Murder in Colonial Albany: European and Indian Responses to Cross-Cultural Murders

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Preface

On December 26, 1758, John McMickle, a New York fur trader, was found murdered in western New York on the road between Fort Stanwix and Fort Herkimer. As soon as his death was reported, Captain Thomas Butler, the commander of Fort Stanwix, knew that he had missed his chance to capture the murderer, a Cayuga Indian named Tanighwanega. Earlier in the day, McMickle had been sent by Butler to warn Lieutenant Nicholas Herkimer, commander of Fort Herkimer, that French-allied Indians were rumored to be approaching. McMickle had chosen Tanighwanega, a hunter and fur trader who had been staying in his house, as his guide. Yet only three hours after they set out, Tanighwanega had returned to Fort Stanwix. Butler, suspicious of Tanighwanega's prompt return and haste to leave the fort, stopped him to question why he had returned so quickly. The Indian trader claimed that he had hurt his knee and found an Oneida hunter to take his place so that he could return to the fort. Butler remained suspicious, but had no actual proof that events had occurred other than as they had been relayed to him. Within a few hours, the scouts Butler had sent out to find McMickle returned and informed the captain that the trader had been found "scalped & by all the marks suppose the Indian [Tanighwanega] as he walked behind took an Oppertunity to Kill him with his Hatchet." By this time, however, the murderer had already left Fort Stanwix and, as Butler almost certainly knew, would never be apprehended or punished by the English.[1]

[1] James Sullivan, et. al., eds., *The Papers of Sir William Johnson*, 14 vols. (Albany, N.Y.: State University of New York, 1921-1965) (hereafter *Johnson Papers*), X: 82-84; E.B. O'Callaghan and B. Fernow, trans. and ed., *Documents Relative to the Colonial History of the State of New York*. 15 vols. (Albany, N.Y.: Weed, Parson, 1853-1887) (hereafter *DRCHNY*), VII:380; Quote from *Johnson Papers*, X:83-84.

Over the course of the previous century, the European residents of Albany (and western New York) and the Iroquois Confederacy, which included the Cayugas, had developed an unofficial but commonly used ceremonial method for resolving conflicts between peoples of the different nations. The chiefs of the Cayuga Nation, following the accepted protocol, did not let the conflict over the McMickle murder fester for long. In just over one month, on February 5, three Cayuga chiefs arrived at Johnson Hall, the home of Sir William Johnson, Superintendent of Indian Affairs for the northern colonies, to resolve the conflict, despite the "severe Season of the Year." Using the metaphorical language of the Iroquois Wood's Edge ceremony, the chiefs told Johnson that they were there to "wipe away the Tears from your Eyes so that you may look pleasant at us, likewise remove all Obstructions, & clear your Throat so that you may speak clear & friendly to us – lastly we wipe away the Blood of our Brother [McMickle] lately killed near the Carrying place & that the sight of it may no longer give us Concern." For their part, the Cayuga expected that this ceremony, along with a significant gift of wampum, would resolve the murder of McMickle. Both the language of the ceremony and the accompanying gift were meant to clear away the pain and sorrow felt by the English and restore relations to how they were before the murder occurred. Officially, Johnson could not simply accept a gift in exchange for a murder, because English law, and Johnson's superiors, demanded that a murder suspect be arrested and tried before an English court. At a conference with the Confederacy the following April, Johnson attempted to press this claim, but the Iroquois, as they had for over a century, refused to yield to such demands. They claimed, in this case, that the French had tricked Tanighwanega into committing the murder, and therefore revenge should be taken on the French, not on an Iroquois. Johnson, with little apparent reservation, accepted this claim and the Iroquois offer to join in an attack on the French.[2]

[2] *Johnson Papers* X:97; *DRCHNY* VII:380-381, 388, VIII:430; Quotes from *Johnson Papers* X:97.

In colonial Albany and New York colony generally, murders involving both Englishmen and Indians were a complicated problem. From the time of the earliest Dutch settlement on the north Hudson in the 1620s, the way the European residents and their Indian neighbors interacted depended on the balance of power and the control of trade in the region. By the mid-1650s, the Dutch Fort Orange had developed into a major fur trading center entirely dependent on Indians to bring furs in for export to Europe. To maintain a peaceful environment for trade, the Dutch in Albany, then known as Beverwijck, ignored Indians who committed violence, and instead attempted to punish Dutch men and women who contributed to that violence. Only after the English conquest of the colony in 1664 did the residents of Beverwijck (now renamed Albany) begin to slowly, over two decades, claim increased jurisdiction over their Indian neighbors. By the time Albany was chartered as a city in 1686, the residents of the northern settlement claimed, and at times enforced, their jurisdiction over certain Indians of the Hudson River region.

As the McMickle murder of 1758 shows, the colonists handled their conflicts with the Iroquois Confederacy differently than with other tribes. Even in the Dutch period, the Iroquois were the most important Indian ally of the traders who controlled Beverwijck/Albany. From their position across what is now New York State, the Iroquois controlled access to the vast beaver populations in the west, and quickly became the most important fur trading partner. Although by the early eighteenth century the fur trade of Albany had declined significantly, the Iroquois remained the most important ally of the colony of New York. Albany, as a northern outpost near the border with the French, remained largely reliant on Indians as military allies and as a barrier from French invasion. The Iroquois, unlike the Mahicans and other Indians living along the Hudson River, were able to leverage their military and economic prowess to rebuff English attempts to assert jurisdiction over murders. Instead, the Iroquois and the English

developed ceremonies to resolve their conflict ritually and in a way that maintained the cultural and political integrity of both groups. The English in Albany, guided by political and economic concerns, chose to accept Iroquois ceremonial methods for resolving conflict rather than endanger the alliance by attempting to enforce their own jurisdiction over the Iroquois.

Chapter 1: Murder in Colonial America

Methods for Addressing Murder

In colonial North America, murders involving both American Indians and European colonists were a constant source of tension. American Indians and European colonists held widely different understandings of how murders should be addressed. In the wake of a "cross-cultural" murder, each community assumed that its own legal methods would be used to resolve the conflict. Colonists carried the expectation that the individual murderer alone should be held responsible for his own actions, and only after he was judged by a court of law. Most Native communities had a completely different, and largely incompatible, method for resolving murders. In most American Indian societies, the most basic method for resolving a murder was for a member of the victim's clan to kill a member of the murderer's clan as retribution. Responsibility for the murder was shared among all members of the clan, and it did not matter who was killed as long some member of the guilty clan suffered retribution. Most Europeans viewed this custom as primitive, savage, and illogical. Before the late twentieth century, historians generally agreed with the colonial record and understood Indian legal structures as simply inferior to European law. Among the first historians to study an Indian legal system on its own terms was John Phillip Reid who, in 1970, published *A Law of Blood: The Primitive Law of the Cherokee Nation*. Although Reid, like his predecessors, believed the Cherokee legal system was simpler than a European legal system, he did not believe that it was entirely illogical. One of his most important contributions was his argument that Cherokee law must be understood as the Cherokee people themselves would have understood it. European opinions about how

Cherokee law functioned were ultimately irrelevant, because it was the Cherokees, not the Europeans, who lived in a legal world defined by these laws.[3]

According to Reid, what made Cherokee law primitive was that, unlike European law, Cherokee law was not defined by institutionalized structures such as "police, courts, or legal sanctions," but was instead structured around the legal concept of liberty. Every individual in Cherokee society had the right to his or her own opinion and their own actions, and no one was obliged to listen to the will of others. If an individual disagreed with the village, he or she was, likewise, at liberty to leave the community without any legal retribution. While there were "private forms of aggression such as withdrawal, ostracism, public reprobation, and mockery," ultimately, there were no legal sanctions available by which a community might bend a disagreeable member to its will. Because the Cherokees lacked an institutionalized legal system, most colonial observers did not recognize the Cherokees as having a "real" legal system. Reid showed, however, that the Cherokees did have a legal system, which, although different, was no less legitimate than the European model.[4]

To analyze the Cherokee legal system, *A Law of Blood* focuses on what Reid defines as the "bone and marrow of [the Cherokees'] social existence": the law of homicide. In the European legal world, murder was a crime committed against the entire community by an individual. The guilty party, it was believed, damaged the community as a whole with his crime, and so the community needed to purge itself of the harmful element by executing the murderer in the name of the state. Executing a murderer found guilty by a court of law was meant to serve the public purpose of deterring others by showing the consequences of committing murder. In Cherokee society, when a homicide took place, retribution was the responsibility of

[3] John Phillip Reid, *A Law of Blood: The Primitive Law of the Cherokee Nation* (DeKalb, Ill.: Northern Illinois University Press, 2006), 92-102, 230.

[4] Reid, *Law of Blood* 70-79, 92; Quotes from Reid, *Law of Blood* 92, 70.

the clan of the deceased who, in the case of a slaying, had the right to take the life of a member of the slayer's clan. The clan was the primary legal unit in the Cherokee world. It was, as Reid described it, "the family writ large," and included a network of relatives who claimed descent from the same clan through their mother's line. The Cherokees considered all clansmen to be relatives, no matter how distant their relationship. Regardless of the personal relationship a father had with his children, the children were ultimately members of their mother's clan, and all legal connections and responsibilities were to their maternal relatives. Aside from a single prohibition on marrying members of their father's clan, an individual had no formal relationship with his or her paternal relatives. When a homicide occurred, therefore, it was the victim's maternal uncles who held the primary responsibility for exacting revenge on the clan of the slayer.[5]

Unlike in English law, actual "guilt" was not a concern for Cherokee clansmen seeking retribution. Under English law, the circumstances of the death and the intent of the killer were important, and only those circumstances that qualified as murder made an individual culpable for the murder. Accidental death, for example, was not generally considered a murder under English law. In Cherokee law, however, the circumstances of a death were irrelevant. "The probative fact, the sole point to be considered, was the infliction of death." If an individual caused the death of another Cherokee, whether with intent or simply by accident, the clan of the slayer was considered responsible for the death. Cherokee law did allow clans to weigh culpability by accepting a payment of goods from the slayer's clan in lieu of another life. Unlike the English, the Cherokee did not have a governmental structure to adjudicate such culpability, and instead allowed the clans of the slayer and the victim to determine culpability privately.

[5] Stuart Banner, *The Death Penalty: An American History* (Cambridge, Mass.: Harvard University Press, 2003), 10-20; Yasuhide Kawashima, *Igniting King Philip's War* (Lawrence, Kans.: University of Kansas Press, 2001), 70; Reid, *Law of Blood* 35-48, 73-84; Quote from Reid, *Law of Blood* 72, 35.

The choice of whether to accept payment in goods, and how much the price should be, was not defined by law, and appeared to be at the discretion of the deceased's kin. When warranted, the clan of the victim could weigh circumstances and culpability, and accept presents instead of killing another Cherokee when the clan believed it appropriate.[6]

The Cherokee approach to homicide was not universal in North America, but it was widespread. In the Great Lakes region known by the French as the *Pays d'en Haut*, the clan of the deceased had a similar right and responsibility to exact revenge for a murdered clansman. Although the clans in the Pays d'en Haut were patrilineal, except the matrilineal Huron-Petuns, much else regarding homicide law was very similar. Homicide among the Algonquian peoples of New England was also considered a private offense that created a blood feud and was settled by violent retribution if necessary. As elsewhere, the Algonquians often sought to avoid further bloodshed by negotiating a retributive payment of goods. For New England Algonquian groups, the tribe's sachem acted as arbiter to negotiate a payment from the slayer to the kin of the victim and to ensure that peace was maintained and no further conflicts would arise.[7]

Near Albany, the Mohawks, the most important Indian ally and trading partner of New York and New Netherland, used ceremonial practices to mitigate internal conflict following a murder. Together the Mohawk, Seneca, Cayuga, Onondaga, and Oneida Nations constituted the Iroquois Confederacy. Within the Confederacy, these five nations strove to maintain peaceful relations and a degree of mutual assistance. Although there was a Grand Council of the Confederacy, its goal was unlike that of a European central government. Like the Cherokees,

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[6] Reid, *Law of Blood* 112, 262; John Phillip Reid, "Principles of Vengeance: Fur Trappers, Indians, and Retaliation for Homicide in the Transboundary North American West," *Western Historical Quarterly*, Vol. 24, No. 1 (1993), 21-43; Kawashima, *Igniting King Philip's War* 71; Quote from Reid, *Law of Blood* 76.

[7] Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (New York, N.Y.: Cambridge University Press, 1991), 16-20; Reid, "Principles of Vengeance" 24; Michael Leroy Oberg, *Uncas: First of the Mohegans* (Ithaca, N.Y.: Cornell University Press, 2003), 23-25; Alfred A. Cave, "Who Killed John Stone? A Note on the Origins of the Pequot War," *William and Mary Quarterly*, 3rd Series, Vol. 49, No. 3 (1992), 509-521; Kawashima, *Igniting King Philip's War* 68.

the Iroquois valued personal liberty and, therefore, had no forms of legal coercion. Each Iroquois village was effectively independent, although there was an expectation that conflict within the Confederacy would be handled through the Grand Council, rather than through war. According to Iroquois tradition, the League was founded by Deganawida, a Huron prophet who ended the wars between the five nations and created the Grand Council. Deganawida also established for the Confederacy the "Condolence Ceremony," which was used by subsequent generations to assuage grief upon the death of a chief, and inaugurate a new chief for the tribe. In addition, the Condolence Ceremony was also an important means for restoring harmony to the Confederacy whenever conflict arose, and especially in cases of murder. In this ceremony, the chiefs of the Confederacy brought together the nations in conflict and performed a ceremony of forgiveness to restore peace and harmony.

Although ceremony was used within the Confederacy to maintain peace, the Five Nations also used external warfare to redirect retributive aggression toward enemy nations. One of the most common forms of such warfare was what scholars have termed a "Mourning War." The Iroquois used such wars to avenge a variety of deaths, including murder and death from disease. Urged on by mourning female relatives of the deceased, warriors traveled as far as hundreds of miles to seek either a living captive to bring home, or a scalp to hang as a visible sign of the tribe's revenge. When a captive was brought back alive, the mourning women then had the option of either adopting the captive as a replacement for the deceased relative, or allowing the village to take revenge by torturing and killing the captive. Although there were exceptions, often captured women and children were adopted, while men, who might pose a greater danger to the community, were killed.[8]

[8] Daniel K. Richter, "War and Culture: The Iroquois Experience," *The William and Mary Quarterly*, 3rd Series, Vol. 40, No. 4 (1983), 528-559; Daniel K. Richter, *The Ordeal of the Longhouse: The Peoples of*

When a murder occurred between two different communities, the victim's clan often felt entitled to seek retribution by killing a member of the slayer's people. This general rule held true regardless of whether the murderer was an American Indian or a European colonist. To Europeans, however, killing one person for the crimes of another was a horrendous miscarriage of justice. Under the laws of European nations, only the individual who actually committed a crime could be punished. European colonists, although newcomers to North America, believed that their legal system was far superior to that of the "barbarian" Indians, and that Indian legal concepts should not apply to them. At times, colonial leaders were able to negotiate treaties that guaranteed European criminals be tried in colonial courts. Yet under the concept of liberty that dominated most Indian legal structures, no Indian could be bound to a treaty simply because his chief had signed it. Even with a treaty, therefore, a tribe could not guarantee that after a homicide, the victim's kin would not take revenge against a colonist. Also following this doctrine of liberty, Indians often rejected the jurisdiction of colonial courts over them. When an Indian killed a European, colonial officials often demanded that tribal leaders arrest and relinquish the accused for trial in a European court. In communities where nearly all offenses were handled privately by clans, however, a tribal leader did not have the authority to arrest an individual or to turn him or her over to a colonial judicial system. If he tried to do so, the leader risked losing the support of his community, and thereby his position of leadership.[9]

The Problem of Murder and Indian-Colonial Wars

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the Iroquois League in the Ear of European Colonization (Chapel Hill, N.C.: University of North Carolina Press for the Institute of Early American History and Culture, 1992), 30-50.

[9] Evan Haefeli, "Kieft's War and the Systems of Violence in Colonial America," in Michael A. Bellesiles, ed., *Lethal Imagination: Violence and Brutality in American History* (New York, N.Y.: New York University Press, 1999), 17-40; Reid, *Law of Blood* 79-81; Kawashima, *Igniting King Philip's War* 66-75.

With two such divergent systems and no group willing to accept the jurisdiction of the other, any murder involving both an Indian and a European held the possibility of developing into a massive conflict, or even a war. In a number of significant cases, what began as a local conflict over a murder grew into a massive war between two very different cultural systems. One such war began in 1634 after a group of Pequots attacked an English ship in the Connecticut River and killed the captain, John Stone, and his crew. To the English, this appeared to be a completely unprovoked attack, so the following year the leaders of the Massachusetts Bay Colony demanded the Pequots to deliver them the murderers of Stone and his crew. The Pequots refused, claiming that the slayings were consistent with their own laws that allowed for legitimate retribution, because the year before the attack the Pequot sachem Tatobem had been killed by the Dutch. When Stone was killed, he was in an area frequented by the Dutch, not the English, so his slayers had assumed that he was Dutch. Although the Pequots later learned that he was English, his death was nevertheless considered just retribution for the death of Tatobem.

Even if the sachems had wanted to relinquish Stone's killers to the English, they would not have had the authority to do so. Unlike a European king, a sachem was not a monarch, but functioned more as a chief mediator. Like the Cherokees, the Pequots greatly valued their liberty, so the sachem's decisions were dependent on the willingness of his people to follow him. The sachem's role was to balance the competing interests of tribal members, but he had no authority to enforce his decisions if his tribe chose not to follow him. If it appeared that the sachem was not promoting the interests of his followers, such as by allowing European authorities to arrest accused murderers, he would lose his ability to lead. Recognizing that the Pequot had erred, and hoping to maintain peace, the sachems offered to pay the colony seventy skins, four hundred fathom of wampum, and a substantial swath of territory, but refused to turn

over the killers. Even this substantial payment was insufficient for the English if the murderers were not handed over with the payment. With neither side willing to compromise its position, conflict ensued.[10]

According to some historians, most notably Francis Jennings, the English used the death of John Stone as a pretense to attack the Pequot and take control of the Connecticut River. At the time of the Pequot War in the mid-1630s, there was still little pressure in the colony to expand. In addition, the desire to avenge the death of Captain Stone was probably minimal. The Massachusetts Puritans described him as a "drunkard, lecher, braggart, bully, and blasphemer," and many probably believed the Pequot story that Stone had captured two Indians shortly before he was murdered. Instead of revenge, Alfred Cave argues that the English probably attack the Pequot as a way to subdue a supposed threat to their safety, and to send a message to other Indians. Cave notes that from the first settlements in New England, the settlers believed that Indians were dishonest and a constant threat to the existence of the colonies. After the Pequots refused to turn over the murderers of Captain Stone, the English feared the Pequot were planning to betray them. To preempt this feared attack, the English attacked the Pequots. Cave further argues that the English also attacked the Pequots to send a message to other Indians about the dangers of trifling with the English. The Pequot War, which shattered the unity of the Pequots for the next twenty years, was a message to the New England Indians that the English would not tolerate any challenge from them.[11]

Over forty years later, another Indian refusal to relinquish accused murderers, this time a Wampanoag, led the settlers in New England to start another war against their Indian neighbors. Unlike other cases, this murder involved an Indian, killed by other Indians, on Indian

[10] Oberg, *Dominion and Civility: English Imperialism and Native America, 1585-1685* (Ithaca, N.Y: Cornell University Press. 1999), 97-112; Cave, *Who Killed John Stone?* 509-521; Kawashima, *Igniting King Philip's War* 15-18; Oberg, *Uncas* 20-23.

[11] Cave, "Who Killed John Stone?" 517-521; Quote from Cave, "Who Killed John Stone?" 517.

land. The murder victim was John Sassamon, a Wampanoag "Praying Indian," an Indian who had converted to Christianity. He had been educated at Harvard and, at the time of his death, was the minister of the Indian church at Nemasket. In December 1674, Sassamon visited Governor Josiah Winslow of Plymouth to warn him that the Wampanoag sachem King Philip (Metacom) was preparing for war against the English. Following his meeting, Sassamon left, presumably to return home, but he never arrived. He was not seen again until January 29, 1675, when his body was discovered by a group of Wampanoags. Following the discovery of Sassamon's body, the English assumed jurisdiction, disinterred and examined it to determine a cause of death. Although the details of Sassamon's autopsy were limited, it was determined that he did not drown, which led the English to believe that he had been murdered. The English belief that Sassamon was murdered by Wampanoags was further reinforced when Tobias, one of King Philip's counselors, was brought to inspect the dead body and it began to bleed. At the time, following an ancient Germanic test, the English believed that the body of a victim would begin to bleed anew on the approach of its murderer. While many historians believe that Sassamon was killed either in revenge or to stop him from revealing King Philip's plan, other theories have been proposed. Jill Lepore, for example, argues that King Philip had Sassamon killed because he was a literate Christian. She notes that according to some documents, Sassamon had purposely transcribed Philip's will incorrectly to make himself heir to a large part of the chief's land. In an earlier time, this incident would have been left to the Wampanoags because Sassamon was a Wampanoag, his death had occurred on Wampanoag land, and the only accused murderers were Wampanoag. The colonists, however, believed that because Sassamon was a Christian and because he died on land within the formal territory of the

Plymouth Colony, Plymouth courts had the right to assume complete jurisdiction over his death.[12]

With evidence, albeit limited, from the autopsy and the incident with Tobias, the leaders of Plymouth Colony ordered King Philip to relinquish the three accused killers, including Tobias, to their custody. Philip, however, refused to accept that the English courts had any jurisdiction over Sassamon's death. Over the previous decades, the Wampanoags had endured numerous injustices from the English, but to relinquish a Wampanoag into English custody was a step too far. Philip was willing to negotiate with the English but, as with other Native leaders, he was simply unwilling to arrest the accused murderers and hand them over to the English. Unlike when previous sachems had refused to turn over murderers, the English chose, in this case, not to wait while continuing to demand the killers. Instead, Plymouth colony sent Englishmen to arrest the killers and bring them to trial at a colonial court. On March 1, 1675, the three men were formally indicted in a Plymouth court for the murder of John Sassamon.[13]

These arrests were, in many ways, a far more egregious violation of Wampanoag sovereignty than other conflicts over murder. Although the English had always claimed jurisdiction over crimes that involved their own citizens, they had never before claimed any involvement in a murder involving only Indians. In the case of John Sassamon, the English went further than just misunderstanding Wampanoag law. This case involved only the Wampanoags, on Wampanoag land, and the English assumed jurisdiction and completely ignored preexisting Wampanoag legal structures. They had declared, in effect, that English magistrates had the

[12] Kawashima, *Igniting King Philip's War* 1-35, 100, 119; Daniel R. Mandell, *King Philip's War: Colonial Expansion, Native Resistance, and the End of Indian Sovereignty* (Baltimore, Md.: The Johns Hopkins University Press, 2010), 5-32, 42-48; Oberg, *Dominion and Civility* 154-172; Jill Lepore, "Dead Men Tell No Tales: John Sassamon and the Fatal Consequences of Literacy," *American Quarterly* Vol. 26, No. 4 (1994), 479-512; James P. and Jeanne Ronda, "The Death of John Sassamon: An Exploration in Writing New England Indian History," *American Indian Quarterly,* Vol. 1, No. 2 (1974), 91-102.

[13] Kawashima, *Igniting King Philip's War* 66, 119; Oberg, *Dominion and Civility* 154-172.

authority to judge and condemn the Wampanoags according to English standards of justice. To the English, the only proper procedure following a murder was a trial in an English court of law and, in this case, they chose to demand a trial by force. It was, in large part, this ultimate violation of sovereignty that led directly to the conflict known as King Philip's War. [14]

Three months after their arrest, the Plymouth colony tried the three accused murderers before a jury of twelve Englishmen, assisted by six Christian Indian consultants. Relying only on a questionable autopsy and the unsubstantiated testimony of a single witness, the jury unanimously convicted the three men of murder, and sentenced them to be hanged. Following the three executions, colonial leaders began to hear rumors that the Wampanoag were preparing for an attack on the English. Soon after, an Englishman shot three Wampanoag men near the village of Swansea. In retaliation for this killing, and presumably for the execution of the three convicted murderers, the Wampanoags besieged Swansea, officially beginning King Philip's War. The war lasted over a year, and by the end, the English colonies had proved themselves in control of New England. Nearly ten percent of the population of New England was killed, with Native peoples comprising approximately two-thirds of the dead. In addition, the Native peoples of the region were now completely unable to hold back the expansion of the New England colonies. By the end of the war, the English, although still challenged by some of more powerful native groups, had greatly expanded their authority and power in the region.[15]

Cross-Cultural Murder in New France

Unlike in many coastal colonies, the leaders of New France were not always as adamant about enforcing the French system of justice over Native peoples. While the English colonists desired to create an expansive new community unencumbered by their Native neighbors, the

[14] Kawashima, *Igniting King Philip's War* 88-97.
[15] Mandell, *King Philip's War* 50, 135.

French in the *Pays d'en Haut*, the triangle-shaped area between Lakes Michigan and Superior, had only a few sparsely populated settlements. Instead, the French in this region were generally of three types: military men, missionaries, and traders. The primary purpose of these French residents was to trade with and convert the Native peoples of the region. To spark a war by assuming French jurisdiction over Native crimes would, therefore, have been completely detrimental to French interests, because it would have left the French without any Native trading partners or converts.[16]

In his groundbreaking work *The Middle Ground*, Richard White shows how, in an effort to maintain the peaceful conditions necessary for successful trade and military alliance, the French and Indians of the *Pays d'en Haut* developed novel methods for dealing with cross-cultural murder that blended the legal systems of both the French and the Indians. White begins by describing the *Pays d'en Haut* as a world of refugee Indian groups, including the Iroquoian Huron-Petuns, the Siouan Winnebagos and numerous Algonquian peoples including the Ottawas, Fox, and Miamis, fleeing from the Iroquois mourning wars. When the French arrived in the *Pays d'en Haut,* they hoped to trade with the local Indians for furs. Yet for the native peoples of the region, the fur trade, particularly in its early years, was significantly less important than basic necessities such as food and defense. With a native population more interested in basic survival than French luxury goods, the French were never able to entirely dictate the terms of trade. Nevertheless, by the 1680s, the French and their Indian neighbors had established an alliance in an effort to maintain peace and security, as well as a stable environment for trade.[17]

At the heart of the Middle Ground alliance was the French governor's role in mediating conflict and resolving murders in ways that would preclude war and keep alliances strong. In

[16] White, *Middle Ground* ix.
[17] White, *Middle Ground* 1, 23, 56.

the *Pays d'en Haut*, the French governor, known to the Indians as Ontontio, acted as a "father" to the Native peoples, the "children" of the alliance. While this may have been a seemingly simple metaphor, it was understood differently by the French and the Indians. The French understood Ontontio's role as that of a European father and the head of the "household" of the alliance. To Indians, however, a father was a peacekeeper and gift-giver with little direct authority over his children. Ontontio, as a friend and father, was expected to be generous with his Indian "children" and provide great quantities of presents. These differences in understanding were the heart of what White terms the Middle Ground. In the Middle Ground, the French and the Indians used perceived "congruences" between their two cultures as means of sustaining an alliance. What distinguished the Middle Ground from elsewhere, was the fact that each group understood a supposed "congruence" in light of its own culture and in a way very different from the others' understanding. While each nation was able to understand the foundation of the alliance on its own cultural terms, murder posed a more particular problem because Indian and the French had drastically different legal systems that were incompatible if strictly adhered to. As the French knew, if they attempted to enforce their own judicial system, their Indian "children" would abandon their "father," end the fur trade, and probably start a war to revenge the unresolved murder. Instead of conflict, the French and Indians developed novel methods for resolving murders that were neither wholly Indian nor wholly French. Although such methods were often improvised for each new situation, there were general patterns to how murders were resolved. For example, Indians generally turned over accused murderers to the French, in accordance with the French expectation that murderers would be arrested. Only rarely, however, did the French actually punish these murderers. Instead, in accordance with

Indian legal customs, the French would pardon them or allow them to break out of jail and escape back to their people.[18]

A striking and somewhat bizarre example of this improvised blending of different legal traditions occurred in 1682 following the deaths of two Frenchmen at the hands of a Menominee and several Ojibwes. White notes that from the initial French reaction, it appeared that they might have chosen the road to war later taken by the English, because the French arrested the murderers and attempted to force them to stand trial. To find a more equitable solution, a trader named Daniel Dulhut met with a group of tribal leaders at Michilimackinac. Improvising a solution, he transformed the council meeting into a jury, which heard testimony and confessions from the accused. Following this trial, which the Indians may have understood as a ritual preceding forgiveness, Dulhut demanded that the Indians execute the now convicted murderers. The Indian leaders protested, arguing that to execute the murderers would spark a war between tribes. Ultimately, the French and Indian leaders decided that only two Indians would be killed as retribution for the two murdered Frenchmen. In the seventeenth and eighteenth centuries, without formal institutions to effectively solve conflicts, it was improvised solutions such as these that sustained the alliance.[19]

An improvised method of maintaining peace was always tenuous. Every new murder was a new cause for concern and a new test of the alliance. The Indians of the *Pays d'en Haut* turned constantly to Ontontio, as father of the alliance, to mediate and help end disputes. When Ontontio was unable or unwilling to mediate negotiations, the result was often war. One of the most significant cases when the alliance failed was during the War of Spanish Succession when Governor de Vaudreuil, distracted by the war, ignored events in the west. Without the French to mediate, conflict soon arose and threatened a large portion of the *Pays d'en Haut*.

