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Joseph Hall
Bates College

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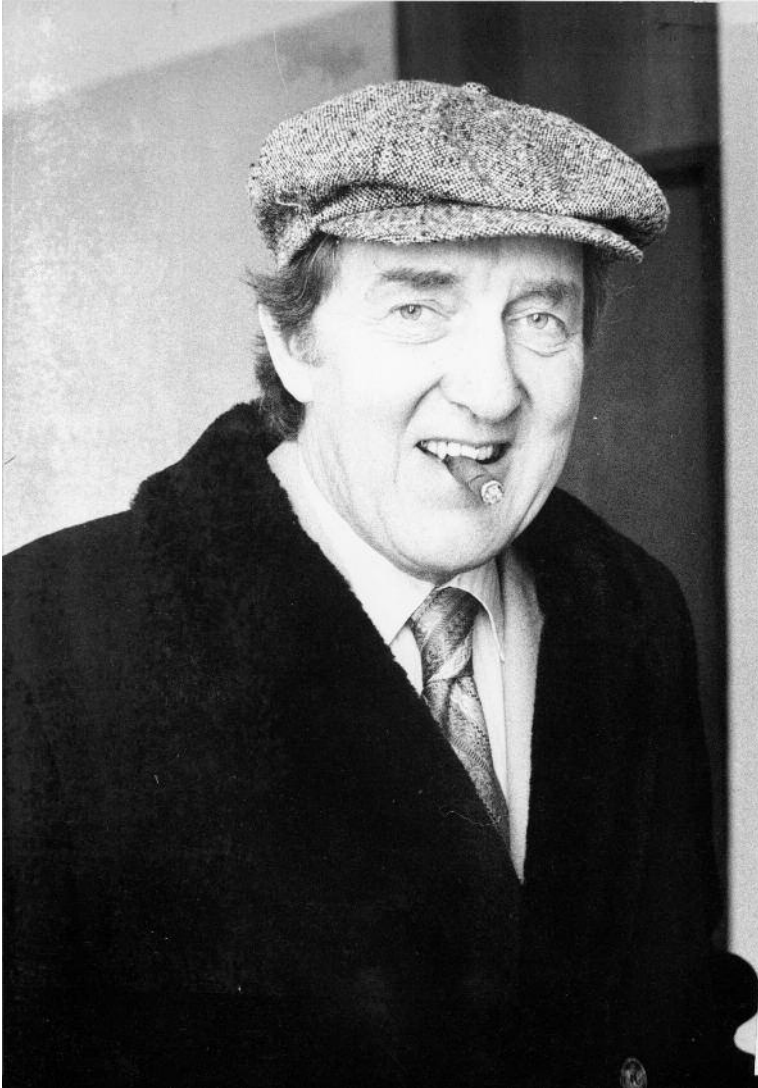


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Photograph of newly nominated Secretary of State Edmund S. Muskie during a trip to Maine. The senator of 22 years was nominated by President Jimmy Carter to replace Cyrus Vance who resigned. Collections of the Maine Historical Society.

WAS THE “S” FOR SILENT?: THE MAINE INDIAN LAND CLAIMS AND SENATOR EDMUND S. MUSKIE

BY JOSEPH HALL

This article explores the work of one of Maine’s most powerful politicians, U.S. Senator Edmund Muskie, during one of Maine’s most difficult political crises, the Maine Indian Land Claims of the 1970s. In 1972, when Penobscots and Passamaquoddies challenged the legality of land sales conducted from 1794 to 1833, they called into question the legal title of the northern two-thirds of the State of Maine. Tom Tureen, the lawyer for the tribes, and Governor James Longley and State Attorney General Joseph Brennan, the state officials leading the case for Maine, played central roles in the case. Muskie played a crucial, if less important, role by advocating for a negotiated settlement that prevented a protracted legal fight. Muskie’s more limited involvement was rooted, in part, in his preference to be a negotiator rather than an advocate in this particular case, but it also was a product of his lack of experience with Maine Indian issues. Muskie’s restraint had important consequences for the case, because it allowed more vocally anti-Indian state leaders like Longley and Brennan to shape the rhetoric that would define the controversy long after the case was settled in 1980. Joseph Hall is an Associate Professor of History at Bates College, where he teaches and studies Native American history and early American history.

On February 10, 1978, Maine’s senior U.S. Senator, Edmund S. Muskie came to Augusta to speak before a joint session of the state legislature about what he called “the Indian problem,” or “the Indian land claim controversy.” For more than two years, the State of Maine had been confronted with a lawsuit that threatened to return 12.5 million acres to Penobscots and Passamaquoddies who lived in the eastern part of the state. At a time when the national economy was itself suffering from recession and inflation, the suit placed the economic foundations of two-thirds of the state suddenly in limbo, if not in jeopardy. Muskie made this unusual visit to Augusta—in fact, only four days after a blizzard had paralyzed the Northeast—because negotiators for

the Carter administration and the tribes had just two days earlier released a joint memorandum outlining a proposed settlement. But what was supposed to settle a controversy seemed instead to make it more tempestuous: Far from considering the proposals a start to negotiations, some Passamaquoddy negotiators explained that the offer was fairly close to their “bottom line.” Meanwhile, Maine governor James Longley complained that the negotiators had treated state leaders “shabbily” by not including them in the process. Some state legislators wondered aloud whether they should grab their guns to defend their lands or to shoot the White House negotiators. In visiting Augusta, Muskie was hoping to bridge the divide before it became any wider.¹

He began by recalling his own ties to the Maine legislature and to the Wabanaki tribes. When he had first arrived in Augusta as a new legislator from Waterville in 1947, he claimed that he had been seated next to “the Indian Representative.” As he explained with some regret, he never met this fellow legislator because “they did not have the vote and they never attended sessions in those days, much as we would have welcomed them.” But Muskie did more than seek to revive legislators’ bygone sympathy for Indians. Far more important than emotional appeals were facts. He presented them in person because “these points don’t always come through clearly in the press.” Equally important, he presented himself as a negotiator: “I am not here to sell a particular point of view this morning. . . . I am here to try to explain as best I can, and I may not be the most effective spokesman to do it, exactly what is at stake and what the choices are.”

The forty-minute explanation that followed would seem to put to rest one basic question. Did the “S” of Muskie’s middle initial stand not just for “Sixtus” but also for “Silent”? In short, no, but for all he said, Muskie’s role in the history of this momentous dispute remains elusive. This fact is doubly remarkable. First, Muskie himself was a man of immense political stature—his involvement in the land claims would be sandwiched by his 1972 campaign for President and his 1980 appointment as Jimmy Carter’s Secretary of State. Second, the Land Claims themselves constituted, in the retrospective words of one reporter for the *Bangor Daily News*, “the biggest story in Maine in the late 1970s.”² Indeed, Muskie apparently considered it the single most complicated issue in Maine’s history as a state.³ And the issue had resonances far west of Downeast. State and indigenous leaders along the eastern seaboard watched Maine closely for what could be a precedent for their own land disputes over long-neglected treaties.

