownership and transfer in seventeenth century Massachusetts was similar to the Indian land ownership in Plymouth during that same century. Indians were more numerous in relation to the English settlers of Plymouth during the seventeenth century than in Massachusetts Bay Colony. Yet the same formal political structures which existed for Indians in Massachusetts Bay were absent from Plymouth. Without the praying villages of Massachusetts, which were set up specifically to allow the Indians land and life away from the English, Plymouth's Indians and English lived much closer together. Despite the lack of formal praying villages as in Massachusetts Bay, the Court explicitly recognized the Indians' need for land on which to live.³⁰ The Indians had large tracts of land set aside for them in Plymouth by the General Court and it was central to Indian landholding and transfer. Land sales and land disputes were scrutinized by the General Court in 1674 when the Plymouth government tried to clear up any land disputes between Indians and English by standardizing the process and informing the Indians of the proper procedure.³¹ At this time, on the verge of King Philip's War, Plymouth Indians had grants of land set aside for them:

“As for lands set out to the Indians, distinct from the English lands, there are divers places already counted; viz there is a

²⁹ William Tuttle, *History of Grafton, Massachusetts* (Boston, 1889), 4.

³⁰ In order to buy land from the Indians, every person had to get permission from the General Court, even, for example, men authorized to buy land not just for themselves but for entire townships: “James Walker and John Richmond are authorised by the Court to purchase the land of the Indians in the behalfe of the towne of Taunton,” David Pulsifer and Nathaniel B. Shurtleff, eds. *Records of the Colony of New Plymouth in New England* (12 vols.), 5: 88.

³¹ “Concerning Indian claimes that are or shalbe made to any lands within this Government; which are now orderly possessed by the English those which doe lay claime to them shall orderly comence and prosecute theire claime as farr as hee or they are able; within one whole yeare after they be of age; and noe longer, and that care be taken that the Indians have notice of it,” William Brigham, *The Compact with the Charter and Laws of the Colony of New Plymouth* (Boston: Dutton and Wentworth, 1836), 172.

tract of land preserved for them and theirs forever, under hand and seal; the which is near ten miles in length and five in breadth. There is the like done at Camassakumkanit, near Sandwich, and at Cotuhtikut: Our honoured governour and magistrates being always very careful to preserve lands for them, so far as is in their power to do it.”³²

The temptation was for the Indians to sell their land to willing English buyers, whether residents of Plymouth or from elsewhere. Plymouth Indians also attempted to sell their lands to other Indians; Indians who lived outside Plymouth Colony. Thus the Court heard land disputes between Englishmen who lived in Plymouth, among the Plymouth Indians themselves, between Plymouth English and Plymouth Indians and finally, between Plymouth residents, both Indian and English and others, most often Englishmen, from outside the colony who had begun to buy land of the Plymouth Indians. Much like in Massachusetts Bay, Indian land was not allowed to be sold, unless the General Court specifically approved each sale. The Court also made it clear that Indian lands in Plymouth were put aside only for “local” Indians: “Many Indians presse into divers ptes of this Jurisdiction; wheerby some of the plantations begine to bee oppressed by them, It is enacted by the Court that noe strange or forraigne Indians shalbee pmitted to come into any pte of this Jurisdiction soe as to make their residence there; and for that end that notice bee given to the severall sagamores to prevent the same.” In the same session, the Court took the opportunity to make Indian landholding more lasting by explicitly closing a loophole in an early law which some Indians and English had exploited by labeling land transfer a “gift rather than a sale.”³³ The Court reiterated their stance against unapproved Indian land sales from time to time.³⁴

When land disputes arose among Indians themselves, they were settled by the Plymouth court system. For example, in July 1674, “John Gipson and Thomas Cloake, two Indians soe called, whoe are the reputed sones of Quantaockamew, of Pottanummacutt, complaineth against

³² Gookin, “Historical Collections,” 198.