[18] White, *Middle Ground* 33, 53, 56, 75-82.
[19] White, *Middle Ground* 76-82.

The situation grew even more troublesome in 1710 when the Fox moved into Detroit and rival hunters began to murder each other. Governor de Vaudreuil now preoccupied with a threatened English invasion, delegated negotiation of the conflict to Commander Joseph Dubuisson in Detroit. Other Indians living near Detroit fed Dubuisson faulty information and led him to believe that the Fox were attempting to destroy the French. He ordered an attack on the Fox and, in response, the Fox took their revenge by ravaging nearly the entire span of the *Pays d'en Haut*, and creating one of the most significant fissures in the slowly-crumbling alliance.[20]

Other fissures came later as subsequent governors, unfamiliar with the workings of the Middle Ground, attempted to use force to dominate the region. As in New England, when the French attempted to impose their own law by force, Native residents fought back in defense of their sovereignty and legal independence. Although the French were a formidable force, they were unable to completely dominate the Indian population as the English were in the 1670s, and ultimately the French governors was forced to realize that mediation was the best possible method for maintaining peaceful trade in the Middle Ground. The alliance, and the Middle Ground, was ever changing as official French policy shifted between attempted domination and adapting to Native power. This pattern lasted until the end of the Seven Years War in 1763, when the British took control of the region. As in the east, the British were less interested in negotiating with Indians, whom they now viewed as conquered peoples. White's study of the Middle Ground shows that, contrary to popular assumptions, Europeans did not automatically dominate a region upon their arrival. In the *Pays d'en Haut*, no group could entirely control the terms of the alliance because while the Indians needed the French to act as an arbitrator for disputes, the French needed the Indians to trade them furs. The Indians also expected the French to provide favorable prices for their trade, in addition to continual presents "father"

[20] White, *Middle Ground* 117-118, 154-159.

Ontontio was expected to give to his Indian "children." These interwoven needs and expectations created a Middle Ground where both the French and the Indians relied upon each other for their mutual benefit.[21]

While *The Middle Ground* focuses only on the *Pays d'en Haut*, there were, in fact, few regions of New France where the French attempted to exert total control over their American Indian neighbors. In the Arkansas River Valley, the French were never able to enforce their law on the Native residents. Although in the *Pays d'en Haut* the French and Indians were forced to compromise because neither could be entirely dominant, in the Arkansas River Valley the balance of power was far less equitable. The most powerful and expansionist people in the region were not the French, but the Native Quapaws and Osages. Katherine DuVal refers to this region as the Native Ground because, defying general assumptions about European colonialism, it was dominated almost entirely by Native people and Native law. French settlement was composed of only a few traders, and the French knew that they could not possibly dominate the powerful Native groups who traded with them. Although the French claimed total sovereignty over the region on paper, their claim was entirely dependent upon the willingness of the Quapaws and the Osages to permit them to remain in the region. If either had wanted, they could have decimated the French and forced them out of the region. Although the Osages were dependent on the French for guns, which allowed them to create an empire of their own, they were, nevertheless, a far stronger power throughout the eighteenth century. In addition, the French, with good reason, believed it was extraordinarily important to appease their Indian trading partners, because without Indian hunters and traders the French would not have access to the expensive furs they hoped to ship back to Europe. Unlike in the *Pays d'en Haut*,

[21] White, *Middle Ground* 173, 204-209.

therefore, the French did not attempt to find an equitable Middle Ground, but instead largely acquiesced to the Native legal codes.[22]

In Osage territory, cross-cultural murders involving the French were, despite Osage dominance, a problematic occurrence for both groups. In Osage society, after a murder, the victim's kin had the right to kill the murderer and lay his scalp on the grave of the victim. As elsewhere in Native North America, the death of a slayer could be replaced with a payment of gifts to the victim's family, if the clan agreed to the substitution. In addition, if the victim's clan preferred, the violence could be directed away from the community by instead killing an outsider as a way to maintain harmony within Osage society. When a French *voyageur* was killed by an Osage, it was almost always because the *voyageur* was attempting to trade with enemies of the Osage. Although the Osages often justified killing *voyageurs* as a means of maintaining Osage dominance in the region, the Osage chiefs, recognizing impending conflict, did not want to cut off trade or spark a war with the French. Like the Osages, the French also never wanted to spark a war with a group whom they knew could pose a real threat to the colony, particularly if they allied with the Spanish or English. To keep the peace, the French and the Osages developed a system that appeased both sides, and averted war. After any murder, the Osage chiefs would go to the French leaders and apologize for the death, claiming it was the actions of a few brash young men. The French government, in response, accepted the apology of the Osage chiefs, and their assurance that the young men who had committed the murder would be disciplined. Although at times the peace was threatened, overall the system was very effective, as evidenced by the lack of wars in the region.[23]

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[22] Kathleen DuVal, *The Native Ground: Indians and Colonists in the Heart of the Continent* (Philadelphia, Pa.: University of Pennsylvania Press, 2006), 79, 102; Kathleen DuVal, "Cross-Cultural Crime and Osage Justice in the Western Mississippi Valley, 1700-1826," *Ethnohistory* Vol. 54, No. 4 (2007), 697-722.

[23] DuVal, "Cross-Cultural Crime" 700; DuVal, *Native Ground* 112.

While theoretically this system created an equitable solution to conflicts, it was, in fact, largely to the benefit of the Osages because when the Osages lied or deceived the French, there was no actual recourse or retribution. For example, in 1749, in response to the murder of a *voyageur* and his slave, the Osage chiefs visited the French to accept blame for the killings and to announce that the murderers had been executed. Soon after, when the French learned that the Osage chiefs had lied, the Osages released a different man into French custody and claimed that he was the true murderer. Again, the French simply and unquestioningly accepted the Osage promises that this was the true murderer. As DuVal explains, both the Osages and the French constructed a "common fiction" that assisted with mitigating strife and maintaining peaceful relations. Whether the second individual was the true murderer or not was irrelevant. The Osage chiefs declared that he was the murderer, and the French, with no reason to doubt the assertion, accepted this as a fact in order to maintain positive relations. At the same time, the Osages made their own concessions by accepting blame and punishing, or at least pretending to punish, guilty individuals as the French demanded, even when, according to Osage law, a murder might have been completely justified. After apologies were made, all was set right until the next murder occurred and yet another ritualized apology was required.[24]

While both *The Middle Ground* and *The Native Ground* focus on the edges of the French colonial world, others have studied similar questions closer to the capital of the French colonial empire. In his article "French Criminal Justice and Indians in Montreal," Jan Grabowski argues that even in Montreal, one of the largest cities in New France, the French did not dare to upset their Indian neighbors. The Indians of greatest concern to the French were the Christian "Mission Indians," who had settled within the District of Montreal during the 1660s and 1670s. Through an analysis of court documents, Grabowski showed that while the French arrested

[24] DuVal, "Cross-Cultural Crime" 701; DuVal, *Native Ground* 114.

many Indians for crimes, the French never actually punished any Indians. This pattern was an obvious violation of the official laws of New France, which outlined criminal procedure in exacting detail, and mandated that any judge who failed to follow the procedures as written repeat the entire process at his own expense. Nevertheless, while the French routinely arrested Indians for crimes, these Indians were, possibly without exception, interrogated and set free without any repercussions. Instead, the French attempted to diminish the number of Indians who committed crime by punishing colonists who provided Indians with alcohol, sometimes with fines as high as one thousand livres and banishment from the colony. Often, the only reason that French officials interrogated Indians was to learn the names of men who sold alcohol to Indians.[25]

Among the most important reasons the French never attempted to subject the Mission Indians to French law was that it might have started a war. The French feared war with the Indians of the region who vastly outnumbered them. As late as the 1690s, the Mission Indians within Montreal even outnumbered the French residents. To the French, it did not matter what crime an Indian committed, because ultimately the most important French goal was to maintain friendships with their Indian neighbors and ensure the continued existence of New France. Throughout the French colonial world, there was an ever-present fear that if Indian allies grew displeased, they might turn against the French and attack with the help of other Indians or the English. Even when a Huron Mission Indian killed a Sulpician missionary inside the mission, the French interrogated him and then set him free, although he was banished from Montreal Island. In this and most likely many other similar cases, the murderer's release was influenced by

[25] Jan Grabowski, "French Criminal Justice and Indians in Montreal," *Ethnohistory* Vol. 43, No. 3 (1996), 404-429.

warnings from both Jesuits and other Native leaders that if he was not released, there would be "very dangerous consequences for the whole colony."[26]

Murder in Albany, New York

Because it was ruled by both the Dutch and the English, Albany provides a prime opportunity to compare how different colonial powers reacted to similar political and economic conditions in an outpost far from the European centers of power. European settlement at this site began with the Dutch establishment of Fort Nassau in 1614 as a garrison to defend the northern fur trade. This was followed by the formation of the patroonship of Rensselaerswijck in 1629 and the village of Beverwijck in 1652, both of which helped to create a more permanent European community in the region. The village retained the name Beverwijck until 1664, when the English conquered the New Netherland colony and renamed it Albany. As a fur trading center, the Dutch, like the French, constantly dealt with conflicts that inevitably developed with their Indian trading partners, the most important of whom were the Mohawks. Indians visited Fort Orange and Beverwijck almost daily and, as in the *Pays d'en Haut*, *t*rade could be a cause for conflict that led to murder. The prevalence of liquor and weapons in many trades also served to inflame conflict. The Dutch community of Beverwijck was unlike other area of New Netherland, where Indian solutions to murder were completely unacceptable. The residents of this north Hudson community maintained cordial, even deferential, relations with their Indian neighbors, recognizing that an Indian war near Fort Orange would ruin the fur trade. As evidenced by Dutch-Indian wars south of Beverwijck, such as Kieft's War and the two Esopus Wars, the Dutch had no special affinity for Indians that kept them from sparking a war. In fact, Dutch colonists in North America had few qualms about engaging in war with Indians who would

[26] Grabowski, "French Criminal Justice" 413-414; Quote from Grabowski, "French Criminal Justice" 414.

not follow Dutch law. As will be shown, the Dutch in Beverwijck, like the colonists in New France, were guided largely by political and economic concerns about maintaining the safety of the northern settlement and the stability of the fur trade upon which their entire economy depended.[27]

Economic and political concerns continued to dominate Indian affairs in Fort Orange and Albany throughout the colonial period and up until the Revolutionary War. After the English conquest of the colony in 1664, Dutch fur traders continued to dominate the renamed village of Albany. The imposition of English law over this settlement and Indian fur traders developed very slowly over the next twenty years, culminating in the assumption of English jurisdiction over the Indians of the Hudson River, including the Mahicans, Esopus, Catskills, Wappingers, Nochpeems, and Wecquaesgeeks. The Mohawks and other Iroquois Nations, by virtue of their position the largest Indian trading partner and the most powerful Indian nation in the Northeast retained their independence from colonial authorities throughout the seventeenth and most of the eighteenth century. The English even assumed that the Iroquois held sway over Indians throughout the region, and treated other Indians as if they were under the control of the Confederacy. As Albany's place as a fur trading center declined during the early eighteenth century, political considerations began to eclipse the economy as the dominant force in English-Indian relations. By the 1750s, the Hudson River tribes were largely subject to English law in cases involving Europeans, although they had not relinquished all authority to govern their own people. The Iroquois Confederacy, however, remained mostly independent of English legal institutions. Before the end of the Seven Years War in 1763, the Iroquois were an important English ally because they lived in between the English and French colonies. The English knew

[27] Janny Venema, *Beverwijck: A Dutch Village on the American Frontier, 1652-1664* (Albany, N.Y.: The State University of New York Press, 2003), 20-23; Jaap Jacobs, *The Colony of New Netherland: A Dutch Settlement in Seventeenth-Century America* (Ithaca, N.Y.: Cornell University Press, 2009), 13, 106, 109-111.

that, if courted by the French, the Iroquois could prove a significant danger to their settlements and, most importantly, to the City of Albany. The Iroquois, the English believed, also had influence over Indians throughout the region and west into the Great Lakes, who they could likewise turn against the English colonies. Furthermore, the location of the Iroquois between the two colonial powers allowed them to serve as a buffer for French attacks on the English. After the Seven Years War, the English gained control of Canada and the threat of the French was eliminated. With the conclusion of Pontiac's War in 1764, the English no longer had either the economic or the political need to sustain equal relations with the Iroquois and began to demand greater subservience in cases of murder. Such demands were finally met in 1774 when, for the first time ever, an Iroquois Nation willingly handed over two murderers. By tracing the assumption of colonial jurisdiction over Indians in and near Albany through the Dutch and English periods up until the Revolution, I will show how European-Indian relations were guided by political and economic considerations focused on the survival of the village and the protection of the colony.[28]

Sources

Among the most important records for the study of the history of Dutch New Netherland are the historical manuscripts housed at the New York State archives in Albany. For nearly two centuries, the state government has taken a keen interest in increasing public access to these documents through funding translation of the Dutch sources, and more recently their publication. The first effort at translation was begun in 1814 by Francis Adriaen Van Der Kemp, a Hollander hired by the governor of New York. During the 1850s, the archivist of the State of

[28] Amy C. Schutt, *Peoples of the River Valleys: The Odysesey of the Delaware Indians* (Philadelphia, Pa.: University of Pennsylvania Press, 2007), 47; Allen W. Trelease, *Indian Affairs in Colonial New York: The Seventeenth Century* (Ithaca, N.Y.: Cornell University Press, 1960), 6.

New York, Edmund O'Callaghan, undertook a massive reorganization of the colonial records of New York, which contained "correspondence, land conveyances, court proceedings, resolutions of council, regulations, contracts, leases, or anything that the government might need as evidence in future court proceedings." He took the original forty-nine record books, ripped them apart, and ordered the documents in way he considered to be more logical and useful for researchers. O'Callaghan also began a retranslation of the documents, completing the first four volumes before his death. In the first decade of the twentieth century, Arnold J. F. Van Laer, another archivist in the New York State library, judged these O'Callaghan's translations to be unreliable and began the painstaking process of completely retranslating the entire collection of Dutch documents. Just after Van Laer completed the translation of the first volume in 1911, a terrible fire broke out in the State Library, destroying his translation and many of the colonial records. As the fire burned, the shelves holding the colonial records collapsed and the English records, which were stored above the Dutch, fell, partially shielding the Dutch records from destruction. The English records suffered extensive destruction, and only papers from five seventeenth century governors survived, albeit with varying degrees of damage.[29] Although not destroyed, many of the Dutch records were significantly scarred, particularly along their outer edges. Over the last thirty-five years, the New Netherland Project, a division of the New York State Library, has been translating and publishing the extant Dutch records in order to "place the documentary evidence in the hands of American scholars who are unable to read seventeenth-century Dutch." Of greatest importance for a study of Fort Orange are the minutes of the New Netherland council (volumes four, five, and six), which cover the years 1638-1649

[29] The five governors whose records survived are Richard Nicholls (1664-1668), Francis Lovelace (1668-1673), Sir Edmund Andros (1674-1681), Thomas Dongan (1683-1688), and Jacob Leisler (1689-1691).

and 1652-1656, and the correspondence of Petrus Stuyvesant, the Director General of New Netherland, from 1647-1658.[30]

Along with reorganizing and cataloguing the New York colonial records, O'Callaghan also translated and published documents collected on behalf of New York State by John Brodhead in the Hague, Holland, England, and France. His eleven volumes were published during the 1850s and 1860s under the title *The Documents Relative to the Colonial History of the State of New York*. During the 1880s, these were supplemented by another three volumes focusing specifically on the Dutch settlements along the Delaware River, the Hudson and Mohawk Rivers, and on Long Island. During this same period, O'Callaghan also published the four volume *Documentary History of the State of New York*. This collection included papers on a wide variety of topics relevant to the colonial history of New York, including censuses, journals of explorers' journeys into Indian country, and papers related to French expeditions against New York. These collections of documents are indispensable in the study of New York history, and particularly in the English period, because the 1911 fire destroyed so many unpublished documents. Yet O'Callaghan's work is not without question. Both Van Laer and more recent scholars at the New Netherland Project have questioned O'Callaghan's translations and shown, from analysis of extant documents, that his work was sometimes faulty. Nevertheless, these collections are, in many cases, the only extant copies of extraordinarily important documents, a benefit which far outweighs their flaws.

In addition to records of the colonial administrations, Van Laer and the New Netherland Project have also published a series of extraordinarily important documents related to the City and County of Albany. Most of the general administrative records of the city, including notarial

[30] Quotes from Charles T. Gehring, ed., *The Register of the Provincial Secretary, 1638-1642.* (Albany, N.Y.: New Netherland Research Center, 2011), accessed April 11, 2012, www.nnp.org/nnrc/Documents/Register_of_the_Provincial_Secretary/index.html#/2/, ii.

papers, deeds, mortgages, and wills, were published in four volumes by Van Laer under the title *Early Records of the City and County of Albany and the Colony of Rensselaerswyck, 1654-1678*. Van Laer's most important undertaking in the Albany records was his translation of all the extant court minutes for the present day county of Albany. These records begin with the *Minutes of the Court of Rensselaerswyck*, which cover the years 1648 to 1652. Although there is evidence that the court continued to exist until 1668, these records have apparently been lost. In 1652, the New Netherland colony created the Village of Beverwijck and created a new court for the village and Fort Orange. *Minutes of the Court of Fort Orange and Beverwijck* exist for the years 1652 through 1660. Unfortunately, the years 1660-1668, during which the government changed from Dutch to English, are lost. These records resume with the *Minutes of the Court of Albany, Rensselearswijck, and Schenectady*, which retains a mostly complete record (with some minor gaps) from 1668-1685, just before the city was granted its charter. The minutes for the next century of the Court of the City of Albany, originally written in English, were printed in chapters scattered throughout the ten volume *Annals of Albany* published in the 1850s.

The final collections of documents relevant to any study of Indian-colonial relations in New York are the records of the Commissioners of Indian Affairs, and the Superintendent of Indian Affairs for the Northern Colonies. In 1754, Peter Wraxall, then the Secretary of Indian Affairs, published *An Abridgement of the Records of Indian Affairs: Contained in Four Folio Volumes, Transacted in the Colony of New York, from the Year 1678 to the Year 1751*. In its modern, single-volume printing, Wraxall's work condenses approximately one thousand pages into only two hundred and fifty pages of transcribed records. Unfortunately this abridgement, despites its significant limitations, remains an indispensable source because so many of the records have been lost. Another important, albeit limited, source is *The Livingston Indian Records, 1666-1723*, a collection of the private notes of Robert Livingston, the Secretary of

Indian Affairs in Albany from 1695 until his death in 1728. The only complete records from the Commissioners of Indian Affairs are the minutes from 1722-1748, which are housed in the National Archives of Canada, in Ottawa.[31] Additional limited selections taken from private notes are also published in two articles published by the New York Historical Society and the American Antiquarian Society.[32] The final selection of documents related to New York colonial Indian affairs are the *Papers of Sir William Johnson*, the English Superintendent of Indian Affairs for the Northern Colonies. These papers, which cover the period from 1738 to Johnson's death in 1774, provide one of the most important sources for the study of Indian-colonial relations in the northern colonies in the years before the Revolutionary War.

Research Questions

Although historians have long been aware of the lack of open warfare in Albany, few have addressed the important question of how Europeans and Indians handled cross-cultural murders that were undoubtedly as problematic in Albany as elsewhere in the colonial world. This study, therefore, will focus first, and most importantly, on how Indians and Europeans living in and around Beverwijck/Albany resolved the murders and other cross-cultural violence. Second, this thesis will examine how the methods for resolving cross-cultural murders in Albany are indicative of the economic and political relationship between the Albany settlers and their Indian neighbors and trading partners. As already shown, the resolution, or lack of resolution, of a cross-cultural murder was central to determining the relationship between Indians and Europeans. In New England, murder was the spark of war, while in New France the peaceful

[31] Unfortunately, these records were not available while researching this thesis.

[32] "Continuation of Colden's History of the Five Indian Nations, for the Years 1707-1720," in New York Historical Society, *Collections* 68 (1935), 357-434; Daniel K. Richter, "Rediscovered Links in the Covenant Chain: Previously Unpublished Transcripts of New York Indian Treaty Minutes, 1677-1691," in American Antiquarian Society, *Proceedings* 92 (1982), 45-85.

resolution of murder was the heart of a century-long alliance. Analyzing how the Albany settlers addressed murders will aid in understanding the relationship of the different peoples near Albany, as well as the extent to which the Dutch and English in Albany feared war with Indians.

This thesis will also question the persistent theory that because the French did not force Indians to accept the French legal system, the French therefore had a special affinity for Indians. As will be shown, the Dutch in Albany also never forced Indians to accept their European legal system, but this was not related to any special affinity for Indians. Further south, the Dutch at the Esopus and on Manhattan Island had no trouble ordering the arrest and execution of Indians, even when they knew it would be completely unacceptable to the accused's nation. This thesis will argue that what made the Dutch willing to compromise was not a special concern for Indians, but rather a concern for the local Dutch economy that depended almost entirely on the fur trade with Indians. After the English conquest of the colony, the residents of Albany remained deferential to the concerns and expectations of Indians, at least as long as the Indians provided a benefit to the colony. This benefit could be economic, via the fur trade, or political, as during the eighteenth century when the Iroquois Confederacy was a significant ally in British struggles against the French. When Indians no longer held a pivotal economic or political role, the English colony quickly lost all concern for maintaining a balanced relationship and, like their colonial counterparts elsewhere, began to demand that Indians accept British legal norms including arrest, trial, and execution.

Chapter 2: The Dutch Period I: Trade and Violence on the North Hudson

Attempts and Failures at Peace on Manhattan Island and the Lower Hudson River

Unlike the founders of other seventeenth century European colonies in North America, the Directors of the West India Company (WIC), the private company charged with settling a Dutch colony, envisioned only small settlements on the edge of the continent where ships could dock temporarily, and where traders could live while they purchased furs to sell back in Europe. The directors gave their representatives in Fort Amsterdam direct instructions "not to interfere in the foreigner's affairs, but as far as possible maintain peace." Even trade was expected to take place only in the coastal settlements so that the traders would never need to travel inland. In her book *The Shame and the Sorrow*, Donna Merwick uses the metaphor of being "alongshore" to explain this distinct Dutch colonial "state of mind." To Merwick, the term "alongshore," signified the Dutch in the "New World." She used this word to signify a place (literally living on the shore), a mentality (remaining on the shore apart from Indians), and Dutch distinctiveness. The Dutch, Merwick argues, feared that involving themselves in Indian affairs would create enemies needlessly, thereby undermining trade. Instead, the Dutch hoped that remaining "alongshore" would keep them out of conflict and maintain their ability to trade freely with everyone, regardless of any conflicts between Indian tribes.[33]

An important component of the "alongshore" mindset was also a desire to distinguish Dutch-Indian relations from the brutal New World regime of the Spanish. The New Netherland

[33] Donna Merwick, *The Shame and the Sorrow: Dutch-Amerindian Encounters in New Netherland* (Philadelphia, Pa.: University of Pennsylvania Press, 2006), 47-52, 88, 110; Quotes from Merwick, *Shame and Sorrow* 39, 9.

colony, like the WIC itself, had originally been founded to support the Dutch war of independence against the Spanish Empire. Although the WIC valued its exclusive trading privileges, it was not until after the end of hostilities with Spain in 1648 that trade became the most important source of income for the WIC. Instead, the vast majority of the WIC wealth came, as intended by the company's charter, from the raiding of Spanish ships transporting gold from South America. In North America, the WIC attempted to use Indian relations to create a contrast between the colonial empires of the Dutch and the Spanish. Unlike the Spanish, the WIC had no desire to dominate and control a subservient native population, but instead chose to respect the right of Indians to control their own land and maintain their own government. Rather than simply claiming land under a presumed "right of conquest," the Dutch purchased all of the land on which they settled. Furthermore, in stark opposition to the Spanish, the Dutch never sent missionaries to Indian communities or forced or even encouraged Indians to live like the Dutch.[34]

Although simple in theory, the idea of remaining "alongshore" proved more complicated for the actual residents of the New Netherland colony. In one sense, the Dutch succeeded in remaining uninvolved in the internal affairs of Indian nations. The New Netherlanders sent extraordinarily few expeditions to explore the west, and the Dutch Reformed Church never sent any missionaries to preach in Indian communities. What the Dutch failed to realize, however, was that their presence necessarily altered social relations throughout the region. Furthermore, their trade with Indians inevitably intertwined Dutch and Indian communities in ways that went beyond a simple exchange of goods. As conflict between Dutch and Indians developed, the

[34] Merwick, *Shame and the Sorrow* 35, 75, 95; Benjamin Schmidt, "The Dutch Atlantic: From Provincialism to Globalism," in Jack P. Greene and Philip D. Morgan, eds., *Atlantic History: A Critical Appraisal* (New York, N.Y.: Oxford University Press, 2009), 163-187; Donna Merwick, *Possessing Albany, 1630-1710: The Dutch and English Experience* (Cambridge, Mass.: Cambridge University Press, 1990), 2, 9-24.

leaders of the colony, despite WIC protestations, rarely remained aloof from such conflicts and, willingly or not, allowed the colony to become actively involved in military conflict with Indians. In *The Shame and the Sorrow*, Merwick recognizes that the "alongshore" state of mind was merely an ideal. Her narrative, therefore, focuses not on the professed desire to remain "alongshore," but at the consistent failure of the Dutch to achieve this goal.[35]

The best known and most significant of these failures was Kieft's War, which developed from a series of cross-cultural murders in the 1640s. The origins of this conflict trace back to 1640, when Willem Kieft, Director-General of the New Netherland Colony, learned that a group of Raritans, one of the Algonquian peoples of the Hudson River region, had killed some pigs on Staten Island. Rather than negotiating a solution as directors of the WIC in Amsterdam probably expected, Kieft – determined to assert his dominance – demanded reparations from the Raritans. This conflict simmered for over a year until the Raritans retaliated by killing four servants of David de Vries. In response, Kieft began a small war against the Raritans by ordering a bounty for the head of any Raritan involved in the murders. After a few killings of Raritans by Indian allies of the Dutch, peace was temporarily restored.[36]

Violence began again in August 1641 when a Wecquaesgeek man murdered a Dutch farmer in modern-day Bronx County. When Kieft demanded the Wecquaesgeek sachems to turn over the murderer, the sachems refused on the grounds that the death was justified retribution for the murder of the slayer's uncle twenty-one years earlier by three Dutch servants. Rejecting the basic Indian legal tenet of retribution, Kieft called together the leading citizens of New Netherland to approve an attack on the Wecquaesgeek village. Although the soldiers sent out in March 1642 failed to find the village, their presence concerned the

[35] Merwick, *Shame and Sorrow.*

[36] Haefeli, "Kieft's War" 19-23; Paul Otto, *The Dutch-Munsee Encounter in America: The Struggle for Sovereignty in the Hudson Valley* (New York, N.Y.: Berghahn Books, 2006), 112-116.

