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The Penobscot Nation, the State of Maine, and the River Between Them

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THE PENOBSCOT NATION, THE STATE OF MAINE, AND THE RIVER BETWEEN THEM

by

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ABSTRACT

Since the arrival of Europeans in North America, Native Americans have been enticed into deceptive treaties and agreements that dispossessed them of their land, significantly alter their autonomy, and infringed on their sovereign rights. Sticking with this tradition, the State of Maine, today, is apprehensive to recognize Wabanaki sovereign rights, as guaranteed in federal Indian law. The rights and benefits that tribes have in other states, such as federal legislation regarding tribal healthcare, are withheld from Wabanaki Nations. This trepidation leaves Maine's Native peoples vulnerable to political exploitation and environmental degradation. I endeavor to understand how Maine's Land Claims Settlement acts limit the Penobscot Nation's authority to protect their land and resources and how this has affected the lives of tribal members.

The Penobscot River's water quality is detrimentally impacted by industries along the river - notably by landfill leachate and industrial effluent. Discharge into navigable waters is regulated by the permitting authority, the Maine Pollution Discharge and Elimination System (MEPDES) - an authority delegated to the State by the Environmental Protection Agency (EPA). The State is thus able to enforce water quality standards (WQS) of its choosing, as long as they uphold federal minimum quality standards. This authority, however, is moot as the State's WQS do not protect Penobscot sustenance fishing rights, rights that are legislated in the Maine Implementing Act (MIA) and Maine Indian Claims Settlement Act (MICSA). This has engendered consumption advisories, preventing the safe consumption of fish by Penobscot Nation tribal members. This abrogation of traditional rights represents a lack of consideration for tribal rights in Maine, as well as the prevailing interests of industry and consumerism.

This thesis addresses the potential avenues available to Wabanaki Nations such as the Penobscot Nation to restore their environmental authority, take advantage of future federal legislation, as well as the importance of Indigenous voices in public environmental policy.

ACKNOWLEDGEMENTS

Due to the developed nature of this topic - temporally and disciplinarily - most of this research was conducted through literature review, testimonials, and other primary sources like court cases and state and federal legislation. Sunlight Media Collective, and Wabanaki Alliance provided a plethora of information regarding the perspectives of Wabanaki people. These sites were invaluable in ascertaining the perspectives of Wabanaki in today's Tribal-State discourse. Additionally, I would like to thank Darren Ranco, John Bear Mitchell, the Penobscot Nation, and the Wabanaki as a whole for giving me a glimpse into their ongoing struggle. Their perseverance and fortitude are unmatched, their dedication to their Tribal rights unparalleled, and their spirit unextinguishable.

A notable portion of sources came from the thesis advisor, Dr. Darren Ranco, whose professional access provided me "insider access", i.e., zoom links to the legislature meetings regarding LD 1626 and accompanying bills. Ranco's work with Fleder in Fleder & Ranco (2004) is the basis of my argument for environmental autonomy, e.g., the pathways the Penobscot Nation and other tribal nations can use to express their environmental sovereignty and help protect their tribal health and environment. He also co-authored the Wabanaki Exposure Scenario which quantified the factors comprising a subsistence. His dedication to our weekly meetings, professional expertise, patience as I grasped this complex topic, and sense of humor made writing this thesis formative and enjoyable.

Moreover, my interview with John Bear Mitchell proved invaluable in understanding how the settlement acts have personally affected people. His pathos

invoked a deeper understanding and feeling for the experiences of Native Americans in the State of Maine. Discussions with him transcended the mundane and brought me closer to Gluskabe.

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METHODOLOGY

Research methods in this thesis entail a broad literature review and conventional qualitative content analysis. Sources were gathered using keywords and Boolean operators to compose a principal body of literature. Search engines not specific to a discipline were used in order to cover the breadth of relevant topics. Google Scholar and Fogler Library's content search were used to find published articles discussing pertinent issues and ideas. After reviewing contextual sources given by the thesis advisor, key terms and themes were identified to code information and data. Terms included: "environmental (in)justice," "Indigenous," "Maine," "land claims," "treatment as a state," "Penobscot River," "Clean Water Act," and others. Tribal environmentalism in Maine touches on multiple disciplines. Sources were organized arbitrarily by theme to form a cross-disciplinary approach to the topic of tribal-State environmental discourse.

These discursive categories include: a) Historical & contextual - academic sources that provided historical background information and analyses of tribal-State discourse in Maine. This literature was valuable in understanding the evolution of tribal-State relations in Maine, specifically as it relates to sovereignty and tribal governance. b) State action - sources such as the Settlement Acts, task force deliberations. References in this category illuminated the State of Maine's disposition to Wabanaki Tribal Nations; they demonstrate the influence of power in decision-making, especially when it affects tribal autonomy. c) Environmental policy, implementation, and tribal WQS. d) Court decisions, litigation, and Congressional mandates. These resources help to characterize relationships between the US federal government and Wabanaki tribal governments, as well as provide a rough chronology of court decisions and amendments to law. Finally, a very broad

category relating the Wabanaki perspective and voice was compiled. These sources included testimonials and personal publications, Indigenous scholarly work, a plethora of material from Sunlight Media Collective and Wabanaki Alliance, as well as sources gathered from the Penobscot Nation website.

The overall goal of this thesis has been to emphasize Wabanaki and Indigenous voices in multiple contexts. Researching has elucidated a significant sense of understanding *what* problems there are but not necessarily how to address them. This provides a space where Indigenous perspectives can offer valuable insights. McGreavy et al. (2021) present examples of integrating Indigenous voice through iterative dialogue and centering Indigenous and Wabanaki world views. A notable case of Indigenous knowledge as an asset is in the black ash task force which addressed threats posed by the Emerald Ash Borer beetle (*Agrilus planipennis*), hereby abbreviated as EAB. A multi-interest group was formed with the Maine Indian Basketmaker Alliance (MIBA), the University of Maine, and the Maine Forest Service to discuss the potential impacts of the invasive Emerald Ash Borer's *Agrilus Planipennis*) impacts on black ash tree (*Fraxinus Nigra*). McGreavy and others note the integral participation of tribal ambassadors from New York and Michigan, states that were at the forefront of the EAB's invasion. These representatives were able to share the impacts of the EAB on cultural practices as well as inform response strategies, like the collection of ash seeds. The outcome of these discussions was an "emergency rule" to ban bringing out of state firewood across Maine borders. This is an accurate example of how including Indigenous voices and interests, even centering Indigenous interests, can have mutual benefits for the State and tribal interests.

INTRODUCTION

Researching and writing this thesis has elucidated a number of inequities and wrong-doings the Wabanaki Nations continue to experience in Maine. Maine's history of paper industry and riverine economy has directly contributed to the degradation of water quality on the Penobscot River, the homeland and tribal members of the Penobscot Nation. Through legal ambiguity and the support of industrial corporations, the State of Maine has maintained inordinate control over tribal activities and knowingly altered the Penobscot Nation's cultural and physical relationship with the Penobscot River. The State of Maine's supporters in *Penobscot v. Mills* - the case determining whether Penobscot River waters are part of Penobscot territories - includes dischargers such as Lincoln Paper and Tissue LLC, True Textiles, Inc., Kruger Energy Inc., etc. Evidently, the interests of the State are enmeshed with the success of industrial corporations that have contributed to the degradation of the Penobscot River thus far.

Nickie Sekera and Mali Obomsawin discuss what environmental justice for Wabanaki Nations would look like with input from Jesse Graham from Maine People's alliance and my advisor, Darren Ranco, a professor of anthropology at UMaine, the Chair of Native American Programs. Most notably, the Penobscot Nation and the other Wabanaki tribal governments are owed recognition of their sovereignty as independent nations and as the first inhabitants of the land to someday be called Maine. Second, water insecurity disproportionately affects racialized and poor communities in the State. Science is beginning to document the ubiquity of PFAS, or per- and fluoroalkyl substances (or "forever chemicals") in Maine waters. This includes ground water, which around one half of the State of Maine's population relies on as drinking water. Moreover,

the Passamaquoddy Nation at Sipayik in Northeastern Maine are also fighting for clean drinking water. To address these drinking water concerns, the State of Maine Legislature is considering LD 906 "An Act to Provide Passamaquoddy tribal Members Access to Clean Drinking Water" (which eventually passed) as well as LD 1626 - a bill applying more generally to the tribal governments in Maine (which was not signed into law). My research addresses the impacts the 1980 Maine Indian Claims Settlement Act (MICSA) and accompanying Maine Implementing Act (MIA) have had on the tribal nations in Maine, and more specifically how the Penobscot Nation can assume more regulatory authority over their land and natural resources.

