

War of Words:
Wabanaki Legal Diplomacy in the Dawnland

A Thesis
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Smithsonian Institution. "1 Pine Tree Shilling, United States, 1952." National Museum of American History. Accessed February 1, 2025. https://americanhistory.si.edu/collections/object/nmah_1082064.

Introduction:

“Wee wonder how they would give it away without asking us?”¹ This is what Wabanaki Confederacy sagamores (tribal leaders) told English commissioners on July 18, 1713, in Portsmouth, New Hampshire. They were rightfully perplexed. That prior April, a vanquished France had negotiated for peace at the Treaty of Utrecht, ending Queen Anne’s War. Part of those terms of peace meant the English had acquired territorial control of Acadia and Newfoundland from France, which made up Wabanaki territory. The English also contested with the French over who controlled Maine. The English and the French had no real answer for the Wabanaki regarding how their native lands had come under English control. The French

¹James Phinney Baxter, ed., *Documentary History of the State of Maine*, vol. 23, *The Baxter Manuscripts* (Portland, ME: Maine Historical Society, 1916), 47-53.

themselves never asserted sovereignty over the Wabanaki, treating them more as equal alliance members.² It's probable that the Wabanaki never understood that their current lands were declared to be under English control. Despite affirming themselves as subjects of Her Majesty, they would not behave as such in practice.³ An alliance meant equality to the Wabanaki, not submission to another power. As they had many times before, the English failed to comprehend the significant role cultural legal beliefs played in negotiations. The 1713 Treaty of Portsmouth, although intended to create a permanent peace and mirror Treaty of Utrecht's terms, ushered in nearly four decades of tension and violence interspersed by rapid, although largely temporary, conference negotiations.

In January the following year, Wabanaki and English leaders met once more. At this meeting, Francis Nicholson, governor of Nova Scotia, presented the Wabanaki with coins inscribed with a pine tree symbol. He told the Wabanaki that together they were, "One Root tho several branches."⁴ Although it comprised small part of a much larger diplomatic history, this interaction exemplifies the flawed albeit complex legal dynamic between the English and Wabanaki. Both sides attempted to some degree to adopt the other's legal principles. In this case, the English used the metaphor of the pine tree, a familiar Native symbol, to illustrate how they were now bound into an unbreakable alliance. Yet the English themselves had no real intention of treating the Wabanaki as a legal alliance member or abiding by their agreed upon terms for trade. Simultaneously, the Wabanaki would adopt some English economic and document-based recording practices, but with hesitation and sometimes aggravation. Language barriers and

² Olive Patricia Dickason, *The French and the Abenaki: A Study in Frontier Politics*, Vermont History 58, no. 2 (Spring 1990): 82-98.

³ Kenneth M. Morrison, *The Embattled Northeast*, (Berkeley: University of California Press, 1984), 163.

⁴ Baxter, *Documentary History*, 52-54.

differing legal conceptions sometimes made it so that Wabanaki leaders did not recognize the treaty terms they agreed to. Wabanaki leaders also had limited, formal control over individual tribal members, meaning agreements sagamores signed didn't necessarily compel their own tribes to abide by them.⁵ An analysis of these diplomatic interactions and short-lasting treaties lends pivotal insights into each side's legal strategies as they constantly butted against and misunderstood each other.

The above meetings were not exclusive to the Wabanaki and English. They were part of a larger diplomatic system in the Americas painstakingly built on the foundations of a century of deliberations. The difficulties were enormous. Language barriers, cultural shifts, differences in political hierarchies, and larger geopolitical tensions often shattered any attempts at compromise. Native and English speakers often shared mutual animosities towards each other that led to tense diplomatic settings with the threat of war always on the horizon. Despite these challenges, a shared set of diplomatic protocols emerged around so-called "Indian Conferences" that created binding law. They as a phenomenon represent how two distinct cultures through political necessity, utilized and adapted law and a pre-existing system of diplomacy to resolve disputes and hopefully, enact lasting treaties.

