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THE DEATH OF SAWANTAENY AND THE PROBLEM OF JUSTICE ON THE FRONTIER

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In early January 1722, near the Pennsylvania-Maryland border, Sawantaeny, a Seneca man who lived in an ethnically mixed Indian settlement with his Shawnee wife Weynepeeweyta, was killed by the English trader John Cartlidge. The short version of the story is really quite simple.¹ Sawantaeny died after a drunken argument with Cartlidge that began when the Seneca accused the trader of failing to deliver all of the rum he was owed. Sawantaeny may or may not have gone back to his cabin to get his rifle, but in any case the disagreement quickly became physical. Cartlidge, thinking his life was endangered, assaulted Sawantaeny, eventually kicking him to death. With the help of Civility (Tagotolessa), a Conestoga Indian who had served as a translator and go-between on the Pennsylvania frontier, John and his brother Edmund Cartlidge, also a trader and present at the assault, arranged a hurried condolence ceremony and burial for Sawantaeny in the hopes that authorities in Philadelphia would not discover what had transpired.

The Cartlidges' attempts were in vain; word of the Seneca's death reached Philadelphia, and the Provincial Council of Pennsylvania sent officials James Logan and Colonel John French to the frontier town of Conestoga to investigate in March. Finding substantial evidence that John Cartlidge was responsible, they decided to try him according to English

law. When French and Logan realized it was impractical “to get such a Number of Christians to undertake that Journey [to Conestoga] as would constitute a legal jury,” John and Edmund were hauled to Philadelphia for trial. After releasing the Cartlidges on bail, the Provincial Council sent word to Conestoga to try to recover Sawantaeny’s body so that the court could proceed. The spring and summer brought several councils between the provincial government and diplomats representing Delaware, Shawnee, Conestoga, and Iroquois Indians, with each tribe offering its own take on what the Cartlidges’ fate should be and how Sawantaeny’s death should be resolved. In September, the Iroquois diplomat Tanachaha asked Pennsylvania’s Governor William Keith for clemency for John Cartlidge. Against the wishes of some provincial legislators, Keith set Cartlidge free and gave the Iroquois a gift of £110.² Relations between Indians and Pennsylvanians along the frontier returned to normal—for the early eighteenth century. Edmund was even able to obtain a license from the legislature to buy and sell Indian lands years later.

This version of the story of Sawantaeny’s death raises as many questions as it answers. Why was it so difficult to convene a jury on the frontier? Who would have composed the jury in a case such as this? Why did representatives from different Indian groups ask that Cartlidge be granted clemency? Why was the government of Pennsylvania so divided on granting that request? It also raises questions about the significance Sawantaeny achieved in death. Why did this particular instance of frontier violence come to involve representatives from so many different nations—Conestogas, Shawnees, Delawares as well as Iroquois? Why, to paraphrase historian James Merrell, has Sawantaeny’s death proven so difficult to bury?³

The answers to these questions lie in the ways that Sawantaeny’s death has served as a folktale of justice for those who have examined it.⁴ Legal scholar Robert Cover argues that all legal systems, at their root, rely on what he has termed “sacred narratives of jurisprudence” to justify their legitimacy. These narratives, either in the form of written texts or oral histories, grant laws the power of jurisdiction over the communities that circulate them. The weight of a legal system’s legitimacy ultimately lies in the power its sacred narratives hold for those within and, even more, for those at the edges of that legal community. Such narratives are invoked not only to instantiate the legal past of the community but also to justify the sovereignty of its legal narratives over another’s. These folktales are



“jurisgenerative” and “jurispathic” at the same time; the very mythic authority that is capable of bringing a moral and legal community into being is also capable of destroying alternative normative worlds by denying the power or authority of their sacred narratives of justice.⁵

Sawantaeny’s death rests at the border between two sets of competing folktales of justice, one historical and the other historiographical. From a historical perspective, the diplomatic councils convened in spring and summer 1722 to discuss how to handle Sawantaeny’s death were themselves contests among legal myths and historical accounts. Each side in the negotiations told very different stories of recent events on the frontier, accounts that were contextualized in the legal myths of Pennsylvania’s ambassadors on the one hand and of Indian negotiators on the other.⁶ Both the Indians living on the Susquehanna and the Iroquois justified their authority on this matter by invoking the idealized history of their friendship with William Penn, the province’s founder. At the same time, Governor Keith’s position relied on a very different understanding of Penn’s history with the Indians, one that cast the proprietor’s relationship with the Indians as a benevolent paternalism, not a reciprocal friendship. Settling the jurisdictional questions surrounding Sawantaeny’s death meant adjudicating these different narratives.

From a historiographical perspective, interpretation of the Sawantaeny case presents a moral problem as well. Homicides on North American frontiers have often allowed historians to tell their own stories about justice in early American history, looking specifically at whether Native peoples received treatment under the (English) law equal to that received by Euro-Americans.⁷ The scholars telling these folktales of justice have attempted, in Alden T. Vaughan’s words, mostly to determine whether “the colonists conscientiously applied impartial justice when Indians were the aggrieved party.”⁸ This project, however, has often uncritically accepted contemporary Euro-American standards of justice as a norm from which to evaluate the past. Moreover, where Indians were accorded different—and, implicitly, unequal and unjust—treatment before the bar, the difference has been attributed solely to Euro-American prejudices, motivations, and choices.⁹

The difficulty with this line of reasoning is that it reduces complex cultural encounters into a narrative of present-day Americans judging “national characters” from their past.¹⁰ This approach, which James Axtell has suggested is common to many moral histories of European-Indian conflict, runs the risks both of casting indigenous peoples as objects rather than

actors in historical narratives and of presuming Euro-American notions of equal treatment before the law as the normative standard of justice.¹¹ It generates folktales of justice that easily solve the jurisdictional problem between past and present, condemning Euro-American actors in the past for failing to live up to conceptions of due process and equal treatment before the law held (roughly) in common between present and past.¹² It relies on a sense of kinship between modern historians and readers, on the one hand, and colonial Euro-Americans, on the other—an explicitly antifiliopietistic stance from which the sins of “our” founding fathers can be judged. These stories of justice serve a jurisgenerative function, reminding their audience of its collective failures to live up to its ideals in the past, with an implicit challenge to further its commitments to these ideals in the present and future. But by ignoring alternative narratives told from a Native perspective, they also serve a jurispactic function, limiting participation in debates over national *nomoi*, past, present, and future, to Euro-Americans, past, present, and future. These accounts are weakened by their tendency to “face west” and to see these events from a provincial point of view, rather than “facing east” to examine them from the Native perspective.¹³