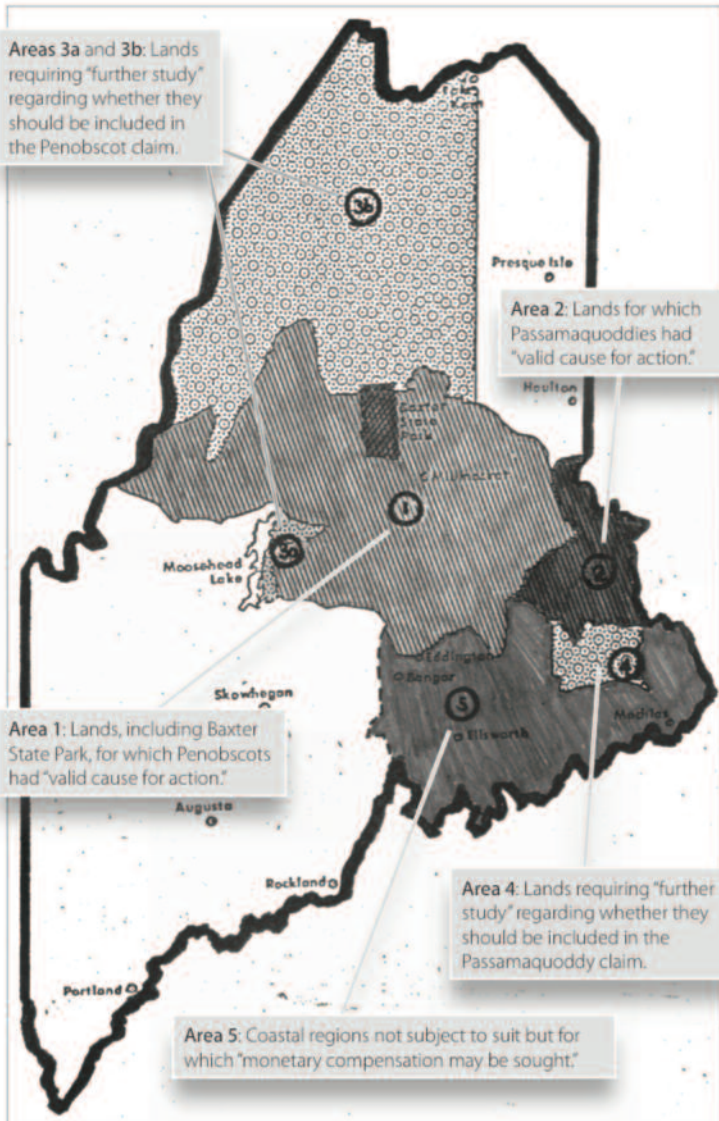
So what do we learn from an examination of Maine's biggest politician during Maine's biggest political drama? Most immediately, it provides new insight into a man about whom we know remarkably little.⁴ Muskie's unwavering commitment to a negotiated settlement was rooted in bedrock principles, but also in a notable, if unsurprising, ignorance of the Wabanakis who spurred the dispute. While the former quality made him distinctive among Maine politicians, the latter did not. Both elements shaped his speech to the Legislature. His insistence on negotiation was the centerpiece of the speech. His ignorance of Wabanakis appeared in his brief sympathetic comments about the "Indian Representative's" absence: contrary to what Muskie remembered, no Wabanaki could have been seated near him, and none were welcome because they had been forbidden membership in 1941.⁵ But Muskie's statements teach us about more than the strengths and limits of his own position. They enable us to understand a little better why the controversy unfolded in the halting way that it did; we see why it was, for instance, that Muskie's speech of February 1978 marked only an intermediate stage rather than a conclusion to the dispute.⁶ More broadly still, a study of Muskie's involvement reminds us that these events were very much a part of the stream of events that defined the 1970s, a decade that, like the politician and the dispute, seems to have gained little credibility among historians.⁷ Last of all, Muskie's involvement sheds some light on the ambiguous legacies of Maine Indian Land Claims.

To understand Muskie's role requires first a survey of Maine Indian history.⁸ Prior to the 1970s, the Mi'kmaq, Maliseets, Penobscots, and Passamaquoddies, who are known collectively as "Wabanakis," or "People of the Dawnland," were the responsibility of the state officials. Not long after independence, Massachusetts acquired land from Penobscots and Passamaquoddies in a series of treaties first signed in 1794. After 1820 the new state of Maine assumed responsibility for negotiating these land sales. A state-appointed Indian agent controlled Penobscot and Passamaquoddy finances, and Wabanakis could not vote in any election before 1955. Despite having their own reservation lands and independent political organizations, Maine's two largest tribes struggled to retain control over their resources and lifeways. Mi'kmaq and Maliseets, who lived mostly in Aroostook County but whose principal populations were in Quebec, New Brunswick, and Nova Scotia, were simply ignored as tribal entities.⁹

For 130 years state policymakers, much like their counterparts in Washington, D.C., expected Indians to assimilate gradually into the

larger white society. In the 1940s, the legislature became more aggressive in its effort to eliminate the tribes. In 1941, it revoked the century-old rights of Passamaquoddy and Penobscot tribal representatives to be seated with and speak to the legislature. (It was this ban that Muskie overlooked in his somewhat rose-tinted recollections in 1978.) By 1952 some state officials proposed abolishing, or terminating, the tribes and their reservations altogether. This, too, paralleled larger national policies towards Indians, in fact foreshadowing the Congressional Resolution from 1953 that sought “to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States.”¹⁰ Muskie, who was a state legislator from 1947 to 1955 and governor from 1955 to 1959, supported this termination effort. As governor, he echoed the widely held belief that the state should “help the Indians achieve responsible self-government and self-determination on the same basis as other Maine communities.” Wabanakis were much less enthusiastic about this new effort to “help” them. In a letter to state officials, Penobscots criticized the attempt to undermine “their nation as a free nation, their people as a free people.” Though their representatives could not speak on the legislature’s floor, numerous Passamaquoddies and Penobscots testified against termination. Far from being silenced, the tribes successfully thwarted Maine’s efforts to disband them.¹¹ Maine’s two biggest tribes carried this political momentum into the coming decade; in 1965 they successfully lobbied for a state Department of Indian Affairs, which recognized the tribes’ independence and persistence.¹²

Meanwhile, Passamaquoddies became increasingly insistent on defending their land base. A non-Indian developer who claimed to own lands within the bounds of the nation sparked a series of protests in 1964. Basing their claims on a copy of the 1796 treaty, Passamaquoddies sought not only the return of the developer’s parcel but also another 6,000 acres occupied by non-Indians.¹³ So began a conflict that would directly challenge Maine’s traditional claims of authority and would catapult Wabanakis into the center of the Red Power Movement, a national campaign for Indian rights. In 1971, a newly minted lawyer, Tom Tureen, realized that the Passamaquoddies had grounds to sue for far more than the 6,000 acres that they had lost since 1796. The 1796 treaty and Passamaquoddies’ subsequent treaties with Massachusetts and Maine were in fact void. Although both states had long claimed control over the tribes within their borders, their land purchases had in fact vio-



“Maine Indian Land Claim: Justice Department Litigation Recommendation, 2/28/77.” Shortly after President Carter took office, Justice Department officials used Attorney Tom Tureen’s claims to identify five “areas” that could be subject to litigation. Original map courtesy of Special Collections, Raymond H. Fogler Library, University of Maine, Orono, Maine. Map from Folder 6, Box 6, Series 3.3.13.2, William S. Cohen Papers.

lated a federal law from 1790 that required the United States Congress to ratify all treaties and land sales with Indians. Tureen was essentially calling into question the state's and private landowners' title to all lands held by the Passamaquoddy in 1790. When Penobscots joined the suit in early 1972, the two tribes essentially contested the ownership of roughly the northern two thirds of the state.¹⁴ Despite his guarded excitement about the legal possibilities, Tureen soon realized that he had made his discovery only months before a federal statute of limitations on Indian land suits was due to expire in 1972. Governor Kenneth Curtis urged Congressional leaders to amend the statute because "the Indians deserve their Day in Court."¹⁵ In the end, no such legislative adjustment was necessary because Tureen managed to file the suit before the deadline, but at the least the governor had expressed support for airing the question, if not actually giving the Wabanakis their land. The resultant federal ruling by Judge Edward Gignoux in *Passamaquoddy v. Morton* (1975) favored the tribes, immediately granting federal status to the Penobscots and Passamaquoddies.¹⁶ No longer wards of the State of Maine, they would be subject only to federal authority. Gignoux further required the United States to begin procedures for suing Maine and private landholders for the return of lands acquired in violation of the Non-intercourse Act of 1790. Indian and non-Indian Mainers were facing a massive struggle over the fate of the state.¹⁷