³³ Brigham, *The Compact with the Charter and Laws*, 129.

³⁴ Brigham, *The Compact with the Charter and Laws*, 154.

Symon, the son of Pompmo, for his vnjust detaining of their lands lying att Pottanumacutt aforesaid, left vnto them as their inheritance by their father deceased.” Gipson and Cloake had adopted English names as well as English concepts of land ownership and inheritance. The judgment by the Court in this case reveals the landholding pattern in Plymouth. These two Indians owned land next to an English military man, and another Indian family. In important ways the Indians were integral members of the community and made full use of the courts: “This Court doth determine and settle the necke of land called Namacocke, made by the deare path and the pond called Ocinamunt, and six acres of land towards Leiftenant Joseph Rogers his marsh, John Sibson [sic] and Tom to haue the island, and all the rest of their fathers land, except what is sold to the English, and what belongs to Josias his children, that to remaine firme to them and their heires for ever.”³⁵

The Plymouth Court became involved in complex disputes which, at times, dragged on for months or years. Indians were often participants in these disputes as landowners, as in the case of Robin or Mattachesett, who the Court recognized as a landowner and for whom they appointed two men to guard his purported title to additional disputed land he claimed as an inheritance.³⁶ Hinckley and Freeman were at a loss to resolve this particular dispute in any expedient fashion, “Mr Hinckley and Mr Freeman to issue and put an end vnto divers controuersyes and difficulties, as, namely, between the towne of Yarmouth and Mashantampaine concerning the boundary line betwixt them and between the heires of Napoitian and some Yarmouth men neare Sasuit or Satuckett att Mattakeese, and between Yanno and some other Indians about an iland or Hands att the South Sea.”³⁷ This dispute is complex, and difficult to fully understand, but it is clear by 1674 that land in Plymouth was scarce and valuable enough to fight over.

³⁵ *Records of the Colony of New Plymouth*, 5: 150.

³⁶ “Mr Hinckley or Mr Freeman be impowered to see that the Indian called Robin or Mattachesett, be not disturbed by any in making claime to his land, vntill such can make such claime out to be just to satisfaction, viz, in reference to that land which hee ought to haue in right off his wife, the daughter of Napoietan,” *Records of the Colony of New Plymouth*, 5: 140.

³⁷ *Records of the Colony of New Plymouth*, 5: 148, 147.

During this same year of 1674, Plymouth residents and other Englishmen from outside the colony had begun to buy land from the Plymouth Indians, “Thomas Joy, of the towne of Hingham, in the goument of the Massachusetts, house carpenter, hath cause great disturbance amongst vs by producing a deed of gift of lands to him from an Indian sachem, wherby hee hath broken a law of this collonie prohibiting the purchasing or receiving any lands by way of gift from any Indian or Indians without libertie giuen them by the Court.” As the Court emphasized, this action had grave repercussions in Plymouth. If anyone could simply enter Plymouth and buy land, there would be numerous disputes over Indian land, adding to the number of cases already surfacing. For this reason the Court took severe action against the unfortunate carpenter, to nip any problems in the bud: “For the same his disturbance and breach of the law was comitted to prison; the said Joy coming into the Court, and in open Court hee disclaiming any right or title to any lands within the said deed expressed that hee hath therby layed claime vnto, and surrendering the said deed vnto the Court, they saw cause to release him.”³⁸ The General Court was faced with a similar case in the same court: “In like manor, wheras Mr Peter Talmon, of Rhode Island, produced a deed of gift and a deed of sale in open Court of Considerable tracts of land obtained of the Indians without the aprobaton of the Court, wherby the law abouemensioned is broken... the said Talmon, for the same comitted to prison.”³⁹ Talmon was also released after kowtowing to the authorities.

