The Imposition of Colonial Jurisdiction over the Montauk Indians of Long Island

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Abstract. The imposition of English authority over the Algonquian peoples of southern New England and Long Island in the seventeenth century has been studied by many scholars who focused, in varying degrees, on the question of exploitation. Bushnell (1953), Vaughan (1965), Kawashima (1969, 1986), and Trealease (1960) concluded that the Algonquian were not treated unfairly, while Ronda (1974), Jennings (1976), and Koehler (1979) conclude that native peoples were exploited. Richard White (1981, 1991) has used a broader focus introducing two useful models for the study of this process: "dependency theory" and the "middle ground." This article treats the question of exploitation within the context of White's models by tracing the historical experience of the Montauk, an eastern coastal Algonquian people, as the middle ground collapsed and patterns of dependency emerged in the latter half of the seventeenth century.

The Middle Ground on Eastern Long Island

In the late spring of 1637 word reached the Native American villages on eastern Long Island that the English had massacred a Pequot village of over four hundred men, women, and children and had followed up the victory with a ruthless search and destroy campaign that nearly destroyed the tribe. The defeat dramatically marked a shift in the New England power balance, which had begun several years earlier as a result of epidemics and the expansion of the English fur trade network (Salisbury 1982: 203–15). The power realignment created a "middle ground" where neither the English nor the Algonquian could depend on military force for success.[1] The Narragansett, for example, whose control of the wampum supplies and untested military potential had enabled them to dominate relations

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with the English, also saw their influence diminished by the Pequot defeat (Robinson 1990: 271–72). The Narragansett warriors, who allied themselves with the English troops, deserted just before the attack on the Pequot fort at Mystic, thereby losing credibility as a military threat. The English, who had depended on the Narragansett for the wampum so vital to the fur trade, now controlled the Pequot wampum industry. The Pequot defeat also demonstrated the destructive potential of English military organization and weaponry.

The English victory, however, did not put them immediately into a position of dominance where they could ignore the interests of the Algonquian groups and pursue their own agenda. Although the Pequot had been devastated by the war, the possibility of a confederation uniting the remaining tribes forced the English onto the middle ground. Demographic factors played a major role here. Although there are few reliable population data for this period, it has been estimated that there were about 21,200 English in New England and at least 30,000 Indians living around Narragansett Bay alone (Salisbury 1982: 22–30; Jennings 1976: 15–31). No matter what the exact figures were, the English knew that they were outnumbered and perceived the wilderness to be "full of Indians" who might be drawn into a conspiracy against them at any moment.

In 1642, for example, a wave of hysteria swept through the English settlements prompted by rumors of a conspiracy led by Miantanomi, the Narragansett sachem.[2] According to the reports, the Narragansett leader came to Long Island to recruit Wyandanch, the Montauk sachem, into a confederacy that included the Mohawk (Gardiner 1897: 140–43). Miantanomi gave specific instructions to Wyandanch, calling for him to raise one hundred men from the neighboring Shinnecock villages and another one hundred from Montauk and to prepare for an attack in forty days when the English were out in the fields harvesting crops. Wyandanch rejected Miantanomi's offer and reported the plan to the English, who sent word to the New England colonies. Connecticut responded with a call to arms, but John Winthrop interviewed Miantanomi and concluded that there had been no plot against the English (Sainsbury 1971: 117; Hosmer 1908, 2:76). The English communities in Connecticut and on Long Island, however, remained convinced that there had been a dangerous plot that had been foiled only by Wyandanch's timely warning.

Wyandanch's rejection of an alliance with Miantanomi was consistent with the policy of accommodation that he had adopted after the Pequot defeat five years earlier. The Montauk sachem went to Fort Saybrook, at the mouth of the Connecticut River, where the victorious English troops had gathered and asked Lieutenant Lion Gardiner, the fort commander, for a

treaty of peace and trade (Gardiner 1897: 137–38). Although no treaty was to be signed for several years, the English soon took advantage of Wyandanch's offer of friendship. Gardiner bought a small island in Peconic Bay, a short distance offshore from the Montauk lands, and built a home there for his family in 1639. The next year English settlements were established on eastern Long Island at Southold on the north shore of Peconic Bay and at Southampton on the south shore about thirty miles west of Montauk.

In February 1644 the Dutch troops from New Netherland under the command of John Underhill attacked a Native American village near Stamford, Connecticut, and massacred an estimated five hundred men, women, and children (O'Callaghan 1966 [1845]: 300–2). The attack reminded the Algonquian, once more, about the awesome destructive force of European military tactics and technology. Seven months later, sachems representing village coalitions on eastern Long Island came before the first meeting of the United Colonies at Hartford, Connecticut, and formally requested a treaty of friendship.[3] Wyandanch, who had established a close personal relationship with Lion Gardiner, represented the Montauk. The English agreed to "certify" that the Unkechaug, the Munhausett, the Shinnecock, and the Montauk were their friends if the sachems would acknowledge English authority, accept the jurisdiction of English courts in all matters involving English citizens and property, and agree to give the English exclusive purchase rights to their lands (Pulsifer 1968 [1859], 9:18–19).[4]

In 1648 the English, exercising their right to purchase, bought thirty square miles of land and established the town of East Hampton. The town was bounded on the west by Southampton Town and on the east by the remaining Montauk lands (Osborne 1887: 2–4). A comparison of the East Hampton deed with the one negotiated eight years earlier by the Shinnecock for Southampton demonstrates the growing dependency on European manufactured goods. In 1640 the Shinnecock asked for sixteen coats, sixty bushels of corn, and military protection from their enemies (Pelletreau 1874–1910, 1:12–14). Eight years later, the Montauk sold half of their hunting grounds to the English for twenty coats, twenty-four mirrors, twenty-four hoes, twenty-four hatchets, twenty-four knives, and one hundred muxes. The hoes reflected a shift in the Montauk's relationship to their environment. They were now relying more on corn horticulture and less on hunting and gathering. The knives, hatchets, and steel muxes indicate a growing dependence on European manufactured tools needed for economic survival. The muxes were used to produce wampum, which had become a common currency in the fur trade. The wampum was exchanged for tools, clothing, blankets, and alcohol (Ceci 1982: 309–10).

Wyandanch was undoubtedly very pleased with the results of his

English policy. The establishment of three English settlements nearby gave the Montauk sachem direct access to the English goods his people so desired. His close relationship to Gardiner enabled him to maintain a monopoly on all trade contacts. Wyandanch's power and influence, therefore, grew in direct relation to the increase in demand among his people for European goods.

As the English settlements expanded, it was inevitable that the clause in the 1644 treaty imposing English jurisdiction on all capital offenses committed by Indians against whites would be tested. In 1649, as the East Hampton community was taking root, a Shinnecock killed a white woman in Southampton. Many Shinnecock believed it was an act of retaliation for the murder of a Shinnecock by whites some years before. When the sachem refused to cooperate in the investigation, the town officials became convinced that he was protecting the guilty party. The matter was of vital concern to the English, who viewed the actions of the sachem as an act of rebellion against their authority. The settlement turned into an armed camp and confronted an equally resolute Shinnecock community (Pulsifer 1968 [1859], 9:142). Gardiner, according to his own account, sent Wyandanch to arrest the guilty men and break the impasse.