Gignoux made his ruling in the last year of Muskie's third term as U.S. Senator. Maine's most senior Congressional legislator had little early involvement in the case, largely because Congress did not need to be involved but also because he had done little related to Indian affairs during his political career. Muskie's ideas on Indian policy tended to follow national trends. As governor, he had supported termination in the 1950s, but as the nation's sentiment changed, so did his. When, in 1970, Nixon called for an end to federal efforts to terminate Indian nations and asserted that "self-determination among Indian people can and must be encouraged without the threat of eventual termination," Senator Muskie sounded much the same. As he observed, the federal government's failure to consult with Indians on Indian policy "has been one of our greatest faults in the past."¹⁸

Such sentiments became more prominent as he began to consider a presidential run in 1971. He and his staffers recognized the importance of appealing to increasingly vocal Native American activists and their supporters. That spring he announced his co-sponsorship of legislation to have federal aid apply to state tribes, including those in eastern

states.¹⁹ And he highlighted this bill when he reassured one inquiring Native woman from California who wanted to know “what will you do for [American Indians], how do you feel about them,?? [sic]”²⁰ He elaborated on his sentiments in a long letter to the administrative assistant of Governor James Exon of Nebraska, who was himself planning to support Muskie’s presidential bid:

The federal government must commit itself to fulfill its promises, treaty or informal, to Indian tribes. If the tribes no longer have to fear the vagaries of past federal policies, and if self-determination is no longer used as a camouflage for terminating federal obligations, we will have provided a better framework for Indians to work to run their own affairs, and eventually replace, by a process of natural evolution, the gigantic bureaucratic machinery by which Indian initiative is now stifled.²¹

The private rhetoric inspired confidence, but, as his California correspondent’s questions implied, his public actions were not so emphatic. As one Muskie staffer acknowledged in March 1972, shortly before Muskie’s presidential hopes collapsed, the Senator’s “record on Indian matters shows a history of ‘right’ votes, but no policy initiative.” As a result, Muskie “is therefore viewed with disfavor in the Indian community generally.”²²

In some respects, these positions fit Muskie’s unwillingness to grandstand on controversial issues. As one sympathetic biographer noted in the year of his presidential bid, Muskie was “a pragmatist and a compromiser and believes that is how government goes forward.”²³ His skill at passing complex environmental and budgetary legislation justified his renown as one of the masters of compromise in the Senate. This desire for compromise was itself rooted in his political moderation and his belief that an authoritative understanding of complex subjects conferred the expertise and the influence necessary to find common ground.²⁴ Muskie had become a Democratic governor and U.S. Senator in a traditionally Republican state thanks to his ability to chart a middle path and bridge political divides. For instance, his opposition to the Vietnam War appeared later than that of many other Democratic colleagues.²⁵ So when Muskie echoed Governor Curtis’s plea to extend the statute of limitations on the Passamaquoddies’ suit in 1972, he spoke not of justice for Indians but of an opportunity “to resolve questions which have been a cause of contention between the Passamaquoddy Indians and the citizens of Maine for close to 150 years.”²⁶ In this first direct intervention and in the work that followed, Muskie acted on ideas that had guided his political career—his insistence on negotiation and

his ignorance of Indians. Unlike Curtis, who had worked closely with Wabanakis, he spoke not as an advocate for the tribes but as one who hoped to appeal to both sides in the dispute.

Because the two sides he appealed to were very far apart, this apparently neutral position had significant consequences. On one side, Penobscots and Passamaquoddies were pursuing a land claim of unprecedented scope and with an autonomy that the state had long denied them. As tribal leaders explained to Longley, the stakes of the suit demanded that they seek land and not simply monetary compensation. "Our obligation to our past generations, who have suffered such needless poverty and obscurity, and to our future generations, whose prospects are so bright, leaves us no alternative."²⁷ Signs of Wabanakis' identification with the wider Red Power movement appeared as well: hanging on the side of the house of one Penobscot elder was a plywood board painted with the words, "Wounded Knee."²⁸ More concretely, the ruling in *Passamaquoddy v. Morton* had augmented both tribes' political status by placing them under the sole jurisdiction of federal laws. After years of existing at the whim of Maine's legislators and jurists, the tribes could now act independently of them.

On the other side of the dispute, Governor James Longley opposed negotiations that involved any transfer of land or recognition of Indians' sovereignty outside of state authority. Some of his opposition was fiscal. He had won the 1974 election to the governorship without party backing or electoral experience largely by criticizing government expenditures, and he was not about to allow several thousand Mainers to obtain exemption from state taxes and regulation. He frequently presented his positions with long diatribes employing inflammatory rhetoric. Muskie himself complained of the governor's apparent incapacity to listen to those who disagreed with him, and one Muskie staffer wondered if the governor even wanted a settlement.²⁹

Most of the other major players agreed with Longley, even if they avoided his mercurial style. State Attorney General Joseph Brennan opposed any transfer of land in part because he believed that the state could win the case in court. The state's major newspapers opposed any kind of settlement that included land, and most of their readers (and Muskie's constituents) shared this sentiment. Letters to Muskie from people throughout Maine questioned why Indians deserved the return of land that whites had improved through hard work and defended in numerous wars. They questioned why the government owed anything to people who supposedly had received state handouts that, as one con-

stituent explained, "paid many times over for any claims they may have had to any land in Maine."³⁰ Although such letter writers frequently had no idea that Wabanakis had participated in disproportionately high rates in the same wars or that they had been supported not with state welfare benefits but with the sale and lease of their reservation resources (largely at the discretion of the state's agents), Muskie must have realized that much of this hostility was rooted in more than ignorance. Recurring threats of violence against Indians, whether in the form of violence against Wabanaki children at mostly white schools or in the resurgence of a chapter of the Ku Klux Klan near the Penobscots' reservation on Indian Island, manifested Mainers' anxiety over their property.³¹ From his position in Washington, Muskie must have recognized the roots of this unease. On the one hand, Mainers were participating in a broader national trend; claims to property rights and economic security were becoming increasingly prominent throughout the nation in the 1970s, as opponents of busing and other civil rights reforms frequently claimed to be fighting an interventionist government obstructing their efforts to pursue the American Dream.³² Newspaper reports about the Land Claims were frequently sandwiched among stories about high inflation, frustration with taxes, and a general sense of national anxiety. On the other hand, the roots of this opposition were decidedly local. As Andrew Akins, a Penobscot and chair of the Passamaquoddy-Penobscot Negotiating Committee, pointedly noted, "Why, it was as if we had touched a raw nerve... and unleashed all their deep hatred for Indians, together with their guilt for what they had done to the Indians over all the years."³³

The principal national figure who might have bridged this gap was, himself, hamstrung by the complexity of the case and by his lack of familiarity with the principal players. Having successfully campaigned for the presidency as an outsider who could reform Washington, D.C., Jimmy Carter was both sympathetic to the needs for mediation and unprepared for what it would require of him. At every stage, Carter preferred to entrust the difficult task of finding a solution to others. Apparently, the presidential engagement that made possible the historic Camp David accords between Israel and Egypt in September 1978 was not going to save Maine from its own conflict over land and history.³⁴

More than any of the participants, Muskie was in a position to be sensitive to the local complexities of the case and its national context. His thoughts, though, were often elsewhere. He had become a national leader in environmental and budgetary policy, and his interest in for-

eign policy was growing in the late 1970s.³⁵ When he was involved in the Land Claims, Muskie's sympathies initially lay with the state and its non-Indian inhabitants. In one early private meeting, he fretted that the tribes would use the economic threat posed by a lawsuit to force the state into an "inequitable" settlement, one that would fail to acknowledge that "there are only innocent parties today."³⁶ He also initially admitted that he was "frustrated" that the Penobscots and Passamaquoddyes insisted on obtaining land when a monetary damage settlement would be much easier to obtain and much less disruptive for the state.³⁷ This frustration initially led Muskie in 1976 to co-sponsor legislation to extinguish the claims by retroactively ratifying all land dealings with Indians in Maine since 1790.³⁸ Had the law passed, Indians could have sued for monetary compensation but nothing more. The move pleased Longley and outraged Wabanakis, but the bill never made it out of the Senate Select Committee on Indian Affairs. Senator James Abourezk, a Democrat from South Dakota who chaired the committee, lambasted the proposal as a "very one-sided attempt to obviate and preclude any just claim on the part of the tribes."³⁹