During King Philip’s War, land was used by the Plymouth authorities as a way to wage peace. By the spring of 1676, the policy towards Indians had evolved from one which considered all Indians as equally guilty to one which began to assess the level of guilt of groups and individuals out of the total number of Indians who came in as prisoners of war or refugees. Many Indians were not charged with specific crimes. Rather, they were able to negotiate a settlement with the English which brought their conflict to an end. In exchange for promises to fight with the English against the enemy Indians, these “rebellious Indians” were given assurances of the safety of their wives and children as well as land on which they could live in peace. “Three Indians -- the first named Peter, (Awashunckes, the squa

³⁸ *Records of the Colony of New Plymouth*, 5: 151.

³⁹ *Records of the Colony of New Plymouth*, 5: 151.

sachems son,) the 2cond Gorge, the third David, allies Chowahunna -- appeared before the councell, in the behalfe of themselves and other Indians of Sconett to the number of about thirty men, with their wives and children, and tendered to renew their peace with the English, and requested libertie to sett down in quietnes on their lands att Saconett.”⁴⁰ Since the first large groups of Indian prisoners came before the Plymouth authorities in 1675, until the spring of 1676, the Plymouth colony had to use Indians to help them fight against Philip and his allies, even encouraging the defection of Philip’s allies. At the same time, the Court did not immediately embrace these once hostile Indians:

Peter ... being asked the reason of their coming hither, answered, because hee and the Indians of Saconett desired to settle there againe; vnto which was replied as followeth: What reason haue you to expect that your request heerin should be graunted, since you haue broken your engagements with vs by joyning with the sachem Phillip att Mount Hope and other Indians, our professed enimies, and haue bin copartenors with them in all assaults and enterprisses against vs, in which said hostile attemptes many of ours haue lost their lives, habitations, and estates? And you must not thinke that we can passe ouer matters of such a high nature soe highly. Wee are not willing to vallow the blood of our English frinds att soe low a rate. You are neuer able to make satisfaction for the wronge, nor make good the damage you haue don vs by your pfiduous dealing in this respect. Your way had bine, when you saw the said Phillip and other our enimies to rise vp in rebellion against vs, to haue declined them and repaired to the English, and placed your selves vnder our protection &c.⁴¹

The Indians were assured of a tract of land on which to live, as long as they continued on good behavior and met all their responsibilities to the English. The last threat was not an idle one; both the English and the Indians understood that “disposal” would mean slavery or even execution for the group if these agreements were violated. In the same month, the Court made a clear distinction between surrendering Indians and captive

⁴⁰ *Records of the Colony of New Plymouth*, 5: 201.

⁴¹ *Records of the Colony of New Plymouth*, 5: 201-2.

Indians. Instead of providing land for the captives, the Court was careful to strictly prohibit the settlement of any Indian captives within the colony:

Wheras it is apprehended that the pmtion of Indian men that are captiues to settle and abide within this colonie may proue prejudiciall to our comon peace and safety ... noe Indian male captiue shall reside in this goument that is aboue fourteen yeers of age att the begining of his or their captiuity, and if any such captiues aboue that age are now in the gourment, which are not desposed of out of this jurisdiction by the 15th of October next, shall forthwith be disposed of for the vse of this gourment.⁴²

This practice of Indians appealing to the English Court continued after the war. The General Court required all land transactions between Indians and English to be approved as a way to insure the Indians had adequate land, and to insure the peace of the community. At times the court had to unravel unwise business decisions in an attempt to preserve tranquillity among the Indians themselves, as in this case heard in 1677: “Two Indians, one named Thomas Hunter and the other Peter, of Teticutt, were both mutally injoynd...vnto their sachem to keep, and not imbezell, or sell, or make away certain lands comitted to them by him.” This partnership did not last long, however as Peter saw an opportunity to turn a buck: “The said Peter hath lately made sale of some pte of the said land, contrary to the mind of his ptenor in this matter, vpon the complaint of the said Hunter, the Court ordereth and doth heerby prohibite the said Peter from imbezelling or any wayes makeing away any more of the said land: but that Thomas Hunter shall retaine it in his owne custody.”⁴³

Land was an asset for the Indians and they used it when they needed to solidify themselves financially. Indians of Plymouth, like the Indians of Massachusetts, sold their land to remove debt or raise cash. For example, in June, 1679, Robert Lawrance made a request to be allowed to buy land from Simon Wickett, the Indian owner. The land was next to a tract already “made ouer” to Richard Bourne to settle a debt. The Indians appear to have been consolidating all land they would sell in one area.

