# *The Defense of Indian Land Rights: William Bollan and the Mohegan Case in 1743*

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THE USE OF LAW to subjugate Blacks and Indians in the mainland British colonies forms a major and increasingly familiar part of the development of the Anglo-American legal system in the colonial period. Rare are those instances when subjected peoples gained access to colonial courts to challenge bias or have grievances aired by learned lawyers. But such was the case in 1743 when attorney William Bollan rose before His Majesty's Court of Commissioners to argue in favor of a land claim by the Mohegan tribe to approximately 120 square miles of Connecticut territory long since settled and organized into towns. Bollan's arguments before this court convened in Norwich, Connecticut, constituted a radical departure from the prevailing treatment of Indian tribes in colonial New England. The setting itself was something of a victory for the Indians, for it implied that the tribe had been and continued to be a distinct polity within the British Empire, equal to Connecticut in the eyes of the Crown and therefore meriting a higher court of jurisdiction than any Connecticut court could provide. Jurisdiction itself was one of the issues at stake. Bollan argued that this large section of southeastern Connecticut had been illegally appropriated by colony and settlers,

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that the lands in question had been expressly reserved by the tribe 'to plant and hunt in, and which were absolutely necessary for them,' in order for their 'continuance as a people.'[1] Bollan declared before the court that the record of Connecticut's transactions with the tribe showed that it still owned the disputed lands, and that this territory should be swiftly restored to it. The origins and significance of such a remarkable defense of Indian land rights in the colonial period merit close examination.

The fact that such a defense could be mounted in an English court was not a signal of fundamental changes in attitudes towards native American peoples. Bollan was no prescient precursor of the belief in cultural pluralism which informs Indian policy today. He was neither an intellectual descendant of Roger Williams, one of the first defenders of native sovereignty in colonial New England, nor did he possess any affinity with Enlightenment philosophers and their fascination with the 'noble savage.' From the first hearing of the suit in 1705, through its revivals in 1738 and 1743, down to its final adjudication in 1773, the Mohegan case had always been more of a conflict between the partisan interests of colonists in Mohegan lands than a principled defense of tribal culture. Ironically, Bollan primarily served the interest of a once powerful, but now declining, colonial family—the Masons—when he devised his defense of Indian land rights.

Yet in the partisan wrangling that ensued, the complex issue of Indian rights was introduced into legal discourse with unprecedented vigor. Bollan's presentation offers an avenue for exploring how questions of Indian policy were defined and articulated during a period when the number of disputes between individuals,

1. Quotation from *Governour And Company of Connecticut, And Moheagan Indians, By Their Guardians: Certified Copy Of Book Of Proceedings Before Commissioners Of Review, 1743* (London, 1769), pp. 87–88, hereafter cited as *Book of Proceedings*; an excellent narrative of the case is contained in Joseph Henry Smith, *Appeals To The Privy Council From the American Plantations* (New York: Columbia University Press, 1950), pp. 417–33; for examples of the use of law to subject Blacks and Indians, see A. Leon Higgenbotham, Jr., *In the Matter of Color: Race and the American Legal Process–The Colonial Period* (New York: Oxford University Press, 1978); Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (New York: W. W. Norton, 1976), ch. 8.

colony governments, and the Crown over the administration and disposition of Indian lands was increasing. When Bollan entered into the Mohegan case in 1743, the Mason family and its allies looked to the Crown to champion Indian rights in order to wrest control over Indian lands from the colony of Connecticut. In serving the Masons, Bollan proceeded to challenge English cultural mores by outlining a new set of assumptions and rules by which relations with Indians were to be governed. Indeed, his presentation offers a formal expression of something approaching an Indian perspective on relations between the races. However clouded the motivations, the legal process in this corner of the Anglo-American world produced a vigorous defense of Indian land rights. Through his pleas for equity in law for the Mohegans, Bollan articulated the growing pressure to clarify and centralize Indian relations in the North American colonies as a whole in ways which would accord to Indians some degree of recognized right in English law to the lands that they occupied, and define regular procedures by which that right might be extinguished. Thus the background and course of this conflict over Mohegan lands reflects the slow and tortuous process by which Euro-American treatment of native peoples in law was gradually transformed.

To understand the origins of the legal confrontation in 1743, it is necessary to survey the sometimes contradictory series of documents recorded in the seventeenth century chronicling the relations between the tribe, the colony, and the intermediary between them, the Mason family. The foundation for Bollan's arguments was his contention that the Mohegans had once 'owned' and continued to possess an interest in the disputed lands.

Beginning in 1640, Connecticut authorities recognized Mohegan 'title' to all the land from the Connecticut River east to the Narragansett territories, almost all of modern eastern Connecticut. This recognition was not extended out of respect for native definitions of territorial sovereignty, or tolerance of the continued presence of a tribal subculture in the developing colony, but be-

cause Connecticut colonists were moving into the area without the authority of a royal charter, and because the Mohegans wielded a considerable military presence in the wake of the conquest of the Pequots, who had formerly controlled most of the territory. By recognizing ownership of the land by their Mohegan allies before purchasing it themselves, the Connecticut interlopers hoped to establish some type of legal basis for their occupancy until they could obtain a royal charter to consolidate their title.[2] Acquisition of title from the Mohegans provided one way station to a formal grant by the Crown, a status which Massachusetts colonists had enjoyed from the beginning of settlement. It also provided the fledgling Connecticut government with a basis for resisting claims to the territory from other British colonies, the Dutch, and favorites of the Crown seeking grants for themselves.[3] Thus the Mohegan tribe—represented by the Sachem Uncas became the source of deeds and agreements for an upstart colony with a shaky foundation and an uncertain future.

2. Francis G. Hutchins, 'Asserting Jurisdiction Over Indians in Connecticut and Massachusetts Bay, 1630–1717' (manuscript, June 1982, in the author's possession) pp. 2, 13–14, 17–19; James Warren Springer has argued that New England colonists routinely recognized native land ownership even in Massachusetts, which possessed a royal charter from the start. He believes that revisionists like Jennings have exaggerated the subterfuge and naked aggression of colonists. Springer does show that numerous deeds were negotiated, but fails to question if the sachems and their followers fully understood the implications of these deeds. Some deeds awarded Indians the continuing right to hunt over the land, but colonial authorities obviously considered these rights to be temporary until clearing and settlement occurred. The prescribed future for Indians in Massachusetts was conversion and settlement in Christian Indian towns or expulsion. Indian title was recognized only as an expediency. James Warren Springer, 'American Indians and the Law of Real Property in Colonial New England,' *The American Journal of Legal History*, 30 (1986): 26–58. For the establishment and history of the Indian towns see Neal Salisbury, 'Red Puritans: The Praying Indians of Massachusetts Bay and John Eliot,' *William and Mary Quarterly* 21 (1974): 27–54; Daniel Mandell, 'To Live More Like My Christian Neighbors': Natick Indians in the Eighteenth Century,' *William and Mary Quarterly* 3rd Ser., 48 (1991): 552–79.