While the English and tribal representatives combined various aspects of their own cultural principles into these proceedings, Native treaty making is best understood as a practice that began between tribes and later was adapted and employed by Europeans. Long before European sails arrived off New World shores, tribal representatives negotiated and enforced a set of treaty principles communicated, despite language barriers, through a shared set of rituals. They promulgated myths that not only entertained but served to justify legal rights to land or

⁵ Morrison, *The Embattled Northeast*, 162-173.

sovereignty. Peace pipes were smoked or wampum, braided shells inscribed with messages, was exchanged signifying the formation of legal bonds. Tribes were given familial names to symbolize a permanent binding connection between parties. Families could and would fight, but there was an expectation that reconciliation would come later. Breaking a bond could result in legally sanctioned retaliation against the offending party. Spoken words weren't just used to affirm law but became law as conferences were carried out. A verbal promise to one party would be remembered as terms of alliance to Natives, even if it was not part of the official written treaty document, something the English would often fail to grasp with adverse consequences.⁶

The English adapted to these traditions out of political necessity but not without some exasperation. Compared to their belief in written contracts and formalized proceedings, these symbolic acts often seemed frivolous. Negotiating with tribal nations in this manner directly contradicted some early seventeenth century English rhetoric that tribal people had no formal systems of government and were “uncivilized”, which threatened the legality of colonization itself. The English too incorporated their own unique practices. Deeds became evidence of purchase and extensive written records were often used to justify and overwhelm the Wabanaki.⁷ The English insistence on documentation and their oftentimes blatant disregard for past agreements did not come without Native anger. However, the Wabanaki adapted and deployed traditional English procedures to promote their own legal goals.

This thesis uses an ethnohistorical lens to analyze spoken legal arguments within conference proceedings to understand Wabanaki-English legal diplomacy and diction. Both cultural groups behaved in ways determined by their pre-existing notions of legal concepts and

⁶ Robert A. Williams Jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600–1800* (New York: Oxford University Press, 1997). 36, 75-93

⁷ Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (Chapel Hill: University of North Carolina Press, 1975), 63, 120–129.

assimilated parts of each other's legal ideals to better reach compromise. Specific diction was deliberately employed by speakers to assert precise legal principles they wanted to protect.

To better understand these negotiations, knowledge of both the Massachusetts Bay and Wabanaki Confederacy interactions is crucial. The Wabanaki, or "People of the Dawn" consisted of three ethnic groups that lived in Maine and small portions of Canada. Tribes were led by sagamores, Native men with special skills who other tribal people voluntarily chose to follow. While the French would appropriately label the three groups by ethnic association, the English instead chose to name the tribes based on geographical features close to their settlements, leading to names like Kennebec after the Kennebec River. These ethnic tribes eventually formed a loose confederacy in response to European incursions, which over time would evolve into the present-day Abenaki, Mi'kmaq, Passamaquoddy, Penobscot, and Maliseet tribes. European contact brought opportunity and disaster. Disease ravaged Native populations, but some Wabanaki regrouped and began exacting tribute from weakened tribes. The fur trade spurred new hostilities, such as the Beaver Wars, as tribes competed for pelts that were becoming scarcer in traditional hunting grounds. King Philip's War (1675-1676) also brought the Wabanaki into conflict with the English. Rightfully upset about settler encroachment in the North and an arms embargo that unfairly punished the Wabanaki for the actions of Southern New England tribes, some Wabanaki would launch raids on English settlement. War would drive English settlers out of some parts of Maine, but at a great cost. These wars would continue, as the system of English land grabbing and fur trading had put the Wabanaki into an increasingly perilous position. Dependent on the fur trade now for survival yet faced with growing colonial settlements, the Wabanaki had to negotiate carefully to protect their interests.⁸

⁸ Richard W. Judd, Edwin A. Churchill, and Joel W. Eastman, eds., *Maine: The Pine Tree State from Prehistory to the Present* (Orono, ME: University of Maine Press, 1995), 97–119.

The Wabanaki had longstanding ties with French Jesuit priests which led the English to believe the Wabanaki were pawns of the French, which simply was not true.⁹ Although the Wabanaki had a much stronger alliance with the French, they acted with their own interests in mind, and often tried to stay neutral in conflicts.¹⁰ The Massachusetts Bay colony rapidly expanded at the end of the seventeenth century following King Philip's War. Despite promises to stay out of Wabanaki territory at peace conferences ending King Philip's War, just a decade later English settlers again began disregarding treaty obligations leading to King William's War (1689-1697), which devastated northern New England settlements.¹¹ Illegal encroachment often was the catalyst that led to Wabanaki raids. Colonial leaders were eager to approve settlement farther and farther north into Maine, ready to exploit the natural resources present.