Despite his concerns about the potential ramifications of a settlement involving land, Muskie never again insisted on a purely monetary resolution. Muskie understood the Senate well enough to know that any legislation relating to Indian affairs would depend on the support of Abourezk and his committee. He was also following the lead of the newly elected President Carter, who advocated for negotiations as a necessary alternative to the litigation that would leave Maine land titles in legal limbo and could last a decade or more. Carter appointed a retired Georgia Supreme Court Judge, William Gunter, to craft a solution. In July 1977, Gunter proposed that the tribes receive \$25 million, 100,000 acres of land, and the option to purchase another 400,000. In an effort to avoid messy negotiations over details, the judge demanded both sides accept his proposal in its entirety or not at all. When both sides balked for different reasons, Carter abandoned Gunter's proposals and assembled a new task force, which he called the Working Group, to examine the problem. Muskie's involvement in these initial negotiations and proposals during mid-1977 was limited, but his thinking was clear, and to Longley's consternation, dramatically different from earlier in the year. As Muskie explained in an interview shortly after the release of Gunter's proposals in August, "My personal feeling is that given the deep convictions each side has in its case...and as a lawyer who hasn't practiced in some 30 years, this case seems one made to order for a settlement." Lon-

gley was dumbfounded by what he thought was a statement "contrary to the position you have expressed to us," but Muskie would not waver in this assessment for the rest of the dispute.⁴⁰ However, he maintained a low profile. Some of this relative silence probably derived from an unwillingness to upstage Justice Gunter, the Working Group, or a fellow Democrat in the White House, but partly it was also likely a lack of interest. He made no mention of the controversy in his review of the year for the *Lewiston Sun* in January 1978.⁴¹

He would break this silence two weeks later, shortly after Carter's Working Group and the tribal negotiators released their Joint Memorandum of Understanding. It proposed that the tribes receive \$25 million from Washington and \$25.5 million from the state. In exchange, the tribes would drop all suits against properties of less than 50,000 acres but would be able to purchase up to 300,000 acres from large landholders at \$5 per acre, well below the estimated value of \$100 per acre for northern forestland. If the state or the landowners failed to respond to the proposals within sixty days, the U. S. Attorney General would initiate the lawsuit against the state and all landowners.

It was one week after the release of the proposals that Muskie spoke before the state legislature. During the speech, he laid out the basic principles that would guide his subsequent participation in the Land Claims dispute. He refused to endorse the plan, saying only that the large landowners and the state had the right to accept, reject, or renegotiate the proposals. He did highlight, however, the benefits of negotiation, as litigation might result in greater sacrifices for the state and its private landowners. In some respects, Muskie did not consider himself qualified to offer a more explicit opinion. "I regard myself," he concluded, "the instrument of the people of this state, and I am not going to try to force my views on them." Besides, he noted, if anyone should be the spokesperson for Mainers, it should be the governor.⁴² He returned regularly to this insistence that negotiation under the governor's leadership was best for the state. As he explained at the end of March with characteristic bluntness, "I don't have any new proposal to make and if I did I wouldn't make it, as any proposal a politician would make would be the next target, as President Carter found out."⁴³ Like Muskie, Carter also refused to endorse any particular plan, but he was a little clearer about the dangers of involvement. Speaking to a town hall meeting in Bangor in February, Carter acknowledged, "politically, there's no advantage in trying to resolve a question of this kind."⁴⁴

By promoting negotiation, Muskie sought to encourage a resolution

without getting caught between an aggrieved minority and a hostile majority. This insistence on negotiation was most apparent during the uncertain months of mid-1978, when the fate of the state seemed suspended between the unpopular Working Group proposal and the uncertain future of litigation. Muskie's commitment to dialogue was unusual among state politicians. Longley wondered if the Working Group, in proposing that large landowners sell land below market value, had forgotten that they were not in the Soviet Union or communist China. State Attorney General Brennan simply rejected the recommendations, confident that the state would "prevail in litigation." Republican Congressman William Cohen, whose Second Congressional District included most of the disputed lands, called the proposal "arbitrary" and "confiscatory." As the sixty-day deadline for a state response approached and a federal suit loomed at the end of May, Muskie was still insisting that negotiation was preferable to a protracted legal battle. Some Longley staffers thought he was "the only person" who could "force continued negotiations." And he was not afraid to unleash his famous temper to insist on them. When Longley approached him privately some time during the tense days of late May and early June to seek Muskie's support for a bill that would allow monetary but not territorial compensation, a bill that would effectively kill any Wabanaki desire to negotiate, Muskie did not conceal his frustration. As staffer Estelle Lavoie recalled years later, the senator's emphatic and infuriated reply could be heard through two sets of office doors.⁴⁵

It was not for lack of ideas that he maintained this unwavering stance. As he explained to Don Larrabee, Longley's liaison in Washington, some kind of offer of land, perhaps in the range of 100,000 acres, plus a combination of state and federal funds, should provide "a basis for talks if all the parties regarded these items as negotiable."⁴⁶ And, as far as he was concerned, the governor's obstinacy was the biggest obstacle to negotiating these terms. It certainly could not be the Penobscots and Passamaquoddies. "There are 4,000 Indians at the most," he explained to Larrabee; "they surely must realize the whole state is against them. If they had the feeling that the other parties were willing to give, they would give also."⁴⁷

And it was in this simple mathematical acknowledgement, that four thousand Wabanakis were fighting one million non-Indians, that Muskie revealed a second element of his strategy to handle the Land Claims. Pragmatism as well as principle guided his desire to present himself as a neutral arbiter. As he and Carter both acknowledged, a

politician had little to gain from getting involved in such a dispute. The dangers of that involvement and even negotiation itself became even more apparent in early August, when Attorney General Griffin Bell announced that the Department of Justice would not pursue claims against any private landowners. The dramatic departure from Carter's stated intention to sue in the event that negotiations collapsed placed the entire process in jeopardy. Longley saw this change in fortunes as his opportunity to press the Maine Congressional delegation to craft a resolution, but when he invited, urged, and finally publicly demanded that Muskie "come up with your own plan and see if *you* can get the delegation to unite" around a proposal, Muskie refused to respond.⁴⁸ Instead, some members of his staff insisted he should let his junior colleague William Hathaway "take the initiative." Chief of staff Leon Billings further counseled Muskie that only when Hathaway did not demonstrate interest, "you should act."⁴⁹

Such action would not be necessary. Hathaway, facing a tough reelection campaign against Representative Cohen, felt compelled by politics and personal conviction to rise to the challenge.⁵⁰ He had already earned the ire of many Mainers for supporting the Working Group proposal as "a reasonable settlement."⁵¹ Cohen regularly reminded Mainers about this unpopular stance. A flyer mailed by the Cohen campaign compared the two candidates on a number of issues, but fully half of its space compared Hathaway's support for the original Working Group proposal with Cohen's criticism that the proposal was "fundamentally flawed." It concluded, simply, "Bill Cohen: A Senator *For* Maine."⁵² Sensitive to such attacks, Hathaway held a series of meetings with the major landowners and state officials. In late October he introduced a new basis for a settlement: the federal government would appropriate \$37 million to purchase 100,000 acres at fair market value, and the tribal territories in the state would have the same status and independence as other municipalities. State leaders praised the new plan to use federal money to pay full value for timberlands, and Indians expressed cautious preliminary interest.

