THE PATENT AND THE INDIANS: THE PROBLEM OF JURISDICTION IN SEVENTEENTH-CENTURY NEW ENGLAND

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When Roger Williams began theorizing in 1632 about the validity and significance of the English patent in New England, Governor John Winthrop of Massachusetts was deeply concerned. According to Winthrop, Williams' treatise disputed "their right to the lands they possessed here, and concluded that, claiming by the king's grant, they could have no title, nor otherwise, except they compounded with the natives."[1]

The issue involved much more than legality of land tenure among the settlers. Williams was not just questioning the English right to Indian land. He was challenging the English right to jurisdiction over the Indians and the Indians' territory, and even over the settlers ("nor otherwise"), and thereby the extensive governmental authority which Winthrop claimed in his great new "city on a hill." Williams' treatise was one of the first challenges to the assumption of European jurisdictional superiority throughout the world, and the principles involved remain relevant today.

Historian Alden T. Vaughn has said that "the issues at stake were points of theory—in fact theology—not details of practice." Representing what one might call the "average American" point of view, he writes:

> While no one will subscribe to the thesis that might makes right, it is undeniable that in troubled times the alternative to chaos is positive action on the part of the most mature and effective political authority . . . and in seventeenth century New England the Puritan colonies were the strongest single force.[2]

It is hard to see how the logic of this formulation differs from the thesis that might makes right. But Vaughan's misunderstanding of the controversy over the patent seems to stem from his inability to see the practical significance of Puritan claims to jurisdiction, both for the Indians and for dissident Englishmen. He claims that "the realities of America rendered the patent theory in large part irrelevant" because "the Puritan colonists dispensed with the part of the theory that would have given them property ownership of natives' land while *keeping a firm grip on the part that vested the Christians with political jurisdiction*" (italics mine).[3]

Neither Roger Williams nor John Winthrop, however, considered the issues irrelevant in their own time. Williams agreed with John Cotton that the question of the patent was the principle reason for Williams' banishment from Massachusetts four years later, even though it was not officially listed by Winthrop as part of the indictment.[4] As Williams later explained his point of view:

> I abhor most of their customs: I know they are barbarous. I respect not one party more than the other, but I desire to witness truth; and I desire to witness against oppression, so, also, against the slightin of civil, yea, of barbarous order and government, as respecting every shadow of God's gracious appointments.

He also wrote, "I know it is said the Long Islanders are subjects; but . . . I question whether any Indians in this country, remaining barbarous and pagan, may with truth or honor be called the English subjects."[5]

Williams saw that the English were bringing chaos to the Indians, not the reverse. He believed in an effective political authority quite different from John Winthrop's ideal. Massachusetts soon circumvented his intentions by banishing and isolating him and by betraying the Narragansetts. But in the 1630s the issue was one of practical coexistence and political reality, not just theoretical theology.[6]

In twentieth-century historiography the subject is still controversial. Some prominent historians ask, would the Indians have fared any better if the Puritans had conceded their right to American land? Such historians claim that since the process of Indian dissolution in the seventeenth century was apparently inevitable, questioning its justice is unnecessary hand-wringing.[7] But the purpose of writing history is neither to justify nor to blame the past. The historian can only try to look squarely both at events and at ideas in the hope that understanding where we have been may help us to know also where we are. Even if the *what happened* was indeed inevitable (and only a pure determinist can be *sure* of that),[8] the *why* and the *how* remain important components of the human record. The implications of the controversy over the patent are wider than the seventeenth-century English-Indian confrontation, because the theory was also applied to nonconformist Englishmen and because it has remained viable throughout American history.

Since Williams' challenge to the patent no longer exists—he burned it at Winthrop's insistence—reconstructing the argument is difficult. This essay is an attempt to cast some new light on what the conflict was all about. Part I examines the theory used by the Puritans to justify their jurisdictional claims in America. Part II discusses Williams' arguments and Indian society at the time he described it. Part III provides a case study of the practical results of the theory as it was applied both tot he Narragansett Indians and to dissident Rhode Islanders. That neither Williams' ideas nor his actions could forestall injustices, both to unorthodox Englishmen and to Indians, is part of the tragedy of his life as well as of the Naragansetts. But at least he raised the issue, and future generations might have understood his challenge more clearly if he had been successful.

I. The Puritan Theory of Jurisdiction

Discovery and possession were the primary terms used to define the legality of English claims to jurisdiction over North America. The superiority of Christian civilization and the moral duty to make right use of "waste" land were underlying assumptions of the legal arguments. More often than not, moral arguments were inextricably intertwined with legal, and Englishmen used each to reinforce the other whenever it seemed necessary.

Several European countries invoked the right of discovery in the New World, especially Spain, Portugal, France, and the Netherlands, as well as England. John Cabot's voyage in 1497-98 was the basis of the English claim. In any disputes, however, actual possession by means of either settlement or conquest determined who was acknowledged as the discoverer.

The right of discovery backed up by conquest had deep roots in English history. Not only had the Angles and the Saxons taken the land away from the ancient Britons, but William the Conqueror had taken it from the Anglo-Saxons in 1066. In 1109 Henry I made a grant to Gilbert de Clare for Wales "if he could win it," and later kings did the same with Ireland. Henry VII made such a grant of the New World to John Cabot, while Elizabeth I granted specified areas to Sir Walter Raleigh and Sir Humphrey Gilbert. Wilcomb Washburn suggests that "the principle of the English sovereignty based on the royal grants was, in sum, as 'speculative' as the grants themselves and depended for its establishment on the course of events. Fortunately for the English, the fact proved equal to the assertion."[9]

Reinforcing the claim to America, some Europeans assumed that Christianity and civilization were interdependent. Since the Indians were not Christian, they were also considered uncivilized—and only a civil state, according to European doctrine, could provide a legal basis for territorial ownership. The English were bringing civilization and religion to the poor barbarians and therefore had every right to assert their superior jurisdiction. As one report from Jamestown put it:

> it is not unlawfull, that wee possesse part of their land and dwell with them, and defend our selves from them. Partlie because there is no other, moderate, and mixt course, to bring them to conversion, but by dailie conversation, where they may see the life, and learne the language each of other.[10]

The charters given by European monarchs derived their supposed validity from the fact that those monarchs were Christian—and Christianity ever since Constantine involved the assumption of jurisdictional superiority. Roger Williams called this the "great sin" of the patents, "wherein Christian Kinds (so calld) are invested with Right by virtue of their Christianitie, to take and give away the Lands and Countries of other men."[11]

Expansion within Europe throughout the Middle Ages was commonly justified as a way of spreading Christianity and civilization—to the Northern Germanic barbarians, to the Scandinavians, to the Poles and the Slavs. When the good Sir Thomas More wrote his *Utopia* in 1516, his ideal settlers used all the same arguments later used by the English in America:

> they sent colonists to build "a town . . . in the next land, where the inhabitants have much waste and unoccupied ground." The native inhabitants are invited to dwell with the Utopians —under Utopian laws, of course, which are considered by the Utopians to be greatly superior. If the natives are foolish enough to resist this benevolence, they are driven off the land; if resistance continues, the Utopians have no choice but to make full-scale war against them. More's ideal people considered this the most just cause of war: "When any people holdeth a piece of ground void and vacant to no good or profitable use: keeping others from the use and possession of it, which, notwithstanding, by the law of nature, ought thereof to be nourished and relieved."[12]

St. Augustine was one of the first who believed that property was the creation of the state, that before the coming of civilization common ownership was the condition of man. As the idea developed, Albertus Magnus and others in the twelfth

century described communal property as natural in the state of innocence but, since the Fall of Man, no longer possible.[13] The Puritans claimed a natural right to the land for all human beings, but such rights "were applicable . . . only in a pre-civil society."[14] As John Winthrop put it: "occupancy and labor on a specific plot of ground convert it from common to private property."[15] Before coming to New England, Winthrop had worked out his "reasons for the Plantation" and concluded that, like the Old Testament Hittites and others, the Indians had only a "natural right" of occupancy because they were still in a pre-civil and pagan state without jurisdictional rights over empty territory. Unused common land was "free to any that possesse and improve it. . . . Soe if we leave them sufficient for their use, we may lawfully take the rest, there being more than enough for them and us. . . ."[16]

The idea of right use as an aspect of ownership also had roots in Augustinian doctrine. In an attempt to justify the confiscation of property from heretics, St. Augustine wrote: "Therefore, all that which is badly possessed is the property of another, but he possesses badly who used badly."[17] John Wycliffe revived the idea in the fifteenth century in his theory of the Dominion of Grace. As part of his attack on Church wealth, he defended the royal power of confiscation.[18] Protestant doctrine developed a theory of stewardship: "ownership entailed obligations and was contingent upon the right use of property."[19] Finally, at the end of the seventeenth century, John Locke propounded the related theory of the origin of private property through a man's labor: "As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property."[20]

These concepts of discovery, possession, Christian superiority, and right use of land provided the ideological basis for the many tracts published in England to encourage emigration and exploitation of the New World. For example, in a tract about the lawfulness of bringing civilization to the Indians of Virginia, arguments based on Christianity, waste land, and purchase from the Indians were invoked.[21] John White first alluded to the necessity of human expansion and the religious duty of using the land properly, in a tract about New England published in 1630: "Besides the gift of the earth the the sonnes of men, Psalm 115: 16, necessarily inforceth their duty to people it." He added the argument that land was vacant because of the plague, and wrote, "the Natives invite us to sit downe by them, and offer us what ground we will: so that eyther want of possession by others, or the possessors gift, and sale, may assure our right."[22] The settlers in the Connecticut River valley also claimed the land as "the Lord's waste" to which they had "a common right . . . with the rest of the sons of Noah."[23] All these tracts, in citing purchase from Indians, assumed that Indians had no rights to land they did not appear to be actually using.

English settlers in America used the same argument of vacancy against one another. When the people of Dorchester decided to move to Connecticut, they chose land not yet settled though already claimed and purchased by Plymouth from the Indians. Plymouth protested:

> because they could not presently remove themselves to it . . . must it therefore be lawful for [the Dorchester men] to go and take it from them? . . . why should they [of Dorchester] because they were more ready and more able at present, go and deprive [Plymouth] of that which they had with charge and hazard provided and intended to remove to, as soon as they could and were able?

But Plymouth, "for peace sake, though they conceived they suffered much in this thing" (like many Indians in similar circumstances throughout American history), made a treaty on "as good terms as they could get." Plymouth men were paid off—the purchase was legal, but they lost the Connecticut land, which they would have preferred to money.[24]

In general, almost all of the land in New England was actually purchased, or obtained by other types of legal transfer from the Indians. But the legality was defined according to English not Indian jurisdictional principles. For reasons of safety, as well as to forestall critics like Roger Williams, an attempt was made to "satisfy" the Indians for the use of their land, even when that land was apparently vacant. Boston obtained a deed in 1670, Plymouth in 1679, as did many other towns, by locating descendants of the original Indian owners.[25] However, such purchases were expedient maneuvers, not recognition of Indian sovereignty.