This chapter attempts to move beyond historical moral critiques that stress the equal treatment question by exploring the folktales of justice told by Pennsylvanians and Indians on their eighteenth-century frontier. The debate over legal authority around the time of the Seneca’s death—a debate that intensified after the incident on the Monocacy—created an arena of conflict for Natives and newcomers alike. Understanding this incident involves understanding the context in which it occurred; it means looking at evolving legal boundaries on a shifting frontier and exploring the ways in which the handling of such episodes changed over time. This intercultural homicide provides one window onto the changing dynamics of law, authority, and power among and between Native Americans and the immigrants who had settled in Pennsylvania. Situating Sawantaeny’s death within the competing narratives of history, law, and authority, each of the participants invoked also provides the first step toward a rapprochement between their folktales of justice in the past and ours in the present.¹⁴

A more complicated story of Sawantaeny’s death might start with conflicts concerning the provincial government’s authority over local Indians dating as far back as 12 September 1700, when a series of negotiations between



Penn's provincial secretary, James Logan, and the "Susquehanna Indians"—the Conestoga, Lenape, Iroquois, and other peoples living together along that river—ended in a treaty.¹⁵ Motivated by a desire to protect Native society from the effects of the alcohol trade, the agreement promised "that no person whatsoever Shall at any time live amongst or trade with the Said Indians, or bring any Liquors or Goods to Sell or dispose of amongst them" except those who had received a special license from the proprietor. Modifying the protections for Indians that William Penn and other legislators had built into the colony's first legal code, this provision made the boundaries between Native and colonial society somewhat less porous than they had been. It made the provincial government responsible for keeping immoral individuals out of Indian country, using the same mechanism by which Penn had hoped to keep immoral individuals from entering Pennsylvania: through passes, seals, and licenses. Moreover, it bore a remarkable resemblance to the local Quaker Meeting practice of requiring Friends moving into the region to produce a certificate attesting to their piety from the meeting they had just left.¹⁶ The "Susquehanna Indians," a loose grouping with little centralized power, newly formed out of people from a handful of eastern Indian nations, had turned to the colonial government to define and defend one aspect of the space between Indians and colonizers and had accepted European—Quaker, really—means by which to do so. And in allowing the provincial government control over these issues of space and authority, the Susquehanna Indians had strengthened their own relationship to the colonial authorities.¹⁷

This example illustrates the evolving relation between discourse, space, and the extension of colonial authority in provincial Pennsylvania. Seeking to expand their authority over the frontier and those peoples who lived on it, colonial magistrates attempted to make their rules for handling conflict the law that would govern interactions between provincials and Indians. Not only did they struggle to define the forms and symbols of displaying legality (such as licenses, passes, or certificates), they also attempted to determine where these displays of authority would be seen as legitimate. Essentially, colonial negotiators endeavored, in halting and often unsuccessful ways, to have diplomatic councils serve the same legitimating functions on the frontier that courtroom proceedings served at home.¹⁸ During the last decade of the seventeenth and the first decade of the eighteenth centuries, formal meetings between Indian negotiators and the provincial government most often took place in Philadelphia during meetings of the

Provincial Council and, at other times, at Conestoga. During this formative time in colonial diplomatic relations, Indians came to the colonials more than the colonials came to them.¹⁹ Thus, diplomatic discourse at treaty councils functioned, spatially at least, similarly to discourse in provincial courts. These councils provided, for Natives and colonials, sites for the reporting, discussion, and adjudication of words and events that took place elsewhere, a central space for making private words and deeds public and recirculating them to new audiences on the peripheries.²⁰

At the same time, the means by which treaty councils were constituted as a central cultural, political, and discursive space were quite different from the means by which magistrates and citizens produced and negotiated legitimacy in Pennsylvania courtrooms. Sessions of county courts opened with an invocation of the Crown's and Penn's authority, legitimating colonial magistrates through their relation to these centers of political authority. Indian authority at the outset of diplomatic encounters was constituted not simply through performative speech but also through the offering of gifts and a display of material signs of legitimacy, specifically wampum.²¹ In a 1705 council at Conestoga, for example, the Indians on the Susquehanna greeted James Logan and his party and "though they were very poor, presented us with some skins."²² Governor John Evans was likewise given gifts of skins, pipes, and tobacco during a trip along the Susquehanna to quell fears of war between the Susquehanna Indians and the Iroquois nations.²³ Colonial diplomats were slow to realize the importance of gift-giving in establishing their own legitimacy to Indian negotiators, a fact that irked Pennsylvania's Native peoples and did little to foster harmonious relations. Although by 1709 Governor Charles Gookin was cognizant enough of this custom during a council with "Mingo," or Ohio country Iroquois Indians, to remind the Assembly of "the immediate necessity . . . for a supply to make them a reasonable present," provincial officials honored this custom more often in the breach than in the observance.²⁴

Perhaps the most critical gift exchanged at these diplomatic councils was wampum. Indian negotiators used the sacred shell beads to establish their authority to provincial diplomats. The wampum was not a means to build a social relationship through which negotiation could occur—the rationale for gift exchange—but a sign of discursive and political authority.²⁵ Provincial clerks noted this practice from almost the beginning of diplomatic exchanges; the first Lenape to meet the royal governor Benja-