During the period between 1720 and 1750, the Wabanaki were forced into intense negotiations or outright conflict with the English following the Treaty of Portsmouth. Both Drummer's War (1722-1725) and King George's War (1744-1748) involved the Wabanaki largely because of the unresolved conflicts around land and trade written into the Treaty of Portsmouth. By the Seven Years War, treaty negotiations between individual colonies largely disappeared as English officials sought to assert more control over colonial diplomacy.¹²

Treaty conference documents from this crucial period were heavily mediated towards the English translators and transcribers who wrote them. They exemplify how the English used

⁹ Saliha Belmessous, ed., *Native Claims: Indigenous Law Against Empire, 1500–1920* (New York: Oxford University Press, 2012), 120.

¹⁰ Harald E. L. Prins, "The Crooked Path of Dummer's Treaty: Anglo-Wabanaki Diplomacy and the Quest for Aboriginal Rights," in *Papers of the Thirty-Third Algonquian Conference*, ed. H. C. Wolfart (Winnipeg: University of Manitoba Press, 2002), 360–378.

¹¹ Mary Beth Norton, *In the Devil's Snare: The Salem Witchcraft Crisis of 1692* (New York: Alfred A. Knopf, 2002), 90–91.

¹² For more on diplomacy during the war see Erick Hinderakers' *Britain's Ocean Empire* Chapter 9 and Fred Anderson's *Crucible of War*.

written legal documentation to justify actions, even if the documents origins were false or misleading. Although the true words of Native speakers were rarely recorded in full, there are still many instances where a careful reading of these documents exposed specific Native attitudes towards a policy or idea. This thesis will analyze the specific diction from treaty conference transcripts in each chapter. Some conferences will be mentioned across multiple chapters as they often discuss multiple legal issues. Thus, with a close reading, this thesis will attempt to discern the underlying sentiments and arguments of Native speakers.

One useful lens for analyzing these conferences is through the application of “legal pluralism” where historians have argued that every human society is ultimately made of multiple legal systems simultaneously that co-exist to form a unique equilibrium. In the colonial context, this means a pluralistic system would involve English legal hierarchies imposed upon existing Native legal systems. Regarding the Wabanaki, this is supported by the frequent conference negotiations that took place in the eighteenth century. Both communities adopted principles of the other as they negotiated while incorporating their own unique cultural practices. Despite repeat bloodshed, both parties would always return to the pluralistic conference system to restore peace and order.¹³

Legal pluralism also offered opportunities for the colonized. By exploiting gray areas in overlapping legal systems or adopting novel legal approaches, indigenous peoples would retain privileges to handle matters in their own traditional way. Inversely, exploitation of gaps in the law only prompted a gradual hardening of formal state control over colonial affairs. When each

¹³ John Griffiths, "What Is Legal Pluralism?" *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 38.

legal system recognized the other, it implicitly affirmed the existence of a new legal order with both indigenous and colonizer actors possessing authority.¹⁴

This thesis analyzes the language employed in these conferences in three distinct categories that made up the bulk of negotiations: outlining property, debating sovereignty, and settling trade disputes, all in their own respective chapters. Property disputes were often the reasons for Wabanaki-English quarrels and both groups' pre-existing notions of property influenced their legal concepts and argumentation at conference meetings. Native property systems varied but most divided property based on need (usufruct rights), with rights to certain resources delegated by tribal chieftains. However, there was no sense of permanent title to private property that would exist in the long term. This system was similar to traditional English perceptions of common lands, where peasants could allow their domesticated animals to graze. However, by the seventeenth century, English nobility had been enclosing common fields into parcels that were completely controlled by individuals. Thus, while the English treated and recognized Native's as limited property holders, their concepts of permanent title and enclosure put them at odds with Natives. Furthermore, the English viewed land that had been clearly cultivated ("improved") as being owned by Native peoples.¹⁵

Sovereignty was largely defined by the power dynamics at the time. Tribal leaders did not exert the level of direct control over their members as did European society. However, tribal governments existed with surprisingly complex roles for those who assisted tribal leaders. Tribal leaders themselves did rule with complete authority, although with the approval of a council of

¹⁴ Lauren A. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2004), 253-254.