Muskie, who had never shared Hathaway's strong support of the Penobscots' and Passamaquoddies' claims, offered tepid support for his colleague.⁵³ In a press release, he congratulated his junior colleague and anticipated that "it shouldn't take long at all in the new Congress to get this nailed down into law." Such mild words did little to counter Cohen and Longley, who attacked Hathaway for taking too much credit for negotiations that they had either opposed or ignored. Despite Hathaway's

diplomatic heroics, on Election Day, Cohen prevailed by a margin of nearly two to one.⁵⁴ Whether Muskie could have changed this outcome is hard to say, considering Mainers' hostility towards Wabanakis. Indeed, Attorney General "Indian Fighter Joe" Brennan capitalized on this anti-Wabanaki sentiment to win the governor's seat with promises of "not one inch and not one dollar" to Maine's Indians.⁵⁵ Clearly, most Mainers were against Wabanakis, but it was still with some bitterness that Hathaway recalled years later, "Ed should have supported me more than he did."⁵⁶

Should he? Hathaway had good reason to question Muskie's restrained handling of the Land Claims, but Muskie's strategy essentially reflected three basic influences on his thinking, influences we have already encountered. First, it was true, as a staffer had recognized in 1972, that Muskie considered it important to make "right votes" on Indian issues, and while we do not know how he voted on several pieces of legislation, including the Indian Child Welfare Act and the American Indian Religious Freedom Act, which were both passed in 1978, we do know that he thought very highly of their sponsor and his old critic, Senator Abourezk of South Dakota. When Abourezk announced that he would not seek a second term as Senator, Muskie praised how he "always spoke for those least able to speak for themselves in the corridors of power," including "the Indians whose love and respect he enjoys and has so well earned."⁵⁷ Such statements would understandably lead Hathaway to expect more from his senior colleague.

Convictions mattered, but so did a second consideration. Muskie refused to let advocacy interfere with the more important need for negotiation and compromise in any proposal. He suggested as much when he speculated that his friend and colleague Abourezk might be leaving the Senate so soon because "the same energy, imagination, and deep sense of justice which made him so valuable to us made the frustration with the legislative process, which we all chafe under, unbearable to [him]."⁵⁸ As he explained to one reporter two years earlier, on any complex dispute, "you've got to have consensus."⁵⁹ And in this dispute, categorical pronouncements could undermine such a quest. However much Muskie supported Hathaway's ideas (and it is not clear how much he did), he believed he could not stand unequivocally behind any proposal that would itself require negotiation and, potentially, modification.

A third quality, the personal attribute Muskie most valued, perhaps decisively shaped his restrained response to Hathaway's plan. As he had made clear in his shepherding of complex environmental legislation,

and as he explained to anyone willing to listen, there was one route to influence as a legislator. "If you've done your homework and know what you're talking about, that is power."⁶⁰ When it came to the Land Claims, the limited extent of his knowledge appeared in a surprisingly awkward way. One night at a private dinner during the intense weeks prior to Election Day, 1978, one guest, Cynthia Beliveau, found herself on opposite sides of Muskie during a discussion of the Land Claims. Years later, she recalled his formidable debating skill and the intensity with which he pressed his argument. Uncertain how to respond, she cut to the point: "And I sort of challenged him a little bit, it was kind of like, well, you know, you're not an Indian, . . . how do you know how they feel about X, Y, Z or. And he was very perturbed at me for sort of saying this among, you know, and everybody stopped to listen." Despite a mutual friend's efforts to smooth the conversation over, Muskie became "furious." As Beliveau remembered it, "he got up and stormed away from the table."⁶¹ For a man who preferred to be an expert, the Land Claims presented a set of challenges that, as Beliveau accidentally discovered, lay uncomfortably outside his expertise. In wishing for a more ardent and effective supporter, it seems, Hathaway was expecting Muskie to be somebody he was not.

Following Hathaway's defeat, Carter and Muskie both took a less prominent role in the search for a settlement. Cohen's victory seemed to consign Hathaway's plan to political limbo. Part of the problem stemmed from increasing Wabanaki discontent over the land they were to acquire. Before agreeing to the new proposal, some wanted to determine first which lands were available for purchase. Meanwhile, other Wabanakis insisted that the tribes were entitled to the 300,000 acres that the Working Group had initially proposed.⁶² Questions of sovereignty also complicated the negotiations. Although Passamaquoddy Chief John Stevens expressed a willingness to accommodate Longley's demands for state jurisdiction over the tribes, Penobscot Tribal Representative Tim Love claimed that the United States Constitution itself protected Maine Indians' status as outside state law.⁶³ To complicate matters further, the Mi'kmaq and the Maliseets of Aroostook County were seeking inclusion in the provisions of any land claims settlement.⁶⁴

Muskie kept abreast of these developments, but as he explained to a constituent curious about his position on the Hathaway plan, he was not involved in the negotiations and was awaiting an agreement to submit to the Senate.⁶⁵ Even as he waited, though, he did not welcome the news of the new complications in the Wabanakis' position. A staff member

meeting with the Mi'kmaqs and Maliseets warned them in June that their efforts to be included in the claim "would not make matters easier."⁶⁶ Muskie himself was frustrated that the Hathaway plan's offer of 100,000 acres was no longer operative.⁶⁷ But even in his frustration, he still said little about a plan that he had barely endorsed.

Eventually, it would be Senator William Cohen and state Attorney General Richard Cohen who would lead the last negotiations toward a settlement. Though the two men were not related, they shared a common interest in resolving the dispute. Where Senator Cohen recognized that the 300,000 acres meant higher financial costs, these costs were much less than the prospect of continuing deadlock or long-term litigation. Attorney General Cohen, for his part, recognized the importance of compromise on questions of jurisdiction, and while he did insist on preserving the state's regulatory authority over most matters, he also conceded that the tribes should be eligible for federal programs through the Bureau of Indian Affairs. By the first months of 1980, the basic contours were set. Indians would receive \$81.5 million, \$27 million of which would be set up in trust funds for annuities. The remaining \$54.5 million would allow Penobscots and Passamaquoddies to purchase up to 300,000 acres of land. Maliseets, having demonstrated a historic presence within the state, would be able to use \$900,000 of the settlement money to purchase land. Mi'kmaqs were not included in the settlement because they had yet not assembled adequate historical evidence to prove their long-term residence in Maine. A number of legal ambiguities remained unresolved, for even as the state negotiators celebrated provisions that would restore state jurisdiction over tribal lands, tribal leaders believed that they had not abandoned the sovereignty that their courtroom victory had affirmed in 1975. The state law that implemented the provisions of the agreement included the creation of a Maine Indian Tribal-State Commission, whose members from state and tribal governments would work out points of dispute or misunderstanding. The agreement required ratification by the tribes as well as state legislation and federal legislation to authorize the necessary funds.⁶⁸

Though he now possessed the legislation he had awaited for over two years, Muskie remained quite restrained. At a press conference with other members of the Maine Congressional delegation held on March 19, several days after the announced settlement, Muskie was explicitly non-committal except to note, as Chair of the Senate Budget Committee, that the new settlement had a larger price tag than previous ones.⁶⁹ In fact, it was more than double the cost of the settlement Hathaway had

brokered. Such a sharp increase would not sit well with a President who was seeking deep budget cuts to control rising deficits and an inflation rate of 11.3%.⁷⁰ Perhaps, as Tom Tureen later suspected, Muskie was seeking to appear fiscally conservative at a time when he was mulling another presidential bid. Perhaps he was being the cautious legislator that he had been for the previous two years. Regardless, the tribes' principal lawyer felt "betrayed" by Muskie's sudden reticence.⁷¹

As it turned out, Muskie did not have to face these knotty financial questions because Carter appointed him Secretary of State in May. Governor Brennan appointed George Mitchell to complete Muskie's term, and together Mitchell and Cohen shepherded the necessary bills through Congress and to Carter's desk for signing in October and December. When Carter conducted an October signing ceremony, eagle feather quill in hand, Muskie was there, smiling as broadly as any of the other Wabanaki and state negotiators who had helped make the settlement possible.

He had good reason to smile. This moment of resolution vindicated his longstanding insistence on negotiation. And in that insistence, Muskie had revealed a little about himself and his time. Most obviously, he had acted out of principle. As he made clear to the Maine State Legislature on that snowy and uneasy morning in February 1978, all sides—state, tribes, and landowners—would do well to engage in discussions that would avoid the long, costly, and far less certain outcomes of litigation. As Longley would discover, Muskie insisted on this principle to the point of outrage. By presenting himself as an advocate for a process rather than a champion of a particular outcome, Muskie could also remain true to his understanding that as a U.S. Senator, his real work would begin only after state and tribal leaders brought some kind of accord to the Capitol.