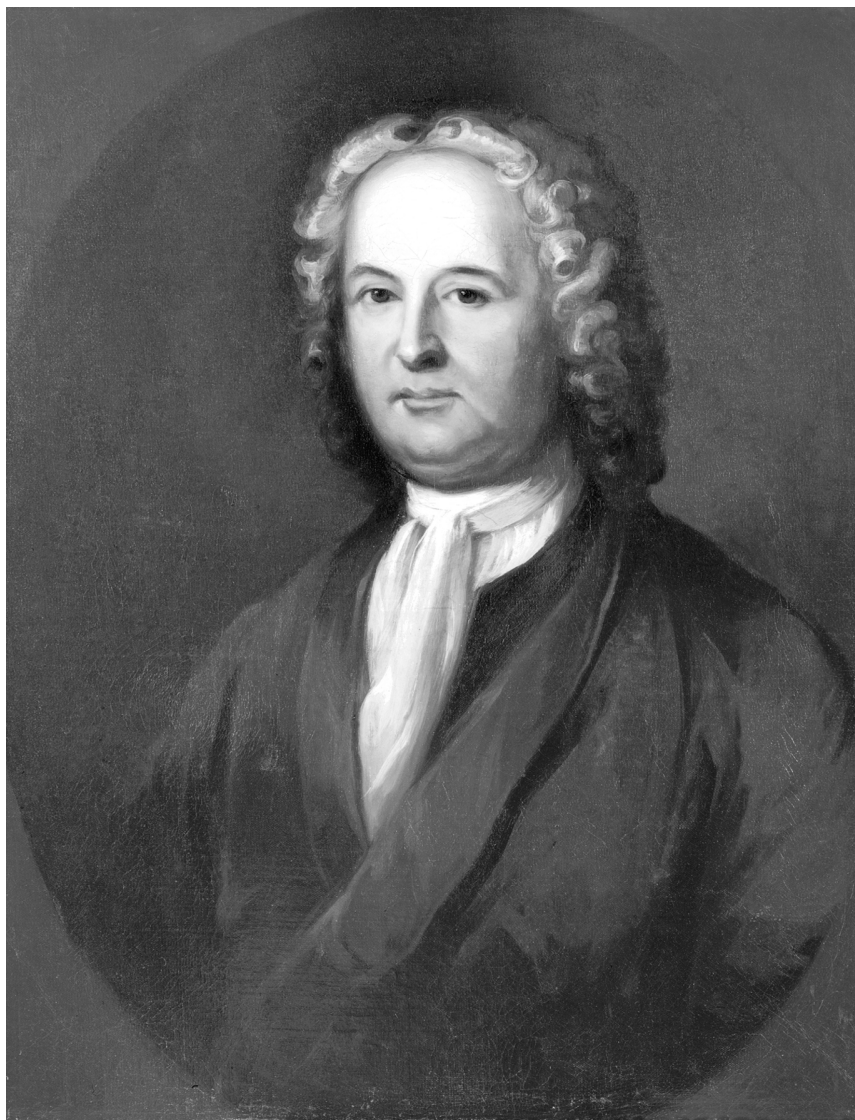


Figure 8. Pennsylvania provincial secretary James Logan, portrait by Thomas Sully (after Gustavus Hesselius), 1831. The Library Company of Philadelphia.

min Fletcher in 1693 opened peace negotiations by “la[y]ing] a belt of Wampum at his Excellency’s feet.”²⁶ The Lenape sachem who came to Philadelphia a year later did likewise, depositing a belt of wampum before Fletcher so that he might address the governor “in the name of the rest of the delaware Indians.”²⁷ This practice was common to other eastern Indians as well. In February 1708, for example, the Conestoga interpreter Indian Harry opened a council that he had initiated at Philadelphia by “laying upon the board Six loose strings of white Wampum for his Credentials,” so that his message to the Provincial Council might be trusted.²⁸ Eight months earlier, a Nanticoke negotiator along the Susquehanna had similarly showed Evans belts of wampum as evidence both of his people’s peaceful relations with Maryland, Pennsylvania, and the Iroquois and of his own authority to negotiate a peace with the province.²⁹

Wampum served not only as a sign of an Indian negotiator’s authority to deliver a message, but also as the message itself. At the 1709 council in Philadelphia, a Mingo speaker rose before assembled diplomats and magistrates, “laid on the Board a Belt of Wampum, as a Token to Confirm what he had to speak,” and then relayed information about tensions between Maryland Indians and the Iroquois nations.³⁰ Nine representatives from the Tuscaroras, Conestogas, Senecas, and Shawnees similarly “spoke on” eight belts of wampum sent both to break off hostilities on the Pennsylvania frontier and to solicit Governor Gookin’s help in negotiating a more stable peace.³¹ Nor were Indians the only diplomats who granted wampum such authoritative power; provincial officials increasingly grasped its meaning as well. In sending the Conestoga Kneeghnyaskoate as a messenger to the Onondagas in 1705, Evans made sure that the emissary carried “a small Parcell of wampum for his Credential” to empower him to inquire in Evans’s name about rumored strife between the Onondaga Indians and the Susquehanna Indians.³² In the same way, the presence of a wampum belt sent by the Iroquois to New Castle by way of Indian Harry was enough to convince Gookin that rumors of Iroquois aggression on the frontier were credible.³³

At treaty conferences, such tactile signifiers of cultural authority as wampum were more than simply mechanisms by which discussion could proceed. They were often the subject of the discussion itself. A May 1700 petition written on the Brandywine and delivered to Penn expressed the Susquehanna Indians’ dismay that three frontier traders had “produced a paper with a large seale and pretended it was a warrant from the Gover-



nor” in an attempt to claim some Indians among them as their servants. The Indians’ sense of the problems such a counterfeit symbol of authority posed underscored the importance that Natives and Euro-Americans alike placed on such symbols as wampum, warrants, passes, and licenses.³⁴ Provincials and Indians discussed frontier traders’ licenses and certificates on several other occasions. Evans, for instance, reassured the Susquehanna Indians who arrived at Philadelphia in June 1706 that the government had “made a Law to prevent any injuries to them from the Christians, and . . . had also enacted in that Law, that no person should trade with them, but such as should first have a License from the Governor under his hand and Seal.”³⁵ The question of traders without licenses or with fraudulent licenses was also the main topic of discussion at the February 1708 conference between Indian Harry and the Pennsylvanians.³⁶ And perhaps most preposterously, Gookin, at a 1710 meeting, suggested that those Indians desiring to migrate eastward should be required to produce licenses before moving just as traders traveling to Indian country or Quakers moving to another Meeting were supposed to bear certificates of good behavior: “We acquainted them . . . that if they intend to settle and live amiably here, they need not Doubt the protection of this Government in such things as were honest and good, but that to Confirm the sincerity of their past Carriage toward the English, and to raise in us a good opinion of them, it would be necessary to procure a Certificate from the government they leave, to this, of their Good behaviour, and then they might be assured of a favorable reception.”³⁷

This discussion suggests the authority that negotiators on both sides afforded material markers of authority in constructing neutral cultural spaces such as treaty councils and in controlling movement across the boundaries between Euro-American and Indian societies. The treaty council relied on mutually recognizable material signs to legitimate its proceedings to those present and to those to whom news of the event would circulate. Employing political rituals that were truly indigenous to none of the participants involved, the treaty council was an attempt to craft a political site that was, culturally speaking at least, peripheral to both Natives and newcomers. Moreover, the same material signs that allowed authoritative entrée to diplomatic discussions—trade goods, wampum, licenses, seals, passes—also gave entrée to Indian country for traders and later even for other Indians. The fact that the display of such symbols of authority operated as frames for the negotiations revealed that Indian diplomats and

provincial officials agreed on their importance; the fact that such signs sometimes proved bones of contention revealed that each side occasionally disagreed with the ways in which the other employed them. Controversies arose not necessarily over the need for material signs of power in mediating the boundary between Pennsylvania and Indian country, but rather over whose signs—the Indians' or the Euro-Pennsylvanians'—would be most authoritative.