¹⁵ Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, MA: Harvard University Press, 2005), 37–40.

individuals. Criminal sanctions dispensed by the family of a wronged individual appeared highly effective, perhaps more so than European criminal justice at the time. Without a doubt, Native tribes had formal political systems that had sovereign power. English sovereignty was derived from vassalage to the King and was based on historical land acquisition. Colonial governors or lords were technically vassals to the Crown and thus supervised by the Crown. A physical colony was proof of the Crown claiming sovereignty over a new piece of land. Similarly, Europeans regarded Natives on newly conquered lands as under their sovereignty and believed they would eventually incorporate them as formal subjects.¹⁶

Trade negotiations reflected the divergent expectations the Wabanaki and English expected from a treaty alliance. The English, utilizing mercantilist and proto-capitalist ideals, emphasized the accumulation of wealth and rewarded the productivity of commodities. Wabanaki society was egalitarian and believed in resource sharing. These two systems clashed and during negotiations, each side would relinquish some of their economic practices to appease the other. For instance, the English sold items at a loss through the truck system solely to appease their alliance obligations to the Wabanaki. Both sides had incentives to dictate trade law based on problems they faced. Discussions of property, despite being the cause of many wars during the period, exemplified the existence of a legal equilibrium.

¹⁶ Jennings, *Invasion of America*, 105-116



"Wabanaki Territories Map," Wabanaki Confederacy, Scarborough Public School District, accessed March 11, 2025, <https://scarboroughschools.libguides.com/wabanaki/confederacy>.

Chapter 1: The Principles of Property

The role of property and claims of ownership were critical in Wabanaki-English relations. Both the English and, contrary to popular belief, Native peoples had unique perceptions of land rights suited to their societies. Oftentimes, many conflicts such as Drummer's War (1722-1725) began when competing claims of land ownership led to open violence. Conflict arose in part from contrasting understandings of land as property. For the English, land ownership wasn't just for economic gain, it was tied to legitimacy as a civilized society. In England, gradual enclosure of common property dating back to the Middle Ages gained momentum in the seventeenth century. As large landowners consolidated their property, enclosure utilized barriers to privatize land and protect resources. Despite this transformation in England, the colonist brought this notion with them across the Atlantic as evidenced by the

Boston Common that continues to exist today. In John Locke's *Treatise of Government* (1689), he described the acquisition and farming of land for personal use as a commandment by God, under the impression that there was no need to worry about land privatization as there would always be more land available.¹⁷ The English, backed by this Biblical reasoning, justified their inhabitation and acquisition of land that was not theirs. Some English settlers argued that Native peoples, by not constructing traditional farms, fencing in domesticated animals, and lacking written deeds, wasted land and did not possess any real ownership claims over large areas they used for hunting or farming. John Winthrop, first governor of Massachusetts Bay, posited that Natives only used the inferior "natural" method of land ownership or were simply lazy.¹⁸ Governors at conferences would often encourage Natives to adopt a way of living in line with English standards of farming and property. English houses and gardens stood as symbols of ownership over surrounding areas and a Godly way of life.¹⁹ This had real impacts. Settler encroachment on Native territories and the illegal poaching of resources they were not entitled to was heavily influenced by the perception that Natives had no claims.²⁰ This association was so pervasive that within "praying towns" like Natick, communities created to Christianize indigenous people and adapt them to an English standard of living, some Natives nearly went bankrupt as they attempted to build English-style housing that was viewed as improved.

¹⁷ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 115-121.

¹⁸ William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983), 54-63.

¹⁹ Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640* (Cambridge: Cambridge University Press, 1995), 20-33.

²⁰ Daniel R. Mandell, *Behind the Frontier: Indians in Eighteenth-Century Eastern Massachusetts* (Lincoln: University of Nebraska Press, 1996), 110-111.