The possibility for the Penobscot Nation to re-assume their historic responsibility as guardians and stewards of the Penobscot River is hinged on the passing of LD 1626 "An Act Implement Recommendations of the Task Force on Changes to the Maine Indian Claims and Settlement Implementing Act." This act would give the Wabanaki Nations of Maine the same access to federal benefits as the other 570 tribal governments in the United States, "no more, no less," (Wabanaki Alliance).

Herein, I delineate the process and provisions available to the Penobscot Nation that will allow them to express their sovereignty fully and effectively. I begin with the historical context of tribal-State relations in Maine and proceed to discuss the context surrounding the infancy of the settlement acts. Additionally, I present a cultural story from the Penobscot Nation that accurately symbolizes their on-going struggle over water-rights, sovereignty, and their relationship to the Penobscot River.

After these discussions, I present the relevant technicalities and controversies surrounding Indigenous environmental sovereignty in Maine, including how LD 1626

can help to reverse the 40 year-long suppression of Penobscot rights and traditions in Maine and how the bill will bolster the Penobscot Nation's capacity to uphold its environmental health and fight pollution. Subsequently, I draw on previously conducted meta-analysis research demonstrating the prevalence of water contamination in Indigenous communities throughout North America. This data substantiates the qualitative facts centered on Maine by presenting the ubiquity of environmental injustice towards Native Americans in North America as a whole.

HISTORICAL CONTEXT: MAINE'S PERSPECTIVE AND RHETORIC

Since the State of Maine's secession from the Commonwealth of Massachusetts in 1820, it has been bound to the agreements between the Commonwealth and Wabanaki Nations, as stated in section 5 of the Articles of Separation from the Maine State constitution. This obligation to Wabanaki tribal governments is contentious. The State's discourse with tribal nations indicates it wanting to maintain power over Wabanaki governments but wanting to absolve itself of all obligations to the Tribes. MICSA states "Since 1820, the State of Maine has provided special services to the Indians residing within its borders" and this "requir[ed] substantial expenditures by the State of Maine." The State would therefore like to abrogate its treaty obligations to the Tribes, while subjecting them to State influence over all tribal activity not considered "internal tribal matters," a term that is used loosely in MICSA and elsewhere, and lacks a concrete definition.

Federal Indian Law & the Doctrine of Discovery

In essence, federal Indian law is the collection of administrative processes, treaties, executive orders, and pertinent court cases that "define and exemplify the unique legal and political status" of federally recognized Indian and Alaskan Native Tribes and their relationship with the federal government (Native American Rights Fund). As Rodgers would attest in his 2004 article, federal Indian law in the United States is complex and heterogeneous, a compilation of precedent setting court decisions and recognized treaties between sovereign Indian nations and the United States. Rodgers characterizes the complexity of this body of law as "arcane, difficult, and hard to crack" (Rodgers 2004). Moreover, he indicates that Indian law is sometimes overlooked or

disregarded as its “unwelcome entanglements” often pose significant challenge and processual arduity.

Relationships between settler entities and Indigenous peoples remains turbulent to this day. At the time of European colonization, there was little formal law regarding the rights of Indigenous peoples outside of the stipulations set in the Doctrine and ostensibly coinciding rights of conquest. As Reid points out in her analysis of Canadian law, Aboriginal law is one of the “most uncertain and contentious bod[ies] of law” in North America. Her reasoning is that at the time of British conquest and sovereignty, there were “no legal principles relating to the rights of Indigenous peoples,” thus modern territorial disputes are often considered in the light of the reigning law of the time - the Doctrine (Reid 2010). Miller would concur with Reid’s position, specifically when considering the intertemporal principle of international law. According to this principle, modern territories and land claims should be judged according to the reigning force of law at the time of settlement. This is fortunate for any entity wishing to maintain its claims on aboriginal lands as any land cessions at the time, spurious or not, are judged in the light of historical precedent (Miller 2019).

The Doctrine’s practical philosophy, as discussed by Miller, can be traced through history, even as far back as the Crusades (1096-1271). The right of conquest and the assumed superiority of Christianity justified the taking of “discovered” lands from non-Christian inhabitants and “other enemies of Christ, wheresoever placed.” This religio-nationalist philosophy is commonplace in the subjugation of the “other,” an idea easily implemented by those with insurmountable military power and far spread political influence. In 1436, Portugal appealed to the then Pope Eugenius IV to grant papal

consent and sole authority to settle the Canary Islands and convert the inhabitants to Christianity "for the salvation souls of the souls of the pagans of the islands" (Miller 2019).

This archaic political ideology had significant influence in 15th century colonialism. Miller summarizes the main facets of the Doctrine of Discovery, discussing the modern implication for Indigenous Peoples. The doctrine legitimizes European conquest of non-Christian societies, such as the domination of "kingdoms, dukedoms, principalities [and] dominions" and the appropriation of "possessions, and all movable and immovable goods whatsoever." The fundamental application of the doctrine is to justify the subdual, capture, and vanquish of all "Saracens [Muslims] and pagans… and other enemies of Christ" (Miller 2019). Thus, the Doctrine effectively demotes Indigenous people to treatment as sub-human, savages, and unholy. Indeed, it positions Indigenous people as enemies of the European world. This positioning and characterization create an implicit prejudice against anyone who may not fall into the narrow European standards of "sameness." This bias can be seen in today's tribal-State discourse. The legacy of the Doctrine is demonstrated in influential legal cases regarding Native American land rights and sovereignty. The philosophies of early settler-colonialists manifest throughout Maine's intercourse with tribal governments. These cases serve to contextualize the nature of Maine's historical discourse with Wabanaki Nations and grant insight into how the legacies still appear today.

The 1823 Supreme Court case of *Johnson v. McIntosh* asserts "The exclusive right of the British government to the lands occupied by the Indians has passed to that of the United States," through the "application of the principle of the right of conquest,"

(Justia Law). This case further sets the unjust precedent that Indians are not full owners of their own land. Additionally, it concludes that non-federal entities cannot enter into land treaties with Indians, a statement first made by the 1790 Nonintercourse Act which mandates congressional approval of land transfers involving tribal governments. These mandates are similar to the concept of *preemption* in the Doctrine of Discovery which the "exclusive right to buy the lands of Indigenous nations and Peoples," is reserved for the conquering entity (Miller 2019, Ranco 2021).

The 1842 State of Maine case of *Murch v. Tomer* is another example of not just the diminishing of tribal lands, but also interference with activity on tribal lands: "Even the territory and soil of the small districts, to which they are now reduced, in their occupation, is not absolutely theirs in fee," - according to the opinion of the court. Furthermore, in the view of this court, Tribes are prevented from "alienating" and prohibiting non-tribal activity on tribal land and "even the use and improvement of it is not left to their entire control." This idea is also evident in the 2017 case *Penobscot v. Mills* insofar that the Penobscot Nation has no recognized jurisdiction over Penobscot River waters and thus cannot prohibit or mitigate commercial and recreational activity that may pose a threat to on-reservation activities or tribal health.

This settler-colonial sentiment is evident in the Maine Constitution, written in 1820, which documents and legitimizes its separation from the Commonwealth of Massachusetts. Section 5 of the Maine Constitution is comprised of what are known as the "Articles of Separation." This section lists the conditions Maine agreed to in becoming a State. Starting in the latter half of the 19th century, the State excluded sections 1, 2, and 5 from being printed. This is important as, under section 5, Maine

acknowledges and accepts the condition of inheriting Massachusetts' treaties and responsibilities to Wabanaki Nations. In this section, the State agrees to "perform all the duties and obligations…towards the Indians within said district of Maine" (Maine Constitution). In removing the Articles of Separation from printed copies of the Constitution, it can be inferred that the State does not feel obligated to honor its commitment to past treaties. Ranco (2021) references that the omission in 1876 notably coincides with the 1874 case of *Granger v. Avery*, a dispute over the taking of 15 Passamaquoddy islands that were guaranteed to them in a 1794 treaty between them and Massachusetts. The State apparently would prefer to keep its responsibilities to tribal nations as an inconsequential matter of the past, specifically when it involves the title of lands or fiscal commitments to tribal governments.