At root, conflict over signifiers of authority reflected deeper questions between provincials and Indians over speech, space, and sovereignty. Magistrates in Pennsylvania were interested not simply in forcing Natives to accept passes, seals, and licenses as uniquely authoritative signs, but also in forcing them to accept the larger political, social, and conceptual edifice that went along with them. If Indians were to be protected, it would have to be under Pennsylvania's laws, not their own. Before his journey back to England in 1701, Penn reiterated his desire—expressed earlier during the colony's founding—to punish harshly those colonizers who harmed Indians. To do so, "the Governor Desire[d] that when ever any Transgressed the said Law, and Came, Contrary amongst them, to agreement they would forthwith take Care to give information thereof to the Government, that the offenders might be duly prosecuted."³⁸ Penn thus elucidated an ambiguous aspect of the Great Treaty signed six months earlier, which had promised swift justice against any Christians who harmed an Indian but had not specified which brand of justice would be applied.³⁹ Five years later, Evans likewise emphasized to local Indians that applying Anglo-American law on the frontier would "prevent any injuries to them from the Christians." He also added that if colonials did harm Indians, the government would lay "greater Punishments on those that should Committ them, than if they were done to the English themselves."⁴⁰

The hopes of Penn and Evans for equal justice were based on English standards. Perhaps not surprisingly, therefore, the region's indigenous peoples showed little interest in the "protective" power of Anglo-American law. One month later, at a council at Conestoga, Gookin's proposal for certificates was met by a strong claim by Natives for the authority to mete out justice in their own way. The Onondaga spokesman Connessoa, through the interpreter Indian Harry, offered among his demands necessary to keep peace in the region "that (notwithstanding our hearty desyres of a peace) yett if any Man affronts You, be not daunted, but revenge Your Selfs."⁴¹ What various Indian negotiators repeatedly asked for was not legal

but political and military protection. Although they accepted, and in some ways even encouraged, the encroachment of Pennsylvania's authority farther west on the frontier, they wanted it on their terms. Aware of the Iroquois' increasing attempts to extend their political dominance southward and the violence that this push had caused, Indian groups along the Susquehanna repeatedly sent messengers to enlist the provincial government's aid against the Iroquois Confederacy.⁴² Thus, Indians and colonials could no more agree on how the provincial government's authority could best be used on the frontier than they had been able to agree on whose signs and symbols of authority should take precedence in diplomatic rituals.

Although Pennsylvania's rulers were convinced they could extend their authority westward through the same mechanisms they used to regulate public conduct in the provincial core, this belief rested on a false analogy equating provincial courtrooms and treaty councils. In point of fact, the differences between these two institutions far outweighed the similarities. The difficulties of managing the multiple discursive streams that moved into and through county courtrooms were significant; the difficulties of managing the frontier rumors, whispers, and hearsay that found their way into treaty councils were far greater. Despite enjoinders from different groups "that, no credit be given to false reports," rumors of war were still a continual problem.⁴³ Tellingly, although Susquehanna, Iroquois, and Conestoga Indians agreed with the provincial council that such dangerous discourse was a problem, they disagreed with the councilors' proposed solution; the Indians wanted to decide for themselves whether or not to credit frontier rumors, while the provincial council insisted that all rumors be reported to Philadelphia.⁴⁴ Given the Indians' disdain for this proposal, the councilors' hope—thoroughly unrealistic as it might have been—of managing the flow of discourse throughout the Native countryside was even more likely to fail than their hope of stamping out all disorderly speech at home.

Of course, the difficulty of managing unruly discourse over such a large space and such a diverse population was not the only reason that Pennsylvania's Provincial Council failed to impose its vision of cultural order on diplomatic treaty councils and the territory they covered. The most basic problem was that of sanction: quite simply, on the frontier the council had no effective control over the behavior of Indians and little over that of their own settlers. Although provincial governors slowly learned to use gifts of guns, matchcoats, and stockings as carrots to encourage Indian

participation in their endeavors, they had no effective sticks. Despite Gookin's absurd mandate that frontier Indians carry certificates, provincial magistrates had no means of punishing Natives that were as effective as peace bonds or physical punishment, to name two of the ways in which the colonial courts disciplined Pennsylvania's citizens. Through these sanctions provincial magistrates attempted to craft "good men" from "good laws," and it was the lack of such sanctions that limited their authority on the colonial periphery. Unless the provincial government could find ways to bring Indians into the same system of punishment it used to sanction its own citizens, provincial claims of jurisdiction over the frontier were inherently problematic.

On 14 March 1722, James Logan and Colonel John French, representing the proprietary government, held a council at Conestoga with leaders from the Conestoga and Delaware Indians to discuss Sawantaeny's death. The provincial records noted that "divers English and Indians" were also present.⁴⁵ Logan, addressing the Indians as his "Friends and Brethren," opened the meeting by invoking the memory of William Penn and the "firm League of Friendship and Brotherhood" the Founder had established with Pennsylvania's Native peoples. "Agree[ing] that both you and his People should be as one Flesh and Blood," Penn and the Indians' predecessors had covenanted that neither side should suffer injury to the other. Having heard, then, "that one of our Brethren had lost his Life by some Act of Violence, alledged to be done by some of our People," Logan had called the council "by the full Powers with which we are invested to inquire how the matter came to pass, that Justice may be done" in the Sawantaeny affair. He concluded his address with a final call to friendship, noting, "We shall suffer no Injury to be done to any of you without punishing the offenders according to our Laws."⁴⁶

Through translators, including Civility, Logan interviewed witnesses to the incident at Monocacy. Despite conflicting reports, some elements of the case quickly became clear. The Cartlidges, assisted by two servants, William Wilkins and Jonathan Swindel, were on the frontier hoping to trade rum for furs. Their wares were in demand, and all agreed that Sawantaeny had received quite a bit of rum and had been drinking through the night before his run-in with John Cartlidge. That morning "the Sinnekae said he must have more Rum, for that he had not received all he had bought." After Cartlidge refused him, the Indian went back to his cabin to



retrieve his gun.⁴⁷ When he emerged, Edmund Cartlidge and Wilkins managed to grab Sawantaeny's weapon, and after "stripping off his clothes," John Cartlidge assaulted him. Following repeated blows, Sawantaeny managed to crawl back to his cabin, where he died the next day.⁴⁸

By 17 March, Logan and French had heard enough to send John and Edmund Cartlidge to Philadelphia in sheriff's custody "for suspicion of Killing the Indian mentioned in their report."⁴⁹ The decision had been made to try the Cartlidges in the provincial capital, not on the frontier. This choice was not perfect, for it meant that the jury would be unable to see a key piece of evidence—the body of the dead man. As the two Pennsylvania commissioners noted, Sawantaeny's corpse had been buried in the woods "three days thence" from Conestoga, making it "impracticable" for the commissioners to convince a provincial jury to travel west and see the body.⁵⁰ The Cartlidges arrived in Philadelphia on 22 March and were granted bail two days later.