There is no record, unfortunately, of the negotiations between Wyandanch and the Shinnecock, but certainly the threat of military attack was a major factor in their capitulation to English jurisdiction. Wyandanch took the accused to Hartford where they were tried and executed (Pulsifer 1968 [1859], 9:98). The executions were a dramatic assertion of sovereignty, and Wyandanch was now acknowledged as a de facto agent of the colonial administration with authority over the Shinnecock. The balance of power on the middle ground was beginning to shift away from the Algonquian on Long Island, but the threat of a conspiracy uniting the Montauk with New England tribes remained a factor in the relations between the two communities. The English kept a careful eye on which factions in the Shinnecock and Montauk communities might challenge Wyandanch's growing power and influence. To ensure that they remained weak, the English gave Wyandanch access to English military and economic resources.[5]

As the English settlements expanded, the subordinate status of the Algonquian people was gradually institutionalized in numerous ordinances regulating alcohol consumption, the location of wigwams, the gathering of wild plants, the maintenance of fences, and the conduct of religious ceremonies. In East Hampton, for example, an ordinance passed in 1655 prohibited the sale of liquor to any Montauk who did not have a written ticket from sachem Wyandanch. The tickets limited the bearer to no more than two drams of alcohol at one time within the village limits and

one quart at a time outside the village.[6] The ordinance served two important political purposes. It reinforced the authority of the English over the Montauk, and it enabled Wyandanch to further strengthen his local influence.

A second major confrontation occurred in 1657 when the Shinnecock were implicated in a wave of arson that destroyed several English buildings in Southampton. Unable to restore order, the town officials requested troops from Connecticut. The colony sent men under the command of John Mason, who had fought alongside Underhill in the massacre of the Pequot at Mystic. When Mason arrived, he found the town in arms. The troops intimidated the Shinnecock and reassured the townspeople, but the individuals responsible for the fire were never identified. Punishment was therefore meted out to the whole Shinnecock community in the form of an exorbitant fine of seven hundred pounds sterling, well beyond their means to raise.[7] The power base in the middle ground shifted once more to the English. Increasing pressures to sell land to the English resulted in a scramble for Indian land. The responsibility for paying the debt fell to Wyandanch, who was also granted the power to sell Shinnecock land. The Montauk sachem exercised this authority two years later when he sold a large parcel of their land to pay off part of the fine.[8]

During the last years of his life, Wyandanch solidified and deepened his political base on eastern Long Island by sanctioning land transactions throughout the English-controlled areas of Long Island. He was identified on many of these deeds as "the Grand Sachem" of Long Island. Although the title was an English fiction, the local sachems were forced to pay him a fee for his services as a referee in all major land sales.

Wyandanch was poisoned by an unknown assailant in 1659 during a plague that took a heavy toll of Native American lives. According to Gardiner, two-thirds of the Indians on Long Island perished in the epidemic (1897: 146). Although there are no reliable estimates of the Indian population prior to this and Gardiner's figures are undoubtedly guesses, it seems likely that the plague caused many deaths. These losses must have been devastating to the scattered Algonquian communities on Long Island. The impact of disease, concluded White, was as important a factor in the decline of Native American sovereignty as the destruction of their subsistence systems and their new market relations with whites (1981: 317).

Wyandanch was succeeded by his widow and young son, but both died three years later, probably from smallpox. The East Hampton officials "appointed" Wyandanch's daughter, Quashawam, to be sunksquaw over the Montauk in 1664 and warned any Montauk who might object that "if Montauk Indians shall not pay tribute to Quashawam, true heir of

their master Wyandanch, that then . . . ye authority of the Long Island . . . cause them ye said Montauk Indians to pay their obedience" (Pelletreau 1874–1910, 2:36).[9] The appointment, backed up by the threat of military intervention, set a precedent for English intrusion into Montauk internal affairs.

The Montauk community survived, but their lifeways were undergoing many changes as they became increasingly dependent on European trade goods. Nangenutch, whose trial for rape is discussed below, and many of his fellow Montauk had become involved in the English economic system as domestics, laborers, and whalemen. During the first two decades of close contact, the Montauk began to trade their labor for such European goods as guns, powder, shot, tools, knives, needles, blankets, shoes, clothing, and alcohol (Strong 1986b: 335–36). According to the trial record, Nangenutch had lived in the home of Richard Shaw, probably as a bond servant (Christoph 1980: 71). There are no other surviving records of bond contracts prior to 1675, perhaps because they were arranged privately. The decision to enter such contracts into the public records may have been a result of conflict over the private agreements. The town records after 1675 indicate that Native American youths were bound out for periods ranging from one whaling season to thirty years.[10]

While the Montauk made many adjustments to the English culture, learning the language and mastering new skills, their English employers had little patience or interest in Native American culture. Unwilling to make the slightest effort to understand the Montauk, they even dismissed the Algonquian names and imposed English first names on their employees (Strong 1986a: 20). Nangenutch, for example, had been renamed "Will" by the English. Often the Algonquian name was simply anglicized. "Jonaquam" became John Aquam or simply "John." This "naming" custom symbolized the power relationship between the two communities.

In 1664 English forces led by Richard Nicolls, a royalist navy officer loyal to Charles II, defeated the Dutch and captured New Netherland. Charles, who had restored the monarchy when Oliver Cromwell's Protestant commonwealth collapsed in 1660, ignored the territorial boundaries set in the colonial charters of Massachusetts Bay and Connecticut and granted his brother James, the Duke of York, permission to establish the colony of New York. James, an ardent Catholic with little patience for democratic procedures, found himself in control over the independent-minded Dutch and English Protestant communities and thousands of Native Americans from Long Island to the St. Lawrence River and west to Lake Erie.[11] He appointed his victorious commander to govern

the new colony and authorized Nicolls to draft a legal code, which was aptly labeled "Duke's Laws" (Lincoln 1894: 7–83).[12]

Nicolls, who had little trouble with the Dutch, was immediately confronted with hostile English townspeople. Unlike the Dutch, who had never been given much voice in their local affairs, the English had experienced a considerable amount of autonomy under the benign rule of fellow Protestants in Connecticut. The English were alarmed to learn that the Duke had made no provision for a colonial legislature. All laws were to be made by the governor in consultation with his appointed advisers. Led by East Hampton, the English towns protested and threatened to rejoin Connecticut (McKinley 1901: 701).

Nicolls angrily announced that he would confiscate the estates of those who opposed his administration, warning that all criticism of the government was treasonable and "must be silenced lest it become another rebellion such as Cromwell's" (Wright 1974: 92–93, 127–28). The governor then moved quickly to reassure the towns by appointing such men as John Mulford to important positions in the new administration. Mulford, one of the founders of East Hampton who enjoyed considerable local support, was named justice of the peace for East Riding, an administrative unit including East Hampton, Southampton, and Southold, which later became Suffolk County. As a result, the towns warily accepted the Duke's jurisdiction, but the potential for open confrontation remained close to the surface.

The Duke's Laws, arranged in alphabetical categories, included nine ordinances listed under the heading "Indians" (Lincoln 1894: 40–42). Eight of these laws regulated relations between Indians and Christians, and the last prohibited Indians from holding powwows or other religious celebrations.[13] The laws addressed those issues that often resulted in unrest and, on occasion, violence. Powwows were prohibited, for example, because the English feared that large gatherings of Indians for any purpose posed a potential threat. One primary area of conflict was the scramble by individual entrepreneurs to purchase tracts of Indian land.[14] Indians frequently complained that they had been cheated in these transactions. All sales of Indian lands were now to be supervised by the governor, who would interview the sachems involved and the English buyer. In an ordinance foreshadowing the Indian Nonintercourse Act of 1790, all purchases had to be approved and officially recorded in the governor's office.

Nicolls was also concerned about complaints from Indians that they could not get proper redress for crop damage by the settlers' domestic livestock and other injuries to person and property. Rather than trusting

the local courts, the Indians frequently killed and ate any livestock that damaged their fields. Four of the ordinances addressed the issue of damages to a delicately balanced ecosystem that had provided the Long Island Algonquians with a stable food base. Not only the planting grounds, but also the hunting territory was affected by foraging hogs, cattle, chickens, sheep, and horses. These newly introduced animals, protected from any natural predators, competed very successfully with the wild game for a limited food supply (Cronon 1983: chap. 7).