Ironically, the Natives sold land and shrank the ownership of their estate to increase the legitimacy of their overall land claim by building “proper” housing.²¹

Yet the simple taking of land could not satisfy the English desire to have just ownership and avoid any troublesome moral questions around simple seizure. Thus, the only way to obtain land was to purchase ownership from sagamores. Most land acquired was sold or at least it was presented as if it was. Native agents were afforded full land rights, although they could only sell to colonial governments or licensed colonial buyers. Secondly, only cultivated land was bothered to be purchased, as this was viewed as land that had exerted ownership over it. The rapidly growing English settler population viewed frontier lands that Indians may have believed were “owned” as wild. It is significant that, although the English in large part purchased property to obtain legal title, in conflicts they often took portions of land as just payment for wars they believed Natives started. Many of these wars began due to tensions as settlers encroached onto lands that were under Native claim.²² This implicit system demonstrates how land sale was pervasive but corrupted, especially by the mid eighteenth century. In this way, the English believed they were securing property rights in a legal manner when the historical setting created a constant pressure that contributed to massive Native land sell offs.

Like the English, Native religious and cultural beliefs influenced their legal conceptions about property. By the 1720’s, agriculture had replaced hunting as a primary food source in New England. However, tribes remained highly mobile, planting and then moving again as the seasons changed.²³ They widely manipulated lands they controlled for agricultural purposes by starting controlled fires in heavily wooded areas. While burning may have not been a traditional

²¹ Ibid 99.

²² Stuart Banner, *How the Indians Lost Their Land*, 25-33, 53.

²³ Ibid, 32.

English method of land manipulation, it made it easier for Natives to gather acorns and establish hunting grounds that would attract deer. Although the English didn't initially realize it, the meadows they encountered were like the houses and gardens the English built to proclaim their claim to land.

New England Natives tended to view the land as a blessing and something that had to be maintained. Just as the English had divine notions of what to do with land, Native peoples too viewed themselves as being at the mercy of their creators. If the proper rituals were not taken like rain dances, they could be forsaken and face droughts.²⁴ Similarly, they viewed property accumulation as something that was only acceptable if required by a family for their immediate needs. Anything in excess should be given to others more deserving. In this sense, Native people were at odds with the proto-capitalist ideas of hoarding wealth and property beyond the needs of survival and the vision of nature as a storehouse of commodities.²⁵

The great difference in attitudes concerning land lay in how Native land systems only vested land rights around the use of specific resources. While tribal families had distinct rights to fish, hunt, or live on a piece of land, they could not obtain complete control of a parcel of land. Importantly, these land rights were not permanent meaning over time who had control of what changed. This legal system was structured by their mobile agricultural and foraging system that, while highly efficient, depended on a mobile definition of land. A European imposition of rigid, permanent property standards near tribal lands made the traditional way of life impossible.²⁶ In regard to treaty disputes, it's very possible that many Natives, with no past concept of selling

²⁴ Neal Salisbury, *Manitou and Providence: Indians, Europeans, and the Making of New England, 1500–1643* (New York: Oxford University Press, 1982) 34–35.

²⁵ Daniel K. Richter, *Facing East from Indian Country: A Native History of Early America* (Cambridge, MA: Harvard University Press, 2001), 53.

²⁶ Richter, *Facing East from Indian Country*, 54–59.

land or full land title, did not realize what they were really “selling” to the English. Thus, many conflicts arose from misunderstandings that came from a right to a resource believed to be a right to the land in perpetuity.²⁷

The Wabanaki people’s view of the natural world placed them at odds with a more Eurocentric framework of land ownership they would soon encounter. They believed every action taken impacted all life in the natural world, with no single element in that world worth inherently more than any other. Viewing humans as inherently above other creatures, “elevates man inappropriately.”²⁸ The sectioning of the natural world into parcels destroyed the idea of harmony with nature and viewed land as too impersonal. To the Wabanaki, land was synonymous to family and worthy of respect.

The English often used written documentation as well as formalized procedure to force Wabanaki participants to accept agreements they would not have under different circumstances. The conference proceedings that followed Drummer’s War are excellent examples of this legal strategy, and how it could overwhelm Wabanaki negotiators. Since the 1713 Treaty of Portsmouth, Wabanaki anger escalated as English settlers increasingly encroached upon their lands. English officials had taken hostile stances towards the Wabanaki while simultaneously avoiding treaty obligations. Meanwhile, the Wabanaki had received purposely vague support from their French allies who wanted to avoid another confrontation with the English. At the center of the dispute lay the English approval of efforts to resettle the lower Kennebec region despite clear Wabanaki opposition. Although the English knew these settlements were increasing tensions, Massachusetts Bay officials chose to build forts in the contested area and to take an

²⁷ Banner, *How the Indians Lost Their Land*, 57-59.