The jurisdictional problems posed by cases like Sawantaeny's were hardly new. Legal boundaries had been one of the first issues William Penn had addressed at Pennsylvania's founding when he passed laws regulating the conduct of sailors and other travelers to the colony. Penn also called for the creation of "mixed" juries in criminal cases involving colonists and Indians, with "six on each side" to settle the matter.⁵¹ There is no evidence, however, that such a jury was ever called between the passage of laws allowing for it in 1683 and Logan's and French's trip to Conestoga in 1722. Moreover, although colonials frequently discussed Indians in provincial courts—some colonists were tried for violating laws regulating Indian affairs—Indians themselves rarely ever appeared before the bar. And while there had been instances of interracial homicide on the Pennsylvania frontier before, Sawantaeny's death was the first time the Provincial Council had concerned itself with a homicide in which an Indian was the victim.⁵² Thus, Logan and French had little precedent to guide them in deciding the Cartlidges' fate. There is no direct evidence that either was aware of the province's early statute calling for mixed-jury trials, but in any case it would have been difficult—if not impossible—to apply.⁵³ Penn's statute stated that when an Indian had been wronged, the provincial government was required to contact "the king to whom such Indian belonged" so that he could summon an appropriate group of Indian peers to be empanelled in the jury. Given Sawantaeny's ambiguous ethnic and political affiliations, Logan and French would have had a difficult time determining his "king."

As a Seneca living on the Pennsylvania frontier—outside of Seneca and Iroquois country—with a Shawnee wife and amidst bands of Delaware, Shawnee, and Conestoga Indians, under whose jurisdiction was Sawantaeny living? To whom did he belong?⁵⁴

Faced with the prospect of entering legally uncharted territory, the two councilors instead fell back upon a familiar legal system: their own. But their decision to apply English law to settle the murder of an Indian may have resulted less from their legal reasoning than from their interpretation of changing political relations on the frontier. Sawantaeny's death occurred during a period when the rhetoric of Pennsylvania's diplomats toward their Indian counterparts was changing. Although Pennsylvanians continued to mention the peace and harmony that had existed between them and the Indians, they also increasingly stressed the importance of using European methods of conflict resolution to maintain that amity. The Provincial Council had warned the Conestoga Indians in 1715 that they should "be very careful on their parts that no difference should arise between any of their and our people, or if there should that they would acquaint us with it immediately, that we might duly inquire into it, and Justice should be done them if they were in any way wronged."⁵⁵ William Keith gave a similar warning to Conestoga diplomats two years later.⁵⁶

Within this context, then, Sawantaeny's death may have presented Logan and French—and by extension, Pennsylvania's government—with a test case, an opportunity to increase the authority of the colonial legal system over the province's Indians by ensuring that justice would be determined according to European rules. Provincial magistrates may have disagreed sharply over matters of policy and power; the Sawantaeny case came in the middle of a major power struggle between Logan and Governor Keith that dominated Pennsylvania politics throughout the decade.⁵⁷ Yet neither Logan nor Keith questioned the appropriateness of applying English laws to settle the Sawantaeny affair. Thus, despite a stated desire that "Justice may be done," the Sawantaeny case may have been another instance in which English colonists invoked law as a cover for their political ends.⁵⁸ Colonial officials who had never before shown any interest in providing Pennsylvania's Indians equal treatment before the law became interested in doing so when it provided a means of expanding provincial sovereignty further west, particularly when that sovereignty could be extended over unruly Euro-Americans as well.



A second—and perhaps more likely—possibility is that examining the colonists' intentions is the wrong approach. Perhaps the absence of Indians in colonial courts represented Native—and not Anglo-American—preferences. After the Cartlidges were released on bail at the end of March 1722, Pennsylvania government officials continued to negotiate with the province's Indian neighbors to determine the traders' fate. Governor William Keith, in a council at Civility's cabin in Conestoga in early April 1722, reiterated his government's commitment to equal justice. Addressing the "Chiefs of the Mingoës, the Shawanois, and the Ganaway," Keith reminded them "that if any one hurts an Indian He will be tryed and punished in the same manner as if he had done it to an English Man."⁵⁹ He then asserted that he thought he had "acted herein like a true Friend and Brother," adding that he expected the Indians to "look upon me even as a child would respect and obey the Words of a tender father." Keith noted that he anticipated the Cartlidges would be tried "as soon as . . . any . . . Proof can be had that the Indian is dead or was actually killed by them."⁶⁰

Keith's response met a mixed reception from Civility, who noted that the local Indians were "ready to receive his Words, and . . . willing and content to follow his Advice: For they know the Governour to be Absolute Rule[r], and it becomes them to submit." Yet the memory of William Penn, Civility argued, was revered because he would not do as other Europeans did, "by Calling them Children or Brothers only: For often Parents would be apt to whip their Children too severely; and Brothers sometimes differ." Penn also had said that "the Indians should be esteemed by him and his People as the same Flesh and Blood with the Christians, and the same as if one Man's Body was to be divided into two parts." In an oblique reference to the role of alcohol in Sawantaeny's death, Civility concluded by reminding Keith that Penn himself had hoped to prohibit the sale of rum to Indians. The Indians "could live contentedly and also grow Rich," he noted, "if it was not for the Quantities of Rum that is suffered to come amongst them contrary to what William Penn had promised them." The Conestoga diplomat punctuated his invocation of Penn's memory by "Holding a Parchment in his Hand which they received from William Penn."⁶¹ In the end, Keith agreed to check the amount of rum that reached the Indians, but the question of the Cartlidges' fate—and the reach of English law on the frontier—had not been settled.

After this April meeting at Conestoga, negotiation regarding the Cartlidges continued. In May, messengers from the Iroquois Confederacy and

the Conestoga Indians arrived in Philadelphia to discuss Sawantaeny's death and the provincial government's response.⁶² Keith reminded the Iroquois, as he had previously reminded Civility and the other communities on the Susquehanna, that the Cartlidges must be tried "by the Laws of our Great King," which treated cases such as this one differently than did Native justice. Once he had finished trying the Cartlidges according to English law, he continued, he would be happy to meet with more Indian delegates. Whereas Indian custom called for those who killed another to make monetary or material reparations to the family of the deceased, "the Laws of our Great King" could not be "alter[ed] or disobey[ed] . . . in the least point" and could not allow such a form of justice; instead, a jury would have to determine if John Cartlidge acted in the heat of passion or in cold blood. If the latter, he would be executed. The governor was telling both the Iroquois and the Indians of the Susquehanna not to get involved in the prosecution of Sawantaeny's alleged killers.⁶³