⁴² *Records of the Colony of New Plymouth*, 5: 210. See also Brigham, *The Compact with the Charter and Laws*, 177-8.

⁴³ *Records of the Colony of New Plymouth*, 5: 259.

Lawrance was given the right to buy 120 acres of land under the provision that “Hee alsoe is heerby ingaged to make payment of the abouesaid debt of nine pounds to Mr. Richard Bourne aforsaid or his order, according to the conditions the Indians made with him about the said debt.”⁴⁴

Those who failed to gain the Court’s approval before buying Indian lands were liable to imprisonment, as Daniel Wilcox discovered in October 1686: “Wilcox stands presented for purchasing of lands of an Indian, within this government, contrary to ye laws thereof...The sd Daniell Wilcock shall & doe personally appear at the Court of Assistants, to be holden at Plimouth on the first Tuesday in Aprill next.”⁴⁵

When trying to settle land disputes, the Court was careful to always remember the underlying Indian claims to land: “A smale iland in Assowamsett Pond ... and places adjacent, shalbe and belonge to the proprietors of Middleberry as thaire proper right, without molestation from any, accepting any lands that doth or may appeer of right to belonge to any Indian or Indians.”⁴⁶ In April of 1685, the General Court specifically voiced this priority of Indian claims to land: “The Court, on considerations of the pmises, doth soe far confirme said land to the said Indians, to be perpetually to them & their children, as that no part of them shall be granted to or purchased by any English whatsoever, by the Court allowance, without the consent of all the said Indians.”⁴⁷ Unlike the land ownership recorded above, this land was owned communally. In the original grant of land made to the Indians in 1665, this provision was placed in the deed. Finally, when land disputes inevitably made their ways to the Court, Indians were given full opportunity to testify about land ownership and claims.⁴⁸ Thus land was a real asset for the Indians in Plymouth. Their claims to land were protected by the General Court and they used the legal system to secure and preserve their claims to land. The peaceful owning and transfer of land, the most valuable of all property, insured peace within the Plymouth Anglo-Indian community.

⁴⁴ *Records of the Colony of New Plymouth*, 6: 16.

⁴⁵ *Records of the Colony of New Plymouth*, 6: 202.

⁴⁶ *Records of the Colony of New Plymouth*, 6: 51.

⁴⁷ *Records of the Colony of New Plymouth*, 6: 159-60.

⁴⁸ *Records of the Colony of New Plymouth*, 6: 21-2.

Indians who owned land at the end of the seventeenth century had a clearer and stronger claim to the land than their ancestors in the 1630's. By the end of the seventeenth century, Indians in Massachusetts Bay and Plymouth retained land. Despite the long interaction with English over the course of the century and the short terrible disruptions of King Philip's War, by the beginning of the eighteenth century Indians had accepted and legally defensible titles to land throughout Massachusetts and Plymouth. They had learned how to operate within the English legal system and knew how to sustain, exchange or transfer their landholdings in ways which would benefit them. The governments of Massachusetts and Plymouth accepted Indian rights to land and did not alter the rules of the game to take the lands. Indians were actors, not victims in land transactions. They had due process under the governments established in these two colonies. The seventeenth century is not the story of English conquest of Indian land. Rather it is the story of Indian adaptability and survival and the willingness of the governments of Massachusetts and Plymouth to remain true to Winthrop's ideals.