²⁸ Sherri Mitchell, *Sacred Instructions: Indigenous Wisdom for Living Spirit-Based Change* (Berkeley, CA: North Atlantic Books, 2018), 87–91.

obstinate stance towards the Wabanaki to force their submission. This prompted Wabanaki raids upon English villages and a subsequent English reprisal raid on Norridgewock that started Drummer's War. After three years of brutal fighting, a weary Wabanaki led by the Penobscot pushed for peace.²⁹

The English began conference proceedings by listing a series of articles they wanted to be accepted as legally binding terms of their deal. The trouble began with the fourth article of the proceeding which demanded that, "His Majesty's Subjects of this Government peaceably to Enjoy and Possess all their rights of Land & c (country)."³⁰ Notable is the emphasis on all rights and the word "possession." The English used this terminology to emphasize that they had no intention of retreating from their claim on lands on the lower Kennebec. The plural use of the word "rights" referred to the English ideal of property, complete permanent control over all resources and all access to the land, not the Native ideal. This simple statement is even more egregious considering the lower Kennebec settlement was originally approved after settlers showed land deeds acquired from the Abenaki sachems in the seventeenth century.³¹ The English signified that as long as there was some distant written deed confirming the purchase, they would allow land claims to go through.

It was clear that these claims continued to be controversial, so the English offered a way to "prevent contention" by proposing a governmental agency to oversee and correct any boundary disputes.³² Although assisted by chiefs, the board consisted of Englishman who almost certainly favored their own side in disputes. By taking control of institutions designed to set legal

²⁹ Morrison, *The Embattled Northeast*, 165-186.

³⁰ Baxter, *Documentary History*, 194.

³¹ Morrison, *The Embattled Northeast*, 173.

³² Baxter, *Documentary History*, 195-196.

boundaries, the English pushed further the idea of a hierarchy within the pluralistic system. Just as the Wabanaki were deliberately excluded from the Treaty of Utrecht, they were left intentionally with unequal standing, contrary to the principles of fair negotiation between parties. The English also relied on purposeful ambiguity. By depicting the boundary disputes as ambiguous, the English could push Wabanaki people to accept a treaty now and await a further decision. By then however, settlements would already be established in contested areas. If these settlements provoked some Wabanaki to destroy English property, the English would then accuse the Wabanaki of breaking their treaty terms and place further sanctions on them.

Later, the English showed Native representatives the applicable land deeds to justify their position before emphasizing that they would still be able to fish and hunt on areas around the lands. This inclusion is notable because it represents the English appealing once again to the traditional Native sense of property in hopes of appeasing them. The English argued that common use resources required for tribal survival were still available, while ignoring the legitimate possibility that white settlers would exhaust or later inhabit these resources. Another revealing moment occurred when the Native representatives enquired, “whether Houses be built and settlements made as far as the English have purchas’d.”³³ This demonstrated that by this time, the Wabanaki were likely aware that miscommunication, whether intentional or unintentional, could seriously impact treaty effectiveness. Clarifying questions do have a legal role as they forced the English to state how they actually intended to use the land in front of multiple Native witnesses. The English were forced to speak orally rather than rely on written legal agreements as shown before, demonstrating how in this case the Wabanaki managed to shift power back to their own method of legal negotiation.

³³ Ibid 200.

Perhaps the most legally significant moment came after the initial conference proceedings. Despite agreeing to the articles discussed in 1725, a Native speaker would write in January of 1726 that he found the written articles entirely incorrect, demonstrating just how opaque the language barrier was. In response, the English showed 29 deeds to Penobscot representatives in July of 1726. The transcript lists the deeds in order by number and includes year, place, and participating tribal signors. The care given to write out these deeds in full was no accident. It represented how the interpreter himself valued these deeds as pivotal for establishing English legal claims. Numbering them in this way supported the narrative that the English had overwhelming deeds to the land that could not be contested. In response to these deeds, all that is written is that the Natives stated that they, “Had been shewn Deeds and papers enough to last them to the fall of the year, and that they did not desire to see anymore.”³⁴ In the face of mountains of alleged English contracts the Wabanaki had no real recourse because the English would intentionally bombard them with documentation they likely could not read or trace. The deeds could have been forgeries, coerced, or even more likely, intended for singular resource rights or temporary tenancy instead of full property title but that didn’t matter now.³⁵ Showing those papers only signified to the Wabanaki that the English believed they had necessary documentation to justify the land claim and now the English would not relinquish that claim. The Wabanaki were left without any immediate legal retorts. Oral claims had little legal weight against paper evidence, further exemplifying a hierarchical Eurocentric legal structure. However, Wabanaki were by no means passive players when property was concerned. Although they might have lost this small battle, over time, the Wabanaki adapted English legal practices to their own