But to the dismay of Hathaway in 1978 and Tureen in 1980, when people did approach him with something looking like a resolution, Muskie became surprisingly evasive. Apparently, he did not seem prepared to endorse the outcomes of the negotiations he demanded. Why? For one, pragmatism as well as principles motivated Muskie's thinking. As he noted at various points, a politician had little to gain from direct involvement in a dispute between four thousand Indians and one million non-Indians. More pointedly, as political commentator John Day noted in the spring of 1980, the largely anti-Wabanaki political rhetoric of the previous two years had taken a toll: "You only have to remember what happened to Hathaway [in 1978] to understand why nobody is



Carter signing Indian land dispute bill, October 10, 1980, © Bettmann/Corbis. Standing immediately behind Carter, left to right, are Maine Governor Joseph Brennan, U.S. Secretary of State Edmund Muskie, U.S. Senator George Mitchell, and Maliseet Chief Terrence Polchies. On the far right, behind Chief Polchies, is Reuben “Butch” Phillips, Penobscot member of the negotiating team.

fighting to pick up the Indians’ football and run with it.” Day noted, too, that Muskie, as chair of the Budget Committee, was going to have a tough sell if he was going to convince his colleagues to approve \$80 million for his own state when he had trimmed or eliminated their own legislative projects.⁷²

In a sense, what Day reminds us is that Muskie was a man of his moment. His smile, in a sense, expressed not just his pleasure at the ways that he had remained true to his personal convictions and political calculations but also his relief that he had done so within a complex political landscape. More than Tureen and perhaps more than Hathaway, Muskie positioned himself not just in terms of Maine’s politics but also in terms of an increasingly circumscribed national political landscape. He was acutely aware that the inflation-burdened, post-Vietnam United States did not have the abundant resources it had a decade or two earlier. Whether or not presidential ambitions complicated his thinking, Muskie knew that as the nation’s economic capacity was shrinking, so

too was its political climate shifting. Public opposition was growing against activist government and the taxes that supported it. Conservative whites were launching successful critiques of civil rights and Native sovereignty. How much these factors drove Muskie's unwillingness to speak out for a settlement is difficult to say, but considering the financial focus of his comments in March 1980, national developments must have had some impact on a Senator who knew that he would need to convince the nation's legislators to accept such a settlement.

Muskie was also a man of his time in another sense. Like most non-Indians, he knew very little about Wabanakis or Native Americans generally. To his credit, he had helped craft legislation in the early 1970s to address rampant poverty in Wabanaki and other eastern Native American communities. But concern did not always translate into comprehension. It is noteworthy that of the two known instances where Muskie did lose his composure over the Land Claims, one was when he was confronted over his acquaintance with Wabanakis. To point this out is not to distinguish Muskie. It reminds us, though, that Muskie, even for all he did to remain abreast of developments, did not amass the expertise that made him such an influential player in other political disputes. These limits on Muskie's engagement with the Land Claims, limits of principle and pragmatism but also basic knowledge, encouraged him to avoid the challenges that buffeted Hathaway without forsaking an image of having "right" votes on issues relating to Native Americans. Thus, he had good cause indeed for pleasure and relief in October 1980.

And in his commitment to limited engagement and in his relief over its happy results, Muskie left a legacy far greater than his own involvement in the case would suggest. Muskie pressed for negotiation, but he left Longley and Brennan to articulate most loudly how representatives of the state understood their relationship to the tribes. And the dismissive bombast of the former and the unrepentantly aggressive "Indian fighting" rhetoric of the latter only validated many Mainers' more violent fantasies for resolving a dispute they deeply feared. The power of this rancor and the limits of negotiation would become more apparent only with time. Many of the finer points of the settlement were left in the hands of a newly created Maine Indian Tribal-State Commission. The panel, with representatives from Maine state government as well as the Penobscots, Passamaquoddies, Maliseets, and, after 1991, Mi'kmaq, was charged with working out the limits of tribal sovereignty, particularly in terms of the tribes' regulatory power over fishing and hunting on tribal territory. Underfunded, largely ignored by the state, and

deeply divided internally, the commission was, by the middle 1990s, “at loggerheads.”⁷³ The state task force that reached this conclusion also proposed some modifications that enabled the commission to become a more effective forum for tribal-state relations. Many tribal leaders regret the 1980 settlement, lamenting that the state’s insistence on treating them like municipalities rather than sovereign nations has undermined anything that money or land has provided. There have been notable achievements, not least the revitalization of Wabanaki communities and cultural pride, but it is hard to celebrate these accomplishments without recognizing a quiet bitterness, an abiding ambivalence.⁷⁴

Muskie’s own participation provides an important window on this ambivalence. He was obviously not the leader who spearheaded the reformist struggle known as the Land Claims dispute. That role belongs to the Penobscots and Passamaquoddies, whose story is only now beginning to receive the careful attention it has long deserved.⁷⁵ In his role as a secondary player, though, we see once again how someone of high stature, by taking a lower profile, could also shape a conflict. His calls for negotiation framed the debate—indeed, one might say they helped make it possible—but his silence within that debate also had an impact on the tenor of state leaders’ rhetoric. His ambiguous position reflects the ambiguities of the eventual settlement and its contested legacies.

NOTES

1. “2 Indian Leaders See All State Gaining,” *Bangor Daily News* 10 February 1978, 1, in Muskie Press Clippings, Box 66, Series 14, Edmund S. Muskie Collection, Edmund S. Muskie Archives and Special Collections Library, Bates College, Lewiston, Me. (hereafter abbreviated as Muskie Collection); Nancy Grape, “Longley May Seek Carter Talks on Indians; Proposed Settlement Treats Maine People ‘Shabbily’, Gov. Insists,” *Lewiston Evening Journal*, 10 February 1978, 15; “Wonder, Rage, Meet Claim Plan,” *Portland Press Herald*, 10 February 1978, 1, in Muskie Press Clippings, Box 66, Series 14, Muskie Collection. The author would like to thank the Harvard Center for Community Partnerships at Bates College for financial and research support for this project, and, for their suggestions and assistance, Elaine Ardia, Chris Beam, Emma Brown Berstein, Matt Chamberlin, Maria Girouard, Sandi Groleau, Matt Klinge, Estelle Lavoie, Eben Miller, Micah Pawling, Chris Schiff, David Scobey, Kat Stefko, and Pat Webber. Thanks to Will Ash and the Bates College Imaging and Computing Center for the annotations on the map. Any errors are entirely my own.)
2. John Day, interview with Andrea L’Hommedieu, 18 August 2000, Muskie Oral History Project, MOH 215.
3. Governor James B. Longley to Senator Edmund S. Muskie, Augusta, 23 May 1978, James B. Longley Collection, folder 1, box 118. For the text of the speech that I discuss in

this and the paragraphs below, see Congressional Record-Senate, February 27, 1978, p. 4802.

4. Among the handful of works are Bernard Asbell, *The Senate Nobody Knows* (Garden City, N.Y.: Doubleday, 1978); Edmund S. Muskie, *Journeys* (Garden City, N.Y., Doubleday, 1972); David Nevin, *Muskie of Maine* (New York: Random House, 1972); Timothy P. Maga, "So Goes Maine; So Goes the World: Secretary of State Muskie and the Politics of Reform," *New England Journal of History* 49,3 (1992-1993):41-51; Paul Charles Milazzo, *Unlikely Environmentalists: Congress and Clean Water, 1945-1972* (Lawrence: University Press of Kansas, 2006), 61-86, passim.