3. Massachusetts, New Netherland, and a group of Englishmen organized as the Saybrook Company all laid claims to Connecticut. Thomas Hooker, leader of the Connecticut River Valley colonists, initially accepted subordination to both Massachusetts and the Saybrook Company. The Connecticut River towns, however, quickly became the nucleus for a separate colony independent of Massachusetts and succeeding Saybrook. The Warwick Patent issued to the Saybrook Company became another legal tool used by the Connecticut government formed in 1636 to justify its legal existence. See Jennings, pp. 196–201; Richard S. Dunn, *Puritans and Yankees: The Winthrop Dynasty of New England, 1630–1717* (New York: W. W. Norton Press, 1971) pp. 67–69, 120–21; Neal Salisbury, *Manitou and Providence: Indians, Europeans, and the Making of New England, 1500–1643* (New York: Oxford University Press, 1982) p. 226.

At the same time that the Connecticut government laid claim to territory purchased from the Indians, it unilaterally assumed jurisdiction over them. In 1638, the General Court made sachems liable for the killing of any English cattle or swine by Indians under their authority. A 1660 statute forbade any Indians from dwelling within a quarter of a mile of English towns. Treating sachems as agents of the government in charge of seminomadic villages whose movements might sometimes disturb English settlements and, therefore, need firm direction, the General Court tolerated tribal autonomy as long as it did not interfere with the colonists' expanding use of the land. While there was room enough for Indians to move about in seasonal migrations and for hunting during most of the seventeenth century, Connecticut exerted its authority only when necessary.[4]

Of all the Connecticut tribes, the Mohegans enjoyed the most autonomy because of the assertiveness of Uncas (d. circa 1683), the warriors he could field, and his alliance with the English in the Pequot War in 1637 and in King Philip's War in 1675–76. Connecticut authorities made formal agreements with the tribe as late as 1683. But whatever temporary concessions were made to tribal autonomy in these agreements, Connecticut ultimately planned to impose a unitary English legal system.[5]

To this end the Connecticut government negotiated a deed for all of the Mohegan lands in 1640 in exchange for a few trifling gratuities, but the government continued to recognize Mohegan

4. Hutchins, 'Asserting Jurisdiction,' pp. 2–7. Neal Salisbury describes the uneasy coexistence of colonists and Indians between 1637 and 1675 in his 'Indians and Colonists in Southern New England after the Pequot War: An Uneasy Balance,' in *The Pequots in Southern New England: The Fall and Rise of an American Indian Nation*, ed. Lawrence M. Hauptman and James D. Wherry (Norman: University of Oklahoma Press, 1993), pp. 81–95.

5. Hutchins, ibid. In the period between 1637 and 1683, or until the death of Uncas, misunderstandings on the part of both English and Mohegans about the present and future terms of coexistence could be smoothed over in a perfunctory way by periodic agreements and bargains. On a small scale, the balance of English jurisdiction (real and intended) and Mohegan autonomy (reduced but still operative) is analogous to the 'middle ground' that Richard White describes for the Great Lakes area. *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815*, (New York: Cambridge University Press, 1991), pp. 50–93. Connecticut did not devise 'Praying Towns' as an alternative legal status for Indians.

ownership of all unincorporated lands in succeeding decades. This was perhaps because so little was given for the land in 1640, and because Uncas himself continued to believe that he owned or possessed rights to the use of the land. Connecticut relied on Major John Mason (d. 1672)—a colony leader who had served with Uncas in the Pequot War—from midcentury until his death to maintain good relations with the tribe. In 1659, it was deemed necessary to acquire a second deed to the lands, this time in Mason's name. Although Connecticut already assumed de facto jurisdiction over all tribes, Mason formally turned jurisdiction of the lands over to the colony the next year. For his services the government gave Mason the right to survey a 500-acre farm for his personal property, and invested him with the authority to 'lay out' new plantations on the lands as the need arose. The colony's other leaders probably chose to leave this vast territory in Mason's name in case upcoming negotiations for a charter should fail and Connecticut come under the control of alien royal officials. At the same time, the tribe received assurances from the government that it 'shall be supplied with sufficient planting ground at all times, as the court sees cause, out of that land.'[6]

Although never stated explicitly, Connecticut and Mason appear to have created a Mohegan land trust controlled by Mason with the condition that he take only 500 acres for himself. It was intended that the rest of the land would eventually be sold, presumably by Mason, to groups establishing new towns. Every member of the government, including Deputy Governor Mason, rejoiced when Governor John Winthrop, Jr., negotiated a self-governing charter from the Crown in 1662. By it, the Connecticut government acquired a new legal authority on favorable terms. While the charter, of course, granted Mohegan lands to the colony, the Indians were not even mentioned. Major Mason still held personal title to the lands acquired in 1659, and he and his heirs would continue to treat the lands as property to be organized and sold at their will.

6. *Book of Proceedings*, pp. 151–52, 46, 42–43.

The legal landscape of eastern Connecticut became still more muddled when Major Mason made independent agreements with the tribe in following years. Although the colony had authorized him to dispose of the land, in 1665, he agreed to share half of all the proceeds of the sales of the lands with Uncas. This formal reinvestment of interest in the land with the tribe may have been to appease Uncas as his former hunting territory gradually became more constricted, or Mason may have decided to strengthen his claim in relation to the colony government by sharing it with Uncas. In any case, the agreement was confirmed by Uncas in 1671 when Mason—acting on his own initiative—entailed an eight-by-four-mile tract of land between New London and Norwich for the perpetual ownership of the tribe.[7] Clearly Mason intended to sell everything except these sequestered lands and split the profits with the tribe. First sanctioned by the colony and now in close cooperation with the tribe, Mason had carved out for himself and his heirs the power to organize and sell vast amounts of land in eastern Connecticut.

Through the 1670s and 1680s, the interests of the colony and those of Major Mason's heirs—Samuel and John Mason—did not conflict directly. But the ambiguity of agreements made before and after the grant of the charter offered potential for conflict as lines of authority, power, and patronage shifted. Just before the death of Uncas in or about 1683, the colony executed a new treaty with the tribe in a League of Amity. In this new agreement the colony appears to have asserted its own rights to the land, while giving assurances to the tribe of its obligations to its faithful ally in past wars. Even though the Masons held title to the land, Uncas now resigned to the colony 'all my lands and territories' to be disposed of in 'plantations, villages or farms according as the general court shall order and determine.' In return, Uncas was promised 'reasonable satisfaction' for the property as it was sold and a 'sufficiency' of land to plant. Governor Fitz-John Winthrop later

7. Ibid., pp. 46–47, 41–42.

explained that treaties such as the League were intended to flatter the tribe's pretension to be a separate nation holding land in Connecticut:

> As for our making articles with ye Indians as if they were a separate nation & not dependent on us, it must be acknowledged ye Articles of Agreement are very imprudently worded, and through the weakness or carelessness of the scribe may be wrested to such an end, and made to look as if they were a distinct nation & not subjected to the obedience of the Crown. But in those days, as accuracy of expression or form was not much studied here, so neither was the thing thought so considerable as to require much.