Hiding and forgetting the past, sweeping it under the carpet, these motions do nothing to prevent future struggles and tensions. In order for the rift between State entities and Wabanaki Nations to heal, the State-inflicted trauma must be addressed in full. It is integral and reasonable for the State of Maine to assess and abrogate the Doctrine's legacies as they appear in Maine law and its relationships with the Wabanaki Nations. Miller notes that this can, in part, be addressed by requiring schools to develop education curricula addressing the State's settler-colonial history and dynamics with Wabanaki tribal Governments. LD 585, one of the bills being considered in the legislature, has provisions that would put this into play. This, at least, would show the State's willingness to accept its history and instead of hiding or avoiding it, acknowledge it as an unfortunate reality that must be owned and addressed.

Cultural Context: An Issue of Epistemology

To begin this chapter, I would like to introduce the reader to a Wabanaki story. Folklore and stories are tools humans use to pass on values and ideas to future generations. In a society that did not rely on written words, stories were crucial to passing along cultural and societal values through generations. This story highlights the intimate and dynamic relationship between the Penobscot Nation and the Penobscot River, as well as admonishing against the sin of greed and overconsumption. This legend holds that the people lived and thrived with the vitality of the Penobscot River. The River gave them fish for food, plants for medicine, and fur for clothes and trading. One day, the river slowed to no more than a trickle. The once powerful and formidable current was gone. The clean, clear river was replaced with polluted and murky water that gathered in puddles along the riverbed. As a result, the people became sick, in dire need of life's most basic necessity.

Gluskabe and the Water Monster

In the beginning, the people lived with the river. One day, the river slowed to a trickle. This left the People, the plants, and the animals sick and dying. Gluskabe went to find the disturbance in the River. He came upon the monster frog hoarding the water for himself. He told the monster that the people needed water. He reasoned with the frog, but the frog did not obey. Gluskabe uprooted a birch tree and used it to defeat the frog, releasing the river water to the community. The waters then took the shape of the branches of the birch tree, forming the Penobscot River tributaries. (American Friends 1989)

It is then said that the people were so thirsty, when the river's flow was restored, they rejoiced and jumped into the river. Some of the people transformed into fish, frogs, turtles, and other aquatic creatures. Thus, the creatures of the river are ancestral kin, to whom the people have a relationship and a responsibility towards to maintain these relationships (Welker 1996). In 2013, Chief Kirk Francis asserted the importance of the River: "The river is simply who we are. It's the very core of our identity as a people and it's simply the most important in the Penobscot Nation's life" (Toensing, 2). Coexisting and living in an environment will doubtlessly shape one's sense of belonging and relationship with that place. Penobscot culture's attitude of gratitude and thanksgiving is not unique. Below I provide a section from the Haudenosaunee Thanksgiving Address. It exemplifies the interconnection between humans and the environment. This connection is not unique, mystical, or metaphysical. It is chemical and biological. Life cannot persist without water. Life originated in water, in the oceans. This paragraph should remind humanity of its reliance, its vulnerability and requirement for clean water and the relationship many have forgotten.

"We give thanks to all the waters of the world for quenching our thirst and providing us with strength. Water is life. We know its power in many forms- waterfalls and rain, mists and

streams, rivers and oceans. With one mind, we send greetings and thanks to the spirit of Water.

Now our minds are one."

(National Museum of the American Indian)

For this thesis, I interviewed Professor John Bear Mitchell, an educator at the University of Maine and a member of the Penobscot Nation. He is a knowledgeable and enthusiastic sharer of his culture and he told me that he has been fishing on the Penobscot River since he was a young child. He continues this activity, but mourns the risk from consuming fish (RARE). He noted that when fishing from the river, he knows exactly where the would-be food comes from. It is a gift from nature, something as natural and innate as breathing. Access to this sustenance is a Penobscot birthright. It is not a privilege that has been assigned or legislated, it is life-sustaining, forming a human-nature relationship with the Penobscot River and "other than human kin" (Daigle et al. 2019). John Bear and I discussed the popular narrative of Gluskabe in the *Frog Monster Story*. This well-known Penobscot folk story demonstrates the meaningfulness of the River throughout Penobscot history. The Frog monster, as noted by the discussion participants, has oft been used to represent the dams on the River. In the context of this thesis, it is an accurate metaphor for the State's voracity and self-interest.

Daigle et al. (2019) conducted three discussion focus groups with Wabanaki Nation tribal members, each group consisted of 24 participants. These discussions help to elucidate the importance of storytelling as "a pathway for sustaining cultural identity" and for adapting to changes in the environment. Moreover, the discussions show how traditional Penobscot culture is indistinct from the vitality of the River. Today, culture narratives and storytelling serve as modes of transmitting traditions and local knowledge. Stories are flexible and dynamic; they can be used to transfer information and values. They are adaptive and enable communities to "thrive in an environment characterized by

change, uncertainty, unpredictability, and surprise." Therefore, it seems ordained that the Nation's narrative philosophies address the appropriation of river resources, whether it be by a monstrous frog or by self-interested political entities. Robin Kimmerer writes: "Creation stories offer a glimpse into the world-view of people,"
how they envision themselves in relation to the world "and the ideals to which they aspire." Therefore, the villains they create, the takers, and the bullies all represent the veritable fears and "closest held values of a people" (Kimmerer 2013). They are the closest held values of a people. Sometimes the villain is not an entity existing individually, but the one that lives inside us all.

The Windigo and Consumption

A formative book in the ethical philosophy of this thesis is Robin Kimmerer's *Braiding Sweetgrass.* Kimmerer is a botanist and professor at the State University of New York, as well as a member of the Potawatomi Nation. In her book, she addresses numerous cases of environmental injustice, towards Native Americans and to the environment itself. A notable and applicable story she uses is that of the *Windigo.* The Windigo is a cautionary tale, a sort of "Ojibwe boogeyman" story told to children to persuade them to behave. Kimmerer and others note deeper implications. According to her, the American fur trade and the era of exploitation catalyzed the spread of Windigo stories. As the fur industry boomed, game became scarce and people starved. This image evokes empathy for the plight of Indigenous groups in the face of prevailing economic interests and development. The Windigo is created when one eats the flesh of another human - the ultimate hungering desperation. The more the Windigo eats, the more it hungers. "Its mind [is] a torture of unmet want[s]." In this sense, the Windigo represents

a lesson of moderation and sharing, lest someone, or something, become ravenous with greed. Kimmerer, in her multi perspective approach, goes on to explain this idea in terms of systems science and feedbacks. The Windigo is an example of a positive feedback loop; the more the Windigo eats, the hungrier it becomes, resulting in an "eventual frenzy of uncontrolled consumption" - a propitious choice of words as the Windigo is also an acute example of overconsumption and the consequences of unlimited, or myopic and irresponsible growth. Positive feedback loops inevitably engender change, for better or worse. "When growth is unbalanced, you can't always tell the difference." So, even today, it is clear, "we don't need no big greedy frog monsters!" (Daigle et al. 2019).

Native stories and oral traditions have lessons that are not always exclusively unique to the people who create them, sometimes they are human lessons. These stories are imbued with centuries of learning and adapting to circumstances unimaginable in the modern day. It is necessary to consider the applications of this wisdom and philosophy. Greed, as exemplified by both the Windigo and the Frog monster, is a destructive vice. The refusal to let go, the primacy of the self, and the exclusion of the other from impactful decision making will inevitably lead to unknown consequences.

"You know us Injuns we got lot of trust,
There's Livermore Saving and Trust
And the Androscoggin Banking and Trust
And the Merrill Trust
Our investment is in good name
So if Maine go broke
You know who to blame"
(Ssipsis *Dawnland Voices)*

Relationship vs. Ownership

"The Wabanaki of Maine and the Maritimes" (first published in 1989 by the American Friends Service Committee) is a resource book designed with lesson plans and information on Wabanaki cultural history. It discusses, in part, the context of European arrival in North America, including concepts of ownership and property and how they vary between cultures. These varying philosophical frameworks caused innumerable tensions during European contact in the New World. The presumption that one group's definition of property was *the* definition of property gave rise in part to "skirmishes and war" (American Friends, 1989). When treaties were signed between the Wabanaki and English settlers, each side interpreted the terms differently. The English assumed the land treaties gave them exclusive access and ownership to the land and other natural resources. The Wabanaki understood the treaties as an agreement to share the land. When the Wabanaki returned the next year, they were met with hostility and territorial gusto.

