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# THE POLITICAL ECONOMY OF A NEIGHBORHOOD SPAT

*By Sandra Faiman-Silva*

The dramas of daily life are often substance for true anthropological inquiry because they present us with examples of social conflict and its resolution, thereby illuminating perennial questions faced by members of a society. What can a dispute between two neighbors in a not-so-remote village of Cape Cod tell us that might be of interest to students of dispute resolution, resource use, and even political economy? The dispute examined here appears to have far-reaching implications not only because of the disputants themselves, representatives of two classes of American citizenry; but also because their conflict and the process used to achieve resolution address important environmental and ecological dilemmas faced by Americans today.

The setting for this drama is Cape Cod's Waquoit Peninsula and the Seapit/Childs River, which separates Waquoit from Washburn's Island. Waquoit Peninsula is a residential community of about 100 homes situated on spacious lots along the Seapit and Childs River, Waquoit Bay, and adjacent waterways. The peninsula is typically "Cape Cod" architecturally and ecologically. Many homes are sided with weathered cedar shingles; scrub pine and oak along with field grasses mark the landscape. During the summer, Waquoit Bay is dotted with sailboats moored in its protected waters. Washburn's Island, accessible only by boat, separates Waquoit from the open ocean of Vineyard Sound. Today the uninhabited island is managed by the Massachusetts Department of Environmental Management as part

of the South Cape Beach recreational area. Evidence of former uses as a private residence of the Washburn family and World War II occupation by United States military personnel for amphibious training are evident. However, most of Washburn's Island is overgrown with scrub pine, marsh grasses and surrounded by sandy beaches. The island is an attractive destination for weekend boaters to spend the day picnicking or even overnight camping.

Cape Cod itself, including the Waquoit Peninsula, has experienced phenomenal growth during the past one and one-half decades. During the years 1970-1980, Barnstable County, which encompasses all of Cape Cod, grew a phenomenal 53%, while the rest of the Commonwealth of Massachusetts grew only .8%. Much of the immigrant population is at or near retirement age. Between 1970-1980 the Cape Cod population aged sixty years and older grew 83.4%. The largest rate of increase has actually been in the 65-70 age group, mainly those who have chosen Cape Cod as a retirement home.

The Cape Cod region also attracts a significant number of seasonal tourists. The population of Falmouth, of which Waquoit is a part, triples during the summer months, from a winter population of about 25,000 to about 75,000. Tourists include sporadic week-end visitors as well as families who spend summers in spacious Cape residences and winters in the Boston area.

Ocean-related subsistence activities long predated Cape Cod's tourism industry, and were in evidence even during aboriginal occupations by pre-

Colonial Native Americans living along coastal shores and subsisting in part on fish and shellfish. Fishing continues to be a significant feature of Cape Cod, practiced by both commercial fishermen and pleasure fishing craft.

The region of direct interest to this investigation, the Seapit River linking Waquoit Bay to Vineyard Sound, has been a site of organized grant shellfishing since at least 1877. Shellfish grants are a kind of lease of the bottom on which a grantee can cultivate shellfish, in essence farming the sea. Grants prior to the turn of the century permitted the holder to "plant, grow and dig" shellfish. At the turn of the century oysters were primarily grown along the Seapit waterway, known by the trade name "Sea Pete," which was an especially successful species. Early shellfishermen found the Seapit River to be ideally suited to shellfishing, in part due to its brackish water, which seemed to promote fast growth of shellfish.

Oysters and other shellfish were cultivated by "catching spat" or oyster seed on shell midden (old oyster shells) intentionally placed on sand bars to provide a bed for spawning. Shells were later collected by grantees and removed to the Seapit grant sites, where they were broadcast over sections of the grant to be harvested later.

Public uses of shores, estuaries, rivers and the sea itself are governed by complex and elaborate maritime laws and state statutes. The Commonwealth of Massachusetts was the first region in the nascent colonial New World to articulate and codify rules governing public access to coastal regions and waterways. Using the so-called Public

Trust Doctrine, rooted in ancient Roman Law, the colonial Ordinance of 1641 guaranteed public access to "great ponds." Later in 1647 private ownership was extended to the low water mark, the lowest exposed point of the tidal flow. The public was still given rights to so-called intertidal zones, which is the tidewater region between high and low water marks, to fish, fowl, and navigate. The waterways themselves, however, according to the Public Trust Doctrine, remained perennially accessible to the public.