The articles were written, Winthrop declared, because the Indians desired a ceremonious renewal of their ancient friendship with the colony and were 'humored therein.'[8] Ominously, the league treaty made no mention of the Masons' privileges in the land; but in 1692, the colony granted the new sachem Oweneco's request that none of the tribe's lands be sold without Samuel Mason's consent.[9] Thus the Masons still acted as intermediaries between colony and tribe, still exerted control over the sale of lands, and still presumably profited from their disposal. Yet the colony's recognition of the Masons' role in 1692 was fleeting compared to that accorded Major Mason in 1659–60.

The family's influence declined after Major Mason's death, and their connection with the tribe became less valuable as the Mohegans' potential to disturb English colonists diminished. Just a few years later, the colony began to make grants out of the land without consulting the Masons. The General Assembly rewarded Governor Winthrop and Gurdon Saltonstall in 1698 with grants of Mohegan lands for saving the colony's charter in the wake of the collapse of the Dominion of New England government. A parcel

8. Ibid., pp. 39–40, 34–37; *Collections of the Massachusetts Historical Society: The Winthrop Papers*, Sixth Series, vol. 3 (Boston, 1889), p. 350. Samuel Mason was Major Mason's son. Captain John Mason was his grandson. Captain Mason's sons Samuel and John assumed responsibility for the case after the Captain's death in 1737. Theodore West Mason, *Family Record In Our Line of Descent From Major John Mason of Norwich, Connecticut* (New York: Grafton Press, 1909), pp. 14, 15; *Book of Proceedings*, p. 67.

9. *Book of Proceedings*, p. 43.

known as the Mohegan hunting grounds became part of the town of Colchester when it was organized in 1699 and enlarged in 1702; the sequestered lands were annexed to the town of New London in 1703.[10]

These grants may in part have been acts of political retribution, for the Masons had become bitterly estranged from the Winthrop family for political reasons by the 1690s. The rancor ran so deep that the Masons forged an alliance with enemies of Governor Fitz-John Winthrop in and outside of the colony who were already involved in schemes to annul the colony's charter and make Connecticut into a royal colony to topple Winthrop and his associates from power. The Masons perceived a means to link their grievances over the grants with this assault on the charter, and in 1703, they filed a suit in the name of the tribe against the colony for the recovery of the land. It was crucial to the success of these related endeavors to have the suit heard by a royal court, and the Masons and their allies turned to the seventeenth-century treaties and agreements to define the tribe as a sovereign entity within the British Empire equal to the colony before the Crown. Thus they justified their request for the creation of a court of royal commission as the first court of jurisdiction for the land suit. Moreover, they exercised enough influence to get royal governors Joseph Dudley of Massachusetts and Lord Cornbury of New York—both of whom coveted Connecticut—appointed judges of the court, together with other supporters of the imposition of royal rule over the colony. The Mohegan suit became a tool not just to answer the Masons' grievances over land but also to introduce the Crown's influence in the colony's affairs at a crucial juncture. A decision in favor of the tribe against the colony might increase the existing momentum to annul the Connecticut charter.[11]

Not surprisingly, this court of commission readily decided in favor of the tribe in 1705 with little or no consideration of the

10. Ibid., pp. 52, 53–54, 148–50, 45, 177–81.

11. Dunn, *Puritans and Yankees*, pp. 328–55; Smith, *Appeals to the Privy Council*, pp. 417–22; Jonathan Trumbull to William Samuel Johnson, June 16, 1767, Trumbull Papers, Connecticut Historical Society.

evidence. Governor Winthrop, however, refused to recognize the authority of the court to hear and determine the suit; he launched an intensive correspondence with connections in London to void the decision. He wrote to Sir Henry Ashurst, Connecticut's official agent in London, that 'it is well enough known that the setting [of] Oweneco [son and successor of Uncas] to be ye proprietor of such lands is only under that pretence to gain ye land to themselves.' And 'it was very apparent, by Mr. Dudley's managements' of the court proceedings 'that his design was to make that advantage of it.' Ashurst formally appealed the decision, accusing the commission judges of mercenary designs on the land, and managed to block the convening of yet another set of commissioners appointed to review the 1705 decision. As Dudley's own influence at Court weakened, interest in the suit at Whitehall lapsed, and the 1705 decision in favor of the tribe was left unexecuted. In the next decade, Captain John Mason became so discouraged that he began to sell quitclaims of his interests in the disputed lands to still-nervous occupants.[12] The issue of native rights to Connecticut territory—and the legality of the colony's appropriation of those rights—which had emerged so suddenly, now seemed destined to be shunted aside. By 1723 the colony's leaders were so confident that they had buried the issue that they granted permission to Captain Mason—now apparently short of money—to live on the approximately 4,000 acres that the colony had finally settled on the tribe. His mission was to 'civilize' and 'christianize' the Mohegans.[13]

Mason remained quiet at Mohegan for the next ten years, asking only that the General Assembly reimburse the money he had spent on the suit in 1705. The rebuff may have embittered him, for the decision in favor of the tribe still weighed on his mind. It was a legal text of great implicit power. In the early 1730s, Mason took steps to reopen the suit by recruiting support among the Mohe-

12. *Winthrop Papers*, pp. 304–8, 324–27; 349–54; 378–81; Smith, *Appeals to the Privy Council*, pp. 427–29; Quitclaims of John Mason, Papers of William Samuel Johnson, vol. 3, Connecticut Historical Society, microfilm nos. 0131–0151; *Book of Proceedings*, pp. 199–200.

13. *Book of Proceedings*, pp. 189–95, 83.

gans and from potential patrons outside the colony. In 1735, Mason unsuccessfully importuned the governors of Rhode Island and Massachusetts and leaders of the Society for the Propagation of the Gospel for their support and then sailed to England with Mahomet, a Mohegan who claimed he was the rightful sachem. In London, Mason triumphed in the labyrinth of court politics by persuading the Privy Council to appoint another court of commissioners to review the 1705 decision. His personal triumph was short-lived for both he and Mahomet died in London before this new court could be convened in Connecticut in 1738, but his sons Samuel and John—already active in the affair—carried on.[14]