Miantonomi's appeal in 1642, whether apocryphal or not, probably expressed a common complaint by Native Americans living near the expanding English communities. "We shall be all gone shortly," he warned, "for you know our fathers had plenty of deer and skins, our plains were full of deer, as also our woods, and of turkies, and our coves full of fish and fowl. But these English having gotten our land, they with scythes cut down the grass and with axes fell the trees; their cows and horses eat the grass, and their hogs spoil our clam banks, and we shall all be starved" (Gardiner 1897: 142). As William Cronon noted, Miantonomi's speech clearly defined the way "economic and ecological imperialisms reinforced each other" (1983: 162–63).

The English were required to compensate the Indians for any damages to their crops and to help the Indians build proper fences where necessary. These ordinances, however, were moot if the Indians did not take their cases to court. The governor believed that if he could convince the Indians that they would be treated fairly in the courts they would be less inclined to take actions that often led to violence. The second ordinance under the "Indian" section of Duke's Laws, therefore, stipulated that all injuries done to Indians by Christians were to be redressed" as if the Case had been betwixt Christian and Christian" (Lincoln 1894: 40).

The problem, of course, was that the Indians, despite the governor's reassurances, were unlikely to trust the courts. The Duke's Laws established three levels of courts: the Court of Assizes (the highest court in the colony), the Court of Sessions (county level), and the local town courts. The two highest courts shared concurrent jurisdiction over all cases involving Native Americans (Goebel and Naughton 1970: 62).[15] The Court of Assizes consisted of the governor, his councillors, and the justices of the peace for each administrative subdivision of the colony. The issue of crop damage, however, remained unresolved for decades. In 1680, for example, the whites at Southampton complained to the governor, "They [the Shinnecock] have shott many of our horses and some they buried in the ground" (O'Callaghan and Fernow 1856–87, 14:756). The town asked the governor to force the Shinnecock to plant "in a some convenient place

and to fence . . . it substantially; the neglect whereof hath bred such strife and disturbance amongst us" (ibid.).

Although the Duke's Laws made no attempt to define the legal status of Indians, the ordinances clearly assumed jurisdiction over them. The laws required a license from the governor for the sale of alcohol, guns, and boats to Indians. A separate license was required to repair a gun or a boat for an Indian. Trade in furs was also carefully regulated by the colonial authorities. In 1666, shortly after the Duke's Laws were ratified, Governor Nicolls established a Commission for Indian Affairs for the "well Managing of all affairs between the English and the Indyans" (Albany Book of Deeds n.d., 2:49). John Mulford, who had been appointed justice for East Riding, was named to this commission.

An Incident in East Hampton

In 1668 a sequence of events began that provides insight into the impact of the Duke's Laws and the governor's policies on the Algonquian communities of Long Island. The events also reveal the many, often contradictory, agendas at work within the English and Algonquian communities during the early postcontact period. On 19 March John Miller and his wife Mary were leaving their home on Newton Lane in the village of East Hampton when they met Nangenutch (Will) walking toward them returning a sack of grain from the village mill. According to the testimony given at the trial by Mary Miller, Nangenutch carried a message from John's brother, Andrew, asking John to come to Richard Shaw's house as soon as possible (Christoph 1980: 63–64). Nangenutch then suggested that John leave immediately and send Mary back with him to the house to open the door so that he could put away the grain. John turned and walked to Shaw's house, about ten or fifteen minutes away from the Miller home.[16]

Sometime later Richard's wife, Remembrance, saw Mary approaching and walked out to meet her. Remembrance said in her deposition that Mary was crying and knelt down before her. When she asked Mary what the trouble was, Mary said that "it was soe bad she dearst not tell" and asked where Will (Nangenutch) was, for Will had abused her (ibid.: 64). Remembrance apparently calmed Mary, because she overcame her initial reluctance to talk about what had happened.

Mary told Remembrance that after Will put down the bag of grain he grabbed her, dragged her down on the floor, and put his hand over her mouth. Mary said that she pleaded with Will to stop and promised that she would not tell anyone what he did if he would let her go. Will agreed and left the house. Mary then went out, shut the door, and walked to the

Shaw house. Although Mary had talked to Remembrance about her experience, she was apparently reluctant to tell her husband, because it was Remembrance who told John about the incident. Mary's reluctance to go directly to her husband may have been from fear that he would reject her as "damaged goods" (Koehler 1980: 99; Clark 1987: 29).

The next day Mary Miller made a deposition to John Mulford, the justice of the peace. Mary told Mulford about the incident and added a few details that were not mentioned by Remembrance. She said that she had been sitting down on a stool by the fire when Will grabbed her and "committed the act of uncleanness upon her body, although she cried out and so soon he let her goe, shee went out and bad him come out of the house; and he said he must light his pipe, and when he was gone out, shee shut the door . . . and she went to Richard Shaws" (Christoph 1980: 64). Mulford, on the strength of the women's testimonies, ordered the arrest and imprisonment of Nangenutch on the charge of rape.[17]

The incident must have stirred quite a reaction in East Hampton. Even without the emotional racial aspect, the charge of rape would have shaken the community. Rape trials were relatively rare in seventeenth-century New England society (Lindemann 1984: 69; Koehler 1980: 95). In Massachusetts, for example, only four men were convicted of rape from 1673 to 1683 (Powers 1966: 408). Although such statistics are generally not considered valid indicators of the actual number of rapes in a community, there do appear to have been far fewer rapes per capita than in later centuries (Lindemann 1984: 72). The small colonial towns where people interacted daily afforded little opportunity for clandestine sexual attacks. Few women lived alone. They were viewed as the "weaker sex," respected helpmates and mothers, but also as property to be protected and controlled. The patriarchal Puritan culture and the tightly knit social structure of the English towns apparently served to reduce the incidence of rape, although the reduction is difficult to assess because white property owners who assaulted their servant women were seldom charged (ibid.: 80, 82; Flaherty 1971: 245; Clark 1987: 41). Most of those convicted of rape were men on the margin of these tightly bound, family-centered communities. In an analysis of rape convictions in eighteenth-century Connecticut, Cornelia Dayton found that the convicted men tended to be "outsiders"—Indians, African Americans, and poor whites (1986: 118).

Even though Indians as outsiders were more likely to be convicted of rape, sexual attacks on white women by Indians were extremely rare. The East Hampton case was the only one recorded in the seventeenth century on Long Island. The only other similar case in the colony took place the following year in the Delaware province that was under New York juris-

diction at the time. A Delaware-Lenape man was convicted of raping a white woman and sentenced to hang. He later escaped and apparently was never recaptured (Christoph and Christoph 1982: 307).[18]

The procedures for arrest in Duke's Laws called for the justice of the peace to give the town constable a written warrant to arrest the suspect (Lincoln 1894: 29).[19] The town records do not mention the incident, so we do not know if Mulford followed these procedures or how the community reacted to the news about Mary's account. The constable at the time was Thomas Baker, who also ran the local "ordinary" (tavern) out of his home (Hedges 1897: 224–25). We do know that Nangenutch was turned over to the custody of John Jennings, the marshall for East Riding, on the day after the alleged rape (Christoph 1980: 65).[20]

On the following day, 21 March, Mulford took testimony from two women. The first was Mary Miller, the wife of John's brother George. Mary told Mulford that Nangenutch had been sent by Andrew Miller to her home with a sack of wheat. According to Mary, Nangenutch put down the wheat and approached her in an "ill minded" manner. She said that she tried to ignore him and turned to go out to the barn when he "laid his hands on me in an unseemly manner and I thrust him from me" (Christoph 1980: 65).