Wecquaesgeek enough to reopen negotiations with the Dutch to prevent violence. Kieft, unwilling to accept anything less than a proper trial and execution of the murderers, insisted that peace could only exist "on the condition that [the sachems] should either deliver up the murderer or inflict justice themselves." Although the sachems agreed to the terms, they again refused to hand over the murderer, probably because under their own law there was no means by which the sachems might wield such authority. In addition, to surrender him would have violated their own legal code, which permitted, and even mandated, that he take revenge for his uncle's slaying.[37]

While the situation with the Wecquaesgeeks simmered, the son of a Hackensack sachem killed another Dutchman in Newark. In this case, the Hackensack sachems did not attempt to defend the slayer's actions because they were entirely unprovoked and had no basis in revenge. Instead, following an accepted method of restoring peace, the sachems offered to pay the man's widow for the death. Kieft, however, demanded that the murderer be surrendered to him, which they refused, claiming he could not be found. Both situations came to a head in 1643 when the Wecquaesgeeks, fleeing from Mahican attacks, sought sanctuary with the Dutch. Kieft instead ordered a massacre of the refugees, believing that this would convince all Indians to submit to Dutch authority and hand over still unpunished murderers. This belief proved horribly incorrect. The Indians did not surrender, but instead decided to seek vengeance for their murdered relatives and allies by killing Dutchmen and burning their farms. This violence continued intermittently for more than a year as more Indian tribes from along the Hudson River began to join the attacks on the Dutch. It was not until the Indians had satisfied

[37] Haefeli, "Kieft's War" 23-24; Otto, *Dutch-Munsee Encounter* 118; Quote from Haefeli, "Kieft's War" 23.

their need for vengeance and began to ask the Dutch for peace that the violence was finally ended.[38]

With war over and the colony again at peace, the directors of the WIC soon turned their attention to the question of who should be held responsible for violating the "alongshore" ideal and involving their colony in years of costly warfare. In letters, Kieft attempted to place the blame solely on the Indians and their insolent failure to follow Dutch law. To the directors, however, responsibility for the war fell upon the colonists, who had become involved in Indian affairs and thereby created conflict. The greatest responsibility for the war lay with Kieft. The directors blamed his rashness with the Indians and determined that he was no longer fit to lead the colony. In his place, they sent a new director general, Petrus Stuyvesant, to replace him and return the colony to its proper place "alongshore." The directors also recalled Kieft to Amsterdam to answer for his actions, but his ship, the *Princess Amelia*, was shipwrecked in the Bristol Channel and he, along with a number of other Dutch colonial leaders, drowned.[39]

While the colonists continued to profess a desire to remain only "alongshore," their actions in the years after Kieft's War show that such an ideal was never put into practice. In the decade between Kieft's War and the English conquest in 1664, Dutch relations with many of their Indian neighbors were fraught with conflict. While the Dutch never had another war as long or as bloody as Kieft's War, there were short conflicts every few years in Manhattan and along the Hudson River, most notably the Peach War in 1654 and the two Esopus Wars, fought in 1659 and 1663. These wars, as elsewhere, resulted from conflicts over land and trade, and most importantly from murders. During and after each of these wars, the Dutch directors of the colony debated the question of whether they wars they fought against the Indians were "just wars" under the law of nations. In each case, the Dutch looked back with "shame and sorrow,"

[38] Haefeli, "Kieft's War" 24-31; Otto, *Dutch-Munsee Encounter* 119-125.
[39] Merwick, *Shame and Sorrow* 174-177.

and described each war as an unfortunate anomaly in a society that was meant to remain "alongshore." As Merwick shows, the Dutch idea of remaining "alongshore" was, by the 1650s, impossible for nearly all of the settlements in New Netherland.

Attempting to Remaining Alongshore in Fort Orange and Rensselaerswijck

Within New Netherland, Fort Orange was distinctive because it faced very few violent confrontations with its Indian neighbors. In *The Shame and the Sorrow*, Merwick provides only one example in which the Dutch residents of the north Hudson River failed to maintain the "alongshore" ideal. This conflict was, furthermore, significantly smaller than any of the wars further south. In the 1620s, the Mohawks and the Mahicans renewed a war which, many historians believe, had plagued these nations for decades. At first, the Dutch followed their official policy and attempted to ignore the war and trade with both nations. Yet, try as they might, the Dutch could not remain completely uninvolved because they were located literally in between the two competing nations. Furthermore, according to archaeologist James Bradley, the presence of the Dutch may have been the cause of renewed warfare. Relations between the two groups broke down, he argues, because of their competing desires to control access to European trade goods. Dutch attempts at neutrality lasted only until 1626 when Daniel van Krieckenbeeck, a military officer at Fort Orange, decided to give support the Mahicans, and led an attack against the Mohawks. In response, the Mohawks attacked and killed Krieckenbeeck and his men. Immediately after this attack, Pieter Minuit, the Director General, rushed north to atone for the attack on the Mohawk, restore peace, and recommit the colony to a policy of non-intervention.[40]

[40] Merwick, *Possessing Albany* 125-130; James W. Bradley, *Before Albany: An Archaeology of Native-Dutch Relations in the Capital Region, 1600-1664* (Albany, N.Y.: New York State Museum, 2007), 18-20; Matthew Dennis, *Cultivating a Landscape of Peace: Iroquois-European Encounters in Seventeenth-*

One of the prime reasons that Fort Orange has such a small place in *The Shame and the Sorrow* is because, except for the significant failure of Daniel van Krieckenbeeck, the Dutch on the north Hudson were generally able to maintain at least a semblance of the "alongshore" ideal. Fort Orange was a trading colony dependent on the willingness of Indians to bring furs for the Dutch to purchase. As the Dutch understood well, any animosity between themselves and an Indian nation held the possibility of ending trade with that Indian nation, and possibly many others. Letting a conflict fester and grow into a war, as happened during Kieft's War, would at least have damaged trade significantly, and possibly irreparably. To keep conditions with Indians stable, the Dutch in and around Fort Orange followed the practices that Merwick labeled the "alongshore" ideal. At the same time, the residents of Fort Orange could never remain completely apart from the Indians because their livelihoods depended on maintaining trade relations with Indians. Although the Dutch could never remain *entirely* alongshore, they did attempt, as much as possible, to remain outside of any Indian affairs that did not involve trade.

Dutch efforts to control conflict with northern Indians and to remain alongshore initially involved attempts to control who could access, reside, and trade in Fort Orange. One of the earliest attempts at such regulation was the ban on non-licensed traders in Fort Orange. Initially, this ban had little to do with maintaining peace. It was, instead, an attempt to enforce the official WIC monopoly on trade in the Dutch North American colonies. In the wake of van Krieckenbeeck's death in 1626, Minuit issued a new regulation that attempted to use the ban as a way to ensure more peaceful relations with the Mohawks. Minuit declared that only people with explicit permission from the WIC would be permitted to live in or travel to Fort Orange. He

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Century America (Ithaca, N.Y.: Cornell University Press, 1993), 130-131; Trelease, *Indian Affairs in Colonial New York* 47-48.

hoped that by limiting the population of the settlement and strictly controlling its residents, he could limit Dutch violence against Indians.[41]

Minuit's plan was significantly undermined in 1629, when Kiliaen van Rensselaer, a wealth Amsterdam diamond merchant and one of the directors of the WIC, founded the colony of Rensselaerswijck on the land around Fort Orange. In theory, this colony posed little threat to the ban on non-WIC traders because the settlers of Rensselaerswijck signed contracts with the patroon, as the proprietor of Rensselaerswijck was known, forbidding trade with Indians. Van Rensselaer hoped that the creation of a farming colony could support northern traders and assist Fort Orange without undermining the prerogatives of the WIC's monopoly over trade. To the patroon's dismay, his farmers quickly discovered that it was significantly more profitable to engage in trade than to farm. Even the officials of the colony, sent over by the patroon to represent his interests, more often put their own monetary interests above those of their employer and the law. One of the first Rensselaerswijck officials to be dismissed for his legal transgressions was, ironically, Jacob Albertsz ver Planck, the *schout*, who served as both sheriff and prosecutor. According to Kiliaen van Rensselaer, Planck was not a "proper manager" because he knew "more about trading furs which have been of greater profit to him than to me." When even the *schout* was involved in illegal trade, there was little that either the WIC government or the patroon could do to keep control of Dutch-Indian interactions.[42]

After the WIC trade monopoly ended in 1639, the patroon attempted to assert some control over the unruly fur trade by permitting his tenant farmers to trade as long as they paid

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[41] Charles T. Gehring, trans. and ed., *Fort Orange Court Minutes, 1652-1660.* (Syracuse, N.Y.: Syracuse University Press, 1990) (Hereafter *FOCM*), xvii-xviii.

[42] Merwick*, Possessing Albany* 43, 125-130; Benjamin Schmidt, "The Dutch Atlantic" 163-187; Cathy Matson, "'Damned Scoundrels' and 'Libertism of Trade': Freedom and Regulation in Colonial New York's Fur and Grain Trades." *The William and Mary Quarterly*, Third Series, Vol. 51, No. 3 (July, 1994), 389-418; Quote from A.J.F. van Laer, trans. and ed., *Van Rensselaer Bowier Manuscripts*. (Albany, N.Y.: University of the State of New York, 1908) (Hereafter *VRBM*), 430.

him a half-share of their profits. Even after legalizing the trade, however, Kiliaen van Rensselaer struggled to get his tenants to declare their trading profits. Many tenants, accustomed to trading illegally, were unwilling to give up their profits to a patroon living across an ocean. His problems were further compounded by his officials who continued to trade illegally in spite of the new ordinance they were supposedly charged with enforcing. In 1644, he was forced to scold Adriaen van der Donck, ver Planck's successor as *schout,* for failing to prosecute certain settlers who traded illegally. In his defense, van der Donck stated that he did not want to be the "bad one among those in charge." Even worse than van der Donck was Rensselaerwijck's director, and van Rensselaer's cousin, Arent van Curler. Van Curler was an extremely important person in the north Hudson fur trade because of his skill as a Mohawk translator and negotiator. Yet for van Rensselaer, van Curler was a perpetual problem. In letters, van Rensselaer constantly chastised him for failing to complete the account books and failing to provide the information requested of him about goings-on in the colony. Van Curler even refused to live in the middle of the colony as required, instead preferring the north edge closer to where Indians would arrive with furs. By the late 1640s, illegal trading, fur smuggling, and only limited prosecutions had become standard practice for many Rensselaerswijck settlers. [43]

Trade was a problem not only for the patroon's profits, but also for the maintenance of peace on the north Hudson. In their quest for ever greater and more immediate profits, many traders chose to sneak out into the woods and ambush Indians to either steal their furs or force them to sell the furs at below market rates. Even in the best cases when traders did not intend to commit acts of violence, their actions undermined the supposed freedom of Indians to sell their furs to whomever they preferred, by catching them and forcing them to sell before they

[43] Merwick, *Possessing Albany* 29-33; Venema, *Beverwijck* 18, 46; Dennis Sullivan, *The Punishment of Crime in Colonial New York: The Dutch Experience in Albany During the Seventeenth Century* (New York, N.Y.: Peter Lang, 1997), 23; Quote on Sullivan, *Punishment of Crime* 23.

reached the fort. In an attempt to assert control over the fur trade and curb the violent excesses of the fur traders, the courts of Fort Orange and Rensselaerswijck issued a joint ordinance in 1645 that forbade bartering at night, in the woods outside the village, or in private homes. This ordinance was meant to leave traders with no option but to trade in the open during daylight hours, where they could be most easily observed by the *schout* and other representatives of the colony. As before, such regulations went almost entirely unenforced. By 1655, the complaints of the Indians and concerned Dutchmen had grown significant enough for the Council of New Netherland to take notice and mandate that the "new deputies of the court of Fort Orange and Beverwijck…see about a strong ordinance for [Fort Orange] concerning the going into the woods of the Dutch." Yet even this new ordinance and the oversight of the Council failed to stem the violence that was increasingly characteristic of the fur trade. The Dutch faced an increasing number of complaints from tribal sachems that "when the Dutch are in the woods to fetch Indians, they beat them severely with fists and drive them out of the woods."[44]

One of the reasons that violence continued throughout the 1640s was the significant growth of the fur trade, which meant that the profit from trading illegally could be even greater than before. In addition, the period also saw a massive rise in the Dutch population that significantly increased the number of men hoping to make a quick profit from the fur trade. After the death of the first patroon in 1643, the guardians of his young son and heir, in an effort to increase security and to take advantage of the growing fur trade, began moving the villagers

[44] Jacobs, *Colony of New Netherland* 211-214; Venema, *Beverwijck* 183-186; Matson, "Damned Scoundrels" 393; *VRBM* 722-723; A.J.F. Van Laer, ed. and trans., *Minutes of the Court of Rensselaerswyck 1648-1652.* (Albany, N.Y.: The University of the State of New York 1922) (Hereafter *MCR*), 130; *FOCM* 454, 460, 503, 514; E.B. O'Callaghan, trans. *Laws and Ordinances of New Netherland, 1638-1674*. (Albany, N.Y.: Weed, Parsons, and Company, 1868) (Hereafter *LO*), 190, 366, 381, 425-427, 464; Quotes from Charles T. Gehring, trans. and ed. *Council Minutes 1655-1656*. (Syracuse, N.Y.: Syracuse University Press, 1995), 58; *FOCM* 503.

of Rensselaerswijck closer to the fort. At the same time, as demand for furs from both the fort and the new village burgeoned, more Indian hunters came to the village and stayed for longer periods of time to sell their beavers and otters. By 1650, Indian fur traders were such a constant presence in Rensselaerswijck that, according to Brant van Slichtenhorst, the director of Rensselaerswijck, "not half a day went by when the settlement was free of Indians." With growing Dutch and Indian populations, the possibility of conflict between the two groups increased. There are, however, few extant references to such violence. This is most likely a result of the limited sources from Rensselaerswijck and the general unwillingness of the *schout* of the colony to enforce trading ordinances, and thereby leave a record of violations in the court records. Nevertheless, the court records of Rensselaerswijck do offer evidence that by 1650 the Mohawks had grown so discouraged by the Dutch failure to police traders that the tribe was threatening to end the trade and attack destroy the small village. The Dutch fear of attack only ended after all of the traders recommitted to not going out into the woods to trade, along with a significant payment of 159 florins worth of goods to the Mohawks.[45]

The Fur Trade and Violence in Beverwijck

During the early 1650s, the New Netherland colony took control of the Rensselaerswijck village, released the fur traders there of their obligations to the patroon, and thereby opened up even greater opportunities for both the population of the north and the ever important fur trade to expand. By the late 1640s, the Rensselaerswijck village had begun to draw the ire of Petrus Stuyvesant, the Director General of New Netherland. Not only had the village been encroaching on the WIC control of the fur trade, but the director of Rensselaerswijck had also

[45] Venema, *Beverwijck* 89; Thomas E. Burke, Jr., "New Netherland Fur Trade, 1657-1661: Response to Crisis," in Nancy Anne McClure Zeller, ed., *A Beautiful and Fruitful Place: Selected Rensselaerswijck Papers* (Albany, N.Y.: New Netherland Publishing, 1991), 283-293; Jacobs, *Colony of New Netherland* 294; *MCR* 129-130, 215-216; Quote from Venema, *Beverwijck* 169.

began to argue that his settlements were completely independent of the colony and did not need to follow laws set down by the Council in New Amsterdam. After years of political wrangling, Stuyvesant, in 1652, ordered the arrest of the *schout* of Rensselearswijck and the formation of a new village encompassing all land within a cannon shot, or about 3000 feet, of Fort Orange. Residents of this new village, which he named Beverwijck, were absolved of their oaths to the patroon and became free traders and residents of a village under the jurisdiction of the New Netherland Council. Under the command of the new Court of Beverwijck and Fort Orange, headed primarily men who previously traded under contract with the patron, the fur trade quickly grew from an economic venture into a cultural institution that defined life in the village. In the village, the official year began on May 1 when the first ships from New Amsterdam appeared in the Hudson River. To coincide with the new season, May 1 was also the day when the court swore in its new members and inaugurated a new term. Within a few weeks, the small village of Beverwijck burgeoned into a thriving urban-like center as traders flooded the city from New Amsterdam and from Indian country. At the height of trade in the mid-1650s, Indians bought to the city approximately 50,000 pelts to trade each season. During the trading season, or *handelstijd*, which lasted through late September and officially ended on November 1, nearly all commercial activity in Beverwijck was in some way oriented around the fur trade. The traders who filled the city all required boardinghouses for their extended stays and taverns in which to drink and socialize. The *handelstijd* also provided increased work, and usually increased profits, for brewers, bakers, blacksmiths, and others whose services were always needed in a colonial town. Even after the *handelstijd*, the fur trade continued to determine life in Beverwijck. The most valuable properties, for example, were those that

"caught the flow of trade" along the main streets of the village. After walls were constructed around the town in 1659, the homes right next to the gate became the most highly desirable.[46]

In Beverwijck violations of trading ordinances and violence against Indians became even more common and, in some ways, even became a part of the village culture in their own right. Merwick, in her study of colonial Albany referred to trade during the *handelstijd* as a game, during which traders used any means necessary to ensure that they secure the greatest profit possible, regardless of whether such means were legal or not. For many, the fur trade was like a high stakes game in which a trader leveraged his wealth to buy goods on credit each spring in the hopes that he would make back this money and more during the summer. Furthermore, traders in Beverwijck knew that there would be no consequences for violating trading ordinances. Although the court recognized the illegality of trading in the woods, there were few prosecutions and only a handful of convictions under this ordinance. Johannes Dijckman, the first *schout* of Beverwijck, did not charge even one trader with a violation throughout his entire tenure. Traders could ignore the trade ordinances because, as far as most could tell, violations were ignored by the *schout.*[47]

Even when the *schout* did attempt to enforce the law, the sanctions established by the ordinances were rarely imposed. On his first court day as *schout* in July, 1655, Johan de Decker subpoenaed four traders to testify that they had seen Gerrit Banker using an Indian to enticing Indians to trade in his house, for which de Decker demanded that Banker be fined 300 florins and banned from trading for a year, in accordance with the posted ordinance. Despite the evidence of four sworn witnesses, the members of the Court of Beverwijck decided to grant Banker one week to take an oath declaring their innocence, or else to pay the fine as demanded.

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[46] Merwick, *Possessing Albany* 33, 77-82, 105-107; Venema, *Beverwijck* 46, 89, 99; Quote from Merwick, *Possessing Albany* 107.

[47] Merwick, *Possessing Albany* 80; Matson, "Damned Scoundrels" 393; Sullivan, *Punishment of Crime* 73-74, 145.

Although the opportunity to prove one's innocence by oath was used commonly throughout the minutes of the Court of Beverwijck, the option to consider the oath for a week was a privilege the court did not always grant. In this case, despite four sworn witnesses providing proof of his guilt, Banker, who initially refused to take an oath, was given one week, and then an additional week to consider whether he wanted to "purge himself" of the accusations. After two weeks of waiting, the court "seeing that the defendant not only remains in default, but openly refuses to take the oath, condemn the defendant to pay a fine." By giving the defendant two weeks to consider his guilt, the court betrays its unwillingness to enforce the ordinances that it has supposedly passed to control the fur trade. Possibly sensing an unwillingness of the court to prosecute trade violations, de Decker brought only one more prosecution during his one year term as *schout*.[48]

During the first few years Johannes La Montagne's term as *schout*, which began in 1656, there was a similar reluctance to challenge trading violations in court. In his first three years, he punished only one non-alcohol related trade violation. Similarly, La Montagne, like his predecessors brought absolutely no charges of violence against an Indian during his tenure in Beverwijck. In fact, the only way to track violence against Indians is through the infrequent references to violence in trade ordinances and the minutes of conferences with Indian leaders, which show only that there was enough violence to warrant mention. In 1659 and 1660, the level of violence against Indians spiked as a result of the dramatic decline in the fur trade. In response to this decline, the wealthy traders began cornering the market in an effort to ensure

[48] Sullivan, *Punishment of Crime* 73-74, 149-150, 193; Merwick, *Possessing Albany* 182-183; Gehring, *Council Minutes 1655-1656,* p. 58, 66-67; *FOCM* 197, 200-204. Quote from *FOCM* 204.

Under the Dutch legal system in the colonies, the court of Fort Orange and Beverwijck served as both the legislative and judicial body for the village, the fort, and the surrounding settlements as far south as the present day village of Katskill. The *schout* served as the presiding member of the court when acting as a legislative body and during civil trials. During criminal trials, including trade violations, the *schout* served as prosecutor and had no vote in the court's decisions.

that they would maintain the high profits they had previously enjoyed. With fewer furs available for purchase, the lower class traders began taking more desperate measures to acquire the furs they depended on to survive. During the next two *handelstijd*s, traders began to engage in illegal tactics with increasing desperation. One of the most popular tactics was "running in the woods," the practice of catching Indians in the woods before they reached the village, which had been illegal since 1645. In 1659, La Montagne attempted to curb some of this violence by enforcing, for the first time, the laws against going into the woods. During this season, he brought charges against eight men who were accused of either going into the woods themselves, or of hiring others to go into the woods for them. Although eight cases may have been a huge number compared with the previous decade, Philip Pietersz, one of the accused, makes clear in his defense that this represents only a small portion of the actual cases. Pietersz was charged with giving an Indian a coat as a bribe for going into the woods to entice Indians to trade with him. Although Pietersz denies the charge, he admits giving the Indian a coat as a "present," and argued, furthermore, that "if he did wrong in that, [then] not a single beaver is bartered…but contrary to the ordinance."[49]

Although La Montagne wanted punishments imposed to bring order to the fur trade, the court would not support him and imposed a penalty on only one of the accused men. Avoiding conviction actually required the court, in many cases, to accept even the most absurd of excuses because in only one case did the defendant deny outright that he had been in the woods. In one of the most extreme cases, a wealthy trader, Pieter Hartgers, did not even deny the charge that he had sent brokers into the woods for him. Instead, he said that he should not have been charged because, in his opinion, the trade ordinance should have been repealed. The court apparently accepted his argument because no fine or punishment was imposed on him. In

[49] Sullivan, *Punishment of Crime* 151; Merwick*, Possessing Albany* 82-96; *FOCM* 317, 453-460; *LO* 366; Quote from *FOCM* 436.

three other cases, the defendants offered seemingly more plausible excuses for why the *schout* had seen them in the woods, such as searching for missing horses. Others attempted to mitigate their punishment by providing the names of other traders they had seen in the woods, while at the same time denying that they had been in the woods to trade. Although La Montagne doubted the sincerity of these excuses, the court, in all but one case, either dismissed the charges outright or offered the defendants the opportunity to take an oath as proof, which all apparently did. In the only case to bring actual sanctions, the punishment was not even imposed for having violated a trading ordinance. Instead, Cornelis Teunissen Bosch, a wealthy trader charged with sending brokers into the woods, was charged and convicted of defaming the members of the court. When originally confronted by the *schout* with the charges, Bosch refused to answer them stating that unless "Philip Pietersen and Pieter Hartgers, who were caught, were not punished first, that he wiped his ass on the ordinance." He was subsequently banished by the court for twelve years, and condemned by the court to pay a fine of 1200 florins, not for his trade violations, but because he had "defamed the honorable court." If this case had been like any other, it is extremely unlikely that Bosch would have faced any punishment from a court unconcerned with actually enforcing the trade ordinances.[50]

At the beginning of the next season, it appeared as if the court might have decided to begin actually enforcing the trade ordinances, because during the winter, the court had passed a new ordinance forbidding traders to molest Indians or rob them of furs. At the end of May, after the arrival of the summer population, the court put before the village the question of whether traders should be allowed in the woods. The court almost immediately received two responses, one from the principle traders, and one from the poorer trader. The principle traders argued that only Indians should be allowed to "run" in the woods, although they knew

[50] *FOCM* 434-437, 444-445, 462; Quotes from *FOCM* 444, 445.

full well that only they could afford to pay the high rates that Indians charged to act as brokers. The "Christians," however, argued that everyone should be allowed in the woods so that "even the 'least' burghers had as much right as others." Disregarding these two petitions entirely, the court decided to forbid all "running" in the woods as a danger to the Indians. As should have been expected, this ordinance was completely disregarded by all, and violence between Dutch traders and Indians erupted in the woods almost immediately. The Dutch "ambushed natives, bribed them to trade or, more frequently, robbed them." Yet instead of demanding enforcement of the ordinance and an end to violence the court decided to remove itself entirely from the conflict by voiding the law against trading in the wood and "protest…their innocence in all mischief that may result therefrom."[51]

In the Beverwijck government, only La Montagne showed any real concern for violence perpetrated against the Indians. Despite the court's attempts to limit prosecutions, La Montagne brought over twenty charges of trading violations against a variety of traders found in the woods. As in the previous year, only one of these prosecutions actually resulted in a conviction. Even in this case, the court was unwilling to simply accept conviction and gave the defendant over one week to decide whether to purge his guilt with an oath. It was the defendant's own choice, probably based on his religiosity, to accept punishment for his crime. Since nearly all of the men were caught in the woods, only a few attempted to deny this fact, and instead offered what appear to be obvious attempts to cover up their illegal activity. Poulis Jansen, for example, claimed that he was out picking blueberries, while Cornelis Fijnhoudt claimed to be searching for his hogs. In one case, the defendant, Willem Brouwer, did not even try to deny the charge that he sent his servants out into the woods to trade. Instead, he argued that he had thought it was legal because he had done it many times before, he knew of many

[51] *LO* 366, 378; *FOCM* 491-492, 500-502; Sullivan, *Punishment of Crime* 151, 154-159; Merwick, *Possessing Albany* 82-96; Quotes from Merwick, *Possessing Albany* 96, 90; *FOCM* 502.

other men who did the same, and, furthermore, another trader had told him explicitly that it was legal. La Montagne tried to explain to the court that no trader had the right to declare an ordinance void, but the magistrates on the court decided to consider his defense anyway. Despite the absurdity of this defense, the court, searching for any possible way to avoid actual convictions, chose to dismiss the case against Brouwer.[52]

In the three most daring defenses offered to the court during the 1660, three traders attempted to get the charges against them dismissed by leveraging the well-known secret that the members of the court "traded openly" in the woods. All three made the same claim that they had sent their servants into the woods not to trade, but to spy on the servants of Rutger Jacobsen and Anderies Herpertsen, two of the court magistrates. The three traders who offered this defense even offered to prove their claim. In all three cases, the implicit threat against the magistrates worked and the charges were dismissed, because in reality the only member of Beverwijck's elite who wanted to enforce the trade ordinances was *schout* La Montagne. To nearly everyone else in Beverwijck's upper-class, illegal trading was an acceptable practice, which brought no stigma. Few men accused of illegal trading faced significant punishment, and this punishment was never a barrier to holding high office or remaining a respected member of the community. In fact, it was often those men who grew wealthy through illegal trade who were considered the most honorable and most well-respected. Although La Montagne worked hard to bring order to the fur trade and the court during 1659 and 1660, he was quite possibly the only man in Beverwijck with such a goal. For magistrates of the Beverwijck court, the trade ordinances were merely window dressing to feign concern for the excesses of the fur trade, in

[52] *FOCM* 491-492, 496-500, 511-514, 523, 528-530; Merwick, *Possessing Albany* 90-94; Sullivan, *Punishment of Crime* 155-157; Dennis, *Landscape of Peace* 161.

which the magistrates themselves were complicit, and to show the New Netherland council that they were attempting to assert control.[53]

Compensating for Violence against Indians

Maintaining peace, or at least limiting open warfare, required the court to do more than simply ignore violence, because although they might be willing to ignore their own law, Indians still expected to receive compensation for the murder according to their own laws and traditions. On the north Hudson, the Dutch were never strong enough or economically independent enough to consider forcing Indians into submission the way that Kieft attempted to do around Manhattan Island. Instead, the Courts of Fort Orange, Renssleaerswijck, and Beverwijck chose to follow and Indian method for compensating harm and reestablishing peaceful relations: they offered a payment of goods. As already shown, many Indian Nations, including the Five Nations of the Iroquois Confederacy and the tribes living along the Hudson River, considered payment an acceptable substitution for the blood debt owed to a victim's clan. Although evidence of gifts to Indian tribes exists throughout the Dutch records, only limited information was recorded about their purpose. Unfortunately, this makes it impossible for historians to discern whether these payments were made as compensation for specific incidents, or were more general payments to ensure the good will of Indian hunters and traders. In the years 1648 through 1650, for example, Brant van Slichtenhorst recorded 700 florins worth of "expenses incurred on account of the Indians," but provided no further explanation for what such expenses might have been. There were, undoubtedly, many reasons that the Indians might have given present to Indians, such as ensuring that Indians continued choosing to trade with

[53] *FOCM* 511-512, 514, 523, 528-530; Venema, *Beverwijck* 237-239; Burke, *Mohawk Frontier: The Dutch Community of Schenectady, New York, 1661-1710* (Ithaca, N.Y.: Cornell University Press, 1991), 13; Quote from *FOCM* 514.

the Dutch, and not their European rivals. The Dutch government knew that Indians could relatively easily leave their alliance and seek guns from the English or French, thereby threatening the New Netherland colony. Furthermore, when Indian requests for presents were left unfulfilled, it was common for young men of tribe to take what they desired by force. In 1648, for example, "younger Indians…caused trouble in Rensselaerswijck; they walked around daily, saying: 'Give us bacon and meat.'" After the Dutch refused the young men, the Indians began to kill livestock until the Court of Rensselaerswijck agreed to provide the tribe's sachems with cloth, lead, and gunpowder.[54]

By far the most important present for many Indians were guns. During the seventeenth century, Indians grew to depend on guns for a variety of purposes. Indian traders in Beverwijck/Albany requested guns from the Dutch and English to use in defending their homes and when out hunting for beavers. Everyone from the traders in Beverwijck to the directors of the West India Company knew, knew this "to be only a pure pretense." Although guns were useful for hunting, they were at least equally important for raids on other Indian and European communities. The WIC, fearing that Indians supplied with guns might turn against the Dutch and destroy the colony, outlawed the sale of guns, powder, and lead to Indians 1639. Like other trading ordinances, this law went virtually unenforced, and only two years later, the government of Rensselearswijck complained that "many persons and inhabitants of the colony make bold against the ordinance of the Chartered West India Company to sell to the Indians or savages…firearms, powder, and lead." The following year, in 1642, the patroon attempted to take stronger action by forbidding any traders not living in Rensselaerswijck from entering the colony, but again to no avail. As with other trade ordinances, the courts of Rensselaerswijck and

[54] *MCR* 206-207; Charles T. Gehring, trans. and ed. *Correspondence 1647-1653* (Syracuse, N.Y.: Syracuse University Press, 2000), 55, 208; Charles T. Gehring, trans. and ed. *Council Minutes 1652-1654*. (Baltimore, Md.: Genealogical Publishing Co. Inc., 1983), 116; Bradley, *Before Albany* 115; Sullivan, *Punishment of Crime* 176-180; Venema, *Beverwijck* 182; Quote from Venema, *Beverwijck* 43.