It is probable that Captain Mason first made contact with William Bollan, who would become a key player in the case, in Boston before his final journey to England. Bollan and his friend and patron William Shirley were both English-born attorneys who had come to Massachusetts in order to make their fortunes in the imperial bureaucracy. Shirley had been appointed advocate general by 1733, and Bollan assisted him. By 1738, both had become infamous in Massachusetts for their aggressive prosecution of smugglers in civil and admiralty courts. Between 1734 and 1739 they represented the Crown in a protracted case involving the Crown's right to colonial mast trees reserved for the Royal Navy. Bollan himself favored the enactment of parliamentary legislation that would enlarge the jurisdiction of the admiralty courts to cover 'all offenses whatsoever past and future against the Acts of Trade.' He believed that the Crown must assert its authority in the colonies or forever lose it: 'Unless effectual measures are speedily taken, to stop this growing evil, the illicit traders will by their numbers, wealth and wiles have got such power in these parts that laws and orders may come too late from Great Britain to have their proper effect.'[15] Thus Shirley and Bollan were the ideal prosecutors of a

14. Mary Kingsbury Talcott, ed., *The Talcott Papers: Correspondence and Documents During Joseph Talcott's Governorship of the Colony of Connecticut*, 1727–1741, Connecticut Historical Society Collections, 31 vols. (Hartford, 1896), 5: 384–97, 53–62, 120–21; Collections (Hartford, 1892), 4: 330–31, 331–33, 368–72. Order of citation reflects chronology in text and editor's organization of documents. Smith, *Appeals to the Privy Council*, pp. 429–32.

15. John A. Schutz, *William Shirley: King's Governor of Massachusetts* (Chapel Hill: Uni-

suit which promised to strengthen the Crown's authority and prestige in its colonies by making it the supreme arbiter between them and Indian tribes. Connecticut would be made to feel the imperial presence of aggressive offcers of the Crown despite its shield of chartered privileges.

Bollan and Shirley first appeared on behalf of the Masons and the Mohegans before the 1738 commission court, but the majority of the judges so obviously manipulated the proceedings in favor of Connecticut that the two attorneys left the court in disgust and protest. Upon hearing yet another appeal from Samuel Mason in London, the Privy Council discarded this decision and appointed a new set of judges to hear the case.[16] The third commission court which convened in May 1743 in Greenwich, Connecticut, before moving to Norwich, was the first occasion when all parties (with the Mohegans still dependent on intermediaries) received a hearing. Meanwhile, Shirley had maneuvered appointment as the royal governor of Massachusetts, leaving Bollan to handle the suit alone.

On the other side, the Connecticut government had engaged attorney William Smith, of the illustrious New York family, to explain the apparent contradictions in the history of Connecticut's transactions with the tribe. In his initial statements to the court, Smith naturally sought to emphasize the importance of the earliest documents showing transfer of title. He argued that the colony had first obtained title to the land by the 1640 deed after the Pequot War, and again through Mason *for* Connecticut in 1659, and then by charter of the Crown in 1662. Smith declared that the charter represented confirmation of title to territory already obtained through conquest of the Pequots and purchase from the Mohegans, and that Mason's acquisition of title to a 500-acre farm in 1659 was a reward for his service as colony agent. As for the

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versity of North Carolina Press, 1961), pp. 4–19, 26–29; Malcolm Freiberg, 'William Bollan, Agent of Massuchusetts,' *More Books: Bulletin of the Boston Public Library* 25 (1948): 45–49; Letter from Advocate General Bollan, Feb. 26, 1743, *Boston Public Library Historical Manuscripts*, No. 1 (Boston, 1900), p. 3.

16. *Talcott Papers*, Connecticut Historical Society Collections, 5: pp. 139–59; *Book of Proceedings*, pp. 77–81.

colony's subsequent recognition of Mohegan ownership of territory which seemed to contradict previous agreements, Smith contended that such acts must be viewed in light of the difficulty of dealing with Indians. These were acts of expediency taken to placate Indians who mistakenly believed that they still owned, or at least shared, the land. Connecticut had always 'behaved with great kindness and tenderness' toward its Mohegan allies, and indulged the 'prejudiced opinion of the said Sachems, in favor of their pretended right.' It was 'in condescension to those opinions those Indians were prejudiced with' that Connecticut had 'agreed that something should be paid for those lands as they from time to time should be settled by the English.' And it was with this intention that the colony had authorized a survey of the boundaries of Mohegan territories in 1683 and 1684 'the better to know when a plantation was within and when without their ancient territories.' Smith declared that this policy had been one of 'extraordinary kindness.'[17] In comparison to Connecticut's treatment of the Pequots, and in light of Puritan attitudes towards Indian culture in general, it was indeed a step beyond what Connecticut leaders from one generation to the next felt obliged to do. Smith could make these claims for liberality seriously.

Smith's interpretation emphasized Connecticut's benevolence in preserving any land for the tribe. This was why the traditional seat of the tribe between New London and Norwich—part of the tract sequestered by Major Mason in 1671—had been annexed to the town of New London in 1703. When a committee appointed by the General Assembly had, in 1721, settled 4,000 acres from the tract on the tribe in perpetuity, it fulfilled the colony's obligation to reserve planting ground for the tribe. Smith contended that the colony had saved this acreage from the avaricious designs of colonists at large, including those who had sought their 'own interest on the ruins of the said Indians' rights'—namely those parties who had launched the suit in 1703 and now revived it.[18]

17. *Book of Proceedings*, pp. 77–81.
18. Ibid., pp. 81–83.

Smith also sought to diminish the role of the Mason family by asserting that they presumed too much in claiming to be the true guardians of the tribe from the seventeenth century to the present. He emphasized that it was only by the government's permission that Captain John Mason had gone to live among the Mohegans in 1723. Once there he had betrayed the government's trust by stirring up 'new controversies on the old foundation.' In defense the colony had secured from Sachem Ben Uncas a release from all the tribe's land claims, prompting Mason to agitate for the election of a new sachem, the ill-fated Mahomet. This meddling notwithstanding, Smith continued, the tribe remained subject to the government's direction, not the Masons.' And if the colony had not interposed for the tribe, the Mohegans 'should have possessed no lands. . . nor even so much as have been a distinct people in this country.' The law enacted by the General Assembly declaring no time limit on suits for the recovery of lands expressly reserved for Indians,[19] was, Smith declared, proof of Connecticut's benevolence.

In making the case for Connecticut, Smith, of course, was aware of the muddled nature of its transactions with the tribe over the past century. At one point he lamely asserted that 'great favour is due to all acts relating to property which are done in the infant state of any country, and nicety of forms are not to be expected under such circumstances.' His arguments were an attempt to explain away all contradictions to the 1640 deed as kindly gestures to the Indians. He apparently did not dare to discuss the authorization given to Major Mason to supervise the laying out of plantations on the land obtained by the 1659 agreement, a privilege which would seem to enable him to entail the eight-by-four-mile tract for the tribe in 1671. This was much more than the 4,000 acres that Connecticut finally set aside in 1721. But whatever the holes were in his arguments, Smith knew that he could rely on the

19. Ibid., pp. 83–84. After Mahomet's death the Masons supported John Uncas as the rightful sachem, and a majority of the tribe renounced Ben Uncas in favor of John. Pp. 218–9, 229–32, 226–29.

reluctance of the commissioners to evict the colonists occupying the disputed lands. Toward the end of his remarks, he reminded the judges of this long-standing occupation and what a decision in favor of the tribe might mean. 'Many people in this colony have honestly purchased and settled, and made improvements on divers parts of the lands . . . and have lived and spent their days thereon, some twenty, some forty, some fifty, some sixty, and some seventy years; and that the number of said families do now amount to five or six hundred or upwards; the dispossessing of them would ruin them, and tend to the demolishing of many Christian churches, and depopulating a considerable part of the colony, and turning it once again into wilderness.'[20] All legal questions aside, Smith implied, should the occupation of lands by English colonists be disturbed for the sake of Indians?