5. S. Glenn Starbird, Donald Soctomah, and Donna M. Loring, "A Brief History of Indian Legislative Representatives in the Maine Legislature," in Loring, *In the Shadow of the Eagle: A Tribal Representative in Maine* (Gardiner, Me.: Tilbury House Publishers, 2008), xviii

6. Regarding the Maine Land Claims, the five most important works are Paul Brodeur, *Restitution: The Land Claims of the Mashpee, Passamaquoddy, and Penobscot Indians in New England* (Boston: Northeastern University Press, 1985); Dean J. Kotlowski, "Out of the Woods: The Making of the Maine Indian Claims Settlement Act," *American Indian Culture and Research Journal* 30,4 (2006):63-97; Maria L. Girouard, "The Original Meaning and Intent of the Maine Indian Land Claims: Penobscot Perspectives," M.A. thesis, University of Maine-Orono, 2012; John M. R. Paterson, "The Maine Indian Land Claim Settlement: A Personal Recollection," *Maine History* 46,2 (2012):195-225. Other discussions can be found in Pauleena MacDougall, *The Penobscot Dance of Resistance: Tradition in the History of a People* (Durham: University of New Hampshire Press, 2004), 26-32; Neil Rolde, *Unsettled Past, Unsettled Future: The Story of Maine Indians* (Gardiner, Me.: Tilbury House, 2004), 10-54, 283-319; Colin Woodard, "Unsettled: Triumph and Tragedy in Maine's Indian Country," *Portland Press Herald*, <http://www.pressherald.com/unsettled/> (Accessed 13 October 2015), esp. Chapters 9-18. It has also been summarized in larger surveys of American Indian history such as Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: Norton, 2005), 220-229. Histories of Maine have largely ignored the land claims controversy. Rolde, *Maine: A Narrative History*, 338-342; Richard H. Condon and William David Barry, "The Tides of Change, 1967-1988," in Richard W. Judd, Edwin A. Churchill, and Joel W. Eastman, eds., *Maine: The Pine Tree State from Prehistory to the Present* (Orono: University of Maine Press, 1995), 580-582 are notable exceptions.

7. On the ambiguous place of the decade, see Peter N. Carroll, *It Seemed Like Nothing Happened: The Tragedy and Promise of America in the 1970s* (New York: Holt, Reinhart, and Winston, 1982), ix; Bruce J. Schulman, *The Seventies: The Great Shift in American Culture, Society, and Politics* (New York: The Free Press, 2001), xii.

8. There are few histories of Maine Indians after about 1763, when their political and military fortunes began to decline sharply in the face of Anglo-American colonial expansion. Among the broad surveys are MacDougall, *Penobscot Dance of Resistance*; Harald E. L. Prins, *The Mi'kmaq: Resistance, Accommodation, and Cultural Survival* (Fort Worth, Tx.: Harcourt, Brace College Publishers, 1996); Prins and Bunny McBride, *Asticou's Island Domain: Wabanaki Peoples and Mount Desert Island, 1500-2000*, 2 vols. (Boston: Northeast Regional Ethnography Program, National Park Service, 2007); Rolde, *Unsettled Past, Unsettled Future*.

9. David L. Ghere, "Assimilation, Termination, or Tribal Rejuvenation: Maine Indian Affairs in the 1950s," *Maine Historical Society Quarterly* 24,2 (1984):252.
10. Quoted in Donald Lee Fixico, *Termination and Relocation: Federal Indian Policy, 1945-1960* (Albuquerque: University of New Mexico Press, 1986), 94-95.
11. Governor Muskie to Robert A. Lyon, 10 September 1957, folder 9, box 128, Series 4, Muskie Collection ("help the Indians"); Penobscot Nation to Committee on Welfare, House of Representatives, State of Maine, 26 March 1957, folder 9, box 128, Series 4, Muskie Collection ("free nation"); Ghere, "Maine Indian Affairs," 251-256.
12. Ghere, "Maine Indian Affairs," 258.
13. Brodeur, *Restitution*, 69-71.
14. Brodeur, *Restitution*, 82-83, 93.
15. Governor Kenneth Curtis to Senator James O. Eastland, Augusta, 19 June 1972, folder 15, box 1411, Series 5a, Muskie Collection.
16. The full citation for the case is *Joint Tribal Council of Passamaquoddy Tribe v. Morton*, 388 F. Supp 649 (D. Me. 1975).
17. For a detailed summary of the events in this paragraph, see Brodeur, *Restitution*, 79-97.
18. Quoted in Dean J. Kotlowski, "Alcatraz, Wounded Knee, and Beyond: The Nixon and Ford Administrations Respond to Native American Protest," *Pacific Historical Review* 72,2 (2003):209 ("self-determination"); Muskie to Fr. Tom Sewall, 16 November 1971, folder 11, box 1332, Series 5a, Muskie Collection ("faults").
19. Muskie press statement, 1 April 1971, folder 21, box 1443, Series 5a, Muskie Collection.
20. Mrs. Mary Greene to Muskie, San Jose, California, received 27 March 1971; Muskie to Greene, 20 April 1971, both in folder 9, box 1332, Series 5a, Muskie Collection.
21. Senator Muskie to John L. Sullivan, 7 October 1971, folder 12, box 1332, Series 5a, Muskie Collection.
22. Barney Skolnik to John McEvoy, 27 March 1972, folder 9, box 1446, Series 5a, Muskie Collection.
23. Nevin, *Muskie of Maine*, 26.
24. John Day, "Flaming Out," *Bangor Daily News*, 27 May 1978, in Muskie Press Clippings, box 66, Series 14, Muskie Collection; Asbell, *Senate Nobody Knows*, 210-211; Milazzo, *Unlikely Environmentalists*, 61-86.
25. Nevin, *Muskie of Maine*, 24.
26. Muskie to Rogers B. Morton, Washington, D.C., 7 June 1972, folder 15, box 1411, Series 5a, Muskie Collection.
27. Francis Nicholas, et al., to Longley, 18 January 1977, folder 6, box 117, Longley Collection.
28. Ghere, "Maine Indian Affairs," 257-258; Sheryl Lane, "We Don't Make Baskets Any More [Interview with Madasa Sapiel]," *Salt: Journal of New England Culture* 4,4 (1979): 4-5.
29. Leon Billings to Muskie, 11 August 1978, folder 5, box 2151, Series 5a, Muskie Col-

- lection; Don Larabee to Longley?, 24 May 1978, Susan Longley material (unprocessed), Series 16, Longley papers.
30. For examples, see John Hankins to Muskie, Oxford, Maine, January 1977, folder 5, box 2234, Series 5a, Muskie Collection; Alden W. Cole to Muskie, Machiasport, Maine, 12 March 1977, folder 5, box 2234, Series 5a, Muskie Collection (quote).
31. Girouard, “Original Meaning and Intent,” 49-50; Brodeur, *Restitution*, 107-108.
32. Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, N.J.: Princeton University Press, 2006).
33. Brodeur, *Restitution*, 134.
34. Kotlowski, “Out of the Woods,” 74-81, is particularly critical of Carter’s hands-off role. Wilkinson, *Blood Struggle*, 229-230, instead praises Carter’s willingness to become as involved as he did.
35. Leon Billings interviewed by Don Nicoll, 23 October 2003, MOH 417.
36. Handwritten notes of meeting with Muskie, Tom Turean, Barry Margolin, Stuart Ross, and Archibald Cox, 4 February 1977, folder 6, box 2237, Series 5a, Muskie Collection.
37. Undated audio press release, Muskie Collection, SR 465, Series 17b, Muskie Collection. Considering that President Carter later made land a sine qua non of any negotiations, Muskie probably voiced this frustration before Carter became involved as a new president in early 1977.
38. Undated press release, “Delegation to Introduce Bills on Indian Claim,” folder 1, box 2238, Series 5a, Muskie Collection.
39. Quoted in Brodeur, *Restitution*, 99-100.
40. “Muskie: Negotiate Claims,” *Bangor Daily News*, 15 August 1977, enclosed in Longley to Muskie, 16 August 1977, folder 17, box 23, Series 5c, Muskie Collection (“made to order”); Longley to Muskie, 16 August 1977, folder 17, box 23, Series 5c, Muskie Collection (“contrary to the position”).
41. Muskie, Year in Review, Special to the *Lewiston Sun*, 17 January 1977 [sic], folder 1, box 2165, Series 5a, Muskie Collection.
42. Congressional Record-Senate, February 27, 1978, p. 4802.
43. “Muskie Asks Mainers to Offer Indian Plan,” *Bangor Daily News*, 31 March 1978, in Muskie press clippings, box 66, Series 14, Muskie Collection.
44. Jimmy Carter, *The Public Papers of the Presidents of the United States: Jimmy Carter (1978)*, Book 1 (Washington, D.C.: Government Printing Office, 1979), 351.
45. Nancy Grape, “Longley, Brennan Take Indian Settlement Gripes to W’House,” *Lewiston Evening Journal* 15 February 1978, p. 1; Nancy Grape, “Research Shows State Can Win a Court Case, Att’y Gen. Insists,” *Lewiston Evening Journal* 20 February 1978, p. 1 (“prevail”); Anonymous to Jim Case, 12 April 1978, folder 1, box 18, Series 5c, Muskie Collection (“confiscatory”); “Muskie on Indian Claims,” *Lewiston Evening Journal*, 4 April 1978, p. 4; Longley to Muskie, 18 May 1978, folder 2, box 2151, Series 5a, Muskie Collection; Michael Hastings to William Cohen, 16 May 1978, Folder 5, Box 6, Series 3.3.13.2, William S. Cohen Papers (MS 106), Special Collections, Raymond H. Fogler Library, University of Maine, Orono, Maine (“force continued negotiations”); Estelle Lavoie, interview with author, Portland, Maine, 23 August 2010.