Nineteen-year-old Annah Chatfield, the second woman to testify, came from one of the more prosperous families in East Hampton. Her father Thomas owned several plots of land and had served as town clerk and town constable. The Chatfields had arrived in East Hampton in 1651 when Annah was three years old. Annah told Mulford that Will came into her house the previous summer, took her by the hand, and asked her to go into the other room. She said that she took up a stool and threatened to kill him but that Nangenutch ignored her warning and put his hand on her breast. She then struck him and he spoke "bawdily in Indian which she did not well understand and . . . then he run out of doors" (ibid.: 63).

Despite the unusual and potentially explosive nature of these incidents, there is no evidence of any mob action or heated calls for revenge against the local Native Americans on eastern Long Island. Mulford may have defused the situation by sending Nangenutch immediately to New York and turning over the case to the Court of Assizes. Though the Court of Sessions for East Riding (Suffolk County) was empowered to hear cases requiring the death penalty, in practice, most felony cases were tried before the Court of Assizes (Johnson 1965: 77). The assizes met once a year in the fall but could be convened by the governor whenever he deemed necessary. The circumstances of this case undoubtedly prompted Nicolls to call a special session.

A week later at the statehouse in New York, which also served as the city jail, Marshall John Jennings questioned Nangenutch in the presence of two court witnesses (Christoph 1980: 63–67). Jennings read Mary Miller's testimony to the accused and asked him if the statement was true. Nangenutch said that he did not remember anything because he had been drinking at Thomas Baker's Ordinary.[21] Drunkenness was often used successfully as a defense in the colonial courts by those accused of acts involving physical violence.[22] In cases involving Indians, this defense evoked a commonly held stereotype about their vulnerability to the drug.

Jennings, however, did not seem to have been impressed by Nangenutch's testimony. According to Jennings, Nangenutch changed his story several times until he was confronted with a set of irons and told that they would be put on him unless he confessed. This act of intimidation was reported without apology by Jennings because he undoubtedly believed that it demonstrated his effectiveness as a marshall. It is likely that such treatment would have been given to a poor white suspect as well, but there is some evidence to suggest that the experience of being placed in chains, handcuffs, and leg irons was particularly repugnant to Native Americans.[23] Nangenutch, intimidated by the threat of irons, gave a full confession. Jennings reported that the Montauk now acknowledged that, in general, Mary's statement was true.

Jennings then pressed Nangenutch for more details. Did you do the same to Mary Miller that you do with your squaw, asked Jennings. No, said Nangenutch, because when she cried out he stopped. He told Jennings that "hee did enter her body with his privy member about the length of half his forefinger, but that she cryde out . . . and hee left off" (Christoph 1980: 68). Jennings's report was read to Nangenutch by an interpreter, and he was then asked to make his mark on the document acknowledging that it was accurate.

The Trial

On 21 April 1668 Governor Nicolls convened a special session of the Court of Assizes, which included Colonel Francis Lovelace, who would succeed him as governor the following August; Matthias Nicolls, the colonial secretary; Mayor Thomas Willett; Cornelis Van Ruyven, a wealthy Dutch merchant and collector of customs; Ralph Whitfield, a prominent member of the governor's council; Captain Thomas Delaval, also a member of the governor's council and one of Nicolls's most valued advisers; a citizen named Meyer; and the justices of the peace from Hempstead, Gravesend,

and Jamaica (Christoph 1980: 69). These men were a most distinguished group (Chester 1925, 1:359–60). Willett, Van Ruyven, and Delaval served as judges on the Mayor's Court, which tried cases for the city on a weekly schedule. Willett had held prominent offices in both Plymouth colony and in Massachusetts Bay and had long experience in both legal and Indian affairs. He was responsible for establishing the jury system in the Mayor's Court. Matthias Nicolls was the most knowledgeable legal scholar in the colony. He was rumored to have been the author of the Duke's Laws and was in fact responsible for organizing the colonial court system. Lovelace was in New York preparing himself to replace Governor Nicolls, who was returning to England in a few months.

It is interesting to note that Justice Mulford did not serve on the court. Unfortunately, the records do not indicate the reason for his absence. It is possible that Governor Nicolls purposely excluded him because he feared that Mulford might be biased against Nangenutch. Mulford was an official member of the Court of Assizes, but the court did not require full attendance at its sessions.

It also did not require counsel or a jury. In the eyes of the law, the defendant was innocent; the burden of proof lay solely on the prosecution (Christoph and Christoph 1983: xi). A panel of judges questioned both, then rendered its verdict. John Miller, the aggrieved husband of Mary, was called by the court to "come forth and prosecute the indictment . . . against Nangenutch alias Will," who was then charged with "having not the fear of God . . . but being instigated by the devil . . . at Easthampton on the 19th day of March last . . . most wickedly and feloniously [did] commit a Rape upon the body of Mary the wife of John Miller" (Christoph 1980: 63). Despite his earlier confession, Nangenutch pleaded not guilty. The full indictment was translated into Algonquian and read to him by a court interpreter (ibid.: 68–69).[24]

Mary's deposition was read by the court, and she was questioned about the incident. Although the New England courts tended to accept the testimony of married women in rape cases with few questions, the New York court did not. In New England, according to historian Lyle Koehler, the Puritan judges and jurors assumed rape was so serious a woman would not lie about it (Koehler 1980: 95–96; Dayton 1986: 127).[25] Unfortunately, the court minutes do not include the exchanges between the judges and Mary and Nangenutch, but the final verdict clearly indicates that her story was challenged. The court concluded that she gave inconsistent testimony, changing some aspects of her account as she answered the questions. Nangenutch also changed the account he gave to Marshall Jennings. He said

he did pull Mary down on the floor and enter her body but that she did not cry out or make any resistance and that he did not cover her mouth. He repeated that he had been drinking.

When the governor and the members of the court considered the testimony, they had to rely on ambiguous criteria for determining guilt. Some English authorities argued that to establish rape there had to be evidence that force was used, that there had been vaginal penetration, and that there had been a masculine climax in the vagina, while others argued that forcible male penetration of the vagina was sufficient (Dayton 1986: 113).[26]

At this point in the trial, Nangenutch was treated no differently than a white man accused of the same crime. In fact, the court put aside the confession that Nangenutch made under the threat of irons and listened to his new account. Both Mary and Nangenutch acknowledged that there had been penetration but without "masculine ejection." The court, therefore, focused on the crucial question of force and resistance. The burden of proof was on Mary Miller to convince the court that she had resisted Nangenutch. She was unable to do this because there was no evidence of a struggle. Resistance, said the court, was "not sufficiently proved either by marks upon her body or upon the Indian's" (Christoph 1980: 71).

Mary testified that she had cried out and asked Nangenutch to stop, but the court apparently questioned the timing of her resistance. Did she protest when he first pulled her down or after he had begun intercourse? She was unable to give a coherent answer, saying that she did not remember. She also apparently gave the court reason to suspect that she had inadvertently encouraged Nangenutch at the beginning because "she might bee surprized in the matter, whereby the said Indian was encouraged to the first part of the attempt" (ibid.).