When it was Bollan's turn to address the court, he requested a copy of Smith's remarks and examined them for several days while the court adjourned. When the court reconvened, he was prepared to attack Smith's arguments systematically point by point. Bollan offered fresh interpretations of the crucial documents. All of Connecticut's actions to pacify, placate, and flatter Uncas became grist for his central argument that any acknowledgment of native title must be considered legally binding and used to judge the legality of purchases made from time to time by various parties. Had the Mohegans been treated fairly? This was a new question. Connecticut's recognition of Mohegan ownership, originally an expedient to get some kind of legal text, now became the foundation for a re-examination of colony-tribe transactions from something approaching an Indian perspective.

First, Bollan presented himself as the mouthpiece, the spokesman for the Mohegans. Although he probably never consulted with anyone except the Masons on the suit, his statements before the court were studded with expressions like 'the Indians say,' the 'Indians insist,' or 'beg leave to observe.' This style of address became an important means for introducing the Mohegans as

20. Ibid., p. 85.

something other than the mere objects of policy decisions, as all colonists were inclined to think of them, but rather as historical actors with intentions and policies of their own from initial contact with the English to the present. In well-chosen words Bollan portrayed the Mohegans as 'receiving' the English into their country, as hosts entertaining new friends and allies, noting that 'from time to time' the Indians 'spared' these few colonists 'divers parcels of their lands.' Bollan dismissed the 1640 deed of all Mohegan lands as fraudulent, because Uncas had not signed it, and invalid in light of subsequent transactions. It was because the Mohegans gradually discovered that some Englishmen were 'full of craft and guile' that they had turned to Major Mason and later his heirs and 'made use of him and his family as instruments to prevent their being cheated by any fraudulent or unfair purchase of their lands.' It was through Mason that the Mohegans hoped to preserve 'a sufficient portion of their lands' for hunting as well as planting, which was 'absolutely necessary' for 'their continuance as a people.' Major Mason became, in Bollan's interpretation of the 1659 transaction, a trusted agent to whom the tribe turned in order to protect its interests *under English law*, not as a one-time agent of the colony called on to assist in the acquisition of a title to bolster a formal application to the Crown for a royal charter.[21] Whatever Connecticut had intended in 1659, the Mohegans had possessed other intentions in giving title to Mason.

Subsequent events and treaties were given the same interpretation from an allegedly Indian perspective. The charter issued to the colony in 1662, Bollan insisted, had no effect on title to the lands under dispute. The charter did not automatically confer Mohegan lands to the colony government, for 'the Indians say' that King Charles II never intended 'to pass' to the colony 'the lands of friends and allies' when he granted the charter. Rather the effect of the charter was 'to make such of their lands become part of the English colony as should from time to time be fairly purchased from them.'[22] Connecticut leaders back in the 1630s had

21. Ibid., pp. 87–88, 90.
22. Ibid., p. 91.

acknowledged Mohegan title mainly because they lacked a charter for the lands they settled; now Bollan insisted that Mohegan title took precedence over the charter because it had been granted after the tribe had placed its lands in the hands of Major Mason in order to preserve them.

Bollan attacked Smith's contention about the 1681 League of Amity in the same spirit. In this treaty the colony had agreed to survey the original boundaries of Mohegan territory to ascertain when a new township lay within that territory so that compensation could be rendered. While the colony now maintained that it had already acquired full title to all Mohegan territory several times over at the time of this survey, the survey nevertheless defined on paper great portions of land as still being part of the original tribal lands. Bollan contended that this text must be interpreted literally as proof of continuing Mohegan interest in the land without the unwritten sub-text that Connecticut attached to it. Any other interpretation must be dismissed as rank duplicity. According to Bollan, the Mohegans had never given up full title to their lands in the colony, so that when those portions of the land were granted and sold without the Masons' permission in the 1690s, the colony was illegally encroaching on tribal lands. Such violations of native sovereignty, Bollan warned, could have implications for relations with other tribes: For 'if the English colonies be permitted to explain away, or rather contradict and depart from their treaties . . . the Mohegans cannot but say, that the English interest must finally suffer among the Indian nations, to whom such prevarication and injustice is abhorrent.'[23] Along with his portrayal of the Indians as the more honorable party, Bollan tried to make the suit into a precedent upon which imperial relations with other, still powerful, tribes might hinge.

Having argued that Indian intentions in regard to land be considered to carry as much weight as English intentions, Bollan sought to overturn the procedural assumptions that had informed Connecticut's transactions with the tribe over the course of the

23. Ibid., pp. 91–92.

seventeenth century: namely, the assumption that sooner or later the Indians must be displaced from the vast bulk of their lands by English families. Bollan insisted on the right of the Mohegans to negotiate the most favorable terms for coexistence. In a significant series of statements, he pointed out that agreements had taken the form of written English language. And the Mohegans had been and continued to be 'unskilled in letters.' The predecessors of their present adversaries in court had penned the disputed treaties and agreements, and 'doubtless took care to express matters favorably for their own interest.' Bollan suggested that the Mohegans had never completely understood the letter and implications of these legal texts. Indeed, the evidence collected by Samuel Mason from the Mohegans as late as 1703 included the Indians' bewilderment over the increasing loss of land. Appagese had declared that 'from a boy their ground and he grew up together, and they have always been friends to the English, and why our land and we should be parted now, we know not.'[24] If the Indians—sachems or followers—had not understood the treaties, then how could they possess 'legal' validity?