Keith continued to meet with representatives of the Iroquois nations throughout the summer, reiterating his desire to punish the Cartlidges "according to our Laws, in the same manner as if they had killed an Englishman."⁶⁴ The Iroquois, however, steadfastly urged that John Cartlidge be released. In August their messenger Satcheechoe told Keith that the Iroquois "desired John Cartlidge might be released out of Prison, and the injury done to [their] Kinsman be forgot."⁶⁵ During a September council at Albany, Tanachaha, another Iroquois representative, told Keith that "we think it hard the persons who killed our friend and Brother should suffer, and we do in the name of all of the five Nations forgive the offence, and desire You will likewise forgive it, and that the men who did it may be released from Prison and set at Liberty, to go wither they please."⁶⁶ Tanachaha used Sawantaeny's status as a Seneca—a fellow brother in the Iroquois League—to press his claim. In deference to this request, Keith told the Iroquois that, upon his return to Philadelphia, the Cartlidges would be set free. The next day, the Iroquois surrendered to Pennsylvania all claims to the lands around Conestoga where Sawantaeny was killed; Tanachaha's profession of authority over his fellow Iroquois had been transformed overnight into a declaration of Iroquois sovereignty over the entire region and the Indians who lived in it. Following this, the governor and the Indians exchanged gifts, thereby cementing Pennsylvania's position as a treaty partner within the Iroquois Covenant Chain.⁶⁷ The Sawantaeny incident was, for all intents and purposes, over.



Retelling the end of *l'affaire Sawantaeny* does not, however, answer one of the central questions raised at the beginning of the chapter: why did both the Iroquois nations and the Indians on the Susquehanna work for the Cartlidges' release? Iroquois motives were different from those of the Conestoga, Delaware, and Shawnee Indians on whose behalf Civility negotiated, but they seem relatively straightforward, and the Six Nations appear to have gotten what they wanted. Although Keith refused to call his £110 gift at the Albany conference a "condolence payment" to atone for Sawantaeny's death, it appears to have functioned as such in everything except in name. Moreover, Keith's decision to grant the Iroquois' request for clemency after he had previously denied similar requests from the Indians on the Susquehanna effectively recognized the Iroquois as the dominant Indian power in the region.⁶⁸ Both Indian groups had claimed Sawantaeny as a "brother," but Keith's selective gift-giving and treaty making legitimated only the Iroquois claim. The Iroquois used the Seneca's death as an occasion to display their affection toward Keith, seizing the opportunity to strengthen their diplomatic ties to the province and weaken those between Pennsylvania and the Indians on the Susquehanna.

Although this may summarize the Iroquois' motives, it does not explain why Civility would have worked for the Cartlidges' release on behalf of the other Indian groups along the Susquehanna. A hint can be seen in Civility's statement to Governor Keith in May 1722. Recalling the Founder's words about Europeans and Indians being of "one Blood," Civility challenged Keith's attempt to play the "Father" to his Native "Children," with all of the inequality that these terms implied. This objection to familial language suggests that he rejected the terms on which Pennsylvania had hoped to incorporate the indigenous people around Conestoga into a colonial political and legal system in which justice meant European justice. Civility's invocation of Penn also served as a reminder that the colonists had not lived up to all of their agreements to live in harmony with the Indians. Embedded within Civility's acquiescence to the governor's "Absolute Rule," then, was a critique of the ways in which that rule had been enforced. By retelling the story of Penn's treaty with the Indians, Civility challenged the legal narrative within which Keith contextualized European-Indian relations, framing them instead within the local history—the local knowledge—of Pennsylvania's frontier.⁶⁹ This narrative of friendship and alliance, not metaphors of bodily or familial interconnection, provided the dominant linguistic frame for Civility's claims.⁷⁰

Civility's response to Keith's speech was hardly unique in these respects.

Sawantaeny's death occurred during a period in which colonial-Indian negotiations were marked by subtle semantic conflicts over terms of address. While European negotiators often referred to Indians as "Brothers" or, less often, "Children," Indians stressed, as Civility did, that Indians and Europeans were of "one Blood" but in "two parts."⁷¹ Pennsylvanian-Indian negotiations were also marked by conflicts over interpreting recent diplomatic history. During the decade before Sawantaeny's death, Indian negotiators invoked Penn's promises to Conestoga and Delaware Indians in order to critique what they viewed as illegal and unethical encroachments by settlers and traders on Native lands. In 1715, for example, Sassoonan, speaking for the Delawares, informed Governor Gookin during a meeting at Philadelphia that his people had come "to renew the former bond of friendship that William Penn had, at his first coming," made with them, implying that Penn's successors had not filled the Founder's shoes. Three months later Sotyriote, speaking for the Conestogas, also used Penn's example to chastise Gookin mildly.⁷² These negotiators' claims to a special relationship with "Miquon"—the Delaware name for Penn—were pointed challenges not only to Pennsylvania's government but also to those Iroquois diplomats who invoked their old relationship with "Onas," as the Founder was known to the Iroquois.⁷³ They may also have represented some jockeying for position between the Delawares and Conestogas as each group tried to make itself the premier group among those Indian nations along the Susquehanna. By grounding the negotiations within mythohistorical narratives of peace, such Indian diplomats as Civility, Sassoonan, and Sotyriote were able to shift the discussions away from Euro-American frames of justice and legitimacy into a moral context more familiar to Delaware Valley Indians.⁷⁴

The motives for this frame switch, and its implications for Civility's requests for clemency for John Cartlidge, can perhaps be gleaned from an Indian council in May 1723, some months after Sawantaeny's death. Upon being told by Keith—who surely thought he was smoothing over rocky relations with this comment—that English "Laws make no distinction between our people and yours," Civility, speaking on behalf of the Indians on the Susquehanna, dissented. He told Keith that "The Indians well approve of all the Governor Had said except where he told them that the English Law made no difference between the English and the Indians, for they should not like, upon an Indians committing a fault, that he should be imprisoned as they had seen some Englishmen were."⁷⁵

This statement—which, granted, was made more than a year after Sa-



wantaeny was killed and eight months after Indian requests for clemency led to the release of his killer—suggests that perhaps the stance of these Indians was motivated by a desire to remain independent of European laws, a desire to retain their sovereignty and their ability to determine justice in their own manner. That these aims coincided with Iroquois attempts to the same end suggests that Civility's pains to manage Sawantaeny's death himself, on his own terms, were likewise attempts to remain independent of Iroquois influence. Civility's attempt to bury Sawantaeny immediately, without involving the Iroquois or Keith, implies that the primary goal of the Indians at Conestoga was some form of autonomy from outside control, even as the Delaware, Conestoga, and Shawnee maneuvered amongst each other for status and influence.⁷⁶ Equal justice under English law—and an implicit acceptance of its sovereignty over them—was the last thing that Civility, Sassoonan, and others living around Conestoga wanted. If the Iroquois nations' success in claiming authority over the Susquehanna River valley and over the Indians who lived there prevented the settlement of Sawantaeny's death from becoming a complete triumph, the temporary check on English legal authority that the settlement represented was a partial victory for the assorted nations at Conestoga.⁷⁷