The court decided unanimously that there was no rape and reduced the charge to attempted rape. This action was in keeping with a common practice of the English and colonial courts (Dayton 1986: 115; Lindemann 1984: 72; Clark 1987: 47). Courts were hesitant to impose the death penalty and, in some instances, gender biases may have undermined the prosecution's case. The court then broke precedent and violated the provision in Duke's Laws guaranteeing that Indians would be treated equally with Christians. The court concluded that although Mary may have encouraged Nangenutch, she was a woman of "civil and good behavior" whose testimony could not be dismissed. The court's primary concern, however, was "that all Indians may bee deterred to attempt the like upon any Christians hereafter" (Christoph 1980: 71). In passing sentence the court treated Nangenutch as a representative of a group rather than as an individual. The court ruled that "the said Indian called Nangenutch or

Will the Indian shall this day [21 April] be publicly whipped before the town house of this city at or before the hour of 12, there to receive thirty stripes" (ibid.: 72). After the whipping Nangenutch was to be imprisoned to await the opportunity to sell him into slavery in the West Indies, a fate more feared than death by Native Americans. The money from the sale would be used to pay the court costs, which included food for the prisoner, room and board for the witnesses, expenses for the marshall, rods for the whipping, and payment to the African American who inflicted the punishment.

Montauk Resistance

Nangenutch's sentence apparently caused a split in the Montauk community between the accommodationists and those hostile to the local English settlers. Four Montauks decided to take aggressive, direct action, traveling to New York soon after the trial and freeing Nangenutch (Christoph and Christoph 1982: 200–1). The jailbreak raises some interesting questions. Nangenutch was probably kept in the City Hall jail on the waterfront near the present-day South Street Seaport historic area, where he had been questioned by Jennings.[27] According to the Dutch records, capital prisoners were searched and kept in unlighted and unheated cells. It seems highly unlikely that the Montauks could have freed Nangenutch without inside help or a fortuitous lapse of security. One prisoner, for example, did escape in 1661 when the jailer neglected to fasten the cell door properly (Phelps-Stokes 1967: 84).

It is possible that fear of a hostile response from the Montauk prompted the governor or people in his administration to allow Nangenutch to escape. Interestingly, the only other Indian convicted of rape in seventeenth-century New York also escaped after sentencing. Another possibility is that some people in East Hampton saw an opportunity to gain an advantage over the Montauk in the future. The Montauk, in fact, were later forced to give up a tract of land because they harbored a fugitive. This explanation is only speculative; there is no hard evidence of such a plot.

Nangenutch's escape posed another problem for the court. There was no source of funds to pay for the trial costs. Governor Nicolls refused to pay any of the bills out of public funds and passed the problem along to his successor, Francis Lovelace, who replaced him in May 1668. The matter was still unresolved the following October when Lovelace wrote to William Wells, the sheriff of East Riding (Suffolk County), telling him that the creditors must be patient until he found a way to raise the money

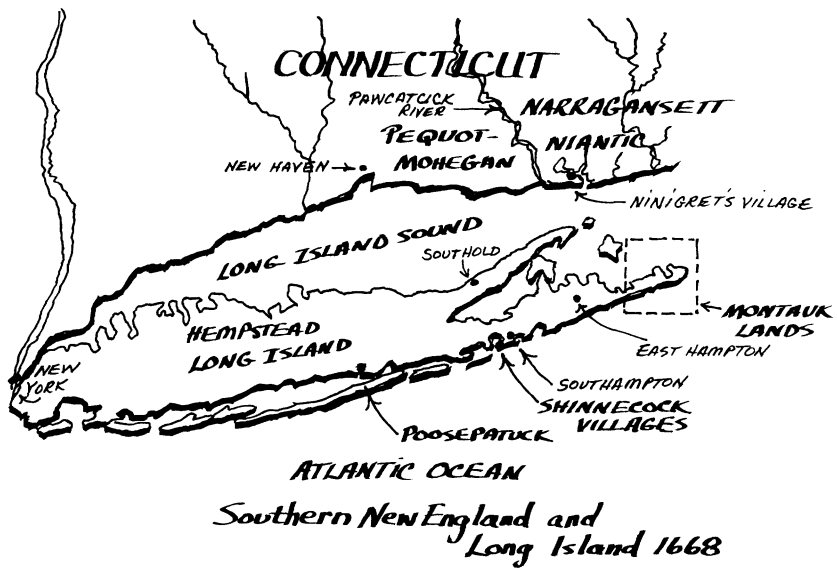
(Christoph and Christoph 1982: 200–1). In the same letter the governor renewed the Commission on Indian Affairs established by Nicolls in 1666. Mulford was reappointed to the revived commission by Lovelace. The commission was empowered to summon anyone before it to testify, to use military force if necessary, and to set up any procedures that it believed would improve Indian relations.

Lovelace turned the matter over to the commission and, on 19 November 1668, ordered the commission to arrest the four men who had helped Nangenutch and to "threaten them severely not only to make them pay the charges but some fine or punishment for their soe doing" (ibid.: 191–92). No arrests were made, and two weeks later the colonial secretary wrote to Sheriff Wells, who was also a member of the commission, saying he hoped the business of "Indian Will" was being "prosecuted to effect" (ibid.: 202). The arrests were never made, for reasons that remain unclear. Instead the commissioners decided to levy a fine of four hundred bushels of corn against the whole Montauk tribe.[28]

The decision to fine the tribe had precedent in the 1657 fine levied against the Shinnecock by the Hartford court. Once again the English court followed a procedure that treated Native Americans differently than their own citizens. In this case, however, the fine was also in direct violation of the guarantees set forth in the Duke's Laws. The Montauk, of course, were unable to pay the fine from their yearly harvest and appealed to the governor for relief. Governor Lovelace granted the Montauk petition for a reduction of the fine and a year's extension to make the payment. He agreed, he said, because the Montauk were poor and had shown good faith by paying some of the fine. A short time later Lovelace repealed his earlier reprieve, for reasons never stated in the colonial record, and demanded full payment from the Montauk (ibid.: 271).

Although the exact sequence of events is unclear, it appears that Mulford and two other East Hampton men, Jeremiah Conkling and the Reverend Thomas James, came forward with a clever strategy designed to give them considerable influence over the Montauk. They put up a bond guaranteeing payment of the Montauk fine; in effect, they had purchased the Montauk debt from the court. The three men now began to press the Montauk to give them a tract of land as payment, and they received some valuable assistance from the Commission on Indian Affairs. Sheriff Wells, representing the commission, approached the Montauk and advised them to accept the offer.

In response to these pressures some Montauks sought assistance from an ancient foe. A Montauk delegation led by Manecopungun and Akomias traveled across Long Island Sound to the colony of Rhode Island



Map 1. Southern New England and Long Island, 1668. Map drawn by David Martine, Shinnecock Reservation.

to negotiate an alliance with the Niantic. They carried gifts for Ninigret, the Niantic sachem, who had periodically raided Montauk villages over the past two decades (Bartlett 1968 [1856], 2:270–71). The most important gift was the old gun that had been owned by the deceased sachem Wyandanch. The sachem's gun symbolized the transfer of authority over the Shinnecock and Montauk to Ninigret. The tribute was presented to Ninigret during the annual green corn ceremony, when many neighboring Native American communities gathered together for religious ceremonies, dancing, and feasting.

The East Hampton officials learned of the alliance with Ninigret from Pauquatoun, one of the Wyandanch's primary counselors who remained committed to an accommodationist policy. Pauquatoun told Jeremiah Conkling that Akomias had asked Ninigret to protect the Montauk from the East Hampton proprietors. The Montauk people, said Akomias, would pay no more of the fine for "the man that run away" and would fight the English if necessary (Connecticut State Archives n.d., 1:18).[29] According to Conkling, Pauquatoun reported that the great powwow at Niantic was concerned with much more than the jurisdiction of the Montauk. The Wampanaog, the Pequot, and the Niantic were said to be confederated with the Mohawk against the English settlements in New England. The combined tribes were to be armed by the French from Nova Scotia and

provided with powder and shot by the Quakers. The threat of an Indian uprising was alarming enough, but the suggestion that the French, who were viewed by the English Protestants as the agents of the Pope, were behind it all was certain to panic many of the English settlers (ibid., 1:18–19).[30] The Quakers, of course, were a favorite target of the Puritans throughout New England. With the help of these allies, the Montauk would "destroy the English and then they should have their land againe from the English and bee as in former times before the English came" (ibid.).