Here Bollan came close to discrediting the 'texts' of Connecticut-Mohegan relations altogether. In his own way, Smith had already discredited some of these texts by pointing out that while they might state one thing, they actually meant another. Language masked intentions; words were at odds with truth. And both Smith and Bollan acknowledged that some of these texts contradicted others, throwing the meaning and validity of all into question. Indeed in these comments on language, Bollan came close to pursuing a line of reasoning akin to Roger Williams's exploration of the relation of language to truth in his *A Key into the Language of America*. Written a century earlier, the *Key* had tested the authority of Puritan texts by exploring language as a basis for the construction of reality. Williams presented the complexity and distinctiveness of the Indians' relationship with their environment by carefully delineating the words and phrases that they used to order

24. Ibid., pp. 92, 57–58.

and describe it, and legitimized this perspective as an 'American language' worthy of investigation in its own right. In some ways the *Key* was an elaboration of previous arguments by Williams contesting authoritative texts and interpretations issued by Winthrop and other Puritan leaders, challenges which had placed Williams on the margins of New England society and sharpened his critical perspective on it. In comparing English language and authoritative discourse with that of Indians, Williams took steps to free himself from an unreflective slavish adherence to the former, and establish a new tolerance and respect for the latter, implicitly challenging Puritan assumptions concerning Indians in formal and informal discourse.[25] He invited readers of the *Key* to converse with Indians in a manner which did not presume Indian culture to be something which must be subdued and made to conform to Puritan precepts.

But Bollan did not pursue the question of language to this degree. It was not for him to travel down any argument to ultimate conclusions as Williams was prone. He was a lawyer; texts were his business. To prove the sanctity of some texts over others for his primary clients, the Masons, Bollan sought to use the 'issue' of the exercise of power through language by the English as a factor to weigh and interpret—not discredit—the texts under collective consideration. Thus, Bollan argued that the 'most favorable construction for the said Indians, as they conceive, should be put upon these writings.'[26] Bollan did not reject English legal texts as alien and, therefore, irrelevant for Indians, but pleaded for a special category of law to guide adjudication of disputes between Indians and the English. Bollan sought to include Indian land rights under the umbrella protection of law, interpreting English law not as a tool to overwhelm or placate native peoples as circumstances required, but as an abstract impartial force to which Indians as well as colonists might turn to establish and protect their interests. Bollan stood colonial assumptions on their head by asserting that

25. Christopher D. Felker, 'Roger Williams's Uses of Legal Discourse: Testing Authority in Early New England,' *New England Quarterly*, 63 (1990): 624–26, 644–47.

26. *Book of Proceedings*, p. 92.

Indian disadvantages in English legal procedures must be acknowledged and compensated for when rendering judgment. This, of course, invested greater validity in the agreements made between the Mohegans and their 'trusted' advisors, the Masons, from one generation to the next. The Masons had, after all, spoken to them in their own language.

Such a strategy sometimes led Bollan to make statements at variance with the Masons' own actions. Smith had argued that the annexation of the traditional tribal seat to the town of New London in 1703—one of the precipitants to the suit—had been executed in order to help secure lands for the Indians. But Bollan responded that the Indians 'have quite contrary sentiments of that proceeding: for as their policy, customs, and manners differ widely from those of the English (which they neither despise nor can approve) so they, by no means, like to be so mingled with them.' It was not just that the Indians preferred to keep their distance culturally, they had found from experience that such 'close habitation to the English' had a direct tendency 'to drive them away from their ancient possessions.'[27] In 1723, Captain John Mason had gone to live among the Mohegans in order to 'civilize' them. Now his attorney argued that it was Mohegan policy to maintain a cultural and geographic distance from the multiplying numbers of colonists. Bollan's logic carried him to the repudiation of all missionary endeavors, even, seemingly, his own client's during the past two decades.

Bollan left no argument put forth by Smith untouched to make the case for reaffirming the 1705 judgment in favor of the tribe. He castigated Connecticut for interfering with the internal affairs of the tribe. Reserving a special venom for the disavowal of the suit obtained by Governor Talcott from Sachem Ben Uncas, the only sachem the colony would recognize, Bollan stated that the tribe had deposed this sachem, who had become merely 'the head of a corrupt party or faction, seduced, deluded, and made by a little money.' Bollan declared that the Indians 'insist' that 'they are a

27. Ibid., p. 93.

free and independent people, and have the sole right of settling and determining all differences arisen among them touching their sachems.'[28] Connecticut, of course, regarded the fact that it had extended any recognition at all to tribal government as another liberal gesture—more flattery—on the part of its leaders, especially after the death of the forceful Uncas. Bollan interpreted the limited autonomy enjoyed by the tribe in the seventeenth century as the basis for carving out an independent status for it in the eighteenth century. Connecticut could not be a guardian of a tribe with whom it had negotiated treaties in the past. Just as the Mohegans could elect their own sachems, they could choose their own guardians on the basis of trust. And the Mason family, Bollan asserted, 'has at all times discharged their whole trust in them' with 'the utmost fidelity, having spared no labour . . . to promote the interest of the tribe, and preserve their estate.'[29] Besides, the Crown had recognized the Masons as guardians in formal texts, and it was to the Crown that the Mohegans had come for justice.

As for the English colonists who occupied the disputed lands, some for several generations, Bollan dismissed their situation as irrelevant. He answered Smith's plea for sympathy for these tenants with a restatement of Connecticut's own law providing that there be no limitation of time for Indian suits for the recovery of lands. Besides, when the original judgment in favor of the tribe had been rendered in 1705, the English tenants of the land had generally been 'modern,' or recent occupants.[30] Connecticut's subsequent refusal to honor the 1705 decision in favor of the tribe had permitted the colonists to multiply on the land which had been deeded to the Mason family back in 1659 to protect and preserve it, and to insure that the tribe receive compensation if and when it was sold. The Mohegans, Bollan claimed, had always intended to reserve territory for hunting as well as planting needs, and since the colony had arbitrarily granted these lands in the

28. Ibid., pp. 94–95.
29. Ibid., pp. 95–96.
30. Ibid., pp. 96–97.

1690s and 1703 without the Masons' permission, the tribe still owned these lands.[31]

Bollan chose to put the best face he could on the confusing, contradictory record of transactions with the tribe by exaggerating the beneficence and disinterest of the Mason family from one generation to the next. To be sure, Major John Mason had acted in 1671 before his death to entail the eight-by-four-mile tract, approximately 20,000 acres, for the Mohegans in perpetuity, but neither he nor his heirs who launched the suit had ever intended to reserve the other disputed lands as tribal hunting grounds. In filing suit Captain John Mason was seeking to protect his own power to dispose of these lands as well as embarrass and, perhaps, topple the Winthrop government. In effect, the Masons had done as much to foment divisions within the tribe as Connecticut leaders by their decision to reopen the suit and push for the election of a new sachem agreeable to this endeavor. The Mohegans became bitterly divided at a time when unity was crucial to the successful adaptation in lifestyle which must inevitably come whatever the outcome of the suit.[32]

By focusing on Indian intentions and interests, Bollan had made the 1743 suit into a more emphatic defense of native culture than the thinly veiled prosecution of English interests in the land that it had been in 1705. In the process he came closer than anyone might expect to an articulation of Mohegan perspectives on the documents at issue. What Uncas had actually understood of the 1640 deed and subsequent agreements can never be precisely known, especially as he had used the English to break free of subjugation to the Pequots in 1637. It is likely that he and his councilors considered the 1640 deed to be merely an agreement to share the land's resources with their new English allies.[33] No one, not even Connecticut's leaders, could anticipate in the seventeenth

31. Ibid., pp. 95–96.

32. *Talcott Papers*, Connecticut Historical Society Collections, 4: 335–37; 5: 53–62.