Beverwijck were extremely reluctant to prosecute violations and illegal actions. In the twelve years of minutes between the two courts, only one man, Michiel Jansz, was ever convicted of having "sold contraband munitions of war to the Indians." This prosecution was a special case, because Jansz was accused not simply of selling firearms, but of doing so during Kieft's War, thereby facilitating the death of many Dutch men and women. For these crimes, he was sentenced to pay 50 guilders to the patroon, along with whatever "arbitrary punishment and heavy fine … the honorable court shall consider fit to impose." Yet even in this most extreme case the judgment of the court may never have been carried out. During the next three years, the court orders Jansz five more times to pay the fine imposed against him, and by the end of the minutes in April, 1652, the records are unclear as to whether these orders were ever successful.[55]

The concerns of the New Netherland council about ordinances forbidding the trade of guns meant little to Indian allies of the Dutch colony. Unlike the Dutch, the Indians who traded at Beverwijck understood their alliances to form a kinship, which bound both nations to assist the other. As far as the Indians were concerned, they needed guns to hunt and to defend themselves (and to use in raids), and it was the Dutch responsibility to provide these guns for them. Although it pained them to admit it, the leaders of the Dutch colony, including the directors of the WIC in Amsterdam, knew that to keep Indians as allies and trading partners, the colony needed to supply them with guns, shot, and powder. In 1648, the Directors in Amsterdam, in a private letter to Stuyvesant, gave the director-general permission to allow the company's officers "to supply the tribes very sparingly." Over the years, the "sparing" number of guns supplied to Indians increased as the colonial government sought to keep the Indians

[55] David J. Silverman, Indians, Firearms, and the Problem of Dependency in Colonial America, unpublished manuscript; *LO* 18-19; A.J.F. Van Laer, trans. and ed., *Council Minutes, 1638-1649* (Baltimore, Md.: Genealogical Publishing Co. Inc., 1974), 42; *VRBM* 565-566, 626-627; *MCR* 34, 36-39, 77, 96, 123, 169-170; Quote from Gehring, *Correspondence 1647-1653*, p. 56; *VRBM* 565; *MCR* 34, 37.

from leaving the Dutch to trade elsewhere. In addition, the Stuyvesant and other colonial officials in Fort Orange and Beverwijck probably found that it was necessary to increase the number of presents, and especially the hugely desirably firearms, given to Indians as a condolence for Dutch violence.[56]

Although many different Indian nations received presents, the Dutch were, by far, most concerned with maintaining the military and economic alliance they had with the Mohawks. After the Mohawks defeated the Mahicans in 1628, the Mohawks became the most important Dutch ally in New Netherland, as well as one of the most powerful nations in colonial North America. As the easternmost nation of the Iroquois Confederacy, the Mohawk were the "Keepers of the Eastern Door" and were in charge of negotiating Iroquois affairs with the Dutch at Fort Orange. The Mohawks also controlled Dutch access to the huge beaver populations to the west of Beverwijck. This prime position in the fur trade economy gave the Mohawks significant leverage to use in negotiations with the Dutch. Of all the Indian nations who traded near Fort Orange, only Mohawk threats were terrifying enough to bring the Courts of Rensselaerswijck and Beverwijck together to find a way to satisfy the Mohawk sachems. As Dutch violence increased during the late 1640s, threats from the Mohawk became more common, reaching a peak in September, 1650, when a Tappan trader informed the Dutch that the Mohawks were planning an assault to destroy the colony during the winter. In the south, as evidenced by Kieft's War and other smaller wars fought with Indians, colonial leaders would likely have fought back to defend the dominance of the Dutch colony. The Court of Rensselaerswijck, however, understood that they were the weaker power in the region, both economically and militarily. Although the court complained of "living…under the unrestrained

[56] Gehring, *Correspondence 1647-1653*, p. 55, 208; Gehring, *Council Minutes 1652-1654*, p. 116; Sullivan, *Punishment of Crime* 176-182; Dennis, *Landscape of Peace* 125; Venema, *Beverwijck* 182; Quote from Gehring, *Correspondence 1647-53*, p. 55.

domination of inhuman people and cruel heathen," it chose to accept this subservient position and rejected the few calls to take up arms against the Mohawks. Instead, the members of the court decided instead to send five traders to the Mohawk villages with presents "to renew the former alliance and bond of friendship." In addition to a significant gift of presents, the court also promised to stop "the sending of brokers (a source of much mischief, quarreling, and discord)" into the woods. Although this promise went unfulfilled, the Mohawks did accept the presents and apologies offered by the Dutch, and continued trading as they had in years past.[57]

Throughout the 1650s, Mohawk threats to attack the village or cut off trade continued to occur with increased frequency, leaving the Dutch leaders in Beverwijck continually terrified that the settlement's economy might collapse. During conferences in 1654 and annually from 1657 through at least 1660, the Mohawks complained of Dutch attacks in the woods, and demanded goods in order to "renew the old alliance and friendship." In each case, the Dutch, without noted dissent, quickly capitulated and sent the Mohawk chiefs home with most, and sometimes all, of what they had requested. The peace reestablished then lasted until, as always happened, the Mohawk returned with more complaints about Dutch traders.

Although the relatively short conferences make it appear as though maintaining peace was a simple process of paying off the Mohawks for their grievances, the process was complicated by the complex co-dependence that existed between the Dutch and the Mohawks. While the Dutch were, as already discussed, dependent on the Mohawk to bring furs, the Mohawks were growing increasingly dependent on the Dutch to supply them with European manufactures, such as guns, metal, and cloth. Although over time the dependence of the Mohawks would weaken their bargaining position in North America, during the mid-

[57] Venema, *Beverwijck* 160-164; Burke, *Mohawk Frontier* 70-74; Richter, *Ordeal of the Longhouse*; John Parmeter, *The Edge of the Woods: Iroquoia, 1534-1701* (East Lansing, Mich.: Michigan State University Press, 2010); *MCR* 127-131, 215; Quotes from *MCR* 128, 129, 129.

seventeenth century the balance was more equal. In part, this was because while trade with the Dutch might have been most convenient, the Mohawk could, if necessary, have taken their furs to the French or the English who were both eager for the valuable trade.[58]

While the presence of other European powers gave some credibility to the Mohawk threats, there was no point when the Mohawks actually followed through, even after over a decade of witnessing the Dutch fail to limit violence as they promised to do. At a conference in 1660, the Mohawks made no request for presents and asked only that the Dutch forbid traders "to molest the Indians as heretofore by kicking, beating, and assaulting them…and if it is not prevented, they will go away and not be seen by us anymore." As always the Court of Beverwijck made promises and passed ordinances, but did little to enforce its commands. The Mohawks apparently had no response to this failure, as trade continued as before and the two communities remained formally at peace. It may have been that Dutch presents were simply enough to convince the Mohawks to forgive and forget their grievances. It is also possible that the Mohawk threats were attempts to leverage economic dominance, rather than representing a real plan to divest from the Dutch fur trade. Despite their professed belief that the violence against their people must stop, the Mohawks decided, year after year, to compromise and accept presents in lieu of their actual demand that the Dutch control the fur traders. The Dutch, meanwhile, apparently accepted the need to compromise and give the Mohawks presents, leaving aside their general belief that the Indians should have to purchase goods just like anyone else. In a codependent economy where neither party could truly afford to end trade, the only way to keep the Dutch and the Mohawks trading together in relative peace was for both sides to compromise their demands and expectations.[59]

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[58] Parmeter, *Edge of the Woods*; Silverman, Indians, Firearms, and the Question of Dependency; Gehring, *Council Minutes 1652-54*, p. 116; *FOCM* 146-147, 304, 400-402, 453-458; Quote from *FOCM* 146.

[59] *FOCM* 503-504; *LO* 381, 383-384; Quote from *FOCM* 503.

Chapter 3: The Dutch Period II: Indian Violence, Alcohol, and Troubles in the Village

"Alongshore" Jurisdiction and the Problem of Indian Violence

The Dutch never demanded redress from Indians when colonists were attacked or murdered. In North America, as shown in the introduction, the European legal institutions of arrest, confinement, trial, and state-sponsored execution were foreign to most Indian peoples. While most European colonists cared little about what Indians thought of Europeans laws, the Courts of Rensselaerswijck and Beverwijck could not so easily ignore Indian legal concerns. The colonists in these settlements undoubtedly considered Indian ways to be barbaric, but a belief in legal superiority was very different from actually enforcing Dutch law on Indians. Given the military strength of the Mohawks and the Dutch dependence on the fur trade, the Courts of Rensselaerswijck and Beverwijck tried, as much as possible, to avoid any action against Indians that might have upset Indians trading in the village. The courts never punished any Indian for violence or other crimes perpetrated against colonists.[60]

In twelve years of extant court minutes, there were no cases in which the Dutch ever punished an Indian for the murder of a European, which was in stark contrast to the multitude of cases found in the English court minutes from other colonies. Although Dutch records are incomplete, covering the Court of Rensselaerswijck from 1648 to 1652 and the Court of Fort Orange and Beverwijck from its founding in 1652 to 1660, they nevertheless present a clear picture of a court that only involved itself with Indians when Indian sachems themselves requested a meeting. It is also extremely unlikely that in the final years of the Dutch period the

[60] *MCR*; *FOCM*; Sullivan, *Punishment of Crime* 202-203.

court altered its stance, because under the English regime that began in 1664 the composition of the court remained the same and continued to avoid punishing Indians. Other extant Dutch records provide further evidence that the governments of Rensselaerswijck, Beverwijck, and Fort Orange never punished Indians for murder, at least through official means. In sixteen years of council minutes (1638-1649, and 1652-1656), and eleven years of letters (1647-1658) the New Netherland Council in New Amsterdam never once discussed the punishment of an Indian in Beverwijck. If the government of Beverwijck had ever punished an Indian it almost certainly would have been reported to the council. This complete lack of evidence is in stark contrast to contemporary English colonies where colonial court records provide ample evidence of Indians brought to court and punished for a wide variety of both violent and non-violent crimes. In *Puritan Justice and the Indian*, Yasuhide Kawashima cites innumerable examples of Indians prosecuted in Massachusetts courts beginning in 1630 and increasing significantly after the English victory in King Philip's War in 1676. While Kawashima limits his scope to the Massachusetts colony, he does note that the assumption of English jurisdiction over Indians during the seventeenth century was a pattern common to all New England colonies.[61]

Unlike Indians who complained when the Dutch failed to punish violent traders in the woods, the Dutch community does not seem to have been dissatisfied with the lack of legal action against violent Indians. On the contrary, the public may have even supported such inaction because it supported the fur trade. As in previous decades, the priority of the community was the fur trade. The leading members of the community expected, and even

[61] *MCR*; *FOCM*; Van Laer, *Council Minutes 1638-1649*; Gehring, *Council Minutes 1552-1654*; Gehring, *Council Minutes 1655-1656*; Gehring, *Correspondence 1647-1653*; Charles T. Gehring, trans. and ed. *Correspondence 1654-1658*. (Syracuse, N.Y.: Syracuse University Press, 2003); A.J.F. Van Laer, ed. and trans., *Correspondence of Jeremias van Rensselaer 1651-1674* (Albany, N.Y.: University of the State of New York, 1932) (hereafter JVR); Yasuhide Kawashima, *Puritan Justice and the Indian: White Man's Law in Massachusetts, 1630-1763* (Middletown, Conn.: Wesleyan University Press, 1986); Grabowski, "French Criminal Justice" 406.

demanded, that their actions in the woods be ignored, because violence was considered integral to sustaining the profit of the fur trade. When this angered Indians, as it often did, the courts found other ways to compensate them without impeding the fur trade. Likewise, when Indians attacked Dutch, the court's priority was to find a way to resolve the conflict without impeding the fur trade, even if that meant ignoring Dutch legal norms. As the Dutch probably understood, any Dutch legal taken against Indian would have caused an immediate, and potentially irreparable, conflict. In cases of violence committed by Indians, therefore, the most effective means to support the fur trade was to go beyond the demands of the "alongshore ideal" and completely ignore Indian perpetrators.

One of the unfortunate effects of this policy was that few incidents of violence were recorded in written records. While there were references to violence, little can really be done to actually quantify the violence that undoubtedly occurred in and around Beverwijck. It is also, unfortunately, impossible to state with complete certainty how many, if any, Indians murdered Dutchmen or, for that matter, how many Dutchmen killed Indians. At the same time, however, it can be stated with certainty that violence and, most likely, murder were relatively common occurrences near the northern trading settlement. Numerous laws passed by the New Netherland Council and the Court of Beverwijck reference a need to limit violence by Indians. In one law passed in 1652, the Council forbids traders to travel to the Mohawk villages specifically because of the fear of that they might be murdered, "as [had] frequently happened heretofore to others." Oblique mentions to violence continue throughout the court minutes of the 1650s, such as in 1657 when a number of drunken Mohawk Indians were found committing many "acts

of insolence," and the year before when the *schout* found a drunken Indian "committing insolence."[62]

Within the court minutes, only three incidents were described in any detail, and all three express extremely well the levels of violence the Dutch would ignore in order to avoid prosecuting Indians. In 1649, "a certain Mahican…assaulted and fell upon [Gerrit van Wencom] in cold blood and almost strangled him, in such a way that his head was extremely swollen." Despite the fact that Wencom appeared to have known his attacker, no effort was made to apprehend the perpetrator or even to demand that he compensate Wencom. Five years later, Jan van Hoesem complained to the court that an Indian named "Pimp" "picked up a mallet lying…and thereby forcibly banged open the door of his house and thereupon greatly molested him and his family." In this case, Pimp did not get out of the town without any repercussions because he was found after the attack and "given a sound thrashing" by two other traders. Nevertheless, Pimp was allowed to leave Beverwijck after having attacked not only a trader, but also his family. If such an attack had happened in New England in the 1650s, the colonial government would undoubtedly have been less forgiving. By far the most extreme example occurred in 1656, when a Mohawk Indian "came quite drunk into [the house of Anderies Herbertsen] and after committing many acts of violence left some goods in his house." In this case, the lack of desire to arrest Indians became completely and undeniably apparent a few days later when the Mohawk perpetrator returned to Herbertsen's house to retrieve the goods he left there. Not only did Herbertsen, a magistrate of the court, not have his attacker arrested, but he even agreed to give back the goods. If incidents like had happened anywhere further south in New Netherland, it most likely would have at least led to calls for repayment, as happened, for example, after Raritans killed a number of Dutch pigs on Staten Island. Yet in

[62] Van Laer, *Council Minutes 1638-1649*, p. 43, 196, 380-381; *LO* 34, 64-65, 254, 323, 383-384, *FOCM* 514-515; Quote from *FOCM* 43, 323, 254.

none of the attacks in Rensselaerswijck/Beverwijck were any demands made for reparations from Indians. In the Herpertsen case, the magistrate even agreed to return goods that the, theoretically, could have demanded to keep as reparation. Although each of these attacks ended short of murder, a murder would most likely not have led to demands that an Indian be turned over to the Dutch justice system. If murder was handled more stringently than other attacks, a claim for which no evidence exists to either prove or disprove, the Dutch courts may have demanded reparations, but most likely would not jump all the way from having no official response to demanding that an Indian nation violate its own legal aversion to arrest.[63]

Murder and War at the Esopus

To the south of Fort Orange, along the Hudson River and on Manhattan Island, the Dutch residents reacted to Indian violence in much more drastic ways than in the fur trading settlement. At first, following the "alongshore" ideal set down by the WIC directors in Amsterdam, the Dutch attempted to find equitable and non-confrontational means of resolving disputes over violence and murder. As in Kieft's War, however, Dutch settlements on Manhattan and along the south Hudson consistently failed to maintain this ideal. Further south along the Hudson, the Dutch lived mostly in horticultural communities alongside economically similar Indian communities, which created competition for prime farming and grazing lands. Unlike settlers in Beverwijck, where the economy depended almost entirely on the Indian fur trade, Dutch farmers reaped no economic advantage from maintaining cordial relations with Indian communities. In fact, it could even be economically advantageous to spark a conflict with Indians as a way to take their lands for Dutch settlement. Throughout the 1650s, conflict with Indians was a constant problem for the settlers of the Esopus, a small farming village about 83

[63] Haefeli, "Kieft's War"; Quotes from *MCR* 97, *FOCM* 141, 141, 263.

miles north of Manhattan now known as Kingston, New York. The conflicts in the Esopus provide an interesting contrast with Beverwijck because, until 1661, crimes in the Esopus settlement were under the jurisdiction of the Court of Beverwijck. Although the town had its own local leaders, the vast majority of crimes were tried by the Court of Beverwijck. Yet unlike the settlers in Beverwijck the settlers in the Esopus had few reasons to fear attempting to impose Dutch law on the Esopus Indians. At worst, many assumed that Stuyvesant would send to protect them if the Indians decided to retaliate and attack the Dutch.[64]

Throughout New Netherland and the colonial world, including in Beverwijck and at the Esopus, Europeans often described Indian aggressors as having been "madly intoxicated" while attacking European settlers and villages. In nearly all of the cases from Beverwijck cited above the Indian perpetrators were described as having been drunk during the attack. One of the important reasons for this phenomenon of widespread attacks by drunken Indians was that, unlike Europeans who treated alcohol as a regular part of their diet, Indians almost never drank alcohol in moderation. Instead, most Indians, when in possession of alcohol, would drink for the sole purpose of getting drunk. Many also understood the nature of alcohol differently than Europeans. Intoxication was in many places understood as a spiritual experience during which an individual could not be blamed for their actions. In Beverwijck, no Indians in the historic record claimed that could not be punished for drunken actions, but at the same time, no Indians seem to have been called to account for their actions, drunken or not. In other settlements, when Indian chiefs attempted to claim that their men could not be held responsible for crimes that occurred under the influence of brandy sold to them by the Dutch, their claim was roundly dismissed as absurd and of no legal substance. Under Dutch law, drunkenness was no excuse for murder, and the killer was expected to be punished for his actions. These different views on

[64] Merwick, *Shame and Sorrow* 237-258; Gehring, *Correspondence 1654-1658*, p. 168, 171.

guilt and culpability set up a legal conflict that was to be fought in the Esopus/Kingston for decades.[65]

Although Dutch settlers in the Esopus had always had minor conflicts with their Indian neighbors, the first major conflicts began during the late 1650s, in the same years that violence in Beverwijck began to increase steeply. On the evening of May 1, 1658, a group of drunken Indians shot and killed Harmen Jacobsz and set fire to the house of Jacob Adryaensz. Fortunately, Adryaensz and his family were able to escape, so no one was killed in the fire. Almost immediately, Thomas Chambers, the leading man in the Dutch settlement, demanded that the Indian leaders turn over the murderers, but he was "mockingly refused." In mid-May, Chambers wrote to Stuyvesant that the community was terrified because the Indians continued to "use great violence every day…and derisively say that if they kill a Christian or more, they can pay for it in [wampum]." He requested that New Netherland authorities send troops north to protect the extremely vulnerable community and arrest the murderers by force. Upon receiving this letter, Stuyvesant decided to go north himself to negotiate with the Indians because he "did not think that the present time was favorable, to involve the whole community in a general war on account of a murder."[66]

After some coaxing, the Esopus sachems agreed to meet with Stuyvesant to explain their grievances, which went back over a decade to the Esopus Indians murdered during Kieft's War. The Indian speaker explained to Stuyvesant and the assembled Dutch settlers that the recent murder should be forgiven as just retribution for those Indians murdered during Kieft's War. This speech left Stuyvesant stunned and a bit irritated. He countered that Kieft's War had

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[65] Gehring, *Correspondence 1654-1658*, p. 167-168, 191; Sullivan, *Punishment of Crime* 187-196; Peter C. Mancall, *Deadly Medicine: Indians and Alcohol in Early America* (Ithaca, NY: Cornell University Press, 1995), 68-84; Grabowski, "French Criminal Justice," 410; Quote from *Correspondence 1654-1658*, p. 168.

[66] Trelease, *Indian Affairs* 148-149; Otto, *Dutch-Munsee Encounter* 149; Gehring, *Correspondence 1654-1658*, p. 168-169, 171, 188-189; Quote from Gehring, *Correspondence 1654-1658*, p. 171, 171, 189.

happened before his time and was irrelevant, in addition to the fact that the war had ended with an agreement to put away all anger for past actions. To the Dutch, the past was the past and guilt was individual, so the only crimes that mattered were recent, and retribution for the past was an impermissible excuse for murder. Stuyvesant reminded the Esopus Indians that he did not want another war, but that if the Indians did not turn over the murderers, the Dutch were strong enough to defeat them. To this, the Esopus sachems offered a more immediate cause for the murders: the Dutch alcohol dealers. They blamed the Dutch men who sold brandy and caused their young men to become "crazy, mad or drunk and then [commit] outrages… [and] as far as they were concerned, they had done no evil." The Dutch, however, saw this as just another excuse, and the day ended at this seemingly insurmountable impasse.[67]

The next day, with war becoming ever more likely, Stuyvesant decided to negotiate more strategically for the long term benefit of the community. The day began with the Esopus Indians returning and offering a significant gift of presents to encourage the Dutch to wipe away their anger. Although Stuyvesant accepted the gift, he considered it only a portion of the restitution necessary to compensate the Dutch farmers for their damaged property. Furthermore, it had no effect on the Dutch demand that the chiefs turn over the murderer. The sachems then told that Stuyvesant that, regardless of what the tribe wanted to do, the murderers were of another people and were not within their power to turn over. For whatever reason, only at this point does Stuyvesant seem amenable to finding a more mutually acceptable resolution to their predicament. He asked that the Esopus Indians, in order to settle their conflicts, give up a huge tract of land, enough for the Dutch settlers to build a new enclosed village. Upon his arrival in the Esopus, Stuyvesant had urged the settlers to move their homes together close enough so that walls could be built to protect them. As it was, the Dutch

[67] Trelease, *Indian Affairs* 149-150; Schutt, *Peoples of the River Valleys* 49; Gehring, *Correspondence 1654-1658*, p. 189-192; Quote from Gehring, *Correspondence 1654-1658*, p. 191-192.

farms were spread out over an area of land too widespread for the soldiers to protect. If the farmers wanted the protection they had requested, they needed to move into a palisaded village where they could be defended. By demanding the land from the Esopus Indians, Stuyvesant avoided a war temporarily and set the community up to be better protected in the future.[68]

By October, the murder of Adryaensz had again become an issue of contention between the Esopus Indians and the Dutch, and came exceedingly close to starting a war. Over the preceding months, the Esopus had continued drunken attacks on farmland and animals. On October 15, the Dutch held a conference with the Esopus and demanded payment for all of the previously uncompensated crimes, including the springtime murder. The Esopus offered to pay land and to bring the Dutch settlers many furs the next summer, but they again held firm that they could not turn over the murderers. As in the spring, the Dutch ultimately decided to let payment settle the issue for the moment. This payment, however, may have disappointed the Dutch leaders, who seem to have been itching for a way to force their Indians neighbors into submission. Yet even if the Dutch had wanted to push the conflict into a war, the soldiers in the fort were under explicit instructions not to engage in hostilities unless the Indians were to attack first. In this case, the Dutch could only demand so much because the Esopus had not actually attacked a Dutchman or created a pretext for war.[69]

Interracial conflict in the Esopus continued to simmer for nearly a year, until one night in September 1659, when a number of Dutchmen confronted a group of drunken Indians and fired upon them, killing two and capturing one. The next day, the Esopus attacked the settlement, killing nine or ten, taking hostages, and burning the village, thereby sparking the months long

[68] Trelease, *Indian Affairs* 149-150; Gehring, *Correspondence 1654-1658*, p. 179, 189, 192-194.
[69] Trelease, *Indian Affairs* 150-152; Merwick, *Shame and Sorrow* 237-258; Gehring, *Correspondence 1654-1658,* p. 202-207, 210-212.

Esopus War. The Esopus continued to lay siege to the village for nearly one month, until Stuyvesant arrived with 150 men and the Indians fled. Over the next few months, the Mohawks, Mahicans, and Catskills acted as intermediaries, and helped to negotiate the return of captives held by the Dutch and a temporary cease-fire. Stuyvesant, however, had no intention of allowing the war to end. Throughout the winter, he prepared to renew the war in the spring, and established new treaties with Indians living along the Hudson and Delaware Rivers in order to isolate the Esopus Indians from any potential allies. Hostilities resumed at the end of March, 1660, with the Dutch garrison stronger than ever before. War lasted until the end of June when Stuyvesant finally agreed to travel north again to meet with the Esopus sachems and conclude a peace treaty. In this treaty, the Esopus agreed to relinquish their lands around the Dutch village, move permanently to a more distant location, and return the ransom they had been paid in exchange for their prisoners. They also promised that when they did travel to the village to trade, they would leave their guns outside the village, not drink alcohol until they had left the village, and never again make war against the Dutch.[70]

This peace lasted only three years before Dutch expansion onto Indian lands again precipitated war. In June, 1663, only a few months after the establishment of a new Dutch village in the region, a significant number of Esopus men arrived at the old village, ostensibly to sell maize and beans. Only fifteen minutes after their arrival, several Dutchmen arrived screaming that the Indians had burned down the new village. Almost immediately, the Indian traders in the old village turned violent. Only the lucky return of some men from the fields averted the destruction of the entire town. Although the Esopus Indians were able to besiege the Dutch village temporarily, they were not powerful enough to contest the militia of 210 men that Stuyvesant was quickly able to build with support from the Dutch and his Indian allies from

[70] Trelease, *Indian Affairs* 152-159; JVR 220; Merwick, *Shame and Sorrow* 237-258; Otto, *Dutch-Munsee Encounter* 149-152.

the south Hudson and Long Island. The most decisive blow to the Esopus was the destruction of two hundred acres of corn and over one hundred pits of food stores. Over the next few months, the Dutch won significant victories in every battle they fought, and by the time winter arrived, the Esopus sachems were again calling for peace, which was ultimately concluded at the end of May, 1664.[71]

The Esopus Wars, and the preceding year and a half of conflict, were wars for legal and territorial dominance. To the Dutch settlers in the Esopus, Indians were a troublesome group that needed to be controlled and taught to understand the superiority of the Dutch and their legal system. When the Esopus committed murders and other types of violence and destruction, the colonists saw little reason to compromise and instead pushed Stuyvesant to authorize the garrison to punish the Indians. The only thing that held the colony back from a war were explicit instructions from Stuyvesant that, following the idea of remaining "alongshore," the soldiers were not to engage with Indians unless absolutely necessary. Only after the Esopus led a full on assault of the village and took hostages did Stuyvesant authorize a military response, which he could at least claim was retaliatory. Unlike Beverwijck, the Dutch community had neither an economic nor a political need to maintain relations with their Indian neighbors. Like the New England colonists, the settlers in the Esopus were far more concerned with forcing themselves into the position of authority that they believed was theirs by right of their innate superiority. The only thing really holding back war was Stuyvesant's reluctance to fight a war he feared the colony might lose. Once the palisaded village was established for protection and the Esopus were goaded into a retaliatory attack on the village, the Dutch began a fight for dominance that lasted, with intermittent peace, for over a decade.[72]

[71] Trelease, *Indian Affairs* 159-168.
[72] Cave, "Who Killed John Stone?" 509-521; Merwick, *Shame and Sorrow* 237-258.