³⁴ Ibid 207-208.

³⁵ Banner, *How the Indians Lost Their Land*, 49-84.

advantage. They co-opted English legal system practices, threatened violence, and when possible, used the geopolitical tensions between the French and English to their advantage.

An Indian Conference in Boston beginning on June 23, 1736, between Penobscot representatives and Governor Belcher, demonstrates how Wabanaki leaders used documentation to justify their assertions against the English. They adopted the past English insistence on having written proof to establish land ownership and used it to directly confront the governor for disregarding legally binding treaty obligations. Wabanaki leaders remarked that a Mr. Waldo appeared past the waterfall on the Main River, claiming he had purchased a deed from a Madockowando. The problem was this land was firmly in Native territory. The Native leaders then intentionally stated that negotiating the current boundary was difficult and that if breached by settlers, war could break out. Here the threat of war was used as a potential sanction of treaty breaking behavior, just as it was in the pre-colonial era.³⁶ This instance illustrates how the Wabanaki were not passive in their legal arguments, despite facing a hostile English government unconcerned by its past treaty obligations. By bringing up issues of contention and blatant violations of treaty law, the Wabanaki put Governor Belcher and Massachusetts Bay in a tougher position. If they did not act, they would appear blatantly unjust, something the English hoped to avoid. The English had to rationalize their land grabbing as a just system and anything that poked holes in that narrative threatened to expose just how unethical the system truly was.³⁷

A 1739 Conference with Governor Belcher and the Presumpscot Indians, a group of Abenaki, also demonstrates how the Wabanaki used direct confrontation to discuss land rights. A Sachem named Polin argued for his tribe's land rights. Polin advocated against the damming of the Presumpscot River, something that prevented vital fish from being caught by his tribe. Polin

³⁶ Baxter, *Documentary History*, 243.

³⁷ Banner, *How the Indians Lost Their Land*, 84.

also contended that, “he cannot find that the Land & Ponds where the English Settle and do Settle were ever Purchased by the English from their (Presumpscot) fathers & Grandfathers.”³⁸ Polin openly implied that these settlements were illegal and thus demanded that settlement stop. He did this again at another conference three days later. The repeat attempts to allege illegal settlement demonstrate how the Wabanaki increasingly relied on English standards of evidence to prevent settlement. Here Polin accepted a concept of permanent title to advance his own interests.

Later that day, a Native representative delivered a message presumably from the whole tribe. This pledge bluntly stated they would not allow English settlement past certain points on the Presumpscot River. This statement was much firmer than Polin’s oral arguments and demonstrated that the tribe had drawn a red line, implying that breaching this demand could result in open conflict. Statements like this show how the Wabanaki would use multiple methods to support their land claims. While Polin in person took the diplomatic approach by pointing out the alleged illegality of settlements, the larger tribe subtly threatened conflict while presenting a united front to the English.³⁹

Another unique aspect of this treaty was Polin’s emphasis on the resources harmed. Polin was upset about these illegal settlements because they had harmed fishing and hunting yields, yet he supported settlement of a trader or interpreter on their lands. Thus, Polin still asserted a traditional tribal view of property based around resource use. By arguing in this manner, he forced the English to at least consider the consequences of settler use of surrounding Native resources and recognize Native views of property.⁴⁰

³⁸Baxter, *Documentary History*, 257-259.

³⁹ *Ibid* 260-261.

⁴⁰ *Ibid* 259-260.