33. William Cronon discusses Indian concepts of ownership in his *Changes In The Land: Indians, Colonists, and the Ecology of New England* (New York: Hill & Wang, 1983), pp. 65–69.

century how rapidly the colony's population would increase by the early eighteenth century and spread over eastern Connecticut inhibiting the free movement of the Mohegans for seasonal migrations and hunting. In any case, misunderstandings on the part of the Mohegans as to the 'true' meaning and implications of documents could be allowed to accumulate until the time when their opinions would mean little. Yet through a strange confluence of events, their opinions had come to matter, or at least as interpreted by an attorney simultaneously seeking to augment imperial power and influence in an autonomous corporate colony.

Although Bollan delivered a brilliant presentation in favor of the Mohegans before the court, the private interests of the Masons remained the primary motivating force behind the reopening of the suit. True, the Mason family had long since sold quitclaims of their interests in the disputed lands. They could no longer benefit directly from a decision in favor of the Mohegans, but they could achieve virtual control over the lands through their status as guardians of the tribe in the event of a favorable decision. And there were other ways to extract benefits before the proceedings even began. Just how fragile was the foundation on which this strident defense of tribal rights and lands rested is revealed by the discrete negotiations that took place between representatives of the colony and the Masons before the commission court convened. Frightened by the Masons' connections with royal officials like Bollan, and of rumors of still more formidable patrons in England prepared to intervene on the Masons' behalf, Connecticut decided to offer a settlement of £3,000 old tenor to the Masons, from which an allowance would be taken to distribute to the tribe. The Masons would also receive a lease to part of the 4,000 acres that the tribe still possessed, if they agreed to drop the suit. The Masons were willing to bargain, and demanded that Connecticut remove a tenant already established on Mohegan land with a twenty-year lease, plus accord formal recognition of them as guardians of the tribe, together with £6,040 old tenor. If the tenant could not be removed,

the Masons wanted £20,000.[34] For these payments and privileges, the Masons were prepared to drop the suit and their pretended concern for the preservation of tribal hunting ground. Connecticut leaders, however, decided that the Masons demanded too much; the suit went forward, and Bollan delivered his ringing defense of Indian rights.

The final decision of a majority of the commission judges in 1743 also reflects the fragile set of circumstances on which the case rested. The 1705 decision in favor of the tribe had mainly been the consequence of the Masons' alliance with supporters of the imposition of royal rule over Connecticut in a vigorous onslaught on the charter. The judges assembled in 1705 had been prepared to rule in favor of the tribe before the court even convened. The suit still posed a threat to the charter in 1743, but the court was no longer dominated by judges inherently hostile to Connecticut's autonomy.[35] Nor was it weighted to rule automatically in favor of Connecticut as it had been in 1738. The judges had become inclined to weigh the legal and moral issues of the case according to prevailing cultural values. And here lay the problem for Bollan's radical reinterpretation of the records. A majority of the judges were swayed not by Bollan's insistence that all agreements recognizing Mohegan title be considered legally binding or that the most favorable construction for the Indians must be put on the documents, but rather by Smith's contention that such agreements represented expedient and condescending gestures by the colony to the tribe's pretension to a continuing interest in the land. In a statement in their judgment, the commission judges declared that

34. 'Proposals for an Accommodation of The Controversy With the Mohegan Indians,' Papers of William Samuel Johnson, vol. 3, no. 24, Connecticut Historical Society, microfilm nos. 0081–0084.

35. The Commissioners' Court of 1738 dominated by the governor and assistants of Rhode Island was predisposed to rule in favor of Connecticut since it would not even allow the 1705 judgment of the equally biased Dudley court to be read. Petiton of Samuel and John Mason to the King, *Talcott Papers*, Connecticut Historical Society Collections, 5: 150–59. After the Rhode Island delegation was eliminated from the court in 1743, it was composed of the lieutenant-governor and councilors of New York, and the governor and councilors of New Jersey. When it opened, the court had a quorum of five New Yorkers, who were later joined by two councilors from New Jersey. *Book of Proceedings*, pp. 3–9, 143.

Connecticut might acknowledge the ancient boundaries of Uncas's territories in the 1680s 'without any impeachment to [Connecticut's] former right to the land, 'more especially if it be considered that one of the parties to that treaty were Indians, a barbarous people, *not then subject to the regular course of law.*'[36] Bollan's effort to convince the judges to integrate an original Indian right to eastern Connecticut under the umbrella protection of English law was rejected.

The judges also repudiated the right of the Mohegans to choose their own agents to act for them in matters of English law. They declared that Major Mason's title to the land obtained in 1659 was extinguished by the royal charter of 1662 and thus he had no right to entail the eight-by-four-mile tract for the Mohegans in 1671.[37] All that was legally or morally due to the tribe was some planting ground which Connecticut had provided. Thus a majority of the judges upheld Connecticut's seventeenth-century policy of treating the tribe as the original owner of vast amounts of territory in eastern Connecticut to acquire a legal text to forward a claim, but not to allow the tribe to translate this recognition into a legal precedent to forward its own claims in English law through the Masons. Any ambiguities and inconsistencies in the legal texts were merely the consequences of dealing with a 'barbarous' people. Connecticut's more or less obvious intention to extinguish Mohegan 'title' at its convenience and use Major Mason to that end must guide the reading of documents, not any disadvantage that the Indians might have suffered in such negotiations because of language or even the letter of the law when it was to the Mohegans' advantage.

Bollan may have influenced one of the judges, Daniel Horsmanden from New York, who lodged a formal objection to parts of the final judgment which the other judges refused to include in the printed proceedings. The nature of his objection can be surmised from the statements made in the course of arguments over secon-

36. *Book of Proceedings*, p. 139.
37. Ibid.

dary issues. Horsmanden declared that he believed the Mohegans to be a 'separate and distinct people' with 'a polity of their own.' Further, that any dispute over their lands 'cannot be determined' by English law, but by a 'law equal to both parties, which is the law of nature and nations,' and for the commission to determine. Although these words suggest that Horsmanden agreed with Bollan's plea for the creation of a special category of law respecting Indians which would guide and influence the reading and interpretation of texts, he did sign the final judgment revoking the 1705 decision in favor of the tribe.[38]

Even this decision did not end the suit. The Masons kept the case alive by appealing it to the Privy Council, where it became bogged down in legal motions and counter motions for more than two decades before it once again was decided in favor of Connecticut in 1773.[39] Meanwhile, Bollan's fortunes, so bright in the early 1740s, began to decline after his patron, Governor William Shirley of Massachusetts, lost the support of his own patrons in England. Bollan did become the agent for the Massachusetts House in London for many years, but he lost this appointment in 1762. At the same time, he became mired in financial difficulties in London which forced him to sell his extensive law library and house back in Boston. Rebuffed by the Duke of Newcastle from whom he sought patronage, he took up the profession of pamphleteer to address the issues which increasingly divided the Crown from her colonies. Ironically, this one-time imperial prosecutor became a progressively more ardent champion of colonial autonomy in a series of pamphlets published between 1766 and 1774. Denouncing the corruption, dissipation, and violence endemic in English

38. Ibid., pp. 126–27, 141–43, 281. Horsmanden's arguments may have been politically motivated. In royal New York, he was heavily involved in various land schemes involving tribal lands. See Alice M. Keys, *Cadwallader Colden: A Representative Eighteenth-Century Official* (New York: Columbia University Press, 1906), pp. 27–31, 44–45, 60–61.