Controlling Violence in Beverwijck: Attempts at Limiting the Alcohol Trade

Although the Dutch in Rensselaerswijck and Beverwijck never punished Indians, the Dutch government did attempt to stem one of the common causes of Indian violence: easy access to alcohol. As the Esopus explained to Stuyvesant during their 1658 conference, they considered the Dutch responsible when intoxicated Indians committed violence. While this was disregarded by Stuyvesant as merely an excuse, it was, at the same time, this reasoning that underlay the alcohol ordinances passed by the New Netherland Council, from the first ordinance passed in 1643. This ordinance banned the sale of liquor to Indians and mandated a 25 guilder fine for a first offense. Over the next decade, these fines were increased significantly as Indians throughout the colony were "daily seen and found intoxicated and…commit[ted] many and grave acts of violence." By the time Beverwijck was founded in 1652, the initial fine had become 100 guilders. In 1654, the fine was further increased to 500 guilders. Although the fine was not always increased, the council did reissue the alcohol ordinance every two or three years as a reminder to the community. In the early years, these ordinances were issued primarily to control New Amsterdam and other southern communities, but as the years went on Beverwijck became a greater concern for the council. By the mid-1650s, Beverwijck was known not only as a fur trading center, but also as a center for the illegal alcohol trade. In 1654 and again in 1660, the Court of Beverwijck issued its own ordinances at the behest of Stuyvesant to control the northern alcohol trade.[73]

As evidenced by the council's apparent need to reissue identical ordinances every few years, the mandated alcohol ban had little effect on the actual men and women who sold alcohol to Indians. To get around the ban and the increasingly steep fines, liquor dealers used

[73] *LO* 182-184, 258-262, 310-314, 383-384, 446-447; Van Laer, *Council Minutes 1638-1649,* p. 196, 288-289, 380-381; Gehring, *Council Minutes 1652-1654,* p. 173; Gehring, *Correspondence 1654-1658*, p. 192; *FOCM* 127, 514-515; Venema*, Beverwijck* 180, 310-313; Quote from *LO* 182.

sneaky methods, such as selling alcohol from boats on the river and in the woods. Some may have even claimed that by trading on boats or in the woods, they were not *technically* violating the ordinances as posted. To address these specific violations, the New Netherland Council began, in 1645, to describe the different ways that the transfer of alcohol to Indians could be illegal. In this ordinance, "tapsters and other inhabitants" were forbidden to "sell, give, or trade…any wine, beer, or other strong liquor, or…to fetch it or cause it to be fetched by" any other party from any house or tavern. In 1654, this was expanded to include the sale of alcohol from "canoes, rowboats, or other vessels," and later, in 1657, sales "either on land or water, from houses, yachts, barks, boats, or canoes." Even increasing the specificity of the ordinances could not help if, as in Beverwijck, the court was unwilling to enforce the ordinances. In many of their conference with the Dutch, the Mohawk chiefs continually complained that the traders sold alcohol to their men. Even as far as the Esopus, the Dutch complained that most of the alcohol drunk by Indians came from the Beverwijck traders. In the extant twelve years of court minutes from Rensselaerswijck and Beverwijck, only twenty people were ever brought to the court under the alcohol ordinances, undoubtedly only a small fraction of the total sales of alcohol to Indians.[74]

In a failed attempt to encourage prosecutions, the council, in 1654, passed an unprecedented ordinance permitting the use of Indian testimony in court against their liquor providers. This ordinance also permitted the colonial government to arrest drunken Indians and to keep them imprisoned until they "shall have told and declared who had furnished, sold, or given them the liquor." This clause was an attempt to solve the conundrum that Indian testimony was invalid in court, even though Indians were often the only witnesses to such

[74] Van Laer, *Council Minutes, 1638-1649* p. 288-289; *LO* 258-263, 310-314; Gehring, *Correspondence 1654-1658*, p. 167; *FOCM* 453, 503; Quotes from Van Laer, *Council Minutes 1638-1649,* p. 288-289, *LO* 259, 311.

crimes. If ever enforced, this ordinance would have given the *schout* of Beverwijck powers similar to the government of Montreal, where Indians were often imprisoned for the sole purpose of testifying against liquor traders. Like Beverwijck, the economy of Montreal was dependent on the fur trade, and the city official never risked upsetting their Indian trading partners by punishing an Indian under the French justice system. At the same time, the French, under the influence of Jesuit priests concerned about enforcing sobriety and morality, took a much harder stand against alcohol and would detain Indians temporarily until they sobered up. In Beverwijck, however, only one man, a Mahican named Macheck Sipoeti, was ever arrested drunk in the village. When questioned the next day, he was unable to tell the examiner the names of any of the men who had sold him alcohol. The most obvious reason for the *schout* to never arrest Indians was to limit even the possibility of strife between the Dutch and Indians. In Montreal, Indian leaders, including Mohawk sachems, never complained when the French arrested their people. On the contrary, some tribes even "declared clearly that the French could arrest Indians found drunk in the city." Indian sachems knew the trouble that alcohol could cause and they, like European colonial leaders, wanted to limit the sale of alcohol to Indians. If the magistrates of Beverwijck had really wanted to end the liquor trade, they probably could have met with the Mohawk sachems and assured them that while drunken Indians would be arrested, they would only be held until they were sober and able to tell the name of their liquor dealer. Although the true motivations of the court are difficult to discern, it is possible that the government of Beverwijck used the presumed separation between the Dutch and Indians as a pretense for not arresting Indians and thereby limiting the ability to prosecute the men and women who sold them alcohol, some of whom probably sat on the court.[75]

[75] *LO* 184; Gehring, *Council Minutes 1652-1654,* p. 173; Grabowski, "French Criminal Justice" 404-429; *FOCM* 453; Quotes from Grabowski, "French Criminal Justice" 422; Thomas Elliot Norton, *The Fur Trade in Colonial New York, 1686-1776* (Madison, Wis.: University of Wisconsin Press, 1974), 69.

Like other trade violations in the woods, the *schouts* made few attempts to punish violators, probably recognizing that the courts were unlikely to follow through and actually mandate punishment. Throughout the 1640s and 1650s, the members of the Courts of Rensselaerswijck and Beverwijck showed little concern about the alcohol trade in the woods. Although the Court of Beverwijck did pass two ordinances forbidding the alcohol trade, one specifically referenced the sale of alcohol in the Esopus and Katskill, far removed from the trading colony, and the other was passed on the direct command of Stuyvesant and the council. The Court of Beverwijck, moreover, did not accept its duty to enforce the alcohol ordinances in the woods. In the court minutes, there were six alcohol violations for which a location of the sale is not specified, all of which occurred within a six month period in 1658. In three very brief cases, the defendants denied the charges and purged themselves of guilt with an oath. Another three charges were brought over specific sales that all occurred on December 30, 1657. Although what occurred on that day is unspecified, it may have been that a group of drunken Indians had done something in the village that *schout* La Montagne believed needed a swift and decisive response from the court. The court accepted the *schout's* recommendation that the three perpetrators be fined five hundred florins and be banished from the settlement for three years. The very fact that the court even agreed to punish these traders also supports the possibility that something drastic had happened to make the court take an interest in illegal activities in the woods.[76]

In the most extreme alcohol violation case, the deputy *schout*, Hans Vos, was accused of sending a broker, Poulus Janssen, to sell wine to Indians in the woods. In early July, Janssen was caught carrying "a small cask of brandy from the fort to the Indians," and admitted that Vos had passed him the container "over the north east battalion by means of a rope through a

[76] *FOCM* 345-351, 389-390, 392.

loophole." Although Vos vehemently denied the charge, two magistrates went to his home anyway to search for furs that Janssen claimed he received in exchange for the liquor. At the end of the trial, Janssen was fined five hundred florins and banished from the settlement for six years. Vos, as an employee (now a former employee) of the WIC, could only be tried by the council in New Amsterdam. While the court was considering what to do with him, Vos escaped from his home confinement and fled to Katskill. To the court, this "escape sufficiently prove[d] that he was guilty of the crime." After he was recaptured in early August, he was imprisoned and ordered to be sent down the river to New Amsterdam as soon as possible. This case, possibly the only conviction in Beverwijck for selling alcohol in the woods, shows just how extraordinary an alcohol trade in the woods needed to be to attract the attention of the court. Only in this case, when the director general and council would most surely be watching the actions of the court, did the magistrates expend any additional effort to prove a claim. While there may have been three other convictions related to trade in the woods, the very rarity of such prosecutions still emphasizes how uninterested the court was in enforcing trade and alcohol ordinances in the woods.[77]

Selling Alcohol in the Village

Although the court was extraordinarily lax about enforcing violations of ordinances that took place in the woods, the magistrates were significantly more receptive to punishing crime within the village walls. Of the twenty individuals brought before the court on charges of selling alcohol to Indians, at least twelve, and possibly more, were based on sales that happened out of their homes or shops. While this probably represented only a portion of the illegal trades taking place in the village, the most important distinction is how the magistrates handled such cases

[77] *FOCM* 386-388, 394-395; Quotes from *FOCM* 386, 387.

when they were brought before the court. In nearly every case, the court imposed some punishment on the defendant, while only two cases were dismissed or voided by an oath. This contrasts significantly with crimes committed in the woods, in which the court went to sometimes extreme lengths to avoid conviction. In cases of fur trade violations especially, the court accepted any excuse offered, no matter how transparent, in order to let the fur traders go free. When men and women were accused of violating the alcohol ordinances in the city, however, the court sometimes even imposed the full penalty of five hundred florins and three years banishment. Sometimes in these cases the court would show leniency by lessening the sentence, but in no case did the court let an obviously guilty individual go free without at least some penalty.

In the earliest cases recorded in the court minutes, the reason for prosecution was tied directly to violence that had been committed by drunken Indians. In 1649, Aert Jacobsz was brought before the Court of Rensselaerswijck charged with selling alcohol to the Mahican who had attacked Gerrit van Wencom. Although many of the relevant court minutes burned and an exact punishment is impossible to discern, Jacobsz was sent a notice months later that a payment to the court was still due. The record remains silent on alcohol violations for five years, until three men were charged with selling the alcohol that led to the attack on Jan van Hoesem and his family. For some unknown reason, the penalties in this case were significantly lower than those imposed later. It may have been reluctance on the part of the *schout*, Johannes Dijckman, to bring charges against three fur traders, even for crimes committed within the village. Unlike his successors, Dijckman never attempted to bring any other charges against fur traders, either in the village or in the woods. In this case, only one of the three men was fined twenty-five florins for his crime, even though the penalty for a first offense was already five hundred florins according to the ordinance. The other two men accused separately were

not even fined, probably because they had seen Pimp, the Mahican perpetrator, leaving van Wencom's house and had beaten him before letting him leave the village. Yet Dijckman's reluctance did not appear to extend beyond fur traders because in the same summer, he demanded the full five hundred florin fine from Maria Goosens, a woman accused of selling brandy to Indians in her house. Rejecting Dijckman's demand, the court offered her leniency in the form of a lesser fine. This leniency proved to have been misplaced the following year when Goosens was again charged with selling wine to Indians. Although she confessed and begged for mercy, she was ordered to pay the full fine of five hundred florins, and banished from the town for one year and six weeks, the maximum penalty available at the time.[78]

As in Goosens' first case, leniency was an option used by the community to account for extenuating circumstances and the hardship caused by the drastic penalty of banishment. In 1656, during La Montagne's first summer as *schout*, three residents were brought before the court accused of having sold alcohol to Indians within the town. When these three cases were heard, Stuyvesant was visiting the village and, as the highest ranking member of the New Netherland government, sat on the Court of Beverwijck as presiding member. With the encouragement of the Director General, the court showed leniency to two female innkeepers found guilty of selling beer to Indians. Instead of the full punishment of five hundred florins and three years banishment demanded by the ordinance, the court decided to fine each woman only three hundred florins. In the third case, a young Dutch man who confessed to his crime was given the full sentence, although his banishment does not seem to have ever been enforced as he appears in court again only nine months later as plaintiff in a suit. The following year, La Montagne worked with an Indian informant to catch Susanne Bierkaecker in the illegal act of selling beer in her back garden. After she begged the court for mercy on account of her

[78] *MCR* 97, 100-101; *FOCM* 123, 128, 141, 154, 161, 166, 194; Venema, *Beverwijck* 91-93.

husband's injuries, the court agreed to remove the penalty of banishment. Yet even while providing leniency the court still ordered a five hundred florin fine to ensure that she was punished for her illegal actions.[79]

After a string of successful prosecutions during the mid-1650s, La Montagne began to shift his focus toward violence against Indians during 1658. Although such violence was almost universally ignored in the woods, La Montagne did bring two successful prosecutions this year for unprovoked attacks on Indians in the village. In the first case, the defendant, Jochem de Backer, admitted that he had beaten an Indian who had returned to his home claiming he had been robbed. For his crime, the court fined Backer the relatively small sum of twelve florins. One month later, the court imposed a far more substantial penalty of 125 florins each on Jan Anderiessen de Graeff and Pieter Jacobsen Bosboom. On January 1, these men had sold a keg of brandy to a Mohawk man. When this man attempted to return a portion of the alcohol, Graeff and Bosboom beat him and robbed him of the remaining alcohol, declaring that he had cheated them in the original sale. While the penalty in this case may have been about the violence, it may also have been about punishing these men for having traded alcohol in their homes. These two cases were an anomaly in the record that could represent either the court's interest in punishing violence within the town, or the court's reluctance. It was possible that these incidents, like the successful prosecutions for alcohol sales, fit within a pattern of the court showing greater concern about violence within the village. Unfortunately, the limited records of Rensselaerswijck and Beverwijck leave no way to quantify violence within the town, so it is difficult to say for certain whether these cases represent either how unusual violence in the village was, or how rarely the court punished violence commonly perpetrated against Indians.[80]

[79] *FOCM* 252-254, 309, 323-325.
[80] *FOCM* 352, 355, 357-358.

As La Montagne began to focus more of his time on violence in the woods during the last years of the 1650s, he brought few cases of alcohol sales to the court. In 1658, he brought only two charges against men accused of selling brandy from their house, both of which were dismissed by the court. These were also the last two charges in the extant court minutes for charges of violating the alcohol ordinances. Attempting to catch illegal fur and alcohol traders in the woods was a difficult task that surely took up a great deal of La Montagne's limited time. This was especially true after Vos was fired in 1658, which left La Montagne as the sole law enforcement officer for the northern settlement. During the next two years, he complained a few time to the court about how he could not even attempt to perform all of his duties and fully police the community all by himself. He also noted that in order to catch traders in the woods, he was many times forced to spend the entire night in the woods waiting. With more time spent in the woods, most of the alcohol ordinance violations that La Montagne brought to the court were for incidents that occurred in the woods. During these next two years, as La Montagne spent much of his time attempting to stem the growing violence against Indians in the woods, he probably had little time to uncover illegal alcohol sales within the village.[81]

The court's failure to punish crimes committed in the woods was indicative of how the court understood its jurisdiction in the unsettled areas surrounding the town. In Beverwijck, the woods were a place where the trade ordinances went generally unenforced in the woods because everyone in the village, including the magistrates, ignored trader's actions and pretended that there were no violations. Traders surely went out into the woods knowing that they were free act as they pleased, regardless of the law, and when their actions were finally questioned in the late 1650s they concocted silly excuses such as having been out in the woods picking blueberries or searching for missing horses. To continue the unwritten policy of ignoring

[81] *FOCM* 354; Venema, *Beverwijck* 184-186.

illegal trade and violence in the woods, the magistrates of the court accepted all of these excuses almost without question.

While offering no oversight, the court also offered no protection to traders acting illegally in the woods. Traders violating the posted ordinances generally acted without oversight, but also with the knowledge that if they were attacked or robbed, the court would not step in to punish the Indian attackers because to ask for help from the *schout* would be to admit that one was illegally trading in the woods. Although the court would accept virtually any excuse offered, the few convictions for illegal trading in the woods show that the court would impose punishment if the defendant would not swear to his innocence. The magistrates of the court were ultimately accountable to, and appointed by, the New Netherland Council and so, when confronted with uncontested evidence of guilt, they were unable to ignore it. While the court could accept any excuse imaginable, a confession would have required an official response. In the woods, therefore, traders acted outside of the self-imposed jurisdiction of the Court of Beverwijck.

In Beverwijck, the limited scope of the court's jurisdiction reflected a different understanding of the "alongshore" ideal than was practiced further south. In Merwick's theory, the "alongshore" ideal applied to all Dutch individuals and institutions in New Netherland. The West India Company, according to Merwick, demanded that all Dutch individuals, the New Netherland Council, and the regional courts remain outside of Indian affairs, and, when necessary, find the most amicable means for resolving conflict without encouraging more connections between the communities than absolutely necessary. Unlike the WIC, the Dutch in Beverwijck had an "alongshore" idea that applied only to the court, not to individuals. In Beverwijck, the Dutch and Indians interacted constantly and no one expected or wanted these links to be severed. Although neither became involved with or attempted to impede the

cultural or political practices of the other, the Dutch community was inextricably linked to the economy of its Indian neighbors. These links, however, were between individuals and Indians, and did not involve the Court of Beverwijck, which maintained a strictly diplomatic connection with Indian leaders. Unlike in Manhattan and the Esopus, the Court of Beverwijck accepted that remaining "alongshore" meant that the court had jurisdiction only over the Dutch, not over Indians, regardless of any conflict or connections that existed between Dutch individuals and Indians. The court, furthermore, had an implicit understanding that "alongshore" defined the territorial boundaries of the court's jurisdiction, unlike in the south where territorial jurisdiction was understood, at times, to include Indian territories granted to the colony by the WIC. In Beverwijck, if traders went out into the woods, they were no longer "alongshore" and were subject to neither the oversight of the court nor any protections that the court might offer. When the *schout*, an appointee from Manhattan, attempted to enforce Dutch law in the woods, outside of the "alongshore" jurisdiction of the Dutch, the court rebuffed him and offered defendants every possible opportunity to escape punishment, even if, as was likely in most cases, they were technically guilty of violating the law as charged.

The court's jurisdiction, like everything else in Beverwijck, was understood in a way most beneficial to the needs of the fur traders, especially those on the court. The woods, to traders, were a place of profit, where the best ways to make a quick profit were almost always illegal. Having the eyes of the court in the woods could only make the fur trade more complicated and less profitable because the New Netherland Council had very different priorities than the fur traders. In their ordinances, the New Netherland Council prioritized the safety of the community and the continuity of the fur trade through the maintenance of peace with Indians. Fur traders, however, were concerned mostly with the short term profit of each trading season. Only with the court remaining "alongshore" and, and much as possible, out of

the woods, could the trade remain as lucrative as the traders expected without forcing them to face sanctions for their actions. If anything happened to a trader in the woods, it was his own responsibility because he had taken the risk of leaving the "alongshore" jurisdiction for the chance at profit. Unlike in the woods, the village was a place where the threat of destruction outweighed any concerns about profit. In the village, allowing Indians to acquire alcohol meant that they could get drunk inside houses and taverns, or out on the street. In either case, the potential for harm to colonists and their property was more important than concerns over profit. While being in the woods was a choice, being in the town was not, and so protection of life and property was paramount. By developing its own unofficial and more limited understanding of its own jurisdiction, the Court of Beverwijck was able to assert itself in ways that implicitly supported the community's own trading priorities.

Chapter 4: The Town of Albany, 1664-1683: Transition to English Law

Albany during the First English Period, 1664-1673

In August, 1664, four English warships commanded by Richard Nicholls sailed into New Amsterdam and enacted a swift and bloodless conquest of the New Netherland colony. During the next year, Nicholls, as governor of the colony of New York, began to impose a new English-style legal structure known as the Duke's Law. This new legal code, based on the English legal system, demanded a number of significant changes to the colonies legal structure, including the disestablishment of the Dutch courts and the introduction of juries for criminal trials. The Duke's Law also assumed a new and more expansive authority over Indians than the Dutch "alongshore" laws ever did. According to the dictates of the WIC, the colony was not to involve itself with Indians any more than absolutely necessary. Although Dutch colonists in Kieft's War and the Esopus Wars had defied these instructions by attempting to assert control over Indian populations, Dutch ambitions in this respect were more limited than those of the English. The Dutch never demanded Indians accept Dutch culture or even Dutch law except in criminal cases in which Dutchmen were involved. Furthermore, the Calvinist Dutch were never much concerned with proselytizing Indians, and never attempted to forbid them to practice their own religious rituals. By contrast, in the Duke's Laws, Indians were forbidden to "powaw or performe outward worship to the Devil in any Town within this government." In their 1664 treaty with the English, the chiefs of the Iroquois nations agreed that if an Indian attacked a colonist, and the perpetrator could be discovered, "the sachems shall give due punishment and satisfaction." The Indian signatories to this treaty probably understood such language to imply

punishment and satisfaction according to their own systems of justice. Yet as shown by Nicholls' later demands, he expected the Iroquois to follow English legal norms and English standards of punishment.[82]

Unlike in the lower Hudson River Valley, the arrival of the English had little impact on the legal system or Indian relation in Beverwijck, now renamed Albany. The town was still ruled by the same wealthy Dutch traders, and retained nearly its entire pre-conquest population. The only significant English addition to the settlement was a small English garrison sent to guard the fort. Even the English language remained mostly foreign to this northern fur trading colony years after the English conquest. Recognizing the radical legal changes required by the Duke's Law, Nicholls exempted Albany from its provisions in order to allow the colony to transition more slowly to an English legal system. Yet, even after English law was meant to go into effect, the fur trading town retained its Dutch-style government, led by the reorganized Court of Albany, Rensselaerswijck, and Schenectady and presided over by the *schout*. The court was also authorized by Nicholls to continue the payments it had customarily made to the Mohawks and other Indian nations to ensure their continued good will. The English retained nearly all previous Dutch trading regulations, and made only one significant addition by forbidding Indians to spend the night within the town walls. Previously, Indians trading in Beverwijck had been permitted to stay in boarding houses run by town residents. The English feared that allowing

[82] *The Colonial Laws of New York from the Year 1664 to the Revolution*. 5 vols. (Albany, N.Y.: J.B. Lyon, 1894), I:42; P.R. Christoph and F.A. Christoph, eds., *Books of General Entries of the Colony of New York, 1664-1673: Orders, Warrants, Letters, Commissions, Passes, and Licenses issued by Governors Richard Nicholls and Francis Lovelace* (Baltimore, Md.: Genealogical Publishing Co. Inc., 1982), 47-49; *DRCHNY* III:67-68; Merwick, *Possessing Albany* 134-187; William E. Nelson, "Legal Turmoil in a Factious Colony," *Hofstra Law Review* volume 38, issue 1 (Fall, 2009), 69-162; Dennis, *Landscape of Peace*; Quote from *DRCHNY* III:67.

For an example of attempts to enforce English law on Long Island see the trial, and subsequent escape, of "Will the Indyan" for the rape of Mary Miller: P.R. Christoph, ed., *Administrative Papers of Governor Richard Nicholls and Francis Lovelace, 1664-1673* (Baltimore, Md.: Genealogical Publishing Co. Inc., 1980), 62-72; Christoph and Christoph, *General Entries* 191-192, 200, 243, 271, 277.

Indians in the town after dark might enable them to spy on the colonists and plot an attack, so it ordered the town to construct a separate "Indian house" outside the walls.[83]

Among the most significant continuities in Albany was the court's extralegal distinction between crimes committed in the woods and those committed in the town. Unfortunately, the court minutes for 1660 to 1668 do not exist, so it is impossible to say with any certainty if the English conquest had any immediate effect on the punishment of trade violations. Based on the extant records from the end of the decade, however, the regime change likely had little effect and the court continued to ignore illegal trading and violence crime in the woods. In the court minutes for 1668 to 1673, there were no prosecutions for any illegal trading or violence in the woods. During the 1660s and 1670s, the fur trade continued its steady decline, but nevertheless remained one of the most important and profitable occupations in Albany. Most of the traders during this period of decline were the same people as in earlier decades, and it was unlikely that they significantly altered their illegal trading practices for a new government that was, for the most part, identical to the previous court. They almost surely continued their illegal practices of going out in the woods and waiting to intersect Indians arriving in the town with furs to trade. While such practices may have been curtailed somewhat because of the small army now stationed in the fort, the traders had their preferred methods of trade, and it would have been extraordinary for them to give up such practices simply because of a superficial regime change. That said, there are virtually no extant records of illegal trading in the woods and absolutely no records of violence against Indians in the woods for this period any more than for the Dutch one.

The post-conquest court, as under the Dutch, showed a noticeable concern about crimes within the village. If 1668, the first year for which records exist, was indicative of the

[83] Merwick, *Possessing Albany* 169-171; Sullivan, *Punishment of Crime* 208-236; Richter, *Ordeal of the Longhouse* 138; *DRCHNY* III:67-68; Nelson, "Legal Turmoil" 82-83, 93; Trelease, *Indian Affairs* 205-207.

years that preceded it, the *schout*, Gerrit Swart, may have done little to stem illegal trade and lodging in the village. In 1668 he brought only one charge against a man, Jan Clute, for boarding Indians. After Clute denied the charge, the court dismissed it. Yet the year 1668 may have been an exception for *schout* Swart, rather than representing a general disinterest with enforcing the law. During the 1669 and 1670 trading seasons, he took a much harder stand against illegal trade in the town. Swart filed a total of fifteen charges, including tempting Indians to trade in private houses, trading illegally in private gardens, and lodging Indians overnight. In all but one case, which ended with an oath of innocence, the court imposed a fine. In only two years, the court imposed more fines for trading violations than were recorded in the entirety of the extant twelve years of Dutch court minutes. Sometimes, in minor cases, the court allowed the *schout* and the defendant to resolve the case out of court, but in most cases the court imposed the fine as mandated by the posted ordinance. These convictions and fines were also imposed without regard to the status or occupation of the defendant. Many of the men found guilty were of good reputation, as evident in that some of them went on to hold positions such as magistrate, constable, and justice of the peace. In addition, a few of the men were traders, an occupation that, under the Dutch regime, would mostly likely have exempted them from punishment. Community status did not give even significant men the right to resolve their fine privately out of court. Instead, this opportunity appears to have been granted based on the severity of the crime and whether the violation was committed with the defendant's knowledge, or occurred while he was out of the house by his wife or a servant.[84]

The firm stand against trade violations in the village ended in 1671 with the appointment of Captain Silvester Salisbury as the new *schout*. Salisbury was the English

[84] A.J.F. Van Laer, ed. and trans., *Minutes of the Court of Albany, Rensselaerswyck, and Schenectady 1668-1685*. 3 vols. (Albany, N.Y.: The University of the State of New York, 1926-1932) (hereafter *MCARS*), I:21, 89-90, 90, 95-96, 98, 104-105, 108, 111-112, 155, 160-161, 167, 185, 209, II:16, 205, 356, III:37, 437, 548, 553.

commander of the fort and the first Englishman to serve in the Albany government. As commander, Salisbury had numerous duties aside from his responsibilities as *schout* and does not appear to have shown much concern for trade violations, regardless of where such violations occurred. This steep decline in prosecutions was not the result of a decline in violations or violence. In November, 1671, after the end of Salisbury's first trading season as *schout*, the Court of Albany renewed all of the "presently abused ordinances." The following year, the court agreed to again renew the ordinance against lodging Indians in the town. For some reason, whether he was too busy with his various responsibilities or simply did not care, Salisbury brought only one charge against a colonist for an illegal action involving an Indian. In 1671, he accused Anne Ketel, an innkeeper, of lodging Indians and serving them alcohol. After the court found her guilty, she was fined twenty-five florins, the same fine imposed on first-time offenders charged with the same crime by the Dutch. There was no clear reason given in the record for why Ketel was the only person charged with an illegal trade to Indians. One likely possibility was that Ketel's sale of alcohol led her lodgers to get drunk and commit violence within the town, something that would have required a response from the court. It may have been that Salisbury, who often spent little time punishing Indian-related crimes, brought this case to the court only because of some extreme precipitating incident.[85]

The Problem of Indian Violence in Albany

Throughout nearly all of the first decade of English rule, the Court of Albany remained reluctant to enforce English law on Indians in and near the town. As already noted, the English, unlike the Dutch, believed that the colony had an expansive right to punish Indian crime under the standards of English law and justice. This belief, however, was in direct conflict with how

[85] *MCARS* I:211, 279-281, 303; Quote from *MCARS* I:279.

the Dutch in Albany had traditionally handled crimes committed by Indians. The Dutch-controlled Court of Albany, in defiance of governor Nicholls, continued to ignore crimes committed by Indians. There is, in fact, only one brief mention of a cross-cultural murder in Albany during the 1660s that attracted any attention from the Court of Albany. In 1665, the Mohawks and Mahicans resumed their decades-long conflict, and in the crossfire several Dutchmen were killed. When he learned of the incident, Nicholls was furious, and immediately wrote to the magistrates of Albany and ordered the arrest and execution of the two Mohawk men accused of murder. Although the response of the Court of Albany no longer exists, the magistrates almost certainly ignored this order because, as they surely understood, such an action would undoubtedly have caused strife and, at best, cut off the fur trade and destroyed the economy of the town. Furthermore, the five years of extant court records, and nine years of official correspondence and executive council minutes from the first English period lack any mention of other incidents of violence and murder that undoubtedly occurred in and around Albany. If the court had decided to execute two Mohawk men, there would almost surely have been at least mention of a discussion as to whether a later murderer should be executed or not. In addition, if the governor's order had been effective in 1665, it is unlikely that he would have simply allowed later murderers to live without punishment. Instead of execution, conflicts over murder were most likely handled privately, as they had been during the Dutch period, instead of through official channels, and resolved in ways that would ensure the continued existence of the fur trade.[86]

In 1673, the Court of Albany broke with its longstanding, if unofficial, policy of never punishing Indians for crimes committed within its jurisdiction. In January 1672/3, *schout*

[86] Sullivan, *Punishment of Crime* 202-203; Christoph and Christoph, *General Entries;* Christoph, *Administrative Papers*; *MCARS* I; John Romeyn Brodhead, *History of the State of New York*. 2 vols. (New York, N.Y.: Harper & Brother, Publishers, 1853)*,* II:87.