Polin's arguments were partially successful, as Massachusetts officials agreed to allow the dam to be opened. However, Governor Belcher maintained that he believed such deeds existed for the disputed land, and that many were destroyed in fires. He stated he would inquire further about it. In this way, Governor Belcher put the onus on the Wabanaki to prove that there was no claim, something that was virtually impossible. He also placed control of any investigation in the hands of the English. Despite Belcher's machinations, this treaty conference does illustrate a temporary success of the pluralistic system in which both parties used aspects of their own legal conceptions of property and each other's to argue for certain political actions.⁴¹

The above examples, while not exhaustive, exemplify the ways both the English and Wabanaki adapted to assert their legal claims around property, a highly contentious issue. The English, seeking to expand into Wabanaki territory without sparking a war, used overwhelming documentation, Eurocentric standards of evidence, and hierarchical treatment of non-English legal systems to assert their goals. The Wabanaki co-opted some English legal principles while simultaneously relying to their own traditional concepts of property. They also directly confronted English officials with evidence that could not be ignored. Without a doubt, the Wabanaki were at a significant disadvantage in conference proceedings, however, their usage of adaptations to the English system produced fruitful results that helped tribal leaders retain legal power. Through these tense property discussions, both parties used conferences to negotiate and advocate for their legal principles. While many of the treaties did not persist, the continued compromise and merging of principles by each party did. The diplomatic setting naturally encouraged a pluralistic system to develop, as neither side was able to obtain complete control

⁴¹ Ibid 261.

over the other without some compromise. Adopting the other parties' legal views was often the best way to advocate for a policy.

Chapter 3: Sovereignty

To the English, the Treaty of Utrecht (1713) gave the Crown sovereignty over Wabanaki land and its people. To the Wabanaki, they never relinquished sovereignty except on English paper. English documents had little value if the Wabanaki interpreted the alliance relationship as already broken. Further complicating this situation, there were fundamental differences in how political power was organized between the English and Wabanaki and of what sovereignty itself meant. Both parties through their specific diction employed at conferences aimed to push the Wabanaki-English sovereign relationship to function as they would prefer it.

Sovereignty, even in the modern age, can be difficult to define. The traditional concept of sovereignty is based around Eurocentric principles. A society must first transition from stateless to statehood with a large, centralized bureaucracy. Then, members of that society must recognize the authority of the state for it to be a sovereign nation. Stated concisely, a society with an ultimate authority with no equal has true sovereignty. Under this model, Europeans could have viewed Indigenous societies as stateless and incapable of exerting true sovereign force as they only used informal means of social control. Even though many Indigenous societies had systems of governance, because power and punishment were not dispensed from a large state apparatus, they were still not sovereign.⁴² The English concept of body politic influenced this viewpoint. The Crown was viewed as being the head of this body, with the rest being the nation. However, other English theorists classified a monarch as having a natural and separate eternal body, that constituted the monarchy. Either way, this legal principle firmly established a religious and legal basis for the English monarch to rule with great, if not absolute authority after the Glorious Revolution of 1688. The idea of head and body symbolically denotes that the monarch functions

⁴² F. H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 1986), 15-26.

as encompassing and controlling all the polity.⁴³ Without absolute authority over all facets of their people and territory as with the body politic, Native peoples were not considered to have sovereign entities.

European powers at this time also did not necessarily view territorial control as the most important priority for their colonies. Specific geographic locations linked to trade such as rivers or islands served as symbolic projections of control over a larger landmass. Unique locations and the means to get to them were carefully recorded, not just for future settlement but as evidence of formal control by that power. Layers of sovereignty existed as colonial officials who were granted power by European leaders competed or collaborated for authority with indigenous legal systems.⁴⁴ European control within their colonies was variable, largely determined by the political goals of that power. The notion of rigid control over the frontier was never fully realized.

While other scholarship would contest the rigid definition of sovereignty presented above, the concept of de facto and de jure sovereignty best serves the aims of this thesis. De facto sovereignty encapsulates the traditional sense of political control, requiring a body exerting authority over an area of territory and people. The means of control do not matter if that body can govern all aspects of their society. De jure sovereignty is determined by whether a specific state has practical sovereignty in the eyes of a larger legal system on the ground. In this way it is subjective and is based upon whether a system is recognized by international law.⁴⁵ The true difference between the two concepts is perspective. To a nation's citizens, they only comprehend

⁴³ Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ: Princeton