This testimony was written down by the Reverend Thomas James of East Hampton and sent to the Southold town officials, who added a brief endorsement and expressed their own concerns about "the Indian plott intending to the ruin of all nations" (ibid., 1:19) and sent the letter on to John Mason. Two days later a second letter, signed by Mulford, James, and Baker, was sent directly to Mason. The men told Mason that they had further confirmation of the Montauk plot from several "trusty Indians" (ibid., 1:11). The danger, they warned, was imminent and urged Mason to move quickly against Ninigret. Mason sent both letters along to the colonial officials at Hartford with an appeal for immediate action; "tis good to kill such byrds in the egg," he warned. Messengers should be sent to Plymouth and Boston and Ninigret should be apprehended (ibid., 1:12).

The appeal to Mason raises some interesting questions because Ninigret's fortified village of Shamaungenac was located east of the Pawcatuck River in Rhode Island. Mulford must have known that both Connecticut and Rhode Island claimed jurisdiction over much of the land between the Pawcatuck and Ninigret's village. If Connecticut troops arrested Ninigret and imposed their authority over the Niantic, they would establish clear jurisdiction over the disputed area. Mason's message brought a hasty response from Hartford. The Native American villagers around Stonington, west of the Pawcatuck, were disarmed and an armed troop marched across the river and advanced on Shamaungenac. Soon after crossing the river, they were stopped by Rhode Island men, who protested their presence on Rhode Island soil and told them that Ninigret was under their jurisdiction (ibid. 1:20). The Connecticut men ignored the warning and continued on to Ninigret's village to arrest the sachem. Ninigret, however, was warned and went into hiding under the protection of Rhode Island's governor, Benedict Arnold. Later the Rhode Island officials notified Connecticut that they were investigating the rumors of conspiracy and would take appropriate action if necessary.

Amid all the tension, Nangenutch, who remained free, was ordered by Governor Lovelace not to enter the village of East Hampton because his presence "may breed ill blood and cause some disturbance" (Christoph

and Christoph 1982: 277). Apparently Nangenutch had been allowed to move around the town without fear or intimidation until the news about the alleged conspiracy spread.

Back in Rhode Island, Arnold realized that he had to move swiftly to protect the western boundary of his colony. The governor called Ninigret to testify before his council in response to the charges of conspiracy brought by the Long Island and Connecticut colonists. Ninigret denied that there was any conspiracy against the whites and acknowledged his loyalty to the English king and his alliance with the colony of Rhode Island. Manecopungun, the Montauk emissary, did bring him gifts of wampum and Wayandach's gun, but these gifts, said Ninigret, were to recognize Niantic jurisdiction over the Montauk. The Mohegan, Wampanaog, and Narragansett guests came to the annual dance held after the first weeding of the corn to pray for a good harvest and to acknowledge the tributary status of the Montauk.

The accommodationist faction at Montauk that had been led by Wyandanch was now discredited, continued Ninigret, and Pawgatun (Pauquatoun) is "forsaken of all his kindred, and is in a very sad condition . . . friends say unto him, it is justly befallen him for the lyes hee hath made, and for his disturbing the country . . . now his condition was such, there was noe place left where hee might goe to secure himselfe, for that all people that did heare of his baseness would hate him and that he deserved to dye" (Bartlett 1968 [1856], 2:271). Ninigret's statements clearly indicate that many of the Montauk were so angry at the East Hampton officials and the actions of the colonial administrators that they turned to their traditional enemy for help. The Ninigret faction at Montauk may have hoped that Ninigret would support their struggle to wrest control of the tribe from the accommodationists loyal to East Hampton.

Governor Arnold was satisfied with Ninigret's explanation about the alleged conspiracy, but the Niantic sachem's assertion of sovereignty over the Montauk was a more delicate matter involving the jurisdiction of Rhode Island and New York. Embroiled as he was in a jurisdictional dispute with Connecticut, Arnold could ill afford to antagonize New York by asserting jurisdiction over the Montauk through their status as tributaries to Ninigret.

The governor told Ninigret that the Montauk were under the jurisdiction of New York, but if they wished to pay tribute to the Niantic that was their business. He made it clear, however, that the payment must be voluntary and warned Ninigret not to give military support to his allies among the Montauk. The governor's action ended any hope at Montauk for political leverage against East Hampton. Arnold wrote to the gover-

nors of New York and Connecticut to tell them that there was no cause for alarm.

Jurisdiction Restored

The East Hampton officials moved quickly against the Ninigret faction, demanding that they surrender all of their guns and threatening to seize all of the Montauk planting grounds if they resisted (Bartlett 1968 [1856], 2:286). The Montauk who had attempted to resist were left with no alternative but to surrender to the accommodationist faction. Tension on Long Island eased somewhat, but the East Hampton proprietors were also concerned about Ninigret's claim that the Montauk were now under his control, because it opened up the possibility that Ninigret might also claim the right to sell Montauk land to proprietors from Rhode Island.

On 3 November 1669 Montauk elders friendly to East Hampton led by Poniutute, Pauquatoun, and Akomias, who had apparently changed his loyalty, acknowledged Governor Lovelace as their "Chiefest sachem" (O'Callaghan and Fernow 1856–87, 14:627). These Montauks, of course, represented the anti-Ninigret faction that the English wanted in power. The declaration of loyalty goes on to say that Poniutute and his counselors "doe utterly disclayme any such vassalage as Ninecraft did declare to the governor of Rhode Island" and promised not to send the Niantic sachem any more wampum or any other gifts. The declaration of loyalty was witnessed, not surprisingly, by John Mulford and the Reverend Thomas James.

Mulford, James, and Conkling had put up the bond to guarantee the Montauk debts with full knowledge that the Montauk did not have the resources to pay. The Commission of Indian Affairs, which included Mulford, conveniently recommended that the Montauk pay their debt by "forfeiting" some of their land to the bondholders. The accommodationist faction led by Pauquatoun and Poniutute agreed to forfeit a section of meadowland where the present-day village of Montauk is located (Smith 1925: 32–34). The three East Hampton men wrote to Governor Lovelace on 21 December 1670 informing him that the Montauk had elected a sachem and asking the governor to approve their purchase (O'Callaghan and Fernow 1856–87, 14:645, 651). Although the sachem was not named, he was probably the same Poniutute who signed the pledge of loyalty to Governor Lovelace the previous year.

Mulford had taken full advantage of his position as Justice of the Peace and member of the Indian Commission. The blatant conflict of interest aroused several of Mulford's fellow proprietors to object to the deal and to complain directly to Governor Lovelace who, according to Duke's

Laws, had to approve all purchases of land from Native Americans (Lincoln 1894: 40). The proprietors, led by Thomas Baker, did not object to the way the Montauk were pressured by the fine and manipulated out of their land. They feared that Mulford, James, and Conkling would close off access to some of the best grazing land on Montauk. The town patent, argued Baker, granted the governor's permission to the proprietors as a whole to purchase the remaining Montauk lands (O'Callaghan and Fernow 1856–87, 14:650–51). They were right. Governor Nicolls wanted to limit the number of independent entrepreneurs rushing to grab the remaining Indian land on Long Island. Conflicting claims were a major burden on the courts and a potential cause of violence and unrest.[31]

Lovelace was in a bind because he did not want to clash with the East Hampton proprietors nor did he wish to alienate John Mulford, who was one of the governor's key officials on eastern Long Island. At the 1670 meeting of the assizes, just two months before Mulford made the purchase, the governor had issued economic regulations favoring the New York merchants and had introduced a tax to defray the costs of repairing the palisades around Fort James. Petitions of protest were drafted by the towns of Huntington, Hempstead, and Flushing (Ritchie 1977: 65–66). When these petitions were delivered to Lovelace in December, he denounced them as scandalous and illegal and ordered them burned in public (O'Callaghan and Fernow 1856–87, 14:646). Amid this furor Lovelace had to deal with an internal conflict in East Hampton, which had not, as yet, joined openly in the protest.