The "fundamental importance" of sustaining and protecting relationships between humans and non-human kin is mentioned in all Wabanaki cultural stories (Daigle et al. 2019). This fundamental difference between living *with* the land and living *off* or *from* the land is a significant factor in early Euro-Native conflicts. The English understood property as owned and possessed goods, with the innate right to exclude others from it. This notion is indistinct from the principle of *preemption* in the Doctrine of Discovery, whereby the first entity to colonize land can alienate other entities from entering land dealings with the original inhabitants.

The Wabanaki did not share this philosophy. To them, the land was not an object to be owned and managed. The land was a meeting place for life in all its manifestations.

It was not conceivable to own living things, including the trees, rivers, and ponds. In fact, "one could no more own or sell a right [to] these beings than one could own or sell one's mother" (American Friends 1989). Rather, you can enter a relationship of respect and reciprocity with them. Non-human kin are just that, kin. The concept "Natilanah bemnowoog" emphasizes plants, animals, and "those who came before us" as kin and ancestors (Daigle et al. 2019). Settler-colonial legacies are significant and painful for many Wabanaki people. The renaming of traditional places, the appropriation and "claiming" of land and natural systems that are ingrained into Wabanaki lifeways are still evident today. Today, these issues are addressed in minor fragments of amelioration that do little to restore aboriginal territories. Symbolic political moves like changing Columbus day to Indigenous People's Day, or removing Native mascots from schools are certainly meaningful, and necessary. These gestures can move towards an equitably minded and informed citizenry, but they hardly make up for generations of occupation, residential schools, and cultural genocide. These iniquities have impacted Wabanaki in Maine in more ways than one and continue to do so. The State of Maine's disposition towards Native Americans has merely evolved to reflect modern day's acceptable standards of discrimination. Current attitudes towards the Wabanaki are still undercut by themes of distrust and animosity.

Life Before and After the Settlement Acts

The quotations listed here are taken from The Wabanakis of Maine and the Maritimes resource book (pg. A:24-A:25). They are from a Passamaquoddy man describing life on the reservation at Sipayik in the 1950s. Many Native American homes were living below the poverty line (Brimley 2004). "... the resources the people used to

live off by hunting and gathering were next to nothing, so that there was poverty everywhere." Once prosperous and self-sufficient, Native Americans had to struggle with food insecurity and poor health, while simultaneously being refused work. "You'd go try for a job, but people would say, 'We're just not hiring Indians.'" Natives were treated as a separate class, separated by reservation boundaries and deeply held stigmas. "People around us, although they would take our money, had an attitude that we were something other than like themselves. It was really hard." The justice system, ostensibly "color blind" and equal, with adjudication by a panel of peers, was anything but. "Indians were often sent to prison for small crimes, something we wouldn't consider crimes today. Or if an offense were committed against Indians, there was very little punishment."

The reader must consider these obstacles and challenges when contemplating the efficacy and purpose of the land claims settlement. In Stephen Brimley's article *Native American Sovereignty in Maine,* published in Maine Policy Review, he summarizes the 1974 Maine Advisory Committee's report to the United States Commission on Civil Rights. According to the report, 45% of off-reservation Indian homes were "substandard and poor." Further studies revealed chronic health problems like malnutrition, alcoholism and generally poor health. Furthermore, there were 16 times more Indian children in foster care than children from the general population. Foster care housing for Indian children, some of which were funded and built by the State, was often inadequate and did not meet state standards. The committee concluded that these facts are not coincidences, rather they are the results of "long standing assumptions, policies, and practices of discrimination" (Advisory Committee, as cited by Brimley 2004). Due to the living standards of Wabanaki people in Maine prior to 1980, it can be deduced that the tribal

nations indeed "settled." The endeavor to establish a functional land base was a major part of the negotiation efforts. Instead of land grants, they were given funds that, when used to buy land, would ultimately end up back in the State's economy. The unequal playing field is all too apparent as the living standards of most Native Americans were "dire at best" (Brimley 2004). These facts suggest that, in the State of Maine's view, the wellbeing and prosperity of tribal governments in Maine take second place to the State's interests.

The 1980 Maine Indian Claims Settlement Act (MICSA) and the corresponding Maine Implementing Act (MIA) were negotiated in response to the Passamaquoddy Tribe and the Penobscot Nation's legal claim to land ceded from the tribal governments without ratification from Congress. In order to understand the wider implications of the settlement acts, it is necessary to look back a little farther in history. At the end of the 18th century, as settlers moved further inland from the east coast, Congress recognized the potential for disputes between settlers and Native Americans in the west (Brimley 2004). In efforts to prevent qualms and legal disputes, Congress passed the Indian Trade and Intercourse Act in 1790. This act granted congress power over transactions between settlers and tribal nations, mandating that land transactions involving Native Americans be ratified by Congress.

After years of legal research, the Penobscot Nation and Passamaquoddy Tribe submitted a claim to around a two-thirds of the land of Maine. Their claim was premised on the fact that land cessions after 1790 had been signed without the approval of Congress, therefore in violation of the Trade and Intercourse Act. This fact gave the Tribes legal claim to approximately ⅔ of land in the State of Maine. The political,

economic, and social implications were numerous, causing mass political disagreement and an increasingly prejudiced and divided citizenry. In the late 1970s, during the lengthy settlement negotiations, the Penobscot and Passamaquoddy faced several challenges. At the time, Ronald Reagan was projected to win the 1980 presidential campaign (Girouard 2012). Reagan had previously stated that he would not ratify a settlement act with Maine tribes, so the tribes had to race against a looming deadline.

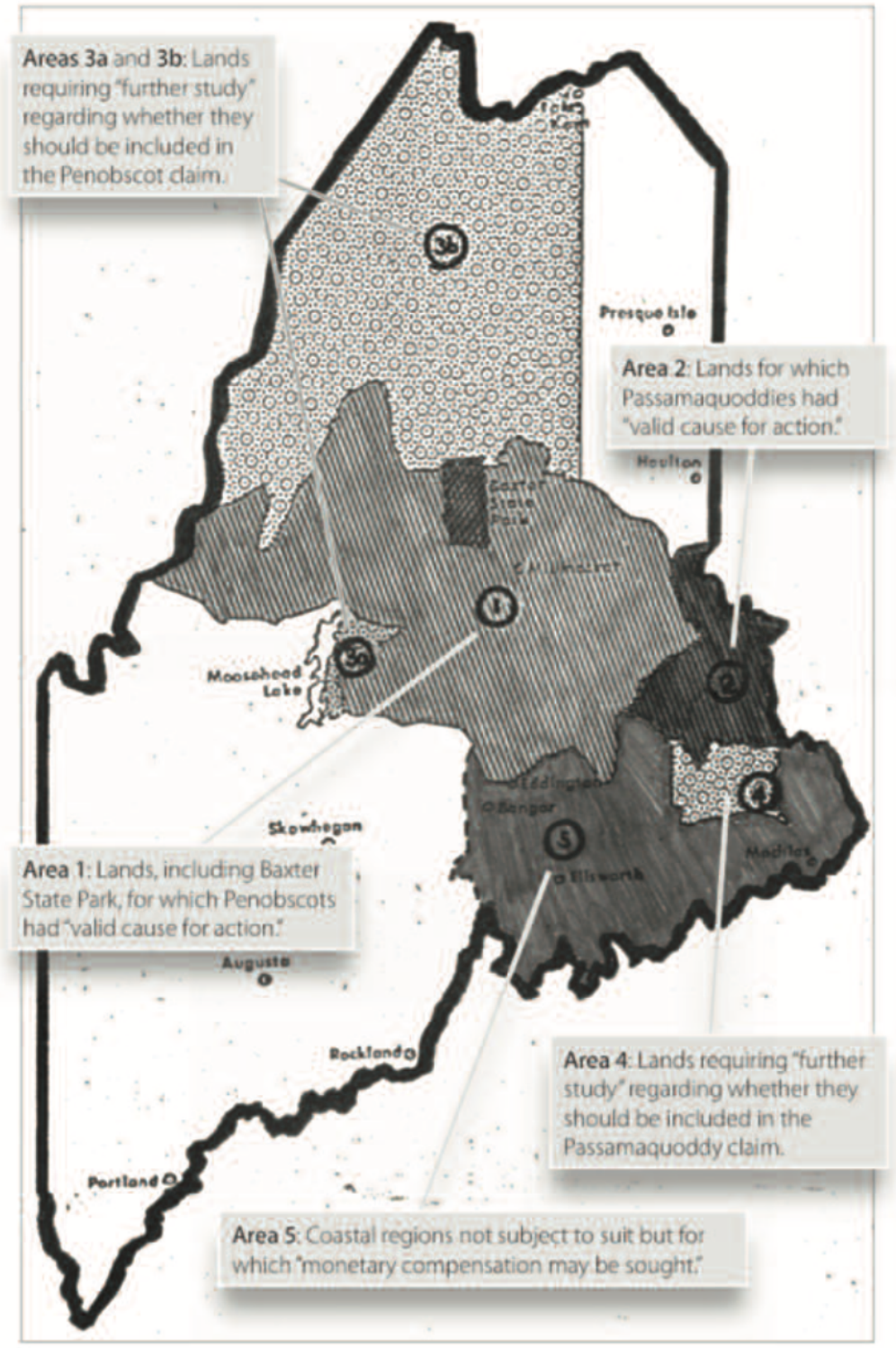

Fig 1. (Hall 2016)

A contested facet of the Settlement acts is the municipality clause (included in the Maine Implementing Act, section 6209). The tribes were under the impression that their newfound municipality status was not mutually exclusive to their sovereignty. In other words, they thought they would have both. The sovereignty of a tribal government is not something that is granted or bestowed, it "is inherent and exists unless and until Congress takes it away," (NARF).