Salisbury arrested two "Northern Indians," Kaelkompte and Keketamape, for the murder of John Steward, a soldier in the garrison at Albany. Although the *schout* had previously held at least a few drunken Indians overnight, none had ever been punished or, so far as the records show, ever been called to account for crimes they might have committed. In this case, for the first time in the history of the settlement, the town held two Indians prisoner for at least one month and subsequently subjected them to a trial before an English-style court. In late January, the governor, now Francis Lovelace, ordered that Kaelkompte and Keketamape "bee equally and duely prosecuted according to the law, from which neither Indyn nor Christian is to bee exempt." He appointed the magistrates of the court and all the officers of the military garrison to a special commission to try the two men and, "if they shall bee found guilty by the court…proceed to sentence, and order execution to bee done upon them." At the trial, both men admitted to having killed Steward and were, on this evidence alone, found guilty of murder and condemned "to be hanged by the neck until they are dead, dead, dead, and thereafter to hang in chains." The decision to follow through with this order led to a number of unprecedented events in Albany. The decision by the court to allow this trial without protest was probably the result of the increasing English influence on the city. Although the court still acted according to Dutch legal traditions, it was now led by *schout* Salisbury, an English military leader, who undoubtedly was more inclined than his predecessors to demand that the court fulfill a direct command from the governor. In addition, this case, unlike the last recorded murder by an Indian in 1665, was of an English soldier, not a Dutchman, and the court may have been more concerned about the fallout if they refused to exact justice for his murder.[87]

[87] Christoph and Christoph, *General Entries* 523; *MCARS* I:326-328; Sullivan, *Punishment of Crime* 71; Nelson, "Legal Turmoil" 84; Quotes from Christoph and Christoph, *General Entries* 523, 523; *MCARS* I:328.

One of the most significant factors that probably encouraged the Court of Albany to agree to the trial of Kaelkompte and Keketamape was that they were not members of the Iroquois Confederacy. Among the most important elements distinguishing the murder in 1665 and the murder in 1673 was that in 1665 the perpetrators were Mohawks. Although the court probably would have ignored an order to arrest Indians regardless of whom the Indians were, the fact that they were Iroquois most likely meant that the court probably gave little consideration to the order. The magistrates of the court knew that to infuriate the Iroquois would have destroyed the fur trade and, given the military prowess of the Five Nations, may have meant the destruction of the town. Eight years later, if it had been a pair of Mohawk men who killed Steward, the court might well have ignored the governor's order and let them go free. Even though the overall value of the fur trade had continued to decline during the 1670s, it was still extraordinarily important to Albany, and the Mohawks were still the most important hunters involved in the trade. In this case, however, the murderers were from one of the tribes of "Northern Indians" who lived to the east of Albany. Although non-Iroquois Indians did sell furs in Albany, their share of the total trade was relatively small. In addition, few of these tribes had the military capacity to oppose the English garrison at Albany. When Kaelkompte and Keketamape killed Steward, therefore, the court had fewer concerns about detaining and ultimately executing his murderers. As long as the Iroquois remained friendly and believed that member of the Five Nations were free from arrest, the court was apparently unconcerned about violating the legal tenets of other Indian nations.

The Regulation of the Fur Trade after the English Restoration

After brief period of restored Dutch rule in 1673 and 1674, the English reconquered New York and began to exert increased influence over the legal and social institutions of

Albany.[88] One of the earliest changes instituted by the new English governor, Edmund Andros, in Albany was the appointment of the first English-speaking court secretary, Robert Livingston, in 1675. Although Livingston had lived in Holland for many years and spoke Dutch fluently, he was a native English-speaker and his appointment represented a significant shift towards a bilingual legal system. This shift was finalized in 1679 when, for the first time, orders from the governor and provincial council were read to the community in both English and Dutch. Another significant legal change to appear in Albany during this time was the jury trial, which became increasingly common after it was first instituted in 1676.[89]

This period also saw the increased centralization of the fur trade as both the Court of Albany and the Council of New York began to issue new ordinances significantly restricting interactions between Indians and fur traders. In 1675, the Court of Albany renewed the previous ordinances that had banned trading with Indians in the woods, trading in private houses, robbing Indians, selling guns to Indians, and lodging Indians overnight. In addition, the court "[forbade] all inhabitants of Albany…to have any intercourse with the Indians or to question them about any matters concerning the province, or to rob them of their beavers, peltries or clothes, even though they should be justly indebted." This regulation, issued in the early months of King Philip's War, aimed to restrict and control not only trade, but nearly any interaction between New Yorkers and Indians. As in previous decades, few colonists appear to have concerned themselves with the ordinances. In a 1679 proclamation renewing all of the previous ordinances, the court complained that "Poeple doe dayly by Subtile and crafty means

[88] The court minutes and other Willemstadt (Albany) records from during this sixteen-month period of Dutch administration no longer exist. They may have been taken by the Dutch governor, Anthony Colve, when he left the colony upon the resumption of English control in November, 1674. These missing records make a reconstruction of Dutch-Indian relations on the north Hudson impossible at the present time.

[89] Merwick*, Possessing Albany* 253; Sullivan, *Punishment of Crime* 217-223; Trelease, *Indian Affairs* 208.

and Inventions Transgresse." In the next few years, the court supplemented this with new ordinances increasing the fine for conversing with Indians, and forbidding traders to accost Indians in the woods under pain of an arbitrary punishment to be determined by the court in each case.[90]

By far the most significant change to the workings of the Albany fur trade was enacted by the New York colonial government in August 1678, when the colonial government limited the right of Albany traders to ship their furs directly overseas. Since the Dutch years, traders in Beverwijck/Albany had enjoyed the right to trade anywhere in the world. They were permitted to buy furs from Indians, ship them downriver to New Amsterdam/New York, and from there ship them overseas to business associates usually located in Amsterdam. Under the new regulation issued in 1679, however, the governor declared that only the inhabitants of Albany could trade there, and that no inhabitant of Albany could participate in the overseas trade. To ship their goods to Europe, traders in Albany would now be required to ship their goods downriver to New York, where they would sell them to overseas traders for transport across the Atlantic. While weakening Albany's links to the Atlantic trade, Andros at the same time sought to strengthen Albany's control over the fur trade by forbidding non-residents to trade in Albany, essentially insuring that the Albany traders would maintain a nearly complete dominance over the acquisition of furs in New York. This new and unprecedented level of control was solidified by the 1686 Albany City Charter, which declared that fur trading could only occur in Albany.[91]

Unlike most types of Indian trade laws, the New York government actually relaxed the regulation of the sale of alcohol to Indians during this period. During the first English period, the

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[90] *MCARS* II:37, 91, 107-108, 393-395, III:147-148, 251-252; Quoting *MCARS* II:37, 394.

[91] Merwick, *Possessing Albany* 113, 210-214; Sullivan, *Punishment of Crime* 233-235; Schmidt, "The Dutch Atlantic"; Venema, *Beverwijck* 23, 179; Matson, "Damned Scoundrels" 393; *MCARS* II: 403-404; *Colonial Laws of New York* I:211-212; Joel Munsell, ed. *The Annals of Albany*. 10 vols. (Albany, N.Y.: J. Musell, 1850-1859), II:75-76.

sale of any alcohol to Indians remained illegal, as it had been previously. After the English restoration in 1674, however, the sale of alcohol to Indians was no longer, in itself, an illegal act. While the English surely wanted to limit violence committed by Indians, English law did not link acts of violence and the sale of alcohol to Indians in the same way as the Dutch. This new regulation was clarified by the court in 1677 to ensure that everyone in the town would understand what Indians were permitted to receive, and what they were not. According to the court, "the inhabitants of Albany may sell strong liquor to the Indians, but in no smaller quantities than in kegs of four kan [approximately two gallons]." The court went on to assure the community that it remained illegal to sell alcohol to Indians in small quantities and in private homes and inns. Rather than outright prohibiting the sale of alcohol to Indians, these regulations ensured that Indians would be permitted to acquire alcohol and that the colonial government would receive the taxes from these purchases. Yet, at the same time, the court recognized that allowing Indians open access to alcohol could prove dangerous, and therefore mandated that only large jugs be sold in the hopes that Indian purchasers would return to their homes with these jugs and not drink them in or near Albany.

During months when large groups of Indians congregated around the town either for trade or for conferences, the court often enacted broader bans that prohibited the sale of any alcohol, regardless of quantity, to Indians. Such temporary bans occurred throughout the 1670s and 1680s, and ranged from a one month ban to as long as four or six months. The goal of these temporary bans was to limit drunkenness in Albany. The court feared that if many Indians were staying near the city, they might consume even large containers of alcohol, and then cause trouble while drunk. The records, however, are unclear as to the effectiveness of these bans. Given the willingness of Albany residents to disregard well-intentioned alcohol ordinances of earlier decades, it seems unlikely that traders would simply stop selling alcohol to Indians for a

few months, particularly because large groups of Indians were surely seen as an even greater opportunity for profit. Alternatively, the citizens of Albany may have actually followed these laws. Of the three cases under an alcohol ordinance, only one, against Gysbert Gerritse in 1681 for having sold alcohol covertly during one of the ban periods, was actually a legitimate charge. He admitted his guilt and was fined the standard twenty-five florins. In the other two cases, both in 1678, two different brewers were charged with having sold alcohol to Indians under the minimum quantity. The court dismissed these charge and condemned the excise collector to pay all fees because he had entrapped the brewers by bribing an Indian to beg them on behalf of a sick child for only one gallon of alcohol, instead of the mandatory two. Given the limited number of charges and the need for the excise farmer to frame two brewers, the loosening of the alcohol regulations may have actually encouraged the residents of Albany to act in accordance with the law.[92]

As the need to police the alcohol trade declined, the *schout* of Albany, now known as the sheriff, began to increase the enforcement of the other trade ordinances. During the first two years after the reissuance of the ordinances (1676-1677), Sheriff Michel Siston brought a total of thirty-two cases, split evenly between the two years. As had been true for decades, many of the charges were for actions that took place in the village, such as trading with Indians in houses, lodging Indians overnight, and robbing Indians in the village. Nearly two-thirds of the cases were for going just outside of the town gate and trading at the "Indian house." In accordance with the ban on lodging Indians, Albany had built a lodging house outside of the village for Indians to stay in while they were selling their furs. Under the ordinances, trading furs was illegal in the Indian houses, except in exchange for small quantities of food. During 1676 and 1677, Siston charged twenty men and women with either going to the Indian houses

[92] *MCARS* II:77, 88, 123, 245, 246, 257, 304-305, 311-312, III:169; Quote from *MCARS* II:245.

to trade or sending their children to trade for them. What remains difficult to determine from the extant record is whether the sheriff and the court were deliberately ignoring trade in the woods proper, or if trade in the woods had actually declined because of the rise in illegal trading at the Indian house. It is also possible that trading in the woods was rampant, but by focusing on crime in the village and at the Indian house Sheriff Siston simply had no time to wander the woods searching for traders. Yet what most distinguishes this period from earlier was the increased number of convictions handed down by the court. Of the thirty-two total cases, only six ended with either a dismissal or oath. In the first dismissal, the evidence presented to the court did not convince its members conclusively that a robbery had in fact occurred. In another three cases, the witnesses called by the sheriff failed to appear and the court could not prosecute. The last two cases ended after the defendants took an oath declaring that they had no knowledge that their children had gone out to trade at the Indian house. Unlike the dismissals granted by the Court of Beverwijck, those granted under Siston more likely to have been based on an actual lack of evidence, rather than as a way to avoid actually prosecuting crime. While the court may not have always imposed fines as high as the sheriff demanded, it did show an increased willingness to enforce trading laws both in the village and at the Indian trading house.[93]

Even though the court appears to have been more willing to convict traders, the actual enforcement of the law still relied largely on the ability and willingness of the sheriff to bring cases to the court. After the end of Siston's term as sheriff, his successors were either significantly less interested in or else less effective at prosecuting trade violations. During Johannes Provoost's one year as sheriff during 1678, he brought only seven men and women to the court. Of these, five were against "defendants [who] incessantly, contrary to the ordinance,

[93] *MCARS* II:62, 64-65, 86, 129, 141, 159, 173, 241-242, 263, 266, 271, 277.

venture again and again either to go themselves or to send their children to the Indian house on the hill and to trade there." It seems that Provoost may have been more concerned with discouraging repeated violations, instead of working like Siston and bringing whomever he could to the court. Provoost's successor, Richard Pretty, spent even less time enforcing the trade ordinances, bringing only one prosecution each year from 1679 through 1682. While the magistrates could certainly have been discouraging prosecutions after 1677, it appears likely that the decline was a result of a disinterest on the part of Provoost and Pretty rather than an unwillingness of the court to convict those accused of trade crimes.[94]

The Punishment of Violence after the English Restoration

After the English restoration, conflicts between Albany residents and Indians that once would have been resolved privately were increasingly handled by the Court of Albany according to the dictates of English law. The first such incident addressed by the court began on May 16, 1678, when "a certain squaw was shot dead at the house of [William] Teller, burgher of this city." Within a few hours, the court assembled and impaneled a jury to determine what was to be done with Teller. In the presence of the jury and the Mahican sachems, the court examined William Teller, his son Johannes, and three Indian witnesses, who all concurred that "it was done quite innocently…because he did not know that the gun was loaded and did not see anyone when the gun went off." Ten years earlier, a simple accident of this sort would almost certainly have gone unrecorded. While the English claimed authority over all Indians within the formal boundaries of the colony, this power was largely theoretical. The uncontested executions of Kaelkompte and Keketamape in 1673, however, confirmed that the small Indian nations to the south and east of Albany were no longer able to contest English dominance. Five

[94] *MCARS* II:345-346, 353-354, 428, 473; III:69, 269.

years later, in the case a European accused of killing an Indian, the Mahicans did not even question whether the English legal system would be the sole forum for resolving the conflict. Yet even while English law and English legal forms predominated, the case was resolved in a way that accorded with both English and Mahican standards. After hearing the evidence, the jury ordered Teller to pay for the burial of the deceased and to pay fifty florins to the Mahicans to cover their costs, which the sachems present agreed was acceptable. To the English, this payment was officially given to cover "all charges occasioned by [this] unhappy incident." For the Mahicans, however, this charge would have been a way for the English to "cover the dead" and resolve the need for vengeance. Like murder resolutions described by Richard White in *The Middle Ground*, this payment was a solution acceptable to the Mahican, couched in language acceptable to the English.[95]

Following the precedent set in 1673, the Court of Albany also continued to arrest and punish Indians according to English law. In the last set of extant court minutes, which cover the years 1675 through 1686, only two cases were apparently troubling enough for the court to actually assert its jurisdiction over Indian perpetrators. One of these cases even occurred outside of the town, implying that the court no longer limited its jurisdiction to the town walls. On August 4, 1683, Jan Pearce, an English visitor from New England, complained that he had been attacked and beaten the night before by a group of Indians outside the town gate. He claimed that they had called him a dog "and Pulld off his Cloathes, and dragged him" along the river. In response to this attack, the court arrested a "Northern Indian" named Webux who had been implicated by a slave named Jack. Under questioning, Webux said "that he did not beat him," and declared that the attacker had been Namparamis, whose wife had recently been raped by Pearce. The sheriff then went to arrest Namparamis who, despite being found with

[95] *MCARS* II:324-327; Munsell, *Annals of Albany* VIII:169-173; White, *Middle Ground;* Quotes from *MCARS* II:324, 324, 325, 327.

Pearce's clothes, also denied having beaten the Englishman. After adjourning to consider the case for a few days, the court "resolved to mitigate the punishment as much as possible," because the two men were "heathen and ignorant of our laws." The court pardoned them "on condition that they pay 4 beavers for the damage done… trusting that in the future that they will refrain from committing such hostility."[96]

While the resolution of this case, in the form of a payment rather than a trial, appeared to harken back to Indian relations under the Dutch, there was one significant distinction that established the dominance of the English/Dutch in negotiations with non-Iroquois Indians. If this attack had occurred under the Dutch, or even in the 1670s, the Court of Albany would likely have remained uninvolved, or at least left no record of proceedings. As has been shown, the Dutch never asserted jurisdiction over Indians or outside of the town boundaries, and the Court of Albany continued this tradition throughout the whole first English period. If the court magistrates had been involved at all, it would probably have been only to help smooth relations with the offended tribe. By 1683, however, the Court of Albany had fully accepted the jurisdiction that the English claimed over Indians. Neither the court nor Indian chiefs present at the court proceedings challenged the right of the English to arrest Namparamis and Webux and subject them to trial. The court then proceeded to investigate the attack and determine whether the case *should* be brought before a jury, something that never would have happened ten years earlier. In determining the guilt of the offenders, the court probably considered not only the English standards of law, but also whether the rape should be considered. Although the court ultimately settled on a compromise, the most important element of this case was the fact that the *English* alone decided the fate of the imprisoned Indians. Unlike in previous decades, when the balance of power between Albany and their Indian neighbors was tilted in

[96] *MCARS* III:369-371, 376-377; Quotes from *MCARS* III:369, 377, 377, 377, 377.

favor of the Indians, this case helped to solidify that the English were firmly in control of the relationship. As the Albany garrison grew even stronger and the fur trade continued to decline over the subsequent decades, the ability of the English to enforce their laws over the Indians along the Hudson River grew ever stronger.

In 1683, only months before the attack on Pearce, Albany faced an even more complicated case when the court attempted to enforce its claimed jurisdiction over a Mohawk man. As in previous decades, the Mohawks remained economically and militarily dominant in the upper Hudson Valley, and so even while the Court of Albany claimed to have jurisdiction over all Indians, the court rarely attempted to enforce this claim on the Mohawks. The delicate balance was challenged when Unochshoenie, a Mohawk, slashed a young Dutch boy named Albert van Hekelen in the head four times with a tomahawk. The night of the crime, Unochshoenie had illegally spent the night in the home of Dirck the Noorman with van Hekelen, Dirck's servant. Since two men were in a locked room at the time of the crime, Unochshoenie was the obvious suspect and the court immediately detained him for questioning. He initially denied having attacked the boy, and claimed that "a River Indian came into the house. He thought that he came for beer or to get something else." The court, doubting this story, resolved to hold Unochshoenie in prison while his story was investigated. After four days of searching, the only new evidence presented to the court was the testimony of Andries van Hekelen, who declared that his nephew had bolted the door shut after Andries' visit on the night of the attack. At this point, Unochshoenie, probably realizing that he was caught, finally gave in and admitted that "he committed the crime and so cut the boy…having first struck him four times with the head of the hatchet." Instead of moving immediately to a trial as the might have

done with a European, the court decided to hold Unochshoenie in prison for the time being and to send a messenger to the Mohawk sachems requesting their presence for a conference.[97]

Within three days, the sachems responded with a message that the magistrates of Albany interpreted to show that the Mohawks were beginning to accept the preeminence of English justice. According to the Mohawk messenger, the sachems were unable to come at the present time, but had agreed that "if the boy who was wounded that way by the [Mohawk] happens to die, the [Mohawk] must die also." They also sent a gift of wampum to express their sorrow and to "wipe away their tears." Yet, despite this apparent show of deference, the Iroquois sachems, by using these phrases, were evoking the language of the Iroquois Condolence Ceremony and the newly enacted Covenant Chain alliance, probably as a means of ending the tension over the attack. Six years earlier, in 1677, the English and the Iroquois Confederacy had established a new and more formalized relationship known as the Covenant Chain. Periodically, the English and the Iroquois chiefs would meet at Albany to "brighten" the covenant chain by reconfirming their alliance, trading presents, and resolving any disputes between the two communities. With this alliance, the two communities also agreed to resolve murders through ceremony and by "covering the dead" with presents, rather than through violence. This ceremony followed very specific protocols that continued to be used for decades. Although full ceremonies are not recorded until decades later, the language used by the Iroquois in their message following the van Hekelen attack, such as being "filled with sorrow," and "wip[ing] away…tears" mirrors exactly the ceremonies recorded in the 1750s. Therefore, while the Mohawk pretended deference to the English and claimed to accept the right of the English to exact retributive justice, the language used in this letter was more likely meant to

[97] *MCARS* III:330-334, 339-343, 363-367; Quotes from *MCARS* III:331, 334.

encourage the English to forgive the attack and accept presents to either "cover the dead," or, if the boy managed to miraculously survive, to forgive the attack.[98]

Fortunately for everyone, the English and Mohawks were never forced to confront the potentially explosive question of whether the English had the right to execute an Iroquois murderer, because the boy did manage to survive his injuries. Although the sachems now expected Unochshoenie to be left alive, they nevertheless told the English that it was "it in your hands to kill him or to let him live, but you may have mercy upon him, who is but a boy." They also reminded the English of the many crimes committed in the woods "by striking and hitting our Indians, of which some…died, but we took little notice of it as we were brothers among one another," and requested that "the covenant between us may remain firm and inviolate." Even more than in their earlier communication, the sachems made clear that while the English might want to kill Unochshoenie, the Mohawks had always held to the ceremonial methods of the alliance, and the English should do likewise. Given that van Hekelen had lived, the court agreed to release his attacker "on condition that you immediately remove him from this jurisdiction and take care that he never returns to it." Furthermore, instead of simply letting the Mohawks' gift of wampum suffice to cover the injury, the court demanded that the Mohawks furnish them fifty beavers to cover the cost of the surgeon who cared for van Hekelen and the jailer who held Unochshoenie for two months. The sachems equivocated in meeting this demand, and said they would try but could not confirm such a large present, and the records are unclear as to whether it was ever paid. Regardless of whether the demand was met, the fact that it was even

[98] *MCARS* III:330-334, 339-343, 363-367; Eric Hinderaker, *The Two Hendricks: Unraveling a Mohawk Mystery* (Cambridge, Mass.: Harvard University Press, 2010), 33; *Johnson Papers* X:97-98; All quotes from *MCARS* III:343.

made represents how the English saw themselves as the dominant party in the relationship, even if they could not yet fully enforce English law on the Mohawks.[99]

Even if van Hekelen had died, it is extremely likely that the magistrates of Albany would still have found a way to avoid actually executing Unochshoenie. While in their initial message the sachems had seemingly offered Albany an opportunity to enforce English legal codes, this was, as already noted, more likely a ceremonial message. The sachems had offered this concession with the expectation that the English would reciprocate the ceremonial gesture by pardoning the murderer. Furthermore, the magistrates of Albany were well aware of the need to maintain the goodwill of the Iroquois, and undoubtedly knew that executing Unochshoenie would create strife between their communities, regardless of what the sachems said. Avoiding an execution, however, would have been significantly more complicated had the wounds proved fatal. Most likely, the governor of New York would have put increased pressure on the magistrates to enforce the English laws that demanded trial and execution for murderers. The magistrates and the sachems would, at this point, have had many options available to them. Although they could have simply pardoned Unochshoenie, such an action would likely have raised the ire of the colonial administration and caused significant problems for the magistrates and the town. Another possibility was to blend the legal expectations of English law and Iroquois ceremony. Like the French in the *Pays d'en Haut*, the settlers in Albany could have brought Unochshoenie to trial, while making clear to the Iroquois sachems that he would never actually be executed. Even if he was ultimately sentenced to death, the court would still have the option of officially pardoning him or unofficially allowing him to escape from the town jail. Although the possible actions following van Hekelen's death may appear endless, the magistrates would surely have been constrained by the political situation of the moment, and

[99] *MCARS* III:330-334, 339-343, 363-367; Quotes from *MCARS* III:363, 363, 363, 364.

the pressure they were under from the Albany community, the Iroquois sachems, and the New York government. Like the French further west, the magistrates probably would have had to improvise to ensure that whatever they chose to do would serve the interests of the community and ensure continued peaceful relations with the Mohawks and the rest of the Iroquois Confederacy.[100]

Although both Namparamis and Unochshoenie were pardoned for their crimes, the language used by the court to dismiss the cases and release the two men showed a distinctive difference between how the court understood its authority over Iroquois and non-Iroquois Indians. In the case of Namparamis, the court considered subjecting him to a trial, but decided instead to excuse him, officially based on his ignorance of English laws. In the case of Unochshoenie, however, the court never seemed to seriously consider a trial. In the days after the attack, Unochshoenie was questioned many times, but the court ordered that any decision of what to do with him be delayed until after the victim's fate became apparent. Once the court was sure that the boy would live, the magistrates no longer seemed to even consider the idea of a trial. As had probably occurred many times before, the Mohawks gave a gift and probably performed the appropriate ceremony, and the murderer was permitted to go free without further punishment. If van Hekelen had died, the history of New York Indian relations might have gone very differently. While most of the Indians living along the Hudson River and east of Albany could no longer face the English militarily, the Iroquois were still a significant and dangerous force. It was possible that the court, out of concern for the fur trade and the safety of the city, might have defied the expectations of the governor and refused to bring the Mohawk murderer to trial. Had the English insisted on an execution, however, the incident could have significantly strained relations between the two peoples. The Mohawks would have

[100] White, *Middle Ground* 75-82.

been left to make an impossible choice between ending the fur trade and going to war, or giving up their sovereign right to complete authority over their own people. The boy's survival enabled both the English and the Mohawks to avoid the ultimate and extremely dangerous question of whose authority was greatest in northern New York. Instead, the two communities were able to reach a mutually agreeable solution, which was neither Mohawk nor English, and remain in a state of interdependence that lasted, with some struggles, for almost another eighty years.