In a politely worded letter to Mulford, Lovelace said that he was "well satisfied" with the transaction but that he wanted to have the commissioners certify the sale. In particular, they were to confirm the exact boundaries and make certain that the Montauk had entered into the agreement freely and with full knowledge of all details (ibid.: 650). The Montauk, of course, knew full well what was happening, but they had few alternatives left. They returned to Wyandanch's policy of accommodation to protect what they still had.

A few weeks later, on 8 February 1671, Lovelace wrote to the commissioners, which, of course, included Justice Mulford, asking them to examine the matter and report back to him. The next day Lovelace wrote a personal letter to Mulford, telling him that there was fresh opposition to the sale from the town and that the matter should be postponed until he could visit East Hampton himself and settle the conflict to the mutual satisfaction of all parties (ibid.: 651–52). There is no record of any visit to East Hampton by Lovelace, but a settlement was worked out between Mulford and the town officials sometime later. Mulford and his two partners turned over the land at Montauk in exchange for 180 acres of farmland

in the village of Amagansett, a few miles east of East Hampton. Lovelace finally ratified the transaction on 23 May 1671 (ibid.: 652). In this tangle of political manipulations, everybody won except the Montauk. Lovelace kept his authority over all land transactions, the East Hampton proprietors retained their monopoly on purchase rights and their control over the Montauk leadership, and Mulford's group received some prime farmland in East Hampton.

Conclusion

Relations between the English and the Montauk that began after the Pequot War suggest that the Montauk, led by Wyandanch, were able to negotiate fairly effectively on the middle ground shared by the two cultures until disease, alcohol, and a growing dependency on English goods eroded their autonomy. The desire for English trade goods drew more and more Montauk into the English market system as unskilled laborers. The events, which began in March 1668 and ended with sale of Montauk land in 1670, provide a representative view of the interactions among the various factions and interests in both cultures during the early postcontact period.

The examination of these patterns and events suggests that the distance between the so-called moral historians, Jennings and Koehler, and the "new Indian history" scholars, such as Richard White, is not as significant as the new history people have led us to believe. The new Indian history has been defined by White as an approach that "places Indian peoples at the center of the scene and seeks to understand the reasons for their actions. It is only incidentally a study of the staple of "old history"—white policy toward Indians. The moral historians have been taken to task by the new revisionists who accuse them of presenting the Indians as cardboard figures standing by in a befuddled manner as the whites stole their land.

Wyandanch, Nangenutch, Akomias, Poniutute, and Pauquatoun were certainly not cardboard figures who stood by as they were duped out of their land. Wyandanch worked the English system skillfully and with considerable success, but his temporary gains were based on the market economy, a force that, as Richard White has so clearly demonstrated, eventually undermined Indian autonomy, making the Indians vulnerable to exploitation. Few would suggest that the forces of disease, alcoholism, and the market economy were part of a conscious plot to destroy Indian culture and prepare the ground for the more voracious entrepreneurs, but the latter certainly bear a burden of blame for their actions.

The Montauk did eventually lose the rest of their land, but they held on against great odds until the beginning of the twentieth century when the combined forces of the Long Island railroad and several wealthy developers finally wrested away the last small tract in a court battle that lasted from 1909 until 1917. Although the wilderness was turned into a market, concluded William Cronon, the Indians "did not cease to be Indians, but became Indians with very different relationships to the ecosystems in which they lived" (1983: 164). Wyandanch's descendants are still living in scattered enclaves on Long Island, and some have recently begun to revive their Montauk heritage.

Notes

1 Richard White defined the "middle ground" as a relationship that emerged when two opposing cultures met on fairly equal military terms, similar to the recent cold war. "The middle ground depended on the inability of both sides to gain their ends through force. The middle ground grew according to the need of people to find a means, other than force, to gain the cooperation of or consent from foreigners. To succeed, those who operated on the middle ground had, of necessity, to attempt to understand the world and the reasoning of others and to assimilate enough of that reasoning to put it to their own purposes" (White 1991: 52). White's model is similar to one developed by anthropologists such as Spicer (1962: 519–39), Linton (1963: 463–520), and Murphy (1964: 852–53), in which they divided the postcontact period into two phases, non-directed acculturation and directed acculturation. For an informative discussion of these models see Burton 1976: 60–66. The non-directed acculturation, characterized by a free exchange of ideas and material goods and a voluntary adaptation of items and practices that do not fundamentally change lifeways, closely resembles White's definition of the middle ground.

2 For this article I have selected the spelling Miantanomi used by Paul Robinson, the Rhode Island state historian, in a recent monograph. Other spellings include Miantonomo (used by Sainsbury), Miantonomi, and Miantanomo.

3 The devastating impact of the Pequot War and Dutch Wars convinced many New England and Long Island sachems that military resistance to the Europeans was futile. As Burton concluded (1976: 146), the Native Americans "resolved to meet and match the settlers' own terms, without ever acknowledging the superiority of European culture over their own. They would learn to deal with the whites within a European context while clinging tenaciously to their own identity as Native Americans."

4 Unkechaug (Unquachog in *The Handbook of North American Indians*) is the current spelling used for tribal press releases from the Poospatuck Reservation.

5 White describes the evolution of "alliance chiefs" on the middle ground between the Algonquian and European cultures in his recent study, *The Middle Ground* (1991: 177–85). The French and English in the Great Lakes area recruited friendly chiefs and provided them with trade goods to distribute to their supporters. Wyandanch served the English well in this capacity on Long Island.

6 See Osborne 1887, 1:81. Town officials must have given the tickets to Wyandanch. Taverns in colonial New England were closely regulated. Generally only one license was granted for each town and the first taverns were often in the homes of prominent proprietors (Parkes 1932: 439–40).

7 Pulsifer 1968 [1859], 9:180. See also Howell 1887: 167 and Records of the Particular Court 1639–1663 (1928: 175–76).

8 See Strong 1983 and Jennings 1976: 145. Jennings argues that using fines to force Native Americans to sell land was a common tactic in New England. Yasuhide Kawashima (1986: 65) disagrees, arguing that the tactic was used infrequently. The moral issue raised by Jennings, however, is not diminished by quibbling over the number of times Native Americans were coerced out of their land. Paul Robinson (1990: 196) noted a shift from the fur trade to the acquisition of land in Rhode Island, 1657–60.

9 The term "sunksquaw" is Algonquian for a female sachem. For a discussion of Quashawam and Algonquian sunksquaws see Strong and Karabag 1991 and Grumet 1980.

10 White children from poor families were bound out under similar agreements except that their bond contracts were more likely to include a requirement that the child be taught to read and write (Strong 1986a: 20). The public whipping of Nangenutch was probably ordered and executed by the town officials. Masters often gave over slaves and servants to the local authorities for such punishment. Generally the word of the master about the infraction was not questioned by the justice of the peace (Kawashima 1986: 215).

11 The King granted James "full and absolute power" over all inhabitants of the new colony, including not only the former New Netherland, but also Connecticut's Long Island towns, Martha's Vineyard, and Nantucket, which belonged to Massachusetts Bay. Charles saw no need to mention the Indians, because they were nonpersons. People in this category, which also included women, African American slaves, and white males without property, were subject to the law but had no clearly defined legal status. The charter, one of the most despotic ever granted by the English, reflected the Stuart's contempt for democratic institutions (McKinley 1901: 694).