The resolution of Sawantaeny's death did not settle many of the problems underlying the difficult negotiations of 1722 and 1723. A series of unrelated homicides in 1728 brought thorny jurisdictional problems to a head. In early May 1728, Walter and John Winter, two brothers living on Skippack Creek on the Pennsylvania frontier, received a report—incorrect, as it turned out—that Indians had killed two nearby colonials. Having recently heard rumors of an impending invasion led by foreign or “Spanish Indians,” the Winters decided to take matters into their own hands. Electing to “defend” themselves against attack, they grabbed their rifles and went immediately to a nearby cabin where a Delaware man, Tacocolie, lived with his family. There they opened fire, killing Tacocolie, his wife Quilee, and their son while wounding their two daughters.⁷⁸

Governor Gordon's response was immediate and stern: he moved speedily to apprehend the Winter brothers for murder. He then convened a council at Conestoga to meet with Conestoga, Shawnee, Delaware, and Conoy diplomats to allay their fears and told them he was “grieved . . . exceedingly” by the news of the Winters' actions. He assured the Indian diplomats that the murderers were captured “and are now in Irons in a

Dungeon to be tried by the Laws of the Great King of all the English, as if they had Killed so many of his Subjects.” Gordon also noted that provincial officials had found the bodies of the Winters’ victims, “who by my order were laid in a Grave and covered with Shirts and Strowds.”⁷⁹ The Winters’ fate stood in marked contrast to the Cartlidges’ six years earlier; they were hanged that July in Philadelphia. Their corpses were a sign, to Indians and provincials alike, of Gordon’s punitive legal potency.

But the governor’s concerns went beyond the death of Tacocolie and the punishment of his murderers. He also used this council as an occasion to bring up another killing. “About eight months agoe,” Gordon announced that he had “received an account that an English man was Killed by some Indians, at the House of John Burt, in Snake Town” and that he “expect[ed] the Indians will doe us Justice by apprehending the Murtherers that they may be punished.”⁸⁰ Having framed his punishment of the Winters for Tacocolie’s death as evidence of his good intentions toward the Indians, the governor used the homicide at Snake Town to suggest that Pennsylvania’s Indians were obligated to reciprocate, in the name of friendship, harmony, and justice, by helping him punish Indian murderers under Anglo-Pennsylvanian laws. In doing so, Gordon had not only claimed provincial jurisprudence as the appropriate standard for “equal” justice; he had also claimed “Onas”—Pennsylvania’s government—as the only sovereign capable of ensuring that appropriate and equal punishment was meted out to Indian and colonist alike. And although he accepted the Indians’ collective refusal to pursue the accused on the grounds that the murder at Snake Town had been committed by an Indian “of another Nation,” he did not relent from his initial position that equal punishment meant Anglo punishment.

Gordon’s position became even clearer later that year when he received a report that Timothy Higgins, servant to a trader living near the forks of the Susquehanna, was hanged by Shawnee warriors.⁸¹ Calling a council at Philadelphia with Delaware, Iroquois, and “Brandywine” Indians, Gordon reminded his assembled guests of the speed with which he had executed Walter and John Winter and urged them to take care that any Indian harming a Euro-American “be punished for it, that we may have the same Justice as if a Christian had done the wrong.”⁸² Accordingly, he hoped that these Indian leaders might locate the murderer from Snake Town as well as the Shawnees who had killed Higgins. Nor was this October 1728 treaty council Gordon’s last mention of the Winters’ execution. The governor



reminded Indian diplomats of his actions at treaty conferences in 1731 and 1735 and again called for equal punishment of violent offenders, colonial and Natives alike, by provincial authorities.⁸³

Gordon used this invocation of the execution—couched within a longer discussion of Penn's ancient friendship with the Indians—as a way to obligate provincial Indians to uphold Anglo-Pennsylvanian law in much the same way that Native diplomats such as Civility, Sassoonan, and Tana-chaha used narratives of their people's friendship with Penn to urge the provincial government to live up to what they saw as its rightful obligations. In any case, Gordon was relentless in insisting that British laws should prevail on the frontier. In 1732, he raised this issue again, finally getting Iroquois diplomats to agree to stop harboring fugitive slaves owned by Pennsylvanians.⁸⁴ In two separate meetings in August 1733, he convinced Conoy and Delaware diplomats that if the rumors of Conoy attacks against colonizers on the frontier were accurate, these tribes would help deliver the murderers to the provincial government for punishment according to colonial laws.⁸⁵ Gordon's successors continued the theme; at a major treaty conference with the Six Nations in 1736, Logan and Thomas Penn reached an agreement with the Iroquois that an Indian thought to have murdered a provincial on the frontier would be turned over to colonial magistrates to be hanged.⁸⁶

That same 1736 conference, however, also indicated what was at stake in these negotiations over frontier legal authority. The question was not simply how far westward the provincial government's authority spread; it was also who had authority westward of whatever boundary line would be established. Debates over individual acts of frontier violence took place in the midst of ongoing political negotiations about space and authority. Since the early 1720s, the Iroquois had repeatedly asserted their authority over the mixed population of Conestogas, Delawares, and Shawnees living in the Susquehanna Valley. At the same time, provincial officials were playing a political sovereignty version of what Francis Jennings called "the deed game," the means by which Anglo-American negotiators recognized individual Indians as tribal leaders for the purpose of purchasing land from them, regardless of whether or not these supposed sachems wielded any actual authority within Native communities. This shoehorning of indigenous practices of land usage and tenure into an Anglo-American legal idiom was essential to the spread of colonial property and sovereignty westward.⁸⁷

Provincial officials in Pennsylvania likewise shoehorned perceived dis-

order on the colonial frontier. Worried about the cost and difficulty of maintaining harmonious political and economic ties with several independent Indian groups, Gordon and his successors embarked on a plan of recognizing the Iroquois' tenuous—the Conestoga, Delaware, and Shawnee might have said fictitious—claims to sovereignty over the Susquehanna River valley. By ratifying these assertions of jurisdiction, provincial negotiators helped transform frontier spaces into Iroquois territory.⁸⁸ The process had started with the resolution of Sawantaeny's death when Keith's £110 gift to settle the matter had gone to the Iroquois and not to the Susquehanna Indians, recognizing Iroquois sovereignty over them as he accepted their cession of land to him. Similarly, Gordon had asked the Conestogas in 1728 to become sureties for the Shawnees moving into the region, holding the Conestoga Indians—themselves seen as subordinate to the Iroquois—responsible for the Shawnees' actions.⁸⁹ In 1732, Gordon sweetened his demands that the Iroquois stop harboring fugitive slaves with an acknowledgment that the Iroquois were sovereign over Shawnee residents in the Susquehanna region.⁹⁰