However, the State's interpretation of the acts demotes Wabanaki tribes to a municipality classification, with the same powers and limitations of such, subjecting the tribes to the laws of the State. This mitigated sovereignty and autonomy prevents the Penobscot Nation from asserting water quality standards and pursuing culturally relevant environmental management. Below, I discuss the applicability of Treatment as a State provisions and the role of the EPA in enforcing tribal water quality standards.

The Environmental Protection Agency, and the federal government generally, have played significant roles in furthering tribal environmental autonomy. They have also contributed to the inverse, depending on the observer's perspective. Fleder & Ranco (2004) discuss TAS as both a small step towards increased tribal autonomy, but also as a limitation to full tribal decision making. In order for tribal governments to move towards fuller authority in Maine, they must tread a precarious line between idealistic progress and pragmatic progress. TAS provisions represent a middle ground between the two. On one hand, if LD 1626 is passed, the Nations can apply to be treated as a state and afforded environmental authority appropriate to that status. This is a realistic measure. On the other hand, tribal governments are not states. They do not exist in the same political spectrum as other states in the Union, they are governments unto themselves - Nations developed over generations and millennia on lands settled by white Europeans. Therefore, it is necessary to take advantage of provisions within the bounds set by the authoritative administration, but also to realize that even with these provisions, the federal government still acts in a paternalistic manner towards Wabanaki Nations. The EPA is still the ultimate environmental authority, granted it is not otherwise stated in a congressional mandate. Thus, treatment as a state is in some ways a valuable path for the expression of Wabanaki sovereignty and to protect tribal health, but it also places tribal governments in a position where they must contend with conflicting state interests and also abide by environmental standards that are set according to non-tribal values epistemes.

The Clean Water Act & Treatment as a State

The National Pollutant Discharge and Elimination System (NPDES) was developed as part of the federal Clean Water Act (CWA) - originally designated in 1948 as the Federal Water Pollution Control Act. The system regulates the discharge of wastewater and "regulating quality standards for surface waters" (EPA). Under the CWA, it is illegal to release any pollutant "from a point source" into domestic waters unless a permit is obtained through NPDES. Facilities, industrial and municipal, must obtain a permit if their discharge is released "directly into surface waters." The system designates the specific allowable quantities of pollutants to be discharged, as well as how often they must be monitored and reported. The system relies on the polluting entity to test and report its own discharge activity, delegating much responsibility and authority "to perform many permitting, administrative, and enforcement" activities necessary under the act. Section 518 of the CWA provides federally recognized tribal governments the opportunity to set WQS in the same manner as a state with "Treatment as a State" (TAS) provisions. These provisions delegate regulating authority to tribal governments allowing them to set standards congruent with their unique environmental needs and understandings.

Tribal members are at increased risk due to environmental degradation as they have close physical, cultural, and spiritual connections to the "land and all its inhabitants" (Fleder & Ranco 2004, Daigle & Putnam 2009). They review the applications of the CWA as it relates to Indian country and tribal sovereignty, utilizing the exemplary case of *Albuquerque v. Browner* to demonstrate the important applications of TAS provisions.

In 1993, Albuquerque, New Mexico challenged the EPA's delegation of TAS to the Pueblo of Isleta to set WQS on the Rio Grande.

The Pueblo's stringent standards required upstream New Mexico to mitigate their polluting activity to not infringe on tribal standards. Albuquerque argued against the EPA's delegation, claiming it violates the Establishment Clause which forbids any favoritism or bias based on religion (Fleder & Ranco 2004). The EPA's delegation was not to ensure the Pueblo's spiritual rights to the Rio Grande, rather it allowed the Pueblo of Isleta to set numeric and qualitative standards that reflect these values. According to Fleder and Ranco, "If anything, the agency's approval furthers the free exercise of religion," - an inherent human right protected in the US constitution.

Another argument was that the EPA did not allow or make time for public commentary on the Tribe's WQS. While Congress did intend the CWA to include public participation, the court stated that it is the responsibility of states or tribes treated as such to make opportunities for public participation. The court upheld that it is the responsibility of States and Tribes to welcome public opinion, not the EPA. Appropriately, when the Penobscot Nation Department of Natural Resources drafted their WQS, they did just this. The ideology of transparency and open participation is repeatedly stated in the Nation's list of standards, and demonstrated on June 11, 2014 when the department published a notice in the Bangor Daily News and again when it held a public hearing on August 6, 2014 (Penobscot Nation).

Despite Albuquerque's full-fledged efforts to prevent the Pueblo's standards approval, the Tenth Circuit Court denied Albuquerque on every count and ruled in favor of the Pueblo of Isleta - "upholding the tribe's right to design and the EPA's right to

enforce WQS"- mandating Albuquerque redesign their water treatment facility to meet the WQS of the downstream tribal government. It is, however, important to realize that TAS does grant enforcing authority to tribal governments under TAS, it gives them the authority to *set* WQS. Enforcement falls under the jurisdiction of the EPA, who is obligated to consider whether WQS will cause cross-jurisdictional issues and to issue NPDES permits accordingly. In the case of *Browner*, the EPA recognized the Pueblo's WQS and reissued Albuquerque's permit to reflect the more rigorous requirements of downstream Isleta. The role of the EPA, in this case, is rather parental. They recognize the boundaries and WQS of States (or those treated as such) and issue permits that ensure downstream standards. This lack of enforcement authority leaves tribal nations' environmental autonomy at the discretion of the EPA, as they require the agency's approval of their standards to acquire TAS. MICSA, as it stands, prevents the Penobscot Nation from obtaining TAS status. The State of Maine claims the EPA was absolved of their trust responsibility when MICSA devolved the Penobscot Nation to a municipality status (Maine v Johnson). This effectively subjects the Penobscot Nation to laws of the State of Maine and dissolves the federal-Tribe trust relationship that stemmed from years of land cessions and treaties with the United States.

An omnipresent challenge for tribal nations is the complexity of legal and political proceedings. Tribes must navigate political systems bridging community, state, and federal jurisdiction which is costly and tedious. Fleder and Ranco detail the unique nature of environmental dealings between tribal governments and federal agencies, specifically the EPA. They state that "if tribes deal primarily with federal agencies," the proceedings can primarily focus on science and environmental regulation, rather than

become fraught with jurisdictional language and restrictions. They further argue that a binary relationship with the EPA - or the federal government in general - minimizes the "bureaucratic processes and bodies" tribal governments need to maneuver. Moreover, the implicit relationship between Tribes and the US is unique and "consists of the highest moral obligations" for the federal government to "ensure the protection of tribal and individual Indian lands, assets, [and] resources" (Secretary of the Interior). Ergo, the EPA's championing of tribal interests is a matter of the federal trust responsibility. It grants tribal governments the capacity to protect their members from environmental injustice and ensure the longevity of their natural resources. In this respect, it is fair and necessary for the EPA to support tribal nations where it is scientifically and legally plausible.

Even with TAS provisions and the EPA's protection of tribal interests, Tribes are still at a legal and administrative disadvantage. In the words of William Rodgers Jr., a professor of environmental law at the University of Washington, "no state… runs serious risk that a court might hold that the state does not exist." No aggrieved State need fear their legitimization or dissolution. tribal nations run a veritable risk in asserting their sovereign rights, however small the claim. This, however, does not stop tribal governments from pursuing their environmental rights. The below quote, as found in their water quality standards, illuminates the importance of aquatic ecological health in the Sokaogon Chippewa Community.