There was indeed much "waste" land in New England in the early seventeenth century. Fishermen and fur traders had been coming to that area for a generation before the first settlements were made. In addition to the trinkets and tools they paid to the Indians they left, unfortunately, the germs of smallpox, measles, and other European diseases. In 1617-18 the Massachusetts and Wampanoag tribes (living in what is now eastern and

southeastern Massachusetts) had been decimated by disease—losing over one-third of their population in the space of a few months. This was one reason for choosing the site of Plymouth; its fields were already cleared for planting but its owners were dead.[26]

Just as the Black Death of 1347-50 in Europe had opened the way to individual expansion and large-scale aggrandizement through enclosures, so American coastal areas were laid open to the English. Later epidemics, in 1622-23, 1633, and 1647,[27] opened the lands further inland—the Connecticut River Valley and the Narragansett area. Since the Indians were assumed to have no civilization, and therefore no jurisdiction, Puritans continually claimed moral justification for takeover in the doctrine of *vacuum domicilium*. As Winthrop had written, "That which lies comon and hath never replenished or subdued is free to any that will possesse and improve it."[28] John Cotton agreed: God "admitteth it as a principle in Nature, that in a vacant soyle, hee that taketh possession of it, and bestoweth culture and husbandry upon it, his right it is."[29]

In 1639, moreover, Winthrop even asserted the prior claim of the English patent over purchase from the Indians, when he objected to the banished Mr. Wheelwright's purchase of Winicowett.[30] The Massachusetts Bay patent did not include the area in question, but Winthrop was determined to extend its bounds. On another occasion, he said that Massachusetts "would not relinquish our interest by priority of possession for any right they could have from the Indians."[31] In other words, even the Indians' right to sell their own land was subordinate to English jurisdiction, wherever its power could be established.

Perhaps most revealing, John Cotton, in his "Reply to Mr. Williams," noted that Williams had claimed "That we have not our Land by Patent from the King, but that the Natives are the true owners of it; and that we ought to repent of such a receiving it by Patent." But Cotton argued, "yet there be many, if not most, that hold, That we have not our Land, *meerly* by right of Patent from the King, but that the Natives are true owners *of all that they possesse, or improve.*" (Italics mine.)[32] Changing the terms of the argument enabled Cotton to misrepresent Williams as a disputatious troublemaker and to ignore the question of ultimate jurisdiction—the real problem.

For John Winthrop and John Cotton, and most other Puritan settlers, it was the English king, by the right of discovery and possession, who held the jurisdiction and the ultimate ownership of all the land in North America. Even Indian ownership of particular pieces of land was assumed to be by the unwritten grant or approval of the Crown. Indian titles could be considered valid only through English authorization, and even Indian sales of the land could take place only in accordance with English law as exercised by the delegated authority of the Crown in the colonial governments of the New World.[33] In 1633, for example, after the patent dispute with Williams, the General Court of Massachusetts passed a law that said, "what lands any of the Indians have possessed and improved, by subduing the same they have a just right unto according to that in Genesis." But, as G. E. Thomas points out, the law thereby assumed implicitly that Indians had no right to the rest of their land, and the "legal safeguards . . . actually worked against the Indians' interests on a massive scale."[34] The "points of theory—in fact, theology"—became very significant "details of practice" in seventeenth-century New England.

II. Williams' Argument and the Nature of Indian Society

Roger Wiliams' challenge to the English patent in 1632 was so upsetting because of his willingness to insist on the legitimacy of existing Indian governments, no matter how "barbarous," in their jurisdiction over New England land and the Indian people. Corollary to this belief was the right of Englishmen to govern themselves, free of Massachusetts Bay authority, wherever the Indians were willing to allow them to do so. America was the Indians' land, in which Englishmen were foreigners. "In Indian society," says one scholar,

> property inhered in persons and personal relationships, and although the use of it might be given for friendship, or perhaps, for recompense, as the King of England might . . . grant to others the exercise of parts of his rights, the inherent right itself could not be alienated any more than his royal majesty could sell his kingdom. In the Indians' view, therefore, the payments by the colonists were gifts to obtain friendship in order that as allies they might be permitted to occupy parts of the native's territory.[35]

It was a question of "co-occupancy"—an issue the English themselves would have easily recognized if they had been buying land for a trading company in Holland or France.

Roger Williams was cosmopolitan. His London upbringing (in contrast to the country gentry background of most of the other Puritans) exposed him to numerous nationalities, cultures and

religious practices, as did his "Turkey merchant" older brother.[36] A real interest in Indian ways led him quickly to a mastery of their language and intimate knowledge of their culture. In fact, his *Key into the Language of America*, published in 1643, is still the major source for information about the culture and the language of the New England Algonquian tribes.[37] As Edmund Morgan has pointed out, Williams saw the world as "divided into two sorts of men: barbarous and civil," just as did other Puritans. He defined barbarians as "the wild and Pagan, whome God hath permitted to run about the world as wild Beasts," while civilized men were "brought to Cloaths, to Lawes etc."[38] But his *Key into the Language of America*, as a whole, and many other works, in part, insisted that the Indians he knew in southern New England had clothes, laws, religion, and a coherent governmental system:

> If cannot be by their owne *Grante* be denied, but that the *wildest Indians* in *America* ought (and in their kind and several degrees doe) to agree upon some *formes* of *Government*, some more *civill*, compact in Tonwes, &c. some lesse. As also that their *civill* and *earthly Governments* be as lawfull and true as any *Governments* in the World.[39]

Williams' *Key* was not just an exercise in anthropological exposition (though it actually was one of the first of that genre in western literature). It was a major link in his argument for the autonomy of the Indians in their world.