In 1983 the Commonwealth of Massachusetts articulated and codified the Public Trust Doctrine with respect to tidelands, under Chapter 91 of the General Laws of the Commonwealth. Chapter 91 stipulated that the areas between the high and low water marks, called private tidelands, were owned by the upland owner. Lands seaward of the extreme low water marks were owned by the Commonwealth of Massachusetts and called Commonwealth tidelands. The public still had access to the private and Commonwealth Tidelands, by virtue of the Public Trust Doctrine. Chapter 91 was designed to protect that access and insure that subsequent coastal building "served a proper public interest" and promoted the public's benefit (Massachusetts Coastal Zone Mgt., MCZM Review pamphlet, 1983-1985, Executive Office of Economic Affairs, Boston).

Rights to shellfishing by grant are governed by local communities under State statute (Chapter 130, Sec. 57). Applications for grants are reviewed by local parties, in the case of Falmouth, by the Board of Selectmen in consultation with experts if necessary, to determine the feasibility of such grants. Grant leases are for twenty-five years, renewable for fifteen years thereafter, but the law implies that monopoly of the sea bottom is not intended.

Today a clam fisherman, Mr. K, one of the disputants in our drama, operates a Seapit River shellfish grant, where he has lived and fished since 1956. He began shellfishing at his site on the Seapit River in 1956, after the death of the former owner, Gordon Burgess, who had acquired grant rights

from his own father in 1925. Mr. K uses essentially the same technology as that employed since the turn of the century by clam fishermen to seed and harvest clams on his grant of about 22,000 acres. The grant entitles him to seed and harvest shellfish on the bottom. The surface water, however, remains free to responsible public access by boaters. Individuals trespassing on the grant can be prosecuted and the grant-holder is protected against construction on or destruction of the site.

Mr. K is an "old salt," a veritable institution on the Waquoit Peninsula. His small, family-owned business employs from two to five persons, and at the age of seventy he still works alongside men fifty years younger performing rigorous physical labor digging shellfish and transporting sixty-pound bails. Mr. K harvests shellfish for export off the Cape, selling to distributors who transport much of his product to New Bedford, sixty miles away. Tractor trailers arrive at his dock several times per week to pick up "product" for transport to regional markets.

Waquoit Peninsula is today a moderately densely-populated residential community, and Seapit Road is the single major access route in and out of the peninsula. The peninsula also houses the Waquoit Yacht Club, established in the 1920s; Edward's Boatyard on the Childs River, where pleasure and commercial boats are serviced, docked, and maintained; and a seasonally busy town boat landing on Seapit Road used by dozens of pleasure boaters to gain access to Waquoit Bay.

The problem of multiple and/or conflicting uses of coastal and deep-sea areas has become a prominent concern of marine policy research, particularly in the age of oil supertankers, off-shore drilling, and heightened environmental awareness. The opening of George's Bank and the California coast to oil exploration aroused strong public criticism, since such uses pose serious potential threats to fish habitats and recreational uses. Conflict has also arisen in other areas of marine resource use. The use of coastal regions for sewage disposal, both on- and off-shore, seriously threatens marine species and over-all health of coastal waters.

Even the placement of aquaculture projects, an environmentally benign yet potentially cost-effective and job-generating economic strategy, has also been met with objection by citizens who were denied access to coastal resources as a result.

As previously noted, fishing has been an integral component of the Cape Cod regional economy since the 17th century, and continues to be an enduring aspect of local Cape Cod life into the 1980s. K's business represents an activity that has been in evidence since early European settlers entered the region. His shellfish business represents the entrepreneurial self-sufficiency long admired by students of American business enterprise. K has built up his own business today to the point where it provides a comfortable income for himself and his family, and supports a small number of employees. K, although not wealthy, has a valuable family asset and a solvent business.

K's shellfish operation provides a useful model for contemporary small-scale coastal resource use. Scientists and environmentalists warn that ours is a delicate ecosystem subject to abuse and exhaustion. Shellfishing as conducted by grant fishermen, such as K, exemplifies a method of resource management and use that, when properly conducted, is highly benign. Grant shellfishing creates a balance between species productivity and harvest potential, maximizes efficient use of space, reduces the need for more costly methods of random shellfishing, and preserves the physical environment fully intact. Furthermore, grant shellfishing uses little in the way of large-scale, expensive equipment, save small power boats and trucks to access and transport product. Shellfishing is labor-intensive, and the localized, circumscribed scope of the grant on specific acreage reduces the need to travel great distances to shellfish beds.

K's business is appropriately scaled to accommodate to the human component of the workplace. He has a reputation for hiring unemployable and marginal workers who otherwise might be unemployed. The production strategy employed by K in his family-owned business may be characterized as "appro-

priate technology" in which the scale of production is environmentally sensitive and technologically conservative.