TAS in Practice

"Water is a sacred thing to us, as it has always been to our most revered ancestors, through all time. It has been taught to us by our revered elder that water is sacred. It is our blood. It is the blood of our children and ancestors. It is the life-supporting blood of Mother Earth."

The above quote is from the Sokaogon Chippewa Community's Water Quality Standards, as found on the EPA website. It is evident that water has a meaning to tribal nations that western science is not equipped to understand. Indeed, "The Sokaogon Chippewa Indian Community defends its water resources with a spirit no state could possibly muster" (Rodgers 2004). I preface this section with this quote as it helps to demonstrate the highly personal and deep connection some tribal communities have with their physical environment. This idea is easily lost when considering the legal and political complexities. In order to understand these cases and perspectives holistically, this must not be forgotten.

William Rodgers Jr.'s article from the Alabama Law Review discusses Treatment as a State, their applications, and court cases disputing tribal WQS. His article discusses important and successful applications of TAS provisions and court cases disputing the EPA's delegation of WQS authorities to tribal nations. These examples highlight the applicability of TAS provisions within state borders and the

The case of *Montana v. EPA* is an attack on the EPA's delegation of WQS authority to the Confederated Salish and Kootenai tribes of the Flathead Reservation in Montana. These standards apply to all "pollutant emissions" on the reservation, whether they be Indian or non-Indian in origin. This case affirms the rights of tribal governments

to set standards that affect both tribal and non-tribal members on reservation land. The EPA's decision was supported by lengthy documentation of how nonmember owned fee-lands pollute reservation waters. This case also demonstrates the necessity of TAS authority applying off of reservation boundaries, i.e., to non-tribal activity that poses a threat to tribal standards. Wisconsin indicates further the stipulations for TAS provisions to be effective- they need to have jurisdiction off-reservation. That is to say, tribal standards must be met even if polluting activity is occurring well upstream, off of reservation lands.

The case of *Wisconsin v. EPA* - concerning the State and the Mole Lake Band of Lake Superior Chippewa Indians - is another interesting example of how polluting activity, off-reservation, can affect traditional Indian sustenance resources. In this case, Wisconsin has title to a majority of the bed of Rice Lake, a large water body on reservation land that served as a primary sustenance source of wild rice for Chippewa tribal members. The State's concern is if the Sokaogon Chippewa Community was to achieve TAS status, it would "throw a wrench" in the state's construction of a zinc-copper sulfide mine on Wolf River, which feeds into Rice Lake (Rodgers 2004). It is clear that for TAS provisions to be effective, they must necessarily entail authority over upstream, off-reservation polluters, even if the pollution is a result of economic activity that is valuable to the state.

Water is a migratory entity that does not adhere to arbitrarily imposed areas of "ownership." PFAS, dioxins, carcinogens, etc., will not courteously stop flowing from discharge outlets into tribal waters because tribal waters themselves have more stringent standards. This facet of the provisions *necessitates* authority over activities from off-

reservation polluters. To deny this would be to treat tribal nations as less deserving of environmental protection. This is where the authority of the EPA is arguably most integral to supporting tribal environmental quality. The position of the EPA is to consider the effects of one set of WQS on down-stream standards, which is why the preceding cases have resolutions in favor of tribal nations. If the Agency determines upstream polluters can potentially infringe on downstream standards, they must adjust the upstream polluters discharge permit accordingly, setting new restrictions that help to ensure tribal well-being and environmental integrity.

LD 1626 will be an integral piece of legislation that will make the Penobscot Nation eligible for federal environmental provisions. Under current law, §6206(1) of the Maine Implementing Act states that the Passamaquoddy and Penobscot Nations have the "same rights and duties" as a municipality, subject to all Maine laws except for internal tribal matters. LD 1626 amends this and grants affected tribal nations the same "powers, duties, and immunities" generally afforded to other federally recognized tribes in the country.

LD 1626: A Bill to Restore Wabanaki Rights

§6207-A of the Maine Implementing Act codifies an agreement between the Wabanaki Nations and the State of Maine, under the federal Settlement Act, recognizing that Wabanaki Nations have the jurisdiction and authority to protect and regulate natural resources, land, and other natural features "within the boundaries of their respective Indian territory or trust land…" as dictated under federal Indian law (Office of Policy and Legal Analysis).

The State of Maine's stringent interpretation of the settlement acts have long prevented Wabanaki Nations from exercising full environmental governance, an act that is extremely difficult since Tribes must "operate within procedures," cultural complexities, and a long-standing "unequal, colonial relationship with the United States" (Fleder & Ranco 2004).

LD 1626 will make federal Indian law applicable to tribal governments in Maine unless explicitly stated otherwise in the Maine Implementing Act, effectively placing Wabanaki Nations on par with tribal governments in the rest of the United States. Importantly, it will galvanize the Penobscot Nation's environmental sovereignty and will allow them to utilize Treatment as a State (TAS) provisions under the Clean Water Act. TAS will grant the Penobscot Nation the same environmental authority as a State, setting standards enforceable by the EPA under federal law.

The State of Maine is concerned with the Penobscot Nation pursuing TAS provisions under the Clean Water Act. Since the State inherited treaties from the Commonwealth of Massachusetts with the Wabanaki tribes, it has been resolved to maintain a paternal and firm grip on the activities and interests of tribal-nations. Whereas in international law a treaty is defined as a "legally binding agreement between nations" the United States defines it as "an agreement by and with the advice and consent of the senate" (Library of Congress). This conveniently places the US government in a paternal position that grants them the semantic privilege to sign treaties with parties it may not recognize as fully sovereign nations. This is further emphasized in the 1823 case Johnson v. McIntosh. This Supreme Court case finalizes the classification of tribal governments as "domestic dependent nations" and states that Native Americans do not own land, and

cannot therefore sell land unless it is to the colonizing entity, as is stipulated in the concept of preemption in the Doctrine of Discovery (Miller 2019)

The current Maine State Attorney General**,** Aaron Frey, questions the wording of §6207-A, specifically regarding environmental jurisdiction "within the boundaries of their respective Indian territory or trust land…" There is a misperception about the nature of TAS. Frey states that TAS would grant the Penobscot Nation authority to control water quality on the river, outside of their territory. TAS does not grant PN the explicit authority to enforce standards, it allows them to set necessary standards to pursue their cultural heritage on the river, and if upstream dischargers do not comply, the EPA is the deciding authority that will be able to mandate a change in upstream industrial activity. This is seen in the case Albuquerque v Browner.

Along with LD 1626, the legislature will be voting on LD 585. Chief Kirk Francis, of the Penobscot Nation, gave testimony stating the bill would "improve communications between the State and Tribes" and advance Wabanaki economic standings. Improving tribal-State communications is an essential provision for all the considered bills, and a necessary step to establish government to government relationships between Tribes in Maine and the State government. Furthermore, "institutionalizing [a] form of communication between State agencies and Wabanaki Nations" can work as a preventative measure to avoid miscommunications and misunderstandings between relevant parties. Having a set-in-stone method of increasing communication between tribal governments

In Maine, this would look very similar. Fortunately, much of this work has already been done. In 2009, Harper & Ranco conducted a study evaluating the

"environmental contact, diet, and exposure pathways" consistent with a traditional subsistence diet, a Wabanaki right upheld in MICSA (Mortelliti 2016, MICSA). This study helps to inform the exhaustive Penobscot WQS - a numeric and qualitative set of criteria regarding Penobscot River quality. LD 1626 will be the final step toward a holistic river management model. This bill and subsequent management reform will create a new tribal-State dynamic in Maine. It will enable the Penobscot Nation to "protect the health and welfare of its members," while also protecting and upholding "any other existing and future beneficial uses" of the Penobscot River's resources. It will be consistent with the original intents and purposes of MICSA, include and protect Native interests, and function within extant procedures.

An important recommendation from the task force that created LD 1626 is to "Amend the Maine Implementing Act to establish an enhanced process for tribal-State collaboration and consultation." If passed, this amendment would not only benefit the Penobscot Nation, but the entire Penobscot River, under the jurisdiction of the Nation. With more stringent water quality standards, it could hopefully set a path for future innovations regarding tribal-State environmental discourse and serve as a model for setting culturally relevant environmental management.