Williams' caveat against the king's patent was that the Indians were indeed users and possessors —that they had a civilization of their own which entitled them to possessive ownership and the right to retain jurisdiction over their territory. Simply being Christian did not give any European king legal superiority. For if it did, Puritan Englishmen had had no legal government under Queen Mary or prior to Henry VIII's conversion.[40]

As Williams soon realized, the king's patent was used to justify control over all other settlers, even nonparticipants in the charter enterprise. The Massachusetts Bay Company held a corporation charter, a grant of monopolistic power to a group of men organized for trading purposes. Such grants were the outgrowth of earlier trade guilds and comparable to the grants previous kings had made for drainage and irrigation schemes in England, as well as for trading to Russia and the Levant. Trading companies were specifically exempt from the Parliamentary ban on monopolies passed in 1624 because, says one historian, Parliament had not yet perceived the significance of a trend toward corporate monopolies. Under Charles I, from whom the Puritans received their charter, "The distinction between charters and patents lost practical significance," and the sale of charters for the purpose of industrial exploitation became a lucrative source of crown revenue.[41]

The significance of the Massachusetts Bay Company charter, one constitutional historian has said, was not in its form, but rather "in the use made of the Charter by the corporation—its transfer to America and the manipulation of it after the transfer."[42] According to another constitutional scholar, although the charter authorized both a corporation government and the "forms and ceremonies of government and magistracy fit and necessary for the said plantation and the inhabitants there,"[43] the charter "proved itself, after its transfer, wholly inadequate as a constitution of government for the Colony of Massachusetts Bay. It became necessary, almost from the first, to assume powers for which no warrant can be found in that instrument itself."[44] John Winthrop and his fellow Massachusetts magistrates assumed those powers and extended the interpretation of jurisdiction to include other colonists, the land they were living on, and the Indians too.

Winthrop wanted to establish a new England, whereas Williams wanted to establish an entirely new society. It was a choice between a tightly controlled oligarchical theocracy which had no room for either dissidents or Indians, or a new experiment in community building which would tolerate and cooperate with both dissidents and Indians. Winthrop had the backing of a powerful company organization and English finances, but he recognized the threat that Williams' ideas posed in 1632.

Williams' opposition to the patent may have developed out of his knowledge of Parliamentary controversies over monopolies during the 1620s. His mentor and sponsor, Sir Edward Coke, to whom Williams had been "like a son," was a leader in the debates of 1621 and was the author of the motion in 1624 "that it is one of the principal ends of Parliament to hear grievances and call in patents, which are the cause of it."[45] Winthrop was the usurper, and Indian rights could be defended even according to the terms of English law.[46]

Although, in theory, Winthrop's claim to jurisdiction derived from the authority of the Massachusetts Bay charter, Plymouth never had any charter (its settlers were supposed to have landed in Virginia), and Connecticut did not receive its charter until 1663. The Pequot country east of the Connecticut River and the Connecticut River valley itself from Saybrook up to Springfield were

covered by two different patents, neither of which clearly existed or could ever be found.[47] Roger Williams maintained that the only valid jurisdiction over the land was held by the Indians. The charter he received from Parliament for Rhode Island in 1643, in an attempt to prevent absorption and destruction by Massachusetts, was one of incorporation like others; but it was not a capitulation in principle. Though the grant specified the right of incorporation for legal government, it did not include any title to the land. Williams specifically denied any recognition of the so-called rights of the Crown to the land itself. As the charter put it:

> And whereas divers well Affected, & Industrious English Inhabitants of the Townes of Providence, Portsmouth, & Newport in the tract aforesaid, have Adventured, to make a nerer Neighborhood & sociaty, with that great body of the Naragansets sch may in time by the blessing of God upon theire endeavors Lay a surer foundation of hapines to all America; & have purchased, & are purchaseing of & amongst the said Natives some other Places, wch may be convenient both for Plantations, & also for building of shipps, supply of pipe staves & other merchandise . . .[48]

One of the points in Williams' argument which most upset John Cotton was Williams' comparison of Indian land usage to that of the English nobility. As Cotton put it, with his usual ambiguous logic:

> Mr. Williams . . . pleaded, the Natives . . . hunted all the Countrey over, and for the expedition of their hunting voyages, they burnt up all the underwoods in the Countrey, once or twice a yeare, and therefore as Noble men in *England* possessed great Parkes, and the King, great Forrests in *England* onely for their game, and no man might lawfully invade their Propriety: So might the Natives challenge the like Propriety of the Countrey here.[49]

(Cotton ignored the fact that it was the Massachusetts settlers who were challenging the natives, not vice versa.) Cotton defended the nobility (implying that Williams had attacked it) on the basis of their services; the Indians did not give any service to the Church or the English state, and "if they complained of any straites wee put upon them, wee gave satisfaction in some payments, or other, to their content." Finally, "We did not conceive that it is a just Title to so vast a Continent, to make no other improvement of millions of Acres in it, but onely to burne it up for pastime."

Cotton's conclusion revealed the nub of the whole conflict: opposition to the patent "subverted the fundamental State, and Government of the Countrey."[50] It subverted the authority of the Massachusetts Bay magistrates, indeed. Williams' own vision required freedom from Massachusetts Bay jurisdiction and interference, and it required friendship and cooperation with the Indians, for safety as well as for justice. Practical politics as well as idealism led Williams to deny the validity of the patent.[51]

Williams also held a practical and sympathetic understanding of the Indian society. "I spared no cost, towards them," he said, "and to Conanicus & his, tokens and presents many years before I came in person to the Nahiganset." He went on:

> Counanicus . . . was not I say to be stirred with money to sell his lands to let in foreigners. Tis' ture he recd presents and gratuities many of me, but it was not Thousand not Ten Thousands of money could have bought him an English Entrance into the Bay . . . I gave him and . . . Miantunoma gifts of two Sorts. 1st former presents from Plymouth and Salem 2nd I was here their councellor and secratary in all their wars . . . They had my son, my shallop and Pinnace and hired servant &c at command on all occasions . . .[52]

Clearly, Williams was willing to accept Indian jurisdiction as lawful in their own territory. His ideology was unique among seventeenth-century Englishmen.[53]