Wherein, then, lies the dispute which has grown between Mr. K, shellfisherman, and his next door neighbor, Mr. R, whose riverfront property adjoins K's along Seapit Road? The dispute is one which illuminates conflicts inherent in this region of multiple resource uses, commercial/subsistence fishing on the one hand, and recreational/tourism/retirement on the other.

The viability of the Public Trust Doctrine, previously discussed, is not at issue in the dispute between Mr. K and Mr. R. Shellfish grants, as such, do not deny access to waterways by the public, since the grant is only to the bottom. Waterways, themselves, including the Seapit River, are open waters traveled by numerous small craft daily, particularly during the summer months. In fact, traveling along the waterway along Mr. K's shellfish grant one finds little to identify the grant itself, save for a couple of small signs along the Waquoit Bay and Washburn Island coasts to remind boaters that mooring is prohibited.

The nature of the dispute between Mr. K and his neighbor lies ironically in land-based conflicts, and belies the tensions between subsistence/commercial producers and their leisure class neighbors, increasingly representing a monied class of retirees and near-retirees of some financial substance. K's neighbors, the R's, are newcomers to the area, having purchased a large tract of river-front property about fifteen years previously with the intention of constructing a spacious waterfront home for permanent residence and eventual retirement. What they found was a small but thriving shellfish business next door. Although K's shellfish business is modest in scale, work-related activity is evident as product is shipped along the sole access road to and from the peninsula in not unobtrusive tractor trailer trucks two or more times per day. The K home itself hides much of the activity which occurs in the rear sheds along the Seapit River. Large, well-tended vegetable and flower gardens occupy much of the large front yard, and the Seapit River can be seen

meandering to the rear of the K home, a lovely typically Cape Cod vista.

The Rs sought to rally friends and neighbors to urge the town to reduce business-related activities on the Waquoit Peninsula. As a practicing maritime lawyer (and, in fact, attorney for the Massachusetts Lobstermen's Assn.), Mr. R. pursued various avenues of possible litigation to resolve his dispute with his neighbor. What ensued over the course of a year was a process typical of the American judicial system based upon the premise of free and open access to litigation in civil society. R used both the local process of grant assignment through the Falmouth Board of Selectmen and the court litigation process in his attempt to close K's shellfish business. Using his expertise as an attorney and familiarity with maritime law, Mr. R learned of two weaknesses in K's grant entitlement and sought to both (a) obtain the shellfish grant on behalf of himself and his neighbors, and (b) challenge K's right to a long-standing zoning variance.

The shellfish license held by Mr. K was up for renewal in 1986, and due to the vague language of statutes governing grant renewals, it was unclear whether Mr. K could indeed reapply for the same grant. Mr. R, aware of the vagueness of the legal documentation, challenged K's renewal of his shellfish lease, and he, himself, along with several of his neighbors on the peninsula, applied for the shellfish grant themselves. Mr. K's daughter, a partner in the family shellfish business, also applied for the grant, recognizing that her father's advancing age would probably preclude him from successfully managing the business much longer.

The Ks won the first round of legal disputes when the Town of Falmouth decided to award the shellfish grant to K's daughter in March, 1986. At the Town Selectmen's hearing, class factionalism inherent in this dispute was evident. Rallying behind K were at least two dozen fishermen. An interesting alliance of fishermen and academic experts also took shape, when several experts from Woods Hole Oceanographic Institute nearby, testified on behalf of K's shellfishing and mana-

gerial skills.

Testimonials to K's good work were abundant. Some noted how K had always purchased "product" from local fishermen when other markets were unavailable during the slow winter season. Others pointed out that K hired unemployed fishermen year round and ensured that work was available for them. Oceanographic experts testified that K was extremely well-informed in the shellfish seeding and procreation business, maintained an environmentally sound enterprise, used labor-intensive techniques, and always treated the grant in an environmentally-sensitive manner.

K, it was also noted, was perhaps the best informed local source of information concerning shellfish seeding techniques and processing of shellfish, such that he was viewed by members of the local scientific community as an expert in his field. One final spectator concluded that rather than being an eyesore, K's shellfish business, his sheds, boats, and outbuildings, "simply add to the charm of the area." The sentiment of the audience was clearly in favor of K.

A second area of dispute arose when Mr. R pointed out to the local building commissioner that the K property had never been given a zoning variance as a commercial enterprise operating in a residential zone. K had never applied for a variance because he assumed that his business was protected as a "pre-existing, non-conforming use of the property," having been in operation prior to current zoning regulations. Subsequent to being served a "cease and desist" order by the building commissioner as a follow-up to R's complaint, the Falmouth Zoning Board of Appeals voted that K was indeed entitled to operate as a "pre-existing non-conforming user of the property" and his right to operate was reinstated. The R faction, however, decided to exercise its right to appeal the zoning decision to the Massachusetts District Court.