12 See also Pennypacker 1944. The Duke of York wanted a centralized administrative system with as little local interference as possible. The English towns, which had been treated as autonomous units by Connecticut, deeply resented the loss of their treasured independence. The Duke's Laws, for example, made no mention of the town meetings, which had become the symbol of local self-government. The first response to the announcement of the new laws was a boycott by the eastern towns. They refused to elect town officials until threatened forcefully by the governor in 1666 (Ritchie 1977: 50–51). See also Wright 1974: 92–93, 113–14.

13 Governor Nicolls may have purposely avoided referring to all New York subjects as "Englishmen" out of courtesy to the Dutch residents of Manhattan. The use of the term also presumes that there would be no active missionary work in New York. The possibility that there might be a Christian Indian was not even considered.

14 The 1660s marked a significant threshold in Algonquian-English relations in southern New England and Long Island. As Paul Robinson noted in his dissertation (1990: 196), the emphasis shifted from fur trading to real estate entrepreneurship.

15 The word "assize" comes from the Latin assidere, "to sit beside." In twelfth-century England the knights "sat beside" the king to form a court of law. Under the Duke's Laws, the court comprised the governor, the mayor of the city, and the justices from the provinces. The problems posed in assembling these officials led to the replacement of the Court of Assizes in 1684 with the Court of Chancery and a circuit court of Oyer and Terminar (Christoph and Christoph 1983: xi–xvi).

16 Two rough maps of the village, based on building lot records, are on file in the East Hampton Public Library, Long Island Collection. One was found in the papers of the Gardiner family dated 1655. The maps are imprecise because the boundaries for the early lots are vague and no attempt was made to locate the footpaths that may have connected the homes.

17 The indictment of Nangenutch was brought forward by either constable Thomas Baker or justice John Mulford. The final decision to prosecute may have involved a payment by John Miller because the court record lists a forty-pound "bail" paid to Mulford by Miller (Christoph 1980: 68).

18 The case was reported to Lovelace by Captain John Carr, who had been appointed to act as chief magistrate for the Delaware towns by Governor Richard Nicolls (Ritchie 1977: 39). Although rape was a capital offense, the death sentence was seldom carried out (Powers 1966: 281). The punishment for rape was usually a public whipping. Edward Sanders, a white man in Watertown, Massachusetts, was sentenced in 1654 to be whipped "not exceeding thirty stripes at a time," first at Boston and then again in Watertown (ibid.: 282), and a Native American named Sam, who raped an English girl in Massachusetts, "although in an ordinary consideration hee deserved death, yett considering hee was but an Indian, and therefore in an incapacity to know the horribleness of the wickedness of this abominable act . . . hee was sentenced by the court to be severely whiptt att the post and sent out of the country" (quoted by Powers 1966: 303).

19 The town government in 1668 consisted of a town meeting, which was called when deemed necessary, and five officials who handled the daily tasks of governance. They included the justice of the peace, a constable, who also presided over the town court and enforced the law, and four overseers. These officials met regularly and supervised the day-to-day administration of the town government. The overseers were elected by the freemen of the town and the constable was elected from among the men who had served as overseers for at least one term (Ritchie 1977: 35–36). The constable's duties included executing the sentences of the justice of the peace (whipping, stocks, etc.), arresting suspects ("raising a hue and cry"), and sitting on the local court with the four overseers (Wright 1974: 109–11).

20 Jennings lived in Southampton (Howell 1887: 330). Either Baker brought Nangenutch to Southampton or Jennings came to East Hampton and took charge of him there. The duties of the marshalls under the Duke's Laws were to take custody of prisoners arrested by the sheriff of the province or a town constable, provide for the security and feeding of the prisoner, transport the prisoner to the trial, arrange for room and board for the witnesses, and manage the logistics for the trial.

21 The claim of drunkennesss raised a question about Thomas Baker, who ran the ordinary. Did he sell Nangenutch more than two drams, and did the Montauk have a written ticket from the Montauk sachem? The obvious question

concerned the conflict of interest between Baker's duties as constable and his ownership of the tavern where Nangenutch got the liquor.

22 The abuse of liquor was endemic in white colonial society and was accepted as a defense, in part, because the judge and jury were likely to drink heavily themselves. See Hawke 1988: 107–8. The more destructive impact of alcohol on Native American cultures has been the subject of much debate. White noted that not all Indian groups were devastated by the drug. He argued that alcohol abuse seemed linked closely to such stressful situations as epidemics, constant warfare, and hunger (1981: 84).

23 The town officials of Southampton, for example, threatened to send Shinnecock "troublemakers" away to New York in heavy chains when other means of regulating their behavior failed (Pelletreau 1874–1910, 2:202).

24 Three interpreters were listed, a Montauk named Obediah, Samuel Davis, and Richard Shaw, who was sworn in as "Interpreter between the prisoner and the prosecutor."

25 The precedents in English courts indicate that they looked very carefully for any inconsistencies in the victim's testimony. Judges instructed juries to acquit on grounds of inconsistencies (Clark 1987: 57).

26 According to Lyle Koehler (1980: 96), the Puritans assumed that the woman was "immobilized" with fear and could not be expected to bite or scratch or make any vigorous resistance. Koehler, however, does not offer any evidence to support that conclusion. He also argues that because of the sex role conditioning to be passive and the expectation of female passivity by the male judge and jurors, the woman did not have to prove that she put up a physical resistance. That was certainly not the view taken by the New York courts. In 1671, when Francis Lovelace, one of the men who presided at the trial, was serving as governor of the colony, he was asked his advice about a rape prosecution. He told the prosecutor that although he was a bachelor and "not verst in those affairs relating to man and woman," the position of the woman's body indicated that she could not have resisted much. Therefore, suggested Lovelace, perhaps a whipping would suffice (Christoph and Christoph 1982: 426–27). The difficulties posed in establishing these criteria undoubtedly discouraged many women from reporting rape (Beattie 1986: 124–25). See also Tomaselli and Porter 1986: 9. This issue is discussed in more detail in an article in the same volume by Jennifer Temkin, "Women, Rape, and Law Reform," 16–40.

27 Some prisoners, however, were allowed to spend time in the "prison chamber" where there were candles and a fire. It seems unlikely that Nangenutch would have been given any special privileges. See Phelps-Stokes 1967: 63. A lithograph shows the building as it looked in 1679 (pl. 20-B).

28 The reference to four hundred bushels is found in the 1670 deed that transferred a tract of Montauk land to Mulford, James, and Conkling (Smith 1925: 32–34). No record exists of the actual imposition of the fine on the Montauk. It must have happened shortly after the letter of 19 November 1668, because seven months later Lovelace says that he had earlier remitted half of the fine.

29 Transcripts of the 1669 conspiracy documents are in Butler n.d.

30 Concerns about a French and Indian alliance were frequently voiced by New York and New England officials (Massachusetts Historical Society 1852: 118). The French had sent troops south from Canada to attack the English north of Albany twice during the winter of 1665–66 and the Treaty of Breda in 1667

gave Nova Scotia to the French, raising English fears about the threat of further expansion (Ritchie 1977: 76).

31 One of Nicolls's first challenges was to resolve a dispute in Southampton between the town and Thomas Topping, a prominent local landowner. Both had purchased the same land from two different Shinnecock families who claimed hegemony over the disputed area. Nicolls ruled for the town in a clear message, which was reinforced later in the town patents, that Native American land purchase was better left to corporate proprietors regulated by public officials.

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