Chapter 5: Murder in Albany and Western New York, 1755-1774

In 1686, the fur traders in Albany reached their pinnacle of power when Governor Thomas Dongan granted Albany a city charter that gave the city the exclusive right to trade furs with Indians and the right to control New York-Indian relations. Although Albany had dominated the fur trade for decades, this charter provided a firm legal recognition that all Indian relations would occur at Albany and be regulated by the Albany elite. This new city charter also disestablished the Court of Albany, Rensselaerswijck, and Schenectady, the last and most significant Dutch-style court in the colony, and replaced it with a new government consisting of a mayor, recorder, six aldermen, and six assistants. This new government controlled negotiations with Indian Nations until 1696, when the governors of New York began to appoint significant Albany men as Commissioners of Indian Affairs tasked with handling Indian affairs on behalf of the colony. These Commissioners continued to control New York Indian relations until the late 1740s, when their power began to crumble under the pressure of imperial warfare. In 1756, Sir William Johnson, an important New York fur trader, was commissioned by the British crown as Superintendent of Indian Affairs for the Northern Colonies.[101]

Unfortunately, it is extremely difficult to reconstruct how the Albany Commissioners regulated and settled intercultural murders before Johnson took control of the regulation of Indian affairs. The Minutes of the Commissioners of Indian Affairs pre-dating 1722 have been lost. In addition, the 1911 fire in the New York State archives had a disproportionate effect on

[101] Norton, *Fur Trade* 74-75; "Dongan Charter," *The Dongan Charter and Present Charter, Together with the Laws of the State of New York applicable to the City of Albany and the City Laws and Ordinances of the City of Albany*. (Albany, N.Y.: The Argus Company Printers, 1896), 7-27.

papers from after the 1680s, which were stored on higher shelves and were among the first to catch fire. Although O'Callaghan had reproduced some of these records in his two massive collections of documents, they provide only limited information on murders involving Indians in Albany. The Minutes of the Commissioners of Indian Affairs do exist for the years 1722 to 1748, but they are stored at the National Archives of Canada and were inaccessible at the time of this study. Although limited notes from some commissioners are available, none were comprehensive enough to enable a full study of murder in the early eighteenth century.[102]

New York Indian Relations in the Eighteenth Century

As in earlier decades, the leading men in Albany, including the Commissioners of Indian Affairs, were fur traders and were significantly influenced by their own economic pursuits and desire for increased profits. During the late seventeenth and early eighteenth centuries, the fur trade continued the steady decline that had begun around 1660. Although there were a few peak years, in most cases the fur traders in Albany struggled to maintain the profits they had once enjoyed. By 1700, the Governor of New York, the Earl of Bellomont, reported to the Board of Trade in London that the trade was "sunk to little or nothing, and the market is so low for beaver in England that 'tis scarce worth the transporting." Although a bit of an exaggeration, the total fur trade had declined to only 15,000 peltries from a high of 50,000 in the mid-1650s. A large part of this decline was related to the decades of overhunting by the Iroquois and other Indians in western New York. To help bring in more beavers, the Commissioners of Indian Affairs negotiated with the Iroquois to allow Indians from further west to bring furs through

[102] "Continuation of Colden's History"; Richter, "Rediscovered Links"; Lawrence H. Leder, ed. *The Livingston Indian Records, 1666-1723* (Gettysburg, Pa.: Pennsylvania Historical Association, 1956).

their territory to trade at Albany, in the hopes of maintaining the city's monopoly on the trade.[103]

Although the Commissioners of Indian Affairs and elected officials in Albany remained committed to the Albany trade monopoly, as the fur trade declined many traders went west illegally in the hopes of seeking greater profit. Since its founding in 1661, the village of Schenectady, located twelve miles west of Albany along the Mohawk River, was a center of the illegal fur trade. Despite efforts by the Albany government to curb this illegal trade, it remained a consistent problem for decades until the city was burned by the French in 1690. After 1700, as new European settlements were founded along the Mohawk River west of Albany, the illegal trade spread west to communities more easily accessible for both the Iroquois and Indians further west in the Ohio Country. Over the next two decades, as conflict with France grew, the New York government began to consider authorizing traders to buy furs in the west where they could more actively compete with French traders. In the early 1720s, the governor of New York, William Burnet, began to issue licenses for traders to buy furs in areas west of the Senecas, the westernmost Iroquois Nation. In 1724, the Albany monopoly officially ended when Burnet ordered the construction of a new fort at the mouth of the Oswego River, which was meant to serve as the new center of the fur trade. By the time Johnson took control of Indian affairs in 1756, the vast majority of murders and other conflicts between Indians and colonists in New York took place in settlements outside of Albany.[104]

While the fur trade in New York declined, the alliance with the Iroquois Confederacy remained central to the colony's affairs, and became more important than ever before. For much of the late seventeenth and early eighteenth centuries, the British and French North American colonies were consumed by four wars between their countries. During these wars,

[103] Norton, *Fur Trade* 71, 100; Venema, *Beverwijck* 89; Quote from *DRCHNY* IV:789.
[104] Burke, *Mohawk Frontier*; Norton, *Fur Trade* 33, 161-165.

the Iroquois, and particularly the Mohawks, occupied a significant position because they lived, literally, in between the English colonies and New France. This location made the Iroquois an important ally for New York, and especially to Albany, because during a possible French invasion the Iroquois could serve as a buffer and a first line of defense for the colony. Without the Iroquois to act as spies and defend against French attacks, settlers on New York's northern frontier would have been completely exposed to New France. New York also expected that the Iroquois, as supposed subjects of the king and the New York colony, would participate in English expeditions against New France as soldiers and spies. Even if they could not convince the Iroquois to participate in their wars, New York's colonial leaders knew that it was still important to maintain the goodwill of the Iroquois, because their neutrality was still better than them going over to the French. Furthermore, New York colonial leaders believed that the Iroquois, as the head of a supposed Indian Empire, could dictate the allegiance of many Indians in the Susquehanna River Valley and in the Ohio Country. If the Iroquois or their supposed western subjects began to spy for the French, they lived close enough to northern New York to pose a real threat to the colony.[105]

While the British and French continued to assume that Indians were always allies of either one European power or the other, the Iroquois instead found ways to use the conflicts to their own advantage. During the seventeenth and eighteenth centuries, the members and sachems of the Confederacy broke into factions over whether they supported an alliance with the British or with the French. The most populous Iroquois faction, however, was what Daniel Richter calls the "neutralist" faction, which supported neither European party. The term "neutral" masks the fact that most of these Indians did not want to stay entirely out of the

[105] Norton, *Fur Trade* 60, 69-71, 77; Hinderaker, *Two Hendricks* 39; Burke, *Mohawk Frontier*; Francis Jennings, *The Ambiguous Iroquois Empire: The Covenant Chain Confederation of Indian Tribes with the English Colonies from Its Beginning to the Lancaster Treaty of 1744* (New York, N.Y.: W.W. Norton & Co., 1984).

conflicts, but instead wanted to find ways that they could best support the independent interests of the Iroquois people. While the Iroquois Confederacy, in general, continued to support the Covenant Chain alliance with the British, they never actually ended communication with the French. In 1701, the Iroquois concluded a treaty of peace with the French, much to the chagrin of the British who assumed that the Iroquois were their ally alone. However annoyed the British might have been, the Iroquois knew that the British relied on their support too much to threaten the alliance, even if Iroquois support was not as great as they had hoped it would be. Maintaining communication with both European powers also ensured continued significance of the Iroquois because as long as the New York colonists feared that the Iroquois could abandon them and join the French, the British would continue to continue giving presents to the Iroquois and respecting their independence.[106]

Through the first half of the eighteenth century, both the Iroquois and the New York government remained committed to the Covenant Chain, an alliance that benefited both the Iroquois and the British. This alliance was, from its inception, one that was meant to benefit both the leaders of New York and the Iroquois. In addition to formalizing an alliance between these two nations, the Covenant Chain expanded both the authority of New York over northern Indian relations, and the authority of the Iroquois over other Native peoples living near the northern English colonies and in the Susquehanna River Valley. Under the Covenant Chain alliance, New York and the Iroquois agreed that New York would represent all the British colonies in negotiations with the Iroquois, and the Iroquois would represent all eastern Indians in negotiations with the British. Although many of the eastern Indians were displeased with this

[106] Hinderaker, *Two Hendricks* 65-69; Norton, *Fur Trade* 71; Richter, *Ordeal of the Longhouse.*

situation, if the British would only negotiate through the Iroquois, there was little that the Indian nations could do to alter the situation.[107]

Another significant purpose of the Covenant Chain alliance was the creation of a method to resolve murders and other conflicts between New York and the Confederacy. The Iroquois, as already shown, would not have accepted English law or the jurisdiction of English courts, and the colonists were terrified of angering the Iroquois and driving them into an alliance with the French. The two nations, therefore, continued to resolve murders through the Condolence Ceremony, one of the rituals of the Covenant Chain alliance. According to an Iroquois sachem speaking in 1774, the Iroquois had never before "deviate[d] from our ancient customs…by putting our people into your [British] hands." While the British may have wanted to expand their jurisdiction over the Iroquois, their greatest concern during this period was ensuring that the Iroquois remained a close ally in their war against the French.[108]

During the mid-eighteenth century, as the British moved west in search of more furs and new lands for settlement, they encouraged a new and expansive definition of the Covenant Chain alliance that tied together all Indian peoples "from Maine to the Mississippi." Almost since its inception, the Covenant Chain had included a number of peoples besides the Iroquois and residents of New York. In 1676, a year before the enacting the Covenant Chain alliance, the Iroquois invited into their territory refugee Indians from King Philip's War in New England, who settled at Schagticoke on the edge of the Mohawk territory. By 1680, these Indians had settled within Mohawk territory and accepted a subordinate position under the Mohawks, who they began to refer to as their "fathers." Soon after, the Onondagas and Cayugas likewise accepted refugee Susquehannocks who had fled from a conflict with Virginia. They were followed in later years by the Tuscaroras, Nanticokes, Conoys, and Tutelos who also fled from wars in the south.

[107] Jennings, *Ambiguous Iroquois Empire* 145-172
[108] Hinderaker, *Two Hendricks* 33; *DRCHNY* VIII:425.

For the Iroquois, these new refugee settlements on their border served not only to expand their sphere of influence, but also to act as buffers protecting the core settlements of the Five Nations from attack. To the British, however, these peoples apparently subject to the Iroquois were indicative that the Iroquois held a European-style imperial authority over their neighbors. In the mid-eighteenth century, the Iroquois, with encouragement from the British, started to describe themselves as the head of a vast multi-tribal alliance that included tribes from Maine to Virginia and the Ohio Country. Although many of these western Indian nations never agreed to such subservience, the British accepted Iroquois claims of authority because, ultimately, it was more beneficial for the British and the Iroquois if such an empire did exist. The British assumed that, as the head of an empire, the Iroquois had the right to negotiate on behalf of other Indian Nations and, most importantly, to sell their land. The Iroquois, fully embracing the power of this assumption, used it to their own benefit and, on numerous occasions, sold off the land of their supposed subjects without approval from its actual residents.[109]

Although the Iroquois had, of course, been important to New York for decades as a source of furs and as a defense against France, this expansive new understanding of the Covenant Chain significantly altered how the Iroquois related to and negotiated with the British colonies. As the supposed Iroquois Empire expanded, the British expected them to serve as the representatives of western Indian nations, which gave the Iroquois a new and unprecedented power in colonial Indian affairs. In 1746, in order to assert some colonial control over the Covenant Chain alliance, Governor George Clinton appointed Irish-born fur trade William Johnson as the Colonel of the Warriors of the Six Nations (In 1722, the Tuscarora Nation from North Carolina had settled in New York and joined as the sixth nation of the Iroquois

[109] Hinderaker, *Two Hendricks* 33-36, 147-148, 168; Jennings, *Ambiguous Iroquois Empire* 125, 142-150; Gregory Evans Dowd, *War Under Heaven: Pontiac, the Indian Nations, and the British Empire* (Baltimore, Md.: Johns Hopkins University Press, 2004), 37-38, 185-186; Quote from Hinderaker, *Two Hendricks* 147.

Confederacy). In recent years, Clinton had grown frustrated with the Albany Commissioners who often placed the needs of Albany above the needs of the New York colony and the empire as a whole. Johnson was a smart choice as a replacement because he was not associated with the Albany elite, and was extremely well-liked by Mohawk leaders. Unlike most Englishmen who dealt with Indians, Johnson understood Iroquois culture and values, and was known to have "dressed himself after the *Indian* manner, made frequent Dances, according to their Custom when they excited to War, and used all the Means he could think of, at a considerable Expense…in order to engage them heartily in the War against *Canada*." Johnson was also extremely popular among the Mohawks because he understood the importance of personal relationship and kinship ties in Iroquois society. In the 1640s, he cultivated a close relationship with Hendrik Theyanoguin, a significant Mohawk sachem who soon became one of the sachem spokesmen for his nation. Some years later, he married Molly Brant, a woman from a significant Mohawk family. Her brother, Joseph Brant, would also later become a significant sachem and a support of the British during the Revolutionary War.[110]

Although Johnson's appointment was popular among the Iroquois, the Albany Commissioners and their allies in New York City were extremely displeased with their concomitant loss of power, and ultimately forced Johnson to resign in 1751. Yet the return of the Albany Commissioners greatly displeased the Mohawks, who were irritated by the Commissioners' unwillingness to address the problem of land speculators stealing Iroquois land. Since the late seventeenth century, the Mohawks had been complaining fairly regularly to the Albany Commissioners about fraudulent deals, swindles and underpayments for their lands. As the population of the colony boomed in the mid-eighteenth century this problem only

[110] Hinderaker, *Two Hendricks* 147, 158, 166-170, 175-177; Timothy J. Shannon, "Dressing for Success on the Mohawk Frontier: Hendrick, William Johnson, and the Indian Fashion." *The William and Mary Quarterly*, Third Series, Vol. 53, No. 1 (Jan., 1996), 13-42; Quote from *DRCHNY* VI:487.

increased. The Iroquois, and particularly the Mohawks, continued to complain about the Albany Commissioners and about unscrupulous land speculators throughout the early 1750s, until 1753, during a Conference on Manhattan Island, when they declared that the Covenant Chain had been broken. At the Albany Conference the following summer (1754), James DeLancy, the new governor of New York and an ally of the Albany Commissioners, again failed to address Iroquois concerns about fraudulent land sales, and was met with a forceful rebuke from Johnson's Mohawk ally, Hendrik, who demanded that Johnson be reinstated. Johnson, however, was not restored to his position until a few months later, when a new war with France led the government of New York to realize how much they needed the Iroquois to remain their allies. Two years later, in the midst of the French and Indian War, the British government took over control of Indian relations and appointed two new Superintendents of Indian Affairs, one for the northern colonies and one for the southern colonies. As the Iroquois were the most important Indian Nation for all of the northern colonies, Johnson was the natural choice for the position. Now free from the burdens of appeasing the political factions in New York, Johnson ended Albany's traditional control over Indian affairs, and began to hold meetings with the Iroquois and other Indian Nations at his home along the Mohawk River, and later at Johnson Hall, his estate built on land gifted to him by the Mohawks.[111]

Murder along the Hudson River

By the time Johnson was appointed Superintendent of Indian Affairs in 1756 intercultural murders were a more consistent problem than ever before. His letters show that at least every eighteen months he was working with Indian sachems to negotiate either the murder of an Englishman or an Indian in New York (in addition to murders in other colonies).

[111] Norton, *Fur Trade* 190-197; Hinderaker, *Two Hendricks* 59-64, 151-155, 209-210, 216-221, 230-232, 238-244.

Within only his first year, in fact, Johnson was called upon to deal with both: the murder of a Tuscarora man during the summer, and then the murder of an Englishman at the end of the year. The case of the murdered Englishman, which occurred in early December, 1756 in the Hudson River community of Claverack, was one of the few cases Johnson had to deal with that involved the non-Iroquois Indians in New York. On December 8, Johnson wrote to the sachems of the Stockbridge Mahicans to inform them that John van Guelden and his son, both Indians from the Christian community of Stockbridge, had been arrested for murdering an Englishman "with whom they had no Quarrel nor indeed any Business." The men had been arrested and transported to Albany, where they were to wait in the jail until they were put on trial for the murder. Only days later the Stockbridge sachems responded with a request that the men be released and sent back for a trial among their own people. As had been true for decades, the Indian communities of the Hudson River Valley had little they could do to contest the demands of the British. The Stockbridge Indians had neither the military power nor the political leverage necessary to actually contest the British army. Although as shown in the last chapter, non-Iroquois Indians had little leverage in the 1680s, and the situation had grown even more lopsided over the subsequent decades as both the population of and military presence in the New York colony grew. If Johnson and his superiors were unwilling to accede to their requests, there was little that Stockbridge could do but accept the arrests and, they feared, trial of the two van Gueldens before a jury of New Yorkers.[112]

Over the next few months, Johnson, probably in an attempt to find an equitable solution that might appease all parties, stalled both the Stockbridge demands for release and the trial of the two murderers. Nearly two months after the murder, Captain Jacob of Stockbridge asked Johnson whether the two men, still being held in the Albany jail, were to be hanged. Johnson

[112] *Johnson Papers* IX:567, 581, 590, 766; Quote from *Johnson Papers* IX:567.

refused to provide a firm answer. All he could confirm was that "The Law must take its course [and] if they were not guilty of the murder they would be acquitted." He did add, however, that "he would be a Friend to them & their tribe…as long as he found them deserving." While Captain Jacob expressed his displeasure with this uncertainty, there was, as before, little else that he could do. Although he did not admit it explicitly in writing, Johnson seemed determined to find an equitable solution, a sort of middle ground, better than simply ordering a trial as his superiors demanded of him. As in the middle ground described by Richard White, Johnson's options were limited, and finding a solution that worked required a great deal of improvisation based on the circumstances of the moment. Johnson would have immediately known that the two most obvious solutions, either pardoning the murderers or agreeing to let them be tried in Stockbridge, would never be permitted. Even more than in the past, Johnson was under pressure to ensure that these men would be brought to trial in a New York court. If he even considered it, Johnson also would have realized that allowing these men to escape would have been a useless endeavor, because they would surely have returned to Stockbridge, a Christian Indian community where they could easily be found. With no apparent options, Johnson let the two murderers sit in the Albany jail awaiting trial while he delayed the governor of New York, the commander of the army, and the Stockbridge sachems.[113]

Johnson finally found a solution in April, when an English soldier captured, tortured, and killed a Mahican Indian from Stockbridge on the road between Albany and Schenectady. As was customary, Johnson met with the Stockbridge sachems a few days later and "condole[d] with [them]…and cover[ed] his grave with…blankets strouds and stockings, & with these handkerchiefs." He then assured the Indians that, as his superiors demanded, the murderer was in custody and would be put on trial, "and if found guilty," would suffer. In their response, the

[113] *Johnson Papers* IX:590-591, 622, 632, 642; All Quotes from *Johnson Papers* IX:591.

Stockbridge sachems found this solution insufficient because it ignored their customs. They requested that instead of executing the soldier, which would serve the needs of neither community, the British replace the deceased Indian with the men still held in the Albany jail. The Indian speaker reminded Johnson that "you told us two days ago that when a man is dead, there is no bringing him to life again... [but] we understand there are two Indian in jail at Albany, accused of killing a man; they are alive and may live to be of service, and we beg you in the name of the Great King our Father that they may be released." Although he had to wait for official approval the commander of the army and the governor of New York, Johnson believed that the solution fair and had strongly advocated for its approval. While it remains unclear what role, if any, Johnson had in devising this solution to the two murders, he most certainly appreciated the expediency of using the most recent murder to resolve the continued conflict over the Claverack murders. Unlike some of his predecessors, Johnson was not unsympathetic to the expectations of Indians, even if they were the weaker party in any negotiations. Like the Middle Ground of the Pays d'en Haut, Johnson used creative and improvised solutions to balance the demands of his superiors for justice, and the very different Indian expectations of justice.[114]

Murder within the Covenant Chain Alliance

Although the Iroquois held significantly more power than the Stockbridge Indians, negotiations with the British over murders in the 1750s were similar, as both involved gifts of presents, ceremonies of condolence, and mutually agreeable solutions meant to restore peaceful relations. The first murder Johnson handled in New York was that of a Tuscarora man named Jerry who was murdered by members of the 44th Regiment in Schenectady. To add insult

[114] *DRCHNY* VII:248-251, 253; *Johnson Papers* IX:685-687, 766, XIII:95; Quote from *DRCHNY* VII:249, 249.

to this injury, the soldiers cut off his head and stuck it on a pole in the camp where it was found the following morning. Only hours later, a huge crowd of Iroquois men and women, angry and calling for blood, arrived at Johnson Hall. Johnson quickly appealed to the sachems to remember the Covenant Chain alliance and to calm their men. Once the crowd settled down, Johnson met privately with the sachems to resolve this murder through the usual ceremonies. By at least the 1750s, and probably much earlier, murders within the Covenant Chain alliance were resolved through the Condolence Ceremony. The ceremony following Jerry's death, like so many others, began with Johnson expressing condolence for the death of Jerry, along with two other men killed in the French and Indian War. This was accompanied by a large gift of goods to symbolically 'cover the grave' and replace the deceased men. Once Johnson completed his long speech, an Onondaga sachem rose and thanked him for the "early and prudent measures" that he took to resolve this potential conflict. He then told Johnson that the Confederacy would "pull up a large Pine Tree and bury under its Roots this unhappy affair so that it may never give either of us any more uneasiness." The tree referenced in this statement was the Tree of Peace, an important symbol of the peace that covered and sustained the Iroquois Confederacy and its allies. As the Onondaga speaker explained, the unhappiness caused by the murder of Jerry was to be symbolically buried beneath the tree where it could be forgotten as the British and the Iroquois returned to the peace that had previously existed between them.[115]

The following year, Johnson met again with the sachems of the Iroquois Confederacy to perform this same ceremony following the murder of two Iroquois men by an Albany trader. A few days after the murder, Nickus, an Oneida chief, arrived at Johnson Hall to inform Johnson that his brother and a Mohawk man had been murdered a few days earlier. Nickus then stripped off all of the clothes and trinkets he had been given as presents by Johnson and other

[115] *Johnson Papers* II:726, IX:495-947, XIII:89; DRCHNY VII:177-179, IX:496-497; Quotes from *DRCHNY* VII:178, 179.

traders, and declared that his friendship with the British was at an end. Almost immediately, an Onondaga sachem who was fortuitously at Johnson Hall that day took charge of calming down Nickus and the other Iroquois present. The next morning the Condolence Ceremony began with Johnson "clear[ing] away the Tears from their Eyes according to their [the Iroquois] Custom with Six Strings of Wampum." To restore peaceful relations among the nations living under the protection of the great Tree of Peace, the offending party, in this case the British, gave presents to the nation of the victims both as direct compensation for their loss and, more importantly, as the first step in an extremely evocative ceremony of forgiveness. After clearing away the tears of mourning, the belt of wampum was intended to "take the Hatchet out of your [the Iroquois] Heads." This symbolic hatchet was the embodiment of revenge, and by removing it, the victim's kin were to end their thoughts of taking revenge against the offending nation. Johnson then dug up the ground beneath the great Tree of Peace and 'buried the hatchet' "so that it may never more be seen or found by either of us." The hatchet was placed deep below the roots of the tree in a stream that ran out to the ocean, to ensure that the conflict and all thoughts of revenge would be not only forgotten but irretrievably lost forever in a place far away from the Confederacy.[116]

Aside from the symbolic language of the Condolence Ceremony, one of the most important elements of the Covenant Chain alliance was that its symbolic and ceremonial methods of resolving a murder were meant to apply regardless of whether the victim was an Indian or a European. After the Claverack murders, Johnson was unable to release the men until an acceptable reason was found following the murder of the Mahican man by the soldier. When an Iroquois murdered a New Yorker, however, it had been established by the Covenant Chain alliance that such a conflict would also be resolved through a Condolence Ceremony. In 1759,

[116] *Johnson Papers* II:726, III:431, IX:796-797, X:292; quote from *Johnson Papers* IX:797, 797, 797.

for example, Johnson met with the sachems of the Confederacy to resolve the murder of John McMickle recounted in the introduction. As in other Condolence Ceremonies, the sachems began by offering condolences for the murder and clearing away the anger the British felt towards the Six Nations. The speaker told Johnson that they were there to "wipe away the Tears from your Eyes so that you may look pleasant at us, likewise remove all Obstructions, & clear your Throat so that you may speak clear & friendly to us." This was followed, as always, by the ceremony of symbolically digging up the tree of peace, burying the ill will, and allowing it to wash away where it would never be seen or thought of again.[117]

Although the British willingly participated in the Condolence Ceremony, it was, nevertheless, a ceremony consistent with Iroquois standards of justice, not British standards. As the Iroquois understood it, justice among allies was met by 'covering the dead' with presents and restoring peace and harmony through the Condolence Ceremony. This belief was based on the distinctly Indian idea that guilt was collective among either a clan or an entire nation. Ceremonies, therefore, were meant to restore relations between the guilty nation and the aggrieved nation, regardless of individual guilt. To the Iroquois, the English system of justice, which focused on punishing guilty individuals, was improper because within a family or alliance the spilling of blood should not beget the spilling of more blood. In 1733, the sachems of the Six Nations urged the Commissioners of Indian Affairs to forgive an English soldier who had murdered a Cayuga man in Oswego. After the Condolence Ceremony, the sachems reminded the commissioners, all was forgiven and put away never to be thought of again. The sachems knew that it was the English custom to execute murderers, and they would not stop them if they insisted, but the sachems nevertheless wanted to make clear that the Englishman should not be executed for them. According to the Iroquois, once the matter was settled by ceremony it was

[117] *Johnson Papers* X:82-84, 97-98; quote from *Johnson Papers* X:97.

settled forever, and neither Indian nor English murderers should be forced to endure further consequences for their past actions.[118]

By the 1750s, British officials had grown impatient with the Indian justice and the apparent unwillingness of the Iroquois to adopt the idea of individual culpability for crimes. Unlike Johnson, few British officials were interested in learning about a system of justice that seemed so inferior to their own. Among the most important of these officials was Jeffrey Amherst, the Commander-in-Chief of the British forces in North America, who was appointed in 1759, during the height of the French and Indian War. During his tenure, Amherst began to put increased pressure on Johnson to force the Iroquois to relinquish murderers for trial and probable execution, even after the Condolence Ceremony was complete. Yet as Johnson probably expected, the Iroquois were unwilling to hand over their people. He understood Iroquois values well enough to know that handing over a murderer violated some of their most cherished values. Johnson attempted, therefore, to work with the Iroquois sachems to find a more equitable solution that would still appease Amherst. He found his opportunity by focusing Amherst's attention away from murder and towards the war that was his greater concern. During the conference after the murder of John McMickle, Johnson offered the Six Nations the option of sending men on an expedition against France if they would not hand over the murderer. This murder, he explained, was a case of "extraordinary villainy," because it was committed not in drunkenness, but by a sober man professing to be a friend and guide. In such a case, Johnson told the sachems, the British had "a right to expect all the satisfaction which it is your power to give us, & that you ought to deliver up the murderer, if you can come at him." If not he offered as an alternative that they "should revenge it upon our enemies the French." A few days later, after consulting with their warriors, the sachems informed Johnson that their

[118] Dennis, *Landscape of Peace*; *DRCHNY* V:963, 969.

men were ready to join with the British and revenge the death upon their mutual enemy the French.[119]

As the tide of the French and Indian War turned in favor of the British, Johnson struggled to find a way to balance the expectations of the Iroquois and the demands of his superiors. The growing conflict between these competing interests became especially apparent in after the murder of Justice Frank. In the summer of 1761, an Oneida man visiting the German Flatts, a town west of Johnson Hall, shot a hog on the farm of Stephen Frank. Hearing the gunshot, his son Justice chased down the Oneida and confronted him. Turning about, the Oneida man threatened to shoot him, so Justice ran at him and attempted to take away his gun. They scuffled and as soon as the Oneida man got free, he shot Justice in the throat and killed him. In his letter to Amherst, Johnson urged him to forgive the murderer and to be content with the forgiveness promised in the Condolence Ceremony. Knowing that Amherst would be loath to accept this recommendation without a good reason, Johnson also reminded him how three years earlier, in a very similar case, the murderer Thomas Smith had similarly not been punished for his crime. Although he had been arrested, Smith had managed to escape from his confinement and, with the assistance of the Dutch in Albany, fled west and was never apprehended. He had remained free in the west and continued to trade with the Iroquois in their villages until his death only a few months before Frank's murder. Johnson emphasized for Amherst that this was not meant to be an excuse for the murder of Frank, but he nevertheless thought it would be wise to take it into account before demanding that the Iroquois hand over the murderer. This reasoning, however, meant little to Amherst, because, Amherst claimed, if Smith had escaped under his watch, he would have demanded justice in that case just as he

[119] *Johnson Papers* VIII:913; Fred Anderson, *Crucible of War: The Seven Years' War and the Fate of Empire in British North America, 1754-1766* (New York, N.Y.: Vintage Books, 2000); All Quotes from *DRCHNY* VII:381.

planned to do with the murderer of Justice Frank. For Amherst, nothing but the murderer in custody would suffice as equitable compensation.[120]

Having failed to convince Amherst to pardon the murderer, Johnson was obliged, when he met with the Iroquois sachems the following month, to ask that the murderer be arrested and handed over to him for trial. As Johnson expected, the sachems did remind him of how Smith was never punished. After Johnson informed them that this was an insufficient reason to let the present murderer go free, the sachems complained that the settlers at the German Flatts brought violence upon themselves by stealing Indian land. In his response, Johnson remained sympathetic, but informed them that General Amherst would accept nothing but the murderer. As their friend, Johnson "recommend[ed] a speedy Compliance with his demand," because as only a representative of the general, he could do nothing but enforce the order to arrest the murderer. Hearing this, the sachems next responded that even if they had wanted to, they could not turn over the murderer because had "made his escape to some distant part immediately after perpetrating the Crime." They promised Johnson that, if the man could be found, they would follow his advice and turn him over for trial, but until that time, they hoped that the crime could be forgotten without causing further bloodshed. When Amherst learned of this excuse a few days later, he did not believe it and continued to persist in his demand that the murderer be given up. Johnson, however, was the man with the responsibility for negotiating, and he chose to believe the claim that the murderer had fled. While he may not have *actually* believed the sachems, accepting their claims without question allowed him to find a way to balance their expectations with Amherst's. Yet, as this case shows, finding this balance was

[120] *Johnson Papers* III:407, IX: 837-839, X:292, 297; Anderson, *Crucible of War* 535-547.

becoming more difficult as Amherst became more confident in the war and in his authority over the Iroquois.[121]

The Kanestio Murders and Pontiac's War

By the end of the French and Indian War, with the complete removal of the French from North America, the balance of power between the British and the Iroquois had changed significantly. Now in control of Canada, the British no longer needed the Iroquois to act as a buffer against the French, or to act as soldiers and spies. As the war came to an end, Amherst increasingly pressured Johnson to ensure that all Indian murderers, including the Iroquois, would be arrested and tried before a jury. He also began to demand that Johnson break off all trade and diplomacy with any nation that failed to accept submission to English law. Johnson boldly asserted this newly claimed authority over the Iroquois at the end of 1762 when two English traders and a servant were attacked at Seneca Lake by two Indians from Kanestio, a village "made up of Stragglers from several Nations near the Senecas Country," who lived along the Genesee River under the protection of the Senecas. The two assailants shot at the traders, killing William Newkirk and his servant, and capturing another man named Allen, who they held for two weeks until the Senecas freed him and brought him to Johnson Hall. Upon their arrival, Johnson immediately sent a message to the Kanestios ordering them to deliver up the murders, threatening that if they did not, he would turn to the Seneca sachems to enforce his demands. A few weeks later, he sent his nephew and deputy Guy Johnson to Onondaga where the Iroquois sachems were to perform the Condolence Ceremony. In his reply to the sachems, Guy Johnson made clear that while the ceremony was appreciated, it was no longer enough to fully restore peace between the two nations. He declared that only the arrest of the murderers