46. Don Larrabee, Report on a telephone conversation with Senator Muskie, 1 August 1978, Susan Longley material (unprocessed), Series 16, Longley papers.
47. Don Larrabee, Report on a telephone conversation with Senator Muskie, 9 May 1978, Susan Longley material (unprocessed), Series 16, Longley papers.
48. Clyde MacDonald to Jim Case and Bob Rose, 11 August 1978, folder 2, box 2151, Series 5a, Muskie Collection (emphasis in original).
49. Clyde MacDonald to Jim Case and Bob Rose, 11 August 1978, folder 2, box 2151, Series 5a, Muskie Collection; Leon Billings to Muskie, 11 August 1978, folder 5, box 2151, Series 5a, Muskie Collection (quotes).
50. One state legislator who opposed the eventual settlement still respected Hathaway for his willingness to support the Penobscots and Passamaquoddies regardless of the political consequences. Ed Kelleher interviewed by Andrea L'Hommedieu, 23 February 2004, Muskie Oral History Project, MOH 430.
51. John S. Day, "Bill filed to absolve state in Indian suit: Muskie thinks tribunal effort futile
Bangor Daily News, 24 May 1978, box 66, Series 14, Muskie Collection.
52. "Cohen vs. Hathaway: Who Speaks for Maine?," undated, Folder 3, Box 6, Series 3.3.13.2, William S. Cohen Papers (MS 106), Special Collections, Raymond H. Fogler Library, University of Maine, Orono, Maine.
53. At least one political reporter recalled that "they were a little bit at odds over the Maine Indian Land Claim," see John Day interviewed by Andrea L'Hommedieu, 18 August 2000, Muskie Oral History Project, MOH 215.
54. *Lewiston Evening Journal*, 8 November 1978, pp. 1, 14.
55. John Day, "Politicians Are Wary of Indian Settlement," *Bangor Daily News*, 15-16 March 1980, Muskie clippings files, box 66, Series 14, Muskie Collection.
56. Kotlowski, "Out of the Woods," 78.
57. Edmund S. Muskie [ME], A Tribute to Senator James Abourezk, 37693, October 14, 1978, Online Legislative Record of Senator Edmund S. Muskie, <http://abacus.bates.edu/Library/aboutladd/departments/special/ajcr/1978/Tributes%20Asstd.shtml#37591-78-T>, (Accessed 20 July 2012). Both bills were passed by voice vote in the Senate. Muskie was almost certainly in both large majorities. *Journal of the Senate of the United States of America, Second Session of the Ninety-Fifth Congress* (Washington, D.C.: Government Printing Office, 1978), 866, 949.
58. Muskie, Tribute to Abourezk, <http://abacus.bates.edu/Library/aboutladd/departments/special/ajcr/1978/Tributes%20Asstd.shtml#37591-78-T>, (Accessed 20 July 2012).
59. Asbell, *Senate Nobody Knows*, 83.
60. Asbell, *Senate Nobody Knows*, 210.
61. Cynthia Murray Beliveau, interviewed by Andrea L'Hommedieu, 15 September 2000, Muskie Oral History Project, MOH 231. Beliveau offers no specific date for her dinner debate with Muskie, but it was some time after his October 1978 visit to Rome, Italy, and before Joseph Brennan became governor in January 1979.
62. Peter Slocum, "Tribes Ask More Time: Land Settlement Deadline Won't Be Met," *Kennebec Journal*, 7 March 1979, folder 3, box 2151, Series 5a, Muskie Collection;

Tureen to Muskie, 20 July 1979, folder 3, box 2151, Series 5a, Muskie Collection. For a fuller discussion see Brodeur, *Restitution*, 111-115.

63. David Bright, "Indians Deny They Seek a 'Nation within a Nation,'" *Bangor Daily News*, 17 May 1978, folder 2, box 2151, Series 5a, Muskie Collection; Peter Jackson, "Hopes High for Pact OK, Says Penobscots' Leader," *Portland Evening Express*, 23 October 1978, folder 3, box 2151, Series 5a, Muskie Collection.

64. Estelle Lavoie to Jim Case, 5 September 1979, folder 10, box 2150, Series 5a, Muskie Collection.

65. Muskie to Lorraine Hanson, 17 January 1979, folder 17, box 2301, Series 5a, Muskie Collection.

66. Lavoie to Case, 5 September 1979, folder 10, box 2150, Series 5a, Muskie Collection.

67. Muskie to Tureen, 24 July 1979, folder 3, box 2151, Series 5a, Muskie Collection.

68. The state law (30 MRSA, Sections 6201-6212) is known as "An Act to Implement the Maine Indian Claims Settlement," and its federal counterpart is the "(Federal) Maine Indian Claims Settlement Act" (25 USC Sections 1721-1735). In 1991 Congress passed the Aroostook Band of Micmacs Settlement Act, which recognized Mi'kmaq's tribal status in Maine and provided \$900,000 to purchase land in Maine. Harald E. L. Prins, *The Mi'kmaq: Resistance, Accommodation, and Cultural Survival* (Fort Worth, Tex.: Harcourt Brace College Publishers, 1996), 213-214; Clayton Jones, "Biggest Indian Victory Since the Little Big Horn," *Christian Science Monitor*, 17 April 1980, 1. On some of the disparate interpretations, especially regarding state and tribal authority, see Girouard, "Original Meaning and Intent," 61-65; Paterson, "Maine Indian Land Claim Settlement," 215-219.

69. Press conference, 19 March 1980, SC1129, Series 17a, Muskie Collection.

70. Schulman, *The Seventies*, 134.

71. Brodeur, *Restitution*, 127.

72. John Day, "Politicians Are Wary of Indian Settlement," *Bangor Daily News*, 15-16 March 1980, Muskie clippings files, box 66, Series 14, Muskie Collection.

73. Maine Indian Tribal-State Commission, Task Force on Tribal-State Relations, "At Loggerheads: The State of Maine and the Wabanaki," Hallowell, Me., 1997.

74. Jeff Tuttle, "Legacy of the Land Claims: Twenty-five Years after the Maine Indian Claims Settlement Act, Has the Agreement Delivered for Maine and Its Tribes?" *Bangor Daily News* 8 October 2005, p. 1; Girouard, "Original Meaning and Intent," 69-73; Paterson, "Maine Indian Land Claim Settlement," 222; Rolde, *Unsettled Past, Unsettled Future*, 302-336.

75. Girouard, "Original Meaning and Intent," is the first effort to plumb Wabanaki written records as well as oral history.