As sovereign nations, tribal governments in North America have an inherent right to guard their resources; economic, natural, and cultural. Often, the latter two are bound. The Penobscot Nation's intimate relationship with the river demonstrates a unique cultural-ecological interest that as a significant motivating factor for new, innovative environmental management systems that support more than economic endeavors.

Friedrichs (2010) review of the United Nations Declaration of the Rights of Indigenous People (UNDRIP) reaffirms that the rights of Indigenous Peoples to their traditional lands and livelihoods is inalienable. The Declaration creates a structure of rights and standards for the "survival, dignity, and well-being of the Indigenous peoples of the world" and further develops extant human rights unique to the position of Indigenous peoples. The tribal right to autonomy as sovereign nations is not just a matter of honor and dignity, it is an *integral practice* to protect the physical and spiritual wellbeing of tribal members. Article four of UNDRIP recognizes the Indigenous right to self-determination, a right also recognized in federal Indian law and the MIA.

Without the ability to set enforceable environmental quality standards, tribal nations are at the mercy of State-set quality standards, standards that do not take into consideration their unique lifestyles and channels of environmental exposure. Without a doubt, Feeny et al. (1990) would agree that while the State government's "coercive powers of enforcement" can be effective in environmental practice, the State is also "especially responsive to the interests of the elite." This can be seen in the testimonies of corporations in support of the State of Maine in *Penobscot v Mills*, a court case determining the extent of State control over the main stem of the Penobscot River. Mills argues that the waters of the Penobscot River are not included in the Penobscot reservation, therefore the Nation's jurisdiction only applies to the islands within the river. The list of supporters of Mills and the State of Maine's argument is largely composed of active polluters and dischargers such as Lincoln Paper and Tissue LLC, True Textiles,

Inc., Kruger Energy Inc., etc. (Penobscot v Mills). Evidently, the interests of the State are intertwined with the success of industry and corporation, entities that have contributed to the degradation of the Penobscot River thus far. While the Nation will certainly enforce standards necessary to ensure their right to sustenance fishing and other riverine activity, their goal is not to upend Maine's economy.

While the State of Maine and its supporters seem to perceive tribal environmental sovereignty as a pungent threat, it pales in comparison to the lived reality of tribal nations and Indigenous people as a whole. Fernández et al. (2019) gathered and analyzed 686 academic and grey literature articles to consolidate international examples of environmental injustice towards Indigenous peoples. Based on their research, they contend that Indigenous Peoples are one of most at risk populations for exposure and impact by environmental pollution. The diminished autonomy and influence of tribal nations and Indigenous people as a whole put them at unprecedented risk of exposure to environmental contaminants and subsequent health impacts.

In the 1960s, an alkaline chlorine plant disposed of 10,000kg of mercury (Hg) into the English-Wabigoon River system in Ontario, Canada (Kinghorn et al, 2007). Hg levels were measured in seven local freshwater fish species, four of which tested at .3mg/kg higher than Health Canada's maximum contamination level. Moreover, Philibert et al. (2020) conducted a retrospective study in Grassy Narrows First Nation community - a First Nation community living on the same English River system. They tested Hg levels from hair samples taken from 657 individuals between 1970 and 1997. Using statistical analyses in cooperation with the community, they found that there was a 55% increase in the risk of dying before the age of 60 among people with at least *one* hair sample with a

concentration of 15µg/g. Further results from the sample showed that those who died before the age of 60 had hair concentrations 4.7 times higher than controls.

Indeed, the need for more stringent waste disposal policies is indubitable. The prior examples demonstrate a need for further studies on political, and environmental action in the coming years. International examples provide insights for furthering tribal and Indigenous wellbeing, specifically in the United nations' deliberations on Indigenous Rights. Friedrichs (2010) reviews the United Nations Declaration of the Rights of Indigenous People (UNDRIP) and reaffirms that the rights of Indigenous Peoples to their traditional lands and livelihoods is inalienable. The Declaration creates a structure of rights and standards for the "survival, dignity, and well-being of the Indigenous peoples of the world" and further develops extant human rights unique to the position of Indigenous peoples. The tribal right to autonomy as sovereign nations is not just a matter of honor and dignity, it is *integral* to protecting the physical and spiritual wellbeing of Indigenous nations.

Settler colonial legacies are readily apparent in the physical realities of Indigenous nations. The racialized and marginalized experience of some Indigenous people is arguably a result of the interconnect between their cultural and environmental interests and the blatant degradation of the latter. This must be addressed and understood from a holistic and culturally relevant perspective. By incorporating tribal governments in policy-making, by allowing them to set authoritative environmental standards that protect their health, we can in theory develop more meaningful and effective environmental management strategies. Strategies that preserve the health of Indigenous livelihoods, sustain natural ecosystems, and protect human health and wellbeing, regardless of

ethnicity. Fortunately, there are exemplary cases of traditional knowledge systems being effective in protecting Indigenous Peoples health and ecosystem integrity.

The Alaska Native Inupiaq are intimately connected with their surrounding ecological communities. Specifically, their subsistence hunting of bowhead whales is unique and a hallmark of their culture. Utqiagvik sits on Alaska's northwestern coast, right against the Arctic Ocean. The community has approximately 5,000 residents, almost all of who "rely on hunting," primarily bowhead whales, as their means of subsistence (Kunze 2020). In 1977, the Alaska Eskimo Whaling Commission was created in response to the federal government's ban on whaling after its counts suggested decreasing population numbers. In response, the Inupiat conducted their own survey. Their results showed that the populations were being "undercounted by the thousands" when the whales dove under the ice. This more accurate survey resulted in a larger quota for the hunters, as well as a feeling of local pride in their accuracy and comprehensive knowledge of their ecosystem. As polar amplification dramatically increases Arctic temperatures, the community's hunting practice becomes more and more dangerous. The ice that supports their hunt is becoming thinner, constantly at risk of breaking. When pulling harvested whales onto the ice, it is a race against the ice. The Inupiat's local knowledge and tradition exemplify their resilience in the face of constant change, change that is disproportionately imposed on them by the effects of climate change. Moreover, it demonstrates the applicability of traditional ecological knowledge at local scales. The Inupiat culture has subsisted in Alaska for millennia, adapting and harvesting the resources available to them. From this perspective, it is easy to accept that they may know something about their home that a settler colonial entity - who has only been there

for since 1867 when the US annexed Alaska - is not aware of. Therefore, what is the logic in omitting Native voices from environmental policy?

Penobscot Nation's Water Quality Standards

The intent and purpose of the Penobscot Nation's Water Quality Standards (PWQS) is to "maintain, and improve the quality of Penobscot Waters…" to protect native and desirable biota and ensure future cultural, practical, and industrial activities on and around the river (Penobscot Nation Department of Natural Resources). By implementing these standards, the Penobscot Nation is demonstrating the capability and willingness to assume responsibility of monitoring and regulating water quality, which they have been doing in an official capacity since 1978, in the "anticipation of the return of ancestral lands in accordance with the Maine Indian Land Claims Settlement Act of 1980" (Penobscot Nation Department of Natural Resources).

The Penobscot Nation's water quality standards are a means to ensure culturally relevant conservation and to uphold traditional activities on the water. Sustenance fishing and canoeing have long been a hallmark of Penobscot culture (John Bear Mitchell, American Friends 1989) and the PWQS are the most effective means of upholding tribal activities on the Penobscot River and ensuring the enduring practice of tribal, riverine traditions. Narrative standards list in clear language the goals and qualitative standards to be maintained and upheld: "All Penobscot Waters shall be free from pollution in amounts or combinations that…" harm public health and welfare, hinder the growth of indigenous and favorable biota, form deposits on the river bed, and result in "objectionable floating materials" like foam, oil, and other unnatural formations. These are only a sample of the overall qualitative standards required by the Penobscot Nation.

Section 108 of the PWQS mandates cooperation with State and federal agencies to mitigate and reduce water pollution in coordination with water resources programs, like the Clean Water Act. As has been demonstrated, this can come with turbulence due to conflicting interests among polluters and regulatory agencies, which necessitates a mechanism to settle disputes. The next section introduces the Dispute Resolution Mechanism, designed by the EPA, found at 40 C.F.R. §131.7 of the CWA. The mechanism is designed to be utilized if tensions arise between the Penobscot Nation "a state or another Indian tribe approved by the EPA" to set a water quality standards program. A central tenet of the Penobscot Nation's water standards is engaging in "full interagency coordination and public participation" as demonstrated in the public forum addressing the drafting of the PWQS. Below I have listed the essential steps of Penobscot monitoring, as found in the PWQS.