[121] *Johnson Papers* III:431-432, 434, 436-437, 504, 506; Quote from *Johnson Papers* III:434, 436.

could appease the British, and none of the "flagrant excuses," such as "that the murderers are fled, or that they cannot find them," would be acceptable. Furthermore, to prove just how committed the British were, he informed the sachems that if they did not comply, Amherst had promised to send the army to arrest the men and "take Revenge on the Nation, or Village, to which they belong."[122]

Although the Iroquois sachems assured Johnson that they would make every possible effort bring the men to the British for trial, most probably assumed that Johnson was only posturing under orders, and that he would, as he had always done, assist them in finding a more balanced solution after they attempted to fulfill his demands. During the winter of 1763, the sachems, as they had promised, sent an Onondaga emissary named Sogigewona to the Kanestio village to find the murderers. Johnson was sure this would be an easy task because, as he learned from a smith living with the Senecas, the two men were living openly in their village "not in the least concerned at the Mischief, but rather boasting of their Manhood." In Kanestio, Sogigewona confronted one of the murderers in his home, and requested that he and his accomplice travel to Johnson Hall to turn themselves over for trial. Unsurprisingly, the murderer refused, and instead stated his intention to go to the Seneca village and kill the British smith. Hearing this new threat, the murderer's uncle banished his nephew, declaring that the family could no longer accept the trouble his nephew brought upon their village. He further "begged [that] the Five Nations might not throw the Blame on [the uncle], as he had *done* with his Nephew." Obeying his uncle, the murderer then left the village and "Retired to his wicked Partners at the *Ohio*." At their next conference with Sir William Johnson in March, the Iroquois sachems expected that Johnson would forgive the murder and restore their friendship after hearing that the Confederacy had made a genuine, if failed, attempt to bring the murderers to

[122] *Johnson Papers* III:932, 941-942, 967, 973-974, X:582, 614; *DRCHNY* VII:512-514; Quotes from *Johnson Papers* III:967, *DRCHNY* VII:514, 514, *Johnson Papers* III:942.

him. The sachems were, therefore, shocked when, in his reply, Johnson declared that what they had done was "of no consequence, and cannot prove the least Satisfaction." Johnson was infuriated that the Iroquois had not only failed to apprehend the men, but had failed to even attempt what seemed, to him, the obvious action of arresting the men by force. He declared that until the sachems had satisfied him by capturing and delivering the murderers, relations between their two nations would remain strained. In his next reply, the Iroquois speaker assured Johnson that they too were greatly aggrieved by the murder, but that there was nothing more they could do. Iroquois sachems, the speaker reminded Johnson, did not have the power to arrest or detain a man, no matter how heinous his crime. It was for this reason, he explained, that the ancestors of the English and the Iroquois had established the Covenant Chain alliance, and he saw no reason that they should have to deviate in this case from "the antient Custom of our Fore-fathers."[123]

By the end of the March conference, Johnson and the Iroquois sachems remained at an impasse because both continued to argue that failure to follow their legal customs would result in disaster. According to Johnson, the Kanestio murderers needed to be punished for their actions because if they were not, all Indians would take it as a license to kill European settlers freely. The Covenant Chain, he explained, had worked well in the past, but it was no longer effective because in recent years the Iroquois had grown increasingly belligerent. The Iroquois, however, remained firmly committed to their own legal customs and to the terms of the Covenant Chain alliance. They feared that allowing more blood to be spilt through the execution of the two murderers would harm their alliances with other Indian Nations and lead to the relatively swift breakdown of the web of alliances they had constructed over the past century. Although these two demands were completely incompatible, they were, in one

[123] *Johnson Papers* III:961, IV:15, X:582, 588, 613-614, 618, 624, 627-632; *DRCHNY* VII:512-514; Quote from *Johnson Papers* X:582, 627, 627, 628, 628.

significant way, incredibly similar: both peoples feared anarchy if their laws were not satisfied. In any society, a legal system is meant to establish and maintain order. In past negotiations over murder, the British had found ways to create resolutions that appeared acceptable to both communities, such as by accepting Iroquois claims that the murderers had disappeared. Once in control of Canada, however, the British no longer had a need for pragmatic solutions, and rejected Iroquois claims that the murderer could not be found, a story that would surely have been effective only a few years earlier. Rather than compromise, both the British and the Iroquois instead only further entrenched themselves in their own legal system, and in their belief that other systems were inadequate. For the English, allowing murders to go free without punishment would create a chaotic society, but for the Iroquois killing murderers would destroy society by creating more retaliatory bloodshed. Unfortunately, by the end of March, 1763, it seemed that he only way to break this deadlock would be for something to force compromise from one side or the other.[124]

Tension between the two nations was still high in May, when a series of Indian attacks on the forts along the western frontier dramatically altered British relations with their western Indian neighbors. This series of attacks were the beginning of Pontiac's War, a year-long conflict between the British and the Indians living west of Pennsylvania, New York, and Virginia. Grumbling about war had begun among these tribes approximately two years earlier, after Amherst ordered a new British policy toward the western Indians of the Great Lakes, the Illinois country, and the Ohio country. As with the Iroquois, Amherst intended to institute a new policy to bring the seemingly recalcitrant Indians under the authority of the British. Before 1761, the French, the former colonial power in the region, had curried favor from these Indian Nations by providing them with presents and generally treating them with respect, including forgiving

[124] *Johnson Papers* X:631-632, 676, 721; *DRCHNY* VII:522-523.

murders. Yet to Amherst, it was inconceivable that Indians, who he understood as a subject people of the British Empire, might make demands of presents from their masters, and therefore he forbade the practice. He also instituted harsh new restrictions on the trade of powder and shot that only further infuriated Indians accustomed to being treated with greater respect by European leaders. The Indians feared that this measure, which would have effectively limited their ability to defend themselves, was a prelude to the British attacking and enslaving them. In response, a number of Indian Nations, including the Mingos, who were Senecas living in the Ohio country, and the Ottawas, led by their chief Pontiac, began circulating war belts urging a large-scale attack on the British. In 1763, the western Indians were further outraged when Amherst reneged on his promise to abandon the western forts once the French presence had been eliminated. Instead, he decided to fortify the forts and maintain a British presence to control the western Indians. In response, a coalition of Indian Nations under the leadership of Pontiac and other chiefs besieged Fort Detroit and later eight other British forts. The Senecas joined in the attack on Fort Niagara.[125]

With the beginning of Pontiac's War, the British again found that they needed the military assistance of the Iroquois. In July, Johnson met with the sachems of the Six Nations to inform them of the attacks on the western forts and to request their assistance in punishing the "breakers of peace." In exchange, he offered them "all the favour which a Great King, and Generous people can bestow, not only in the protection of their Castles and families but in the defense of all their Rights, & interests in this Country." Although the Iroquois did not actually join the war against the western Indians, they did agree to remain outside of the war and not to support enemies of the British. For this promise of neutrality, Johnson apparently promised to forgive the Confederacy for failing to bring him the Kanestio murderers. As he made clear, this

[125] Dowd, *War Under Heaven* 70-83.

promise only extended to those nations who reaffirmed their commitment to the Covenant Chain alliance and at least remained neutral. Conspicuously absent from the July conference, and from Johnson's promises, was the Seneca Nation. While the other five of the Six Nations decided to ally with the British, these Indians decided instead to join the Indians united in opposition. After a summer of war, two of the three Seneca villages had decided to surrender and rejoin the Confederacy, and were absolved of the British demand that they capture the Kanestio murderers. The Kanestio Senecas, however, remained at war.[126]

As many historians have shown, the Senecas joined the war and remained opposed to the British for reasons that were substantially similar to the concerns of other Indians further west. In *The Middle Ground*, for example, Richard White argues that the Senecas joined the war because they feared that if the British held the western forts, the army would completely encircle Seneca lands. They also feared, he argues, that the western forts would give the British ties to the western Indians and diminish the important of the Iroquois in imperial politics. Thomas Elliot Norton similarly argues that the Kanestio Senecas feared the defeat of the French and the expansion into the west would lead to further British encroachments onto their land. Most importantly, the Senecas feared that the British would interfere with their monopoly over the transportation of goods across the Niagara portage. Only Gregory Evans Dowd, in *War Under Heaven*, mentions the Kanestio murderers, but he considers them of little importance to the war. He only mentions the murders after the surrender of the Kanestio Senecas in February, 1764, following an attack on their village by a British force led by John Penn. In the final peace treaty agreed to months later, the Kanestio murderers were completely forgiven and the troubles of the past were forgotten by both the Senecas and the British. To Dowd, the Kanestio murders were important only as an example of how little punishment the Kanestio Senecas

[126] *Johnson Papers* X:746-753; *DRCHNY* VII:553-560, 563; Quotes from *Johnson Papers* X:748, 749.

actually faced for having gone to war against the British. In the final treaty, the British punished no one, "not even recent killers of Englishmen," and only made a few demands, such as requiring that the Senecas capture three Delaware chiefs to prove their restored allegiance to the British. To both Dowd and Norton, the most important element of these peace treaties was the surrender of the Niagara portage, the only significant concession in the entire treaty.[127]

Despite the assertions of previous historians, the Kanestio murderers were a significant issue that led the Senecas to turn against the British in Pontiac's War. After the initial surrender of the Kanestio Senecas in February, the sachems of all Six Nations met with Johnson at the end of March to perform the requisite Condolence Ceremony and to negotiate the terms of peace. As Johnson and the sachems made clear at this conference, the Kanestio murderers, although certainly not the only reason that the Senecas turned against the British, were a significant factor in their decision. Like the colonial wars of the previous century, a murder appears to have led to the development of this war. In the seventeenth century, Indians living near the northern colonies of New York and Massachusetts accepted numerous injustices, including even invasions of their land. What no Indian Nation would ever accept, however, was the assumption by Europeans of the right to arrest Indians, or to try and execute them. As shown in the introduction, this was especially true in Kieft's War, the Pequot War, and King Philip's War. Although rarely noted, the Kanestio murders likewise played a central role in the growing conflict between the Senecas and the British. For over a year, the British and Senecas dealt with few of their conflicts, including encroachments on Seneca lands and the growing English presence in the west, because the two nations had reached a seemingly irreconcilable conflict over the fate of the Kanestio murderers. Without this murder, the two nations might have been able to overcome their concerns, as the other members of the Confederacy eventually did, but

[127] White, *Middle Ground* 271-272; Norton, *Fur Trade* 211-212; Dowd, *War Under Heaven* 137, 148-159; *Johnson Papers* IV:323; Quotes from Dowd, *War Under Heaven* 154.

because of the murder, neither side was willing to negotiate in the months before the war began.[128]

Not even the war itself could terminate the conflict over the murderers that had been festering for over two years when the British defeated the Kanestio Senecas and forced them to negotiate in March, 1764. At this conference, Johnson made clear that the British would resume hostilities against the Kanestio Senecas unless the fugitive murderers were arrested and handed over for trial. Furthermore, in the peace treaty offered by Johnson in this conference, the first article required the Senecas to "immediately stop all hostilities," while the second article demanded that they "forthwith collect all the English prisoners, deserters, Frenchmen, and Negroes amongst them, and deliver them up to Sir William Johnson (together with the two Indians of Kanestio who murdered the Traders in November 1762)." While Johnson did make many other demands, including the arrest of three Delaware chiefs and the relinquishing of the Niagara portage, the Kanestio murderers were of central importance to the treaty. Although all of the sachems agreed to Johnson's terms and signed the treaty, the Senecas refused to comply with its terms. After over three months of waiting, Johnson called the Senecas back to Johnson Hall for another conference in July. There, Johnson expressed his disappointment and demanded to know why they had not fulfilled any of his demands, had refused to return their prisoners, and had continued to give sanctuary to enemies of the British. Johnson decided to offer them one final compromise in the hopes that conflicts with the Senecas could finally be brought to a conclusion. He ordered the Senecas and the Kanestio Indians to bring all of their prisoners to him within the next three days, and to comply with all of the other terms within thirty days. In exchange, he offered to "abate of the Article by which you bound yourselves to deliver up the two Murderers of Kanestio." Once the threat against the murderers was

[128] *Johnson Papers* XI:154-155.

removed, the Senecas quickly complied with all of the remaining terms of the treaty, including even handing over rights to the Niagara portage that they had jealously guarded for decades. As these negotiations show, the Kanestio Senecas were willing to risk resuming war against a stronger military that had already defeated them, in order to defend their right to judge murderers according to their own laws.[129]

The Lake Ontario Murders

Over the next ten years, Sir William Johnson's time was increasingly spent negotiating murders throughout the northern colonies, from New York and Pennsylvania to the Ohio country and Detroit. With the French threat removed from the western settlements, colonists were moving further west and establishing new farms and villages, often on Indian lands and without approval from the British government. In these new colonial frontier settlements, hatred of Indians was widespread. Men such as the Paxton Boys, who massacred dozens of Indians in western Pennsylvania, killed Indians with no cause other than being Indian. In the years after Pontiac's War, these frontier bandits lashed out at Indians with little regard for whether their victims were allies or enemies of the British colonies. Violence and murder only increased as the western settlers forced their way onto Indian lands and Indians fought back. Not even members of the Iroquois Confederacy were immune from attack. In 1766, for example, a colonist in New Jersey murdered a pregnant Oneida woman, and in 1769, a frontier settler killed a Seneca man in western Pennsylvania. Often, frontiersmen were able to murder without fear of punishment because there were few British officials on the frontier, and the few who were there often shared the settler prejudices against Indians. In addition, colonial law required, except in a few circumstances, that murderers be tried in the county where the

[129] *Johnson Papers* XI:136-144, 154-155, 291-297; *DRCHNY* VII:621-623; Quote from *DRCNY* VII:621, *Johnson Papers* XI:292.

murder had been committed. What this meant in effect was that even if a murderer was brought to trial, he would almost surely face a sympathetic jury that shared his prejudices and would not convict.[130]

Despite rising racial tensions in the west during the 1760s and 1770s, Sir William Johnson attempted to maintain the Covenant Chain, and the alliance it represented, even as the Iroquois sachems grew more skeptical of the British Indian policy. As in years past, Johnson met with the Iroquois sachems after each murder to condole the deaths and assure the Confederacy that the British would do their best to insure that a murder would not happen again. Unlike before, however, the Iroquois were not as willing to accept Johnson's assurances, because attacks were occurring too often and across too great a distance. In 1766, for example, nine Iroquois men and women were murdered in New Jersey and western Pennsylvania within less than one month. In the conferences that followed, the sachems expressed to Johnson their concern that these murders were part of a British plot to undermine the Covenant Chain alliance and, ultimately, to destroy the foundation of the Confederacy. The sachems found it inconceivable that after the Iroquois assisted the British in the wars against the French and against the Kanestio Indians, the members of the Confederacy were still treated so badly by their supposed friends. Yet unfortunately for the Iroquois, they could do little more than complain about their mistreatment. With the French removed and the western Indians defeated, the Iroquois no longer had the leverage that they once enjoyed. Although the sachems tried to sustain the Covenant Chain alliance, it was becoming increasingly obvious that the ceremonies of the alliance actually meant little to the British now that they could control the northern frontier without the support of the Confederacy.[131]

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[130] Alden T. Vaughan, "Frontier Banditti and the Indians; The Paxton Boys' Legacy, 1763-1775." *Pennsylvania History*, Vol. 51, No. 1 (January, 1964), 1-29.

[131] Vaughan, "Frontier Banditti"; *Johnson Papers* XII:95, 115-116, 123, 429.

Recognizing the precarious state of the Covenant Chain alliance, the Iroquois attempted to avoid causing any conflict with the British that might affect the independence of the Confederacy. Although murders of Iroquois men and women by colonists were common during this period, members of the Six Nations were rarely involved in murders of Europeans. In 1768, for example, Johnson reported to Thomas Gage, the new commander of the British forces in North America, that no settlers near Fort Pitt, a center of Iroquois-colonial violence, had been murdered by the Iroquois since the end of Pontiac's War. Similarly, in western and northern New York there were only a few murders of colonists by the Iroquois. Johnson, in fact, did not have to negotiate with the Iroquois sachems about the murder of a European in New York until 1771 when a Seneca warrior killed a soldier at Fort Niagara. For Johnson, this murder was a complicated case because the victim of the attack was still alive during the conference with the Iroquois, and only died of his wounds after the Senecas had already returned to their villages. Initially, Johnson believed that the victim might survive his wounds, so during the conference, the Seneca sachems only gave presents to ask forgiveness for the attack and to compensate the victim for his suffering. They also agreed that if the soldier were to die of his wounds, the sachems would arrest and deliver the murderer to Johnson. Yet when the man did die, Johnson knew that the sachems would probably offer a plausible, if unlikely, excuse as to why the man could not actually be found or arrested. Furthermore, in a letter to Gage, Johnson expressed concern that this might not be the best case in which to force an arrest, although he does not specify why. It may have been that the murderer was either drunk or provoked and therefore, according to Iroquois law, not culpable for his actions. In his reply, Gage ordered Johnson to at least request the murderer be handed over, so that the sachems would understand that the British demands were real. Unlike his predecessor, Gage understood that the best way to achieve British legal dominance over the Iroquois would be to pick his battles, instead of forcing

every issue. He therefore accepted Johnson's recommendation to forgo an arrest in this case, and willingly bided his time until a better case presented itself.[132]

Only two years later, Johnson was informed of a murder that would provide the British a perfect opportunity to, for the first time, achieve the arrest of an Iroquois murderer. At the end of the summer of 1773, three Senecas killed four French traders from Quebec on the southern shore of Lake Ontario. Unlike most of the Iroquois murderers over the last hundred and fifty years, these three murderers were neither drunk nor provoked. Although they, like many others of the Six Nations, were angry that the British and French had been moving onto their lands and cheating them in trade, there was, in this case, no specific confrontation could have be used to explain why this murder had occurred. Most likely, the murderers were simply greedy, and killed the traders in order to steal the thirty packs of furs that they were then carrying. At the conference with Johnson, therefore, the sachems did not attempt to excuse the actions of these men or justify the murders according to Iroquois law. Instead, the sachems, recognizing the gravity of this crime, promised to deliver the murderers immediately and to make full restitution for the stolen furs after the winter hunt. While this claim had been made before, this case was different, because, for the first time, the sachems left two hostages behind to guarantee that the murderers would be handed over. The sachems also eschewed their formerly common excuse that the murderers had fled and could no longer be found, even though, in this case, the murderers *had* actually fled. Although finding the murderers proved more complicated and took longer than the Senecas anticipated, two of the three murderers were in Johnson's custody by the end of March, 1774.[133]

At a conference after delivering the murderers, the Iroquois sachems asked Johnson to show lenience to the two men out of friendship to the Confederacy. Although they respected

[132] *Johnson Papers* XII:470, 882, 1076, 1117.
[133] *Johnson Papers* VIII:886, 890, 903, 906, 924, 925, 1087, XII:1029, 1036.

his right to do what he wanted with the men, the sachems urged Johnson to remember that their people were often murdered by the British, and these murderers were rarely punished. Furthermore, the two men in custody were young men who had been led astray by a ringleader who had, unfortunately, escaped into the west. It would be unfair if these young men were executed for this mistake when colonists who murdered Indians were rarely punished for even greater crimes. Finally, the sachems promised again that all of the stolen furs would be paid back as soon as possible. Years earlier, when Amherst was still in North America, such requests would have been meaningless, because Amherst expected that the superior might of the British would force Indians to accept the British legal system. Johnson, however, knew from experience that this inflexible approach would only cause conflict, as it did during Amherst's tenure. He therefore recommended to Frederick Haldimand, the acting commander of the British forces while Gage was on leave in Europe, that the two murderers be pardoned as a show of good faith to match the Iroquois "sacrifice [of] their antient customs." Haldimand agreed, on the condition that a pardon would only be granted after the Senecas repaid the full thirty packs that had been stolen. Once this condition was met during the summer of 1774, he received approval from the king and pardoned the murderers. For Johnson and Haldimand, it was worthwhile for the British to sacrifice the trial of these two young men as a way to ensure that in future cases, the Iroquois would see British justice as fair and would continue to hand over murderers for trial.[134]

The arrest and potential trial of these two young men also foreshadowed how, after the Revolutionary War, the state of New York would assert jurisdiction over the Iroquois more forcefully than ever before. This process, however, was interrupted by the Revolutionary War, which brought significant destruction to the Iroquois lands. During the Revolution, the Iroquois

[134] *Johnson Papers* VIII:913, 1131-1132, 1135, XII:1029; *DRCHNY* VIII:421, 425, 430, 468; Quote from *DRCHNY* VIII:421.

Confederacy split, with four nations maintaining their alliance with the British, and the Oneidas and Tuscaroras joining the Americans. During the war, the American army ravaged the Iroquois lands by destroying crops, burning towns, and forcing people to flee to the protection of the British. After the war ended, New York State resumed the assertion of jurisdiction over the Iroquois that Johnson had established before the war. The precedents set by Johnson were further bolstered by the Treaty of Paris, which the United States government assumed had granted the new states jurisdiction over the Indians within its borders, even those Indians who, like the Oneida, had fought for the Americans. Although this new jurisdiction was most often asserted to claim Indian lands, it was also used by New York to assert jurisdiction over Indian murderers. As in previous decades, this assumed jurisdiction was often challenged by the Iroquois, who did not accept the full right of the British to determine their affairs. In 1802, for example, a Seneca man named Stiff-Armed George was arrested on the charge of murdering John Hewitt, a New Yorker, during a drunken brawl. This arrest was protested by the Seneca leader Red Jacket, who argued that the Iroquois had never signed a treaty granting New York the right to arrest and try Indians in an American courtroom. Like his predecessors, Red Jacket urged the New York government to offer leniency and to pardon the murderer. Despite Red Jacket's protests, George was ultimately convicted by a New York jury the following year. Surprisingly, the jury, in returning a guilty verdict, urged the state to consider a pardon because of the "wanton & unprovoked attacks on several of the Indians of the Seneca Nation, which have had a great tendency to influence their minds." Although this pardon was granted, the fact that the trial even occurred was a significant loss of independence for the Iroquois Confederacy. Unlike during Johnson's tenure, pardons and extenuating circumstances were now considered *after* a trial in an American court. In his book *Seneca Possessed*, Matthew Dennis even questions whether New York state was attempting to "win the deference of the Senecas and

cement its dominion," by granting this pardon as a show of good faith. It may have been that the government of New York, like William Johnson, recognized the value of offering leniency after asserting increased jurisdiction as a way to engender goodwill in the Iroquois. While the 1773 murder case from Lake Ontario helped to ensure the future right of the colonial (or state) government to arrest Indians, this case established that New York State (and later the federal government) had the right to subject the Iroquois to a trial, and to grant leniency on American, rather than Iroquois, terms. By the turn of the century, the Iroquois had lost the leverage and the military might they possessed fifty years earlier, and had little choice but to accept arrest and trial by the new American legal system.[135]

[135] Matthew Dennis, *Seneca Possessed: Indians, Witchcraft, and Power in the Early American Republic* (Philadelphia, Pa.: University of Pennsylvania Press, 2010), 39, 206-208; Quote from Dennis, *Seneca Possessed* 207, 208.

Chapter 6: Conclusion

In Albany and western New York, as throughout much of the colonial world, the way that Europeans chose to address murders reflected the relative balance of power in the region, and the relationship between the different nations involved. Cross-cultural murder was a troubling occurrence that often brought into conflict drastically different legal systems. Whether Indians were arrested and put on trial or whether murders were resolved through ceremony depended on the relative strength of the Indian nation and colony involved, and the economic and political relationship between these different peoples. Both the Dutch and English accepted Indian ceremonial resolutions and showed leniency to Indians not because of a special concern for Indians, but because such leniency was politically, economically, or militarily advantageous. The settlement began as a small town where European settlers showed great deference to Indians, even to the point of allowing Indian murderers to go unpunished by their laws. During the next century and a half, however, European settlement on the north Hudson grew, and Indians lost their economic, and later political, relevance. By the late 1760s, the English in northern and western New York no longer depended on Indians for trade or protection, and therefore sought to assert the full jurisdiction over Indian murderers that they believed was their right. By tracing the shifting contours of how murder was resolved in Albany and western New York, this thesis has shown that at any given time, the way that Europeans and Indians addressed murder was dependent on the relative power of the different peoples, as well the English dependence on their Indian neighbors.

In the original fur trading colony of Beverwijck, the local Dutch economy was entirely dependent upon trade with Indians, and so the Dutch never punished those Indians who undoubtedly did kill Dutchmen. Rather than punishing Indians and upsetting the delicate balance of trade that then existed, the colonial government instead instituted ordinances in an attempt to forbid provocative Dutch actions, such as intercepting Indians in the woods and selling them alcohol, which often led Indians to commit murder. Although dangerous, these illegal practices were also extremely lucrative, which meant that few fur traders actually followed the orders of the posted ordinances. When Iroquois leaders complained about this activity, there was little that the village government could do, partly because of an inability to stop the illegal trades, and partly out of a lack of desire because the members of the Court of Beverwijck were intimately, if covertly, involved in the illegal trade. To justify ignoring attacks against Indians in the woods, the court followed an "alongshore" jurisdiction, which allowed them to focus on crime within the village while neither punishing nor policing the woods and paths outside of the village. In the woods, if Indians retaliated against European settlers, it was the fault of the settler, not of the community, because the victim was not technically permitted to be there. While Indians were never entirely happy with the Dutch inaction regarding murder, this policy was effective in its ultimate goal of maintaining a thriving trade.

In 1664, the English conquest of the colony had only a slight impact on Indian relations in Albany because the settlement was still ruled over by the same wealthy Dutch fur traders as in earlier decades. These men, as always, prioritized the maintenance of the fur trade over all else, and ignored mandates from the new English governor to assert greater control over Indian affairs, such as by arresting Indian murderers. As the fur trade declined, however, the non-Iroquois Indians of the north Hudson were significantly less important than earlier. The village leaders, therefore, began to contemplate asserting English jurisdiction over Indians without fear

of ruining the fur trade. This trend culminated in the 1673 trial of two Indians for the murder of an English soldier. During the next hundred years, cross-cultural murders continued to be resolved according to English law and in English courts. Although the English sometimes granted Indian murderers leniency, it was always according to English standards of justice. Furthermore, after 1673, most Indians appeared to have accepted that non-Iroquois Indians could be subjected to an English trial, if only because of New York's military might, and that when they were not, it was because they had been granted a pardon by the New York government. Deference to Indian legal customs was no longer automatic, because few Indians living along the north Hudson River were still of importance to the colonial economy.

During the 1660s and 1670s, the Iroquois Confederacy, unlike most Indians of the region, remained extremely important to both Albany and the New York colony, and therefore maintained the negotiating power that other Indian nations lost. Part of this importance was economic, because the Iroquois controlled English access to the valuable furs found around the Great Lakes. Yet even after the decline of their economic significance, the Iroquois remained influential because they lived directly in between the English and French colonies. The City of Albany in particular relied upon the Iroquois Confederacy for protection from a possible French invasion, and would never have threatened their alliance by arresting or punishing an Iroquois murderer. Assuming jurisdiction over Indians, the British knew, would violate Iroquois law, and so the English continued to work with the Iroquois on an even footing through the structures of the Covenant Chain alliance. For nearly a century, the British and the Iroquois continued to resolve conflict through the ceremonies of this alliance, rather than through the common law and courts. Only after the Seven Years War, when the French were removed from the North American continent, did the British again attempt to expand the authority of their courts to include Iroquois murderers. When General Amherst actually attempted to assert this claimed

authority over the Kanestio murderers, however, the Senecas objected and ultimately turned against the British in defense of their independence. Only after the British finally agreed to drop their claim to the murderers did the Senecas finally return to their alliance with New York and the British. Yet by the early 1770s, the Indian wars against the British had ended and there was little that the Iroquois could do to contest the now dominant power of the British Empire in northeastern North America. By the start of the Revolutionary War, murder conflict was still fraught with significant conflict. Although the colonial government argued following the resolution of the Lake Ontario murders in 1773, they would have the right to arrest Iroquois murderers, the Confederacy probably believed otherwise. Based on later incidents, the Iroquois probably expected that murders would still be treated in a fashion somewhat like the Middle Ground, where balance was found between the legal customs of Indians and Europeans. While this debate was temporarily halted by the Revolutionary War, it was renewed after the war when the newly formed state of New York began to claim nearly complete authority over the Indian Nations within its supposed borders.

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