This second aspect of the current dispute, the issue of zoning variances, has proven to be more thorny and costly to both parties. R, however, has a distinct financial advantage, since, as

his own counsel, litigation costs him virtually nothing. K noted that his antagonist, R, was using a tactic of litigating him into bankruptcy. K, however, did not intend to quit, since his very livelihood and that of his daughter were at stake. In March, 1987, the Massachusetts District Court upheld the town's zoning variance on the property, thus affirming the Ks' title to the grant.

Conflict resolution processes utilized in this dispute exemplify standard procedures for such dispute resolution within our contemporary western legal system, where complex social institutions including courts, experts, statute and legislation govern the dispute resolution process. Unlike situations of dispute in traditionally-oriented societies, conflict resolution under contemporary western models entails a formalized, depersonalized method of addressing the dispute process.

Dispute resolution in traditional settings typically takes two forms, depending upon the nature of the persons involved. Where the dispute involves individuals closely or intimately associated who will most likely meet in subsequent close face-to-face contact, such as kin or close neighbors, disputes are typically resolved through informal channels, such as a village mediator or close kinsman. When the help of an outside mediator is enlisted, the mediation process typically entails elaborate negotiation by disputing parties over

several sessions. Resolutions so mediated are viewed as binding by both parties, however, and life resumes as previously.

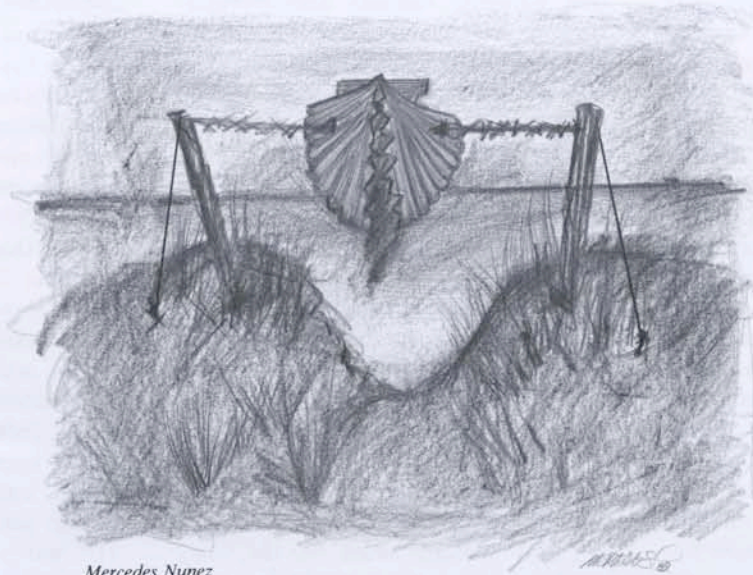
Disputes involving more impersonal disputants, such as state bureaucrats, distant acquaintances, or county agents, are typically resolved through formal channels of courts, formal litigation and trial, where these institutions are available. These types of disputes and the institutional process of resolution are viewed by members of traditionally oriented societies as appropriate only for the more impersonal dispute situations, however.

The present dispute reveals that resolution in contemporary American society entails formal procedures using highly institutionalized, impersonal mechanisms of court litigation, hearing and technicality, regardless of the relationship between disputants. The process of dispute resolution within the western model of jurisprudence assumes that informally negotiated settlement is impossible. In fact, escalation of the dispute to the impersonal level of courts and hearings is perceived as the proper method of resolution.

The dispute in this case grew out of radically different assumptions regarding resource use in a local community characterized by several crucial aspects: 1. a long-standing fishing tradition; 2. rapid influx of retirees and increased demands by the recreational sector; and, 3. the class antagonisms of the

two disputing parties as expressed by their radically different views regarding appropriate uses of the immediate environment.

In conclusion, disputes of this kind cannot easily be reconciled, and may even be exacerbated by the absence of informal mechanisms of dispute resolution in American society. In this instance, however, the garnering of support through personal networks and the expression of personal opinions at public hearings facilitated the voicing of community sentiment which otherwise might not have been heard in formal litigation processes. Open public hearings were crucial to permit the expression of public opinion which supported the right of the subsistence/commercial fisherman to pursue his livelihood over the rights of a privileged class of newcomers desiring access to recreational space. Mechanisms of dispute resolution which exclude informal, face-to-face interactions, in fact, promote legal bias which favors those with the resources to pay, rather than facilitating the open, public expression of opinion. Public sentiment expressed in this episode revealed the public's willingness to accommodate to environmentally sensitive, mixed commercial/recreational uses of coastal regions, a sentiment which may have been obscured if the dispute had remained on a purely formal level. ■



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