In coordination with the CWA § 303(c)(1), 33 U.S.C. § 1313(c)(1), as amended, the Nation shall hold public hearings at least once every three years to review and revise standards as needed. Changes shall be made congruent with engineering and scientific advances in water quality studies and revisions shall be "made pursuant to the public comment and hearing procedures" described further in the PWQS policy. Furthermore, whenever changes are made to the PWQS, the revisions shall be sent to the EPA for review pursuant to CWA § 303(c)(2), 33 U.S.C. § 1313(c)(2), as amended. The specific steps taken by the Nation to protect their standards are listed below.

1. Monitor water quality to determine efficacy of pollution controls and whether activities are affecting water quality
2. Evaluate the impact of effluent on waters and whether receiving waters can handle the activity
3. Advise dischargers and permitting agencies of discharge requirements
4. Develop inspection procedures to ensure dischargers adhere to set standards

5. Insist on best management practices related to non-point source pollution

The propitiousness of the Penobscot WQS is that they function within established political mechanisms and procedures, approved by the Environmental Protection Agency. It is not the Nation's capacity or right that is in question, it is their access to these provisions that is hindered by the Settlement acts. From this perspective, there are few requirements for the State of Maine other than passing LD 1626. There is no financial burden for State agencies as the only change is the Nation's standards are enforceable by the EPA. For decades, the Penobscot Nation has demonstrated their capacity and zeal to regulate and enforce their water quality standards, as well as their willingness to cooperate across multiple agencies. This clearly demonstrates the viability of TAS provisions as well as the Nation's commitment to holding dischargers accountable, and working to protect their physical and cultural wellbeing.

A Cultural Contribution

"As a proud, riverine people," Penobscot customs, traditions, and history are buried deep in their self-described "intimate relationship" with the Penobscot River (Wabanaki Alliance). The Penobscot River is a place where one can canoe into their own history, feel their heritage streaming through them as the river does. *Penawahpskek*, or the "the place of the white rocks" is both home and ancestor, an entity with its own rights within the Nation. "Land and water are not just resources to be owned and used, but valued relatives who are integral to tribal and cultural identity" (Sunlight Media Collective). It is clear that the Penobscot Nation advocates for land and the beloved River in ways the State of Maine refuses to imagine. Millenia of camaraderie and co-subsistence with the River creates an inexorable bond that flows through generations.

“It’s not just a piece of land, it’s a part of the tribe,” said Chief Kirk Francis, referring to the return of 735 acres of ancestral land in now Williamsburg Township. Land, water, place - they are held dear by Wabanaki Nations; not held in fear like the State, fear of comeuppance, fear of change.

Penobscot stewardship is a prudent step toward both restoring Penobscot tribal autonomy, as well as a new era of environmental protection. Traditional skills and knowledge require an intimate knowledge of ecosystem functions, of “mutual respect and sharing” (Ranamurthy et al 2022). This notion of reciprocity is and will be important in maintaining the longevity of the Penobscot River. Its value economically, culturally, and physically must be recognized and protected. The best people to lead this are the people who have done so since time immemorial. “We are among the most impacted groups and have been dealing with these impacts for a long time” said member of the Penobscot Nation Lokotah Sanborn, referring to the impacts of environmental degradation and climate change.

As the original stewards and beneficiaries of the River, the Penobscot Nation is an invaluable asset to have in environmental policy making. As demonstrated in their narrative section of water quality standards, the River is involved in “existing and future domestic, cultural, agricultural, recreational, and industrial uses” and “the existing and attainable uses for which Penobscot Waters shall be protected” (PWQS). While the State of Maine’s agenda for the Penobscot River is dubious, the Penobscot’s standards are concise and explicit in their rhetoric, defending the current values of the River but also ensuring future viability. The future of the Penobscot River and of the Penobscot Nation will be influenced by the State of Maine recognizing its common interests in the

advancement of the Penobscot Nation's sovereignty. By honoring its promises to the Wabanaki Nations, the State of Maine will join the rest of the country in ensuring the common wellbeing of tribal and non-tribal entities

CONCLUSION

It would be beneficial for both parties to adhere to a set and clear process of communication. To "recognize a plurality of differences as possible in relation to the same material space" (Povinelli 1998 as seen in Ranco 2007). LD 585 has specific stipulations to address the lack of communication between State agencies and Wabanaki governments. This is progress. Furthermore, Section of LD 906, as amended, states the Passamaquoddy Nation at Sipayik henceforth has "exclusive authority" to regulate drinking water within Passamaquoddy territory. Furthermore, under the federal Safe Drinking Water Act, the Nation may pursue treatment as a state to "obtain primary enforcement authority" from the EPA (LD 906, Maine Legislature).

The passing of this bill demonstrates a small-scale success for the Wabanaki, albeit important and necessary. The past four years of work have resulted in more sovereignty progress than the past four decades (Wabanaki Nations Joint tribal Chiefs Statement, 2022). It remains, however, that even though federal policy towards American Indian tribes has improved, the state settlement act precludes Wabanaki Nations from exercising the same sovereignty in their territory as other tribes. As has been demonstrated, the Settlement Acts have engendered 40 years of oppression, entailing socioeconomic and environmental injustice towards the nations and tribal-members. LD 1626 remains the most important piece of legislation for Wabanaki Nations since the settlement acts. Whereas the settlement acts were intended to advance Wabanaki sovereignty (Girouard 2012), as well as emphasize State benefits for the Nations, it resulted in a convoluted interpretation of semantics in the acts and diminished tribal governments' recognized authority. Wabanaki Nations now have similar decision-making

power as any other township or municipality in Maine, a gross display of power imbalance in tribal-State treaty making as well as a disregard for the canons of construction in federal Indian law, a section that mandates the interpretation of any legislative ambiguity in the favor of Tribes.

LD 1626 presents a possibility for a future of equal-footed tribal-State relations in Maine. Moreover, with emerging environmental issues such as PFAS (per- and fluoroalkyl substances), the Penobscot Nation can prove to be an asset in environmental monitoring, as it has been conducting river testing on the River since the establishment of the Penobscot Nation Natural Resources Department in the 70s. Dan Kusnierz, the water resources director for the Penobscot Nation, said recent tests of liquid waste – leachate – from the Juniper Ridge Landfill had PFAS levels 20 times the State recommended level (Miller 2022, Leigh 2022). Contamination from this landfill puts the Penobscot Nation at risk of contaminant uptake due to cultural activities entailing increased exposure to environmental media, e.g., fish, plant medicine, and immersion in river waters.

As discussed above, unique tribal exposures to environmental contaminants (ECs) entail an equally unique and specific attention to contaminant levels and environmental protection. Exposure science is a relatively new area of study, often necessitated from epidemiological events or from the observed ubiquity of environmental contaminant exposure, e.g., oil spills near vulnerable communities, landfills near inhabited water-bodies, etc. Even when exhaustive health and environmental data is available, it often reflects the lifestyles of the mainstream population, not necessarily affected sub-populations and underrepresented communities in the US (National Tribal Toxics

Council 2015). Herein lies a field of mutual inquiry where the Penobscot Nation and the State of Maine's environmental interests are similarly at risk.

It is reasonable to conclude that one community suffering in Maine will influence the economic wellbeing of neighboring communities. Maine residents have shown camaraderie with their Native neighbors, over 1,600 testimonies and protestations were given at the public hearings for LD 1626. The "legislative priority" for Wabanaki Nations is still the restoration of permanent sovereignty. By "comprehensively reform[ing] and moderniz[ing] the state settlement act… tribal sovereignty can be the rising tide that lifts the economies and overall socioeconomic well-being of [those] in rural Maine" (Wabanaki Nations). Appropriately, legislators have listened to their constituents and the bill passed through the house of representatives. The question is, when will Mills relinquish the State's egoist yoke on tribal sovereignty in Maine? Is the suppression of tribal sovereignty, rights, and expressive identity a result of legitimate concerns for the State's economic and social welfare, or rather, is it a legacy of centuries of persecution and cultural reduction?

The State of Maine's authoritarian relationship with the tribal governments in Maine is a perpetuation of social and environmental injustice towards Native Americans in the United States. The proposed bills represent small steps towards ameliorating past wrongs and paving a path towards a socially responsible and environmentally sustainable future. Tribal Nations and Indigenous People in general must play an authoritative role in future environmental protection as their unique relationship with their traditional lands and the natural world necessitates a keener eye towards the perpetuity of environmental health and the responsibility of stewardship.

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