39. *The Law Papers: Correspondence And Documents During Jonathan Law's Governorship Of The Colony Of Connecticut, 1741–1750*, Connecticut Historical Society Collections (Hartford, 1914), 15: 431–32, 433–35; *The Wolcott Papers: Correspondence And Documents During Roger Wolcott's Governorship Of The Colony Of Connecticut, 1750–1754*, Connecticut Historical Society Collections (Hartford, 1916), 16: 220, 222; Smith, *Appeals to the Privy Council*, p. 442.

society, Bollan opposed the expansion of the judicial authority of the Crown over her colonies. In 1769, he even sent copies of letters written by Governor Bernard of Massachusetts to the British ministry to Boston radicals who analyzed them at length in town meeting for their many 'base insinuations and virulent charges' against the town.[40] Since Bollan was no longer an ardent servant of imperial interests, it is no wonder that John Mason—in London at the same time to prosecute the appeal—apparently decided not to engage his services again in a suit which had helped to establish the Crown as a court of appeal in Connecticut.

It would be wrong, however, to dismiss Bollan as merely an opportunistic courtier, selling his services first to the advocates of the expansion of imperial authority, and then to their opponents. What Bollan did in 1743 was to stretch the capacity of the English legal system as it had taken root in New England, from a system grounded in the ethnocentric use of law to facilitate the expansion of English culture, to one capable—theoretically speaking—of affording some protection to native tribes in the path of colonization. Out of the jarring partisan interests of Englishmen quarreling over who had the right to dispose of Indian lands came an articulation of the original and continuing rights of Indians to their lands that was remarkable for the time. Such figures as Major John Mason, who led the expedition against the Pequots which resulted in the tribe's almost complete destruction back in 1637, and Massachusetts Royal Governor Joseph Dudley, surely one of the most rapacious and unprincipled of royal officials, make strange champions of Indian rights. Nevertheless, they laid the foundation for a set of proceedings in which ideas of a modern resonance would be aired. The assertion that it was necessary for a tribe to have sufficient land to hunt over as well as plant, and that the Mohegans were a distinct nation with a culture which they wished to preserve, was a backhanded way of asserting the relative value and integrity

40. Joel Meyerson, 'The Private Revolution of William Bollan,' *New England Quarterly* 41 (1968): 536–50; *A Report of The Record Commissioners of The City of Boston Containing The Boston Town Records, 1758 to 1769* (Boston, 1886), p. 303.

of cultures other than one's own. Incongruous as such a perspective on Indian culture was in relation to the ideals and values of Puritan-Yankee New England, Bollan's arguments reflect the potential way in which English attitudes and values could evolve when informal policies and assumptions were placed under close scrutiny.

Indeed, the fact that the proceedings took place at all is testimony to a degree of flexibility in English law that reflected the increasing pluralism, especially religious pluralism, in the Anglo-American world. Accommodation with the 'other' had become more necessary. As various parties competing for Indian lands increasingly clashed with each other and the Crown, an avenue was opened to explore and define the original native rights by perceptive English spokesmen in and out of court whose interests might also be advanced thereby. Bollan travelled down this avenue in a daring, imaginative, intellectual journey outside of his own culture. He conceived of the integration of native definitions of sovereignty into English law, and of an evolving English system of law.

There is no direct link between the Mohegan case and the emergence of a new Indian policy administered by the Crown after 1750. But in the following decades the Crown did move to prevent the replication of such controversies by outlawing the types of transactions which had helped to create the colony of Connecticut in the seventeenth century—the purchase or appropriation of title from the Indians by groups of colonists moving into Indian territories without license to do so. In 1755, the Crown appointed superintendents of Indian affairs for the northern and southern colonies and gave them the responsibility of negotiating boundary lines with the still powerful tribes in the western portions of the larger colonies and in unorganized territory further west. By a general order in 1761 all requests to purchase land from the Indians had to be processed through the Board of Trade. A further elaboration of this policy came in 1763 when a boundary line was

established between the English colonies and a distinct 'Indian country' in which settlement was forbidden.[41]

Through these initiatives, Indian definitions of territorial sovereignty received greater recognition and respect. The Continental Congress adopted similar policies in the 1780s; and, by 1790, Congress had declared all purchases of land from the Indians to be invalid unless made by public treaty negotiated by the federal government. The decentralized nature of English colonization in the seventeenth century had produced so many conflicting claims and deeds, as well as bloody violence between settlers and Indians, that parties appealing to higher jurisdictions had gradually effected a centralization of control in first the crown and then the new United States.[42] In the process Indians received more guarantees in law. A body of law 'equal to both parties' had begun to take shape. What Bollan had tried to achieve retroactively in the case of the Mohegans appeared in outline form as a centrally administered United States policy after 1790.

Yet, the enforcement of this policy proved to be just as difficult as persuading an English court to examine land disputes from an Indian perspective. Squatters pouring into tribal hunting territories all along the frontier inflamed Indian resentment and led to violence. The liquor trade with the Indians wreaked havoc on their cultures.[43] The elaboration of an ideology celebrating expansion of yeoman farmers across the Republic to be the backbone of the Republic all but overwhelmed the government's Indian policy by the 1830s despite Supreme Court decisions defining tribes as domestic dependent nations. The federal government was too weak to enforce its own policies. Ultimately the underlying as-

41. See Francis Paul Prucha, *American Indian Policy In The Formative Years: The Indian Trade And Intercourse Acts, 1780–1834* (Cambridge: Harvard University Press, 1962), ch. 1.

42. Ibid., chs. 2–3.

43. The best starting point for the period between 1790 and 1840 is still Prucha's *American Indian Policy*. For a richly detailed and illuminating examination of the decline of the 'middle ground' of cooperation and interdependence between Indians and Europeans to chaos and violence, see Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (New York: Cambridge University Press, 1991), ch. 11.

sumption that had guided the settlement of Indian lands in Connecticut and other colonies—the assumption that governments should facilitate the emigration of settlers into Indian territories—triumphed over nascent alternative views glimpsed in presentations like that of Bollan. The emerging democratic will of the majority made sure of it.