Gordon was resolute in his efforts to the very end. In 1735, at the governor's last Indian conference before his death, the Conestoga diplomat Civility invoked the 1700 and 1701 treaties with Penn as a sign of the Susquehanna Indians' political independence from the Iroquois; he even argued that the Shawnees—who had not yet migrated to Pennsylvania in 1701—were covered by the treaty and therefore independent of the Six Nations as well.⁹¹ Gordon not only rejected Civility's claims to political independence outright, he denied the Susquehanna Indians any autonomy at all. He insisted that from that moment on, if the Susquehanna Indians wanted to stay in Pennsylvania's good graces, they were obliged to treat as enemies all other Indians "without some sufficient Credential from this Government to show that they come as Friends." Gordon had, in effect, denied the Conestogas and Shawnees the right to determine who their allies and who their enemies were.⁹² The Penns' formal declaration in 1736 that the Iroquois were the sole sovereigns, by right of conquest, of the entire Susquehanna Valley and of all the Indians residing in it, then, was a culmination, the final act in a long attempt by Pennsylvania's provincial government to deny the sovereignty of those local Indian groups—the Conestogas, Delawares, and Shawnees—who asserted their independence and to recognize the sovereignty of the Indian confederacy as a way to enable the expansion of colonial settlements.



Telling folktales of justice about Sawantaeny's death is a difficult task indeed. This can be, in Cover's terms, a jurisgenerative project; retelling this story can provide an opportunity for reimagining the implications of the colonial American past and help frame new conceptions of law, justice, and authority. In his essay on the ethics of practicing early American history, Michael Meranze has eloquently called for a thorough rethinking of the ways historians write about struggle, conflict, and oppression in the American past. While appreciative of the intentions behind social historians' efforts to demonstrate how the poor, enslaved, or disenfranchised survived in the face of difficult odds, he notes that undoing the historical mythology behind American nationalism involves more than celebrating resistance to oppression. This process demands an exploration of historical paths not taken. Instead of symbolically appropriating the struggles of the oppressed, "we must mark . . . the gap between our present and its lost alternatives."⁹³ The history of homicides on the Pennsylvania frontier, illustrating as it does the slow erosion of the Delaware Indians' autonomy, evokes the gap between a modern mid-Atlantic whose Indian history has been effaced and an earlier era when the Conestogas and Iroquois were able to prevent the extension of colonial sovereignty westward. Meranze further suggests that historians examine internal contradictions within American society, "mark[ing] the point in which the dominant is not what it thinks it is—and vehemently seeks to control that gap." He argues that analyzing "the inner contradictions of our dominant values" would reveal how "our institutions and our selves are constructed to deny the gap between what we are and what we think we are."⁹⁴ Meranze's approach neatly accords with historians' criticism of the unequal justice meted out by colonial magistrates; it forces "us" to come to terms with the colonial inequalities embedded in "our" legal historical past.

But this kind of morality tale about the colonial past, its message implicit in historical accounts of homicide and explicit in Meranze's analysis, is dangerously jurispathic in another sense. In challenging "us" to confront the broken promises "our" ancestors made, this narrative tactic assumes that critical agency will be executed solely within a Euro-American, Enlightenment framework. Meranze's assertion that historians might develop an ethical solidarity with past victims of oppression without explicitly identifying with the historical subjects of their work belies his emphatic use of the first-person plural when urging his readers to action. Despite their intentions, historians hoping to find legal equality on the early American

frontier risk replicating the hegemonic tactic favored by such provincial governors as Keith and Gordon. By casting the Indians as victims of a hypocritical White double-dealing, they take Native incorporation into colonial—and contemporary—narratives of justice and authority for granted, ignoring the fact that such negotiators as Civility and Tanachaha participated in colonial legal narratives selectively and at times with great reluctance.⁹⁵ Forcing “us” to face up to the ways in which “our” treasured national institutions denied alternate possibilities in this manner silences the very alternate folktales of justice—those in which Indians resisted incorporation into the master narrative of American colonization—that Meranze would have us pay attention to.

Modern folktales of justice about Sawantaeny’s death, then, become difficult to tell precisely because the fate of the Cartlidges was the subject of so many competing folktales in 1722. Sawantaeny’s ambiguous identity had made his death both a powerful symbol and a political opportunity for those involved in its aftermath. Logan, Keith, Civility, Sassoonan, Sotyrionote, and Tanachaha all told different tales of peace and justice that served their ends in different ways. The governor and the councilor expressed their desire, after the fact, to afford Sawantaeny equality under their law. They claimed him, in effect, as a Pennsylvania citizen to tell stories about their sovereignty over Pennsylvania and all of its inhabitants, Euro-American and Indian. The Indian diplomats, on the other hand, claimed Sawantaeny as a kinsman in stories about their own authority and influence over the region and its peoples.

Although telling folktales of Sawantaeny’s death and its aftermath involves, on some level, the creation of histories jurispactic to cultures of the past, historians must balance their desire for moral judgment with a sensitivity to the multiple moral narratives embedded within their stories. Far from leading contemporary historians and readers down a slippery slope to “moral relativism” (often inveighed against but infrequently defined), such a sensitivity may increase their appreciation and respect for local moral and legal worlds and may caution them against presuming a single normative world as a universal standard of justice.⁹⁶ Put simply, “we” must be careful how we claim Sawantaeny’s story, and for what purposes. This exercise in reconstructing folktales of justice about frontier killings from various Native American perspectives—with its suggestion that the nonpunishment of John Cartlidge may have represented justice and the Winters’ hanging injustice to those Indians involved—represents



a first step toward such a moral history of legal boundaries on the colonial frontier.

One perspective, of course, is missing from this history: Sawantaeny's. What kind of folktale of justice might Sawantaeny have told about his own death? As a Seneca who hunted and lived with his Shawnee wife amongst a mixed group of Delaware, Conestoga, and Shawnee Indians, what might he have thought? Would he have applauded the Iroquois' claim for legal authority over the Susquehanna and its Indians? Would he have supported Civility's attempts to keep the Iroquois and the Europeans out of legal affairs on the Pennsylvania frontier? Or would he have desired to see the Cartlidges swing on the gallows, as Keith had allegedly intended? Without understanding more fully how Sawantaeny's own stories of his life would have resolved his multiple identities, it is impossible to know how he would have understood these difficult issues.⁹⁷ Representatives from the Conestoga, Delaware, and Iroquois nations all claimed Sawantaeny as a kinsman in their efforts to legitimate their authority over Conestoga, subsuming him within their folktales of justice. No such attempt to claim Sawantaeny as a kinsman will be made here; making him into an ancestral national character—affirming his posthumous place in an American national heritage—runs at least as many risks of jurispahic interpretation as any of the works cited above.⁹⁸ Rather than speak for him in a language he would not understand, I will let him rest in peace and let that story remain untold.