Bernard Sheehan has said, "The land can be accounted the basic point of conflict only if it can be shown that the Indian had a sense of spatial identity similar to the white man's. He did not, or at least there is no reason to think that he did."[54] But there is evidence that, before their subversion by the English, Indian concepts of jurisdiciton and land use in southern New England were as specific as those of the English, though unfortunately not in the documentary form which might have protected them.[55] Europeans falsely assumed that the Indians had no governmental system worthy of respect. The nuclear family was the basic unit of society, connected to an extended family or clan, and then to the village whose Council was made up of representatives from all the clans within the village. Usually a number of villages were part of one tribe—defined by a noted anthropologist as a "group with a name, a territory and a group decision-making mechanism" which acted "as a unit in intergroup relations."[56] The chief of each tribe was ultimate owner of the tribal territory and received an annual tribute for it. Several tribes might, by conquest or through marriage or treaty agreements, be subject to a greater chief, who, in his authority, could be compared to a king. Canonicus, followed by Miantonomo, held

his authority in the 1630s as leader of the Narragansetts, the most powerful tribe in New England. At the height of their power they ruled about thirty thousand Indians (including subsidiary tribes),[57] though the territory of their own tribe on the west side of Narragansett Bay was relatively small.

Ultimate authority resided in the chief, assisted by his council of sachems, or lesser chiefs, delegated from each village. Major decisions were generally made only after extensive deliberation, in order to achieve unanimity. In times of emergency, war chiefs, known as "mugwumps" ("muckquomp"),[58] often self-appointed and always without political status, had the same kind of power as English military commanders. Within each village the clan heads gathered in councils similar to town meetings to manage village affairs. Social stratification existed; the ruling class intermarried with other ruling families and their wives lived in royal ease.[59] Like the king of England or the tribal Irish (whom the English also displaced in the seventeenth century), the chief held his territory in trust, for all his people, not as his personal property. (Bradford and Williams both claimed to hold the land of Plymouth and Providence, respectively, in trust for their fellow settlers.) Land for planting fields was alloted to particular individuals for the use of their families, reverting back to the chief if that family died out. An heir had a right to part payment if his chief were to sell the land to someone else. We might compare this to the exercise of "eminent domain."[60]

The casualness of the Indians about land was only apparent. There was communal ownership within the family or village but "when once appropriated for planting, the usufruct went to the individual." Puritans, "forgetting the Lord's claim to undivided common" in England, claimed " 'that which was common to all was proper to none,' and civil rights to land arose only when it was improved by enclosure, manurance, or permanent structures."[61] They also conveniently forgot that their own town lands were at first held largely in common by the specified proprietors.[62]

Indians in southern New England were a settled agricultural group. "Each tribe had its proper domain, consisting of a little cleared land for the gardens; much open swamp and densely wooded jungle along streams and lakes, where there were fishing stations; and much parklike upland forest."[63] The main summer village was near the planting fields, though it might be suddenly moved a mile or so in order to get rid of fleas and dirt. The winter village was in sheltered valleys or forest areas. In a one-hundred-sixty-mile trading trip to Connecticut in 1633, John Oldham "loged at Indian towns all the way." Williams once counted twelve villages in a twenty-mile distance within the Narragansett country.[64]

Fencing fields was a recognized necessity among the English, because of their domesticated animals, with designated officials to see to their adequacy. Indian fields were left unprotected and soon became subject to the depredations of English animals. At first the English tried guarding their herds, and then they tried to aid or persuade the Indians to fence their fields (these fences were usually stone walls—which are time-consuming and difficult to build),[65] and then they told the Indians to fence themselves. The jurisdictional problem became crucial because when animals did trespass it could be "difficult to determine whether a fence was too low or a cow climbed too high" —especially in English courts.[66] Furthermore, Englishmen failed to perceive that tidal flats full of clams, or fields of roots and berries, constituted land in cultivation, so to speak, for the Indians, not just "waste" territory.[67] Even the beaver was carefully "farmed" to avoid depletion, before the exigencies of the fur trade caused such civilized methods to deteriorate.[68] Undergrowth in the forests was regularly burned to facilitate hunting. And though Indians sometimes stalked the animals individually, hunting most often involved a communal "round-up" "into a V-shaped hedge with looped snares at the peak."[69] Fishing weirs were carefully built and maintained, and trapping areas were specifically designated to particular Indians.[70] Maple-sugaring was an indigenous technique which later became an important New England industry.[71]

Indians took more meticulous care of the land than the English did. As Darett Rutman has pointed out, Indian women planted every grain of corn with care in a prepared, 2-foot circle or "hill" of soil, fertilized with a fish, and weeded diligently all summer. Englishmen adopted the Indian corn, but not the arduous weeding. Nor did they even continue the cross-plowing and intensive agriculture of England.[72] This meant that English land in America tended to lose its fertility quite quickly—one reason why farmers kept moving and were so covetous of more territory.[73] Indians did have what amounted to a fallow system, since they changed the location of their cornfields every few years. The English chose to call this system nomadism.[74]

Indian boundaries were very clear among themselves (though not always to the English). Each tribe maintained exclusive ownership of specified

tracts, delineated by natural features or landmarks or by measured distances (based on how far one could walk in a certain length of time). Williams observed that

> the *Natives* are very exact and punctuall in the bounds of their lands, belonging to this or that Prince or People, (even to a River, Brooke) &c. And I have knowne them to make bargiane and sale amongst themselves for a small piece, or quantity of Ground; notwithstanding a sinfull opnion amongst many that Christians have right to *Heathens* Lands.[75]

There were no common hunting grounds between tribes, so that permitted hunting or even a stranger's trespassing was subject to reprisal.[76]

The English were well aware that most of the Indians near the coasts were settled agriculturalists. In neither Virginia nor New England could the first settlers have survived if it had not been for Indian corn and Indian hospitality.[77] Indians kept integrated, well-organized, and abundant economy, as open-minded outsiders like Roger Williams observed.[78] Men like John Winthrop, however, did not go wandering among the Indians, either to trade or to observe. The assumption of English superiority was enough to close the minds even of many who did.

III. Conclusion

At the time of the founding of the Massachusetts Bay Colony and Williams' challenge to the patent, the Indians of southern New England had a sufficiently developed civil society and land-use pattern to justify their claims to ultimate ownership and jurisdiction, even according to Puritan theory. Roger Williams thought so and attempted to act accordingly.

The virtual annihilation of the New England Indians was not just "the inexorable breakdown of the native's cultural integrity."[79] Nor did the controversy over the patent involve mere theory without practical applications. Undoubtedly the coming of Englishmen to America would have caused cultural change for the Indians under any circumstances, but that could have meant amalgamation, assimilation, or respectful co-occupancy, as Williams desired. There could also have been changes in English culture in the New World—but these counter-factual possibilities are beyond the scope of this essay. The cultural breakdown which finally led to war in 1675 was the result not merely of competition but rather of English assertion of jurisdictional rights over the entire New World territory. There was no recognition of Indian sovereignty until it served as an excuse for war.[80] In replacing an established governmental system, without any corresponding solicitude for the rights and interests of their new "subjects" (let alone any representation), the English caused the dissatisfaction for which there was no other outlet except rebellion. A "mature and effective political authority" should have been able to find some "alternative" to the chaos such a war brought to both English and Indian society.

In arguing against the English patent in 1632, Roger Williams was attempting to establish a principle of justice and coexistence both for religious dissidents and for Indians in the New World. He recognized the practical consequences which would follow from the Puritan theory, and he also recognized the extent to which that theory did not accord with Indian society. His ideas would have saved many Englishmen as well as Indians from suffering and death. But his battle was lost from the time of his banishment. The Indians suffered defeats from the massacre of the Pequots and the subsequent betrayal of the Narragansetts. As force replaced justice in the troubled years that followed, only the witness of Williams' words and his integrity remained. In 1664 he wrote with sorrowing but ironic tact to John Winthrop, Jr.:

> Sir, when we that have been the eldest, and are rotting, (to-morrow or next day) a general will act, I fear, far unlike the first Winthrops and their Models of Love: I fear that the common Trinity of the world (Profit, Preferment, Pleasure) will here be the *Tria Omnia*, as in all the world beside: . . . that God Land will be (as now it is) as great a God with us English as God Gold was with the Spaniards.[81]

One of the last acts of Williams' life, before his death at the age of eighty, was to assert once again the primacy of the Indian claim to America:

> and therefore I declare to posterity, that were it not for the favor God gave me with Canonicus, none of these parts . . . had been purchased or obtained, for I never got any thing out of Canonicus but by gift . . . when the hearts of my countrymen and friends and brethren failed me, his infinite wisdom and merits stirred up the barbarous heart of Canonicus to love me as his son to his last gasp, by which means . . . and the authority of Canonicus, consented freely, being also well gratified by me, . . . all the other lands I procured.[82]

NOTES

1. John Winthrop, *Journal*, ed. James K. Hosmer (New York, 1908), 1:116.
2. *New England Frontier: Puritans and Indians, 1620-1675* (Boston, 1965), pp. 119, 183.
3. *Ibid.*, p. 110.

4. John Cotton, "A Reply to Mr. Williams . . ." (1647), in *Complete Writings of Roger Williams* (New York, 1963), 2:44 (hereafter abbreviated as *CW*); Roger Wiliams, "Mr. Cotton's Letter Examined and Answered" (1644), in *CW*, 1:324; Winthrop, *Journal*, 1:162.
5. "Letters," May 7, 1668, Oct. 5, 1654, in *CW*, 6:327, 275.
6. My interpretation of Williams differs from, but does not contradict, those of Perry Miller, *Roger Williams: His Contribution to the American Tradition* (New York: Atheneum, 1966), and Edmund S. Morgan, *The Puritan Dilemma: The Story of John Winthrop* (Boston, 1958). Miller and Morgan see the arguments over the patent simply as an aspect of Williams' theological Separatism and idealism in relation to the development of Puritan society.
7. See especially Bernard Sheehan, "Indian-White Relations in Early America: Review Essay," *William and Mary Quarterly*, 3d ser. 26 (1969): 267-86. For an article that supports my point of view from a different angle, see G. E. Thomas, "Puritans, Indians, and the Concept of Race," *New England Quarterly* 48 (March 1975): 3-27. See also Nicholas P. Canny, "The Ideology of English Colonization: From Ireland to America," *William and Mary Quarterly*, 3d ser. 30 (October 1973): 575-98. Canny points out that by branding the native Irish as "pagan without question," and as nomads because of their practice of transhumance, just as American Indians were later to be branded, the English could declare them barbarians, who must be made bondsmen or else slaughtered if they "unreasonably" refused to submit. Says Canny, "We find the colonists in the New World using the same pretexts for the extermination of the Indians as their counterparts had used in the 1560s and 1570s for the slaughter of numbers of the Irish." (p. 596).
8. The massacred women and children might question, if they could, whether their cultural breakdown was merely inevitable.
9. Wilcomb E. Washburn, "The Moral and Legal Justification for Dispossessing the Indians," in James Morton Smith, ed., *Seventeenth Century America* (Chapel Hill, N.C., 1959), p. 25.
10. Quoted in Marshall Harris, *Origin of the Land Tenure System in the United States* (Ames, Iowa, 1953), p. 63.
11. "The Bloody Tenent Yet More Bloody" (1652), in *CW*, 4:461.
12. Summarized and quoted by Washburn, p. 24, from More's *Utopia*, trans. Robinson (1551), ed. Rev. T. F. Didbin (London, 1808, bk. 2, chap. 5, pp. 191-92.
13. See Richars Schlatter, *Private Property: The History of an Idea* (New Brunswick, N.J., 1951), pp. 38, 45.
14. Charles E. Eiseinger, "The Puritans Justification for Taking the Land," *Essex Institute Historical Collections* 84 (1949): 134.
15. Quoted in Eisinger, p. 135, from *Winthrop's Conclusions*, pp. 6-7.
16. "Reasons for the Plantation," in R. C. Winthrop, *Life and Letters of John Winthrop*, 1:309-310.
16. "Reasons for the Plantation," in R. C. Winthrop, *Life and Letters of John Winthrop*, 1:309-310.
17. In a letter quoted by Schlatter, p. 38.
18. See Schlatter, pp. 38, 70.
19. Schlatter, p. 101.
20. Quoted in Schlatter, p. 154, from John Locke, *Of Property*, bk. 2, chap. 5. The idea, of course, came full circle when Karl Marx used the concept of labor as a source of value to justify the destruction of individual property.
21. See note 10.
22. Quoted in Eiseinger, p. 138, from *The Planters Plea* (London, 1630), p. 2.
23. Eiseinger, p. 139.
24. William Bradford, *Of Plymouth Plantation: 1620-1647*, ed. Samuel Eliot Morison (New York, 1970), p. 283.
25. Harris, pp. 163-64. An example of one type of legal transfer is Richard Smith's thousand-year lease from Sachem Coginiquant for which he was "to pay on every mid sumer day a Red Honney Suckell grasse, if it bee lawfully demanded for acknowlegem'ts." From Daniel Berkeley Updike, *Richard Smith: First Settler of the Narragansett Country, Rhode Island* (Boston, 1937), p. 19.
26. See Vaughan, pp. 21-2; Bradford, pp. 81, 72.
27. See Robert Austin Warner, *The Southern New England Indians to 1725: A Study in Culture Contact* (Ph.D. diss., Yale University, 1935), p. 272. For an analysis of such effects in detail, see Philip Ziegler, *The Black Death* (New York, 1969).
28. Quoted in Eiseinger, p. 138.
29. *God's Promise to His Plantations* (London, 1630), p. 6.
30. Winthrop, *Journal*, 1:294. Wheelwright was banished in connection with the Anne Hutchinson controversy and moved to the New Hampshire area.
31. Winthrop, *Journal*, 1:306.
32. *CW*, 2:40, 44.
33. See Harris, p. 64, and Francis Jennings, "Virgin Land and Savage People," *American Quarterly* 23 (1971):521-22.
34. "Puritans, Indians, and the Concept of Race," p. 11.
35. Robert Austin Warner, pp. 244-45.
36. See Samuel Hugh Brockunier, *The Irrepressible Democrat: Roger Williams* (New York, 1940), pp. 7-10, 142.
37. The definitive edition of the *Key*, along with an excellent critical introduction, is by John J. Teunissen and Evelyn J. Hinz (Detroit, Mich.: Wayne State University Press, 1973).
38. *Roger Williams: The Church and the State* (New York, 1967), p. 126; Roger Williams, "George Fox Digg'd out of his Burrowes," in *CW*, 5:258.
39. Williams, "The Bloody Tenent, of Persecution, for casue of Conscience . . . ," (1644), in *CW*, 3:250.
40. *Ibid.*, 344-45. See also, "The Bloody Tenent yet more Bloody: By Mr. Cottons endevour to wash it white in the Blood of the Lambe" (1652), in *CW*, 4:206 and elsewhere.
41. William Hyde Price, *The English Patents of Monopoly* (Boston, 1906), pp. 34, 36.
42. Charles McIlwain, "The Transfer of the Charter to New England, and Its Significance in American Constitutional History," *Proceedings of the Massachusetts Historical Society* 63 (1929-30): 54.
43. Quoted in Mellen Chamberlain, "The Transfer of the Colony Charter," *Proceedings of the Massachusetts Historical Society*, 2nd ser. 8 (1892, 1894):110.
44. Charles Deane, "The Forms in Issuing Letters Patent by the Crown of England," *Proceedings of the Massachusetts Historical Society* 2(1859-1860):187.
45. Edward Nicholas, "Journal of 1624 Parliament," mimeographed (Yale University Library), p. 397.

46. See Hannah Arendt, *The Origins of Totalitarianism*, new ed. (New York, 1966). Arendt writes: "it is characteristic of 'imperialism' that national institutions remain separate from the colonial administration although they are allowed to exercise control. The actual motivation for this separation was a curious mixture of arrogance and respect: the new arrogance of the administrators abroad who faced 'backward populations' or 'lower breeds' found its correlative in the respect of old-fashioned statesmen at home who felt that no nation had the right to impose its law upon a foreign people . . . the arrogance turned out to be a device for rule, while the respect . . . did not produce a new way for peoples to live together, but managed only to keep the ruthless imperialist rule by decree within bounds (p. 131). Using Arendt's terms we may view Winthrop as the colonial administrator and Williams as the old-fashioned statesman.
47. See Robert C. Black, III, *The Younger John Winthrop* (New York, 1966), pp. 163ff., 140.
48. Howard M. Chapin, *Documentary History of Rhode Island* (Providence, 1916), 1:215-16. See also Harris, p. 110. Morgan, in *The Puritan Dilemma*, says that even after the burning of Williams' treatise on the patent, before his banishment, he "went on arguing with all and sundry to the effect that Massachusetts ought to send the patent back to the King, with a request that he modify it by omitting all clauses relating to donation of land" (p. 123).
49. Cotton, "A Reply to Mr. Williams," *CW*, 2:46-47.
50. *Ibid.*, p. 47.
51. Morgan, in *The Puritan Dilemma*, p. 125-26, discusses the extent to which, by 1635, Williams had begun to build a basis for political separation and independence in the devoted following of the people of Salem. Perry Miller, in *Roger Williams: His Contribution to the American Tradition*, says: "Because he did thus threaten the very bases of the society, at a moment when the possibility of an Anglican invasion to recover the charter and to reduce Massachusetts to conformity with England was real, the state dealt with him as any state must deal with such agitators" (p. 26). Massachusetts claimed the same, but the real danger was not so much Anglican invasion as nonconformist separation and the implications of recognizing Indian sovereignty. Though Miller misses that point, he claims that Williams' ideas offer "justifications for freedom which may prove more pertinent to our necessities than many of the eighteenth and nineteenth century formulas that have tragically crumbled before our very eyes" (p. 27).
52. Quoted in Chapin, *Documentary History* 1:24-25, from Williams' *Letters*. See also *CW*, 4:407.
53. Jack L. Davis, in "Roger Williams among the Narragansett Indians," *New England Quarterly* 43 (December 1970):603, says, "Williams' intimate acquaintance with Narragansett culture provided the catalyst for both his powerful attack upon New England theocracy and his conception of an ideal commonwealth with which to supplant it." See also James P. Ronda, "Red and White at the Bench: Indians and the Law in Plymouth Colony," *Essex Institute Historical Collections* 110 (July 1974): 200-215.
54. Sheehan, p. 276.
55. See Francis Jennings, *The Invasion of America* (Chapel Hill: University of North Carolina Press, 1975), chap. 8, for a detailed discussion and analysis of some of this evidence.
56. Anthony F. C. Wallace, "Political Organization and Land Tenure among the Northeastern Indians, 1600-1830," *Southwestern Journal of Anthropology* 13 (1957):304.
57. Carl R. Woodward, *Plantation in Yankeeland* (Wickford, R.I., 1971), p. 2.
58. Williams, "Key," *CW*, 1:200; Vaughan, p. 38. Captain Miles Standish, for example, was a hired mercenary among the Pilgrims.
59. For example, Ninigret, Sachem of the Niantics, was the brother of Quaipen (the old Queen or Saunk Squaw), wife of Miantonomo, Sachem of the Narragansetts. Even after Miantonomo's death, she retained his privileged position within the tribe. Williams, "Key," *CW*, 1:223-24; Howard M. Chapin, *Sachems of the Narragansetts* (Providence, R.I., 1931).
60. See Harris, p. 68; Bradford, p. 309; Warner, p. 244.
61. Warner, pp. 241, 246.
62. See Roy Hidemichi Akagi, *The Town Proprietors of the New England Colonies* (Gloucester, Mass., 1924; reprint ed., 1963), and Melville Egleston, *The Land System of the New England Colonies* (Baltimore, Md.: 1886), for detailed information on towns and their proprietors.
63. M. K. Bennett, "The Food Economy of the New England Indians, 1605-1675," *Journal of Political Economy* 63 (1955):370.
64. Williams, "Key," *CW* 1:134-35; Winthrop, *Journal*, 1:108.
65. See Woodward, pp. 39, 40, 45.
66. Warner, p. 233.
67. Williams, "Key," p. 96, mentioned among other foods, strawberries enough to fill a ship.
68. Frank G. Speck, "The Family Hunting Band as a Basis of Algonkian Social Organization," *American Anthropologist* (1915), p. 290.
69. Douglas Edward Leach, *The Northern Colonial Frontier, 1607-1763* (New York, 1966), p. 8.
70. Williams, "Key," pp. 171-72. See also Frank G. Speck and Loren C. Eisely, "Significance of Hunting Territory Systems of the Algonkian in Social Theory," *American Anthropologist* (1939), pp. 269-80.
71. H. W. Henshaw, "Indian Origin of Maple Sugar," *American Anthropologist* (October 1890), pp. 341-51.
72. Darrett B. Rutman, *Husbandmen of Plymouth* (Boston, 1967), pp. 7, 54, 60.
73. Many an English family, that of John Winthrop, Jr., being perhaps the most notable, moved from one farm to another every two or three years. See Richard S. Dunn, *Puritans and Yankees: The Winthrop Dynasty* (Princeton, N.J., 1962); Darrett B. Rutman, *Winthrop's Boston* (New York, 1965); Sumner Chilton Powell, *Puritan Village: The Formation of a New England Town* (Middletown, Conn., 1973); Akagi, *The Town Proprietors*.
74. Ester Boserup, in *The Conditions of Agricultural Growth* (Chicago, 1965), asserts that "Land may be very scarce from the point of view of a tribe of long-fallow cultivators living in a given territory, while from the point of view of European settlers established in the midst of this same tribal territory land may appear to be in abundant supply" (p. 79).
75. "Key," *CW*, 1:180.
76. Anthony F. C. Wallace, p. 318: see also Frank G. Speck, "The Family Hunting Band," p. 290.

77. Washburn, p. 20; Bradford, p. 65. See also Bennett, p. 376.
78. M. K. Bennett, basing his calculations on the piles of grain Williams described in his "Key," states that "a family usually had an annual supply of something like 1680 pounds of storable grain" or 280 to 340 pounds per person, whereas current American consumption of all types of grain is 163 pounds per person (p. 377).
79. Sheehan, p. 269. See note 7.
80. Thus the Pequots were held responsible for the murder of John Oldham on Block Island in order that they might be punished; or, in order to obtain the death of Narragansett Chief Miantonomo, the Sovereignty of Uncas as Miantonomo's captor could circumvent the Puritan inability to find him legally deserving of execution. See Winthrop, *Journal*, 1:186; 2:135.
81. *CW*, 6:219.
82. "Testimony of Roger Williams relative to his first coming into the Narragansett country," June 18, 1682, *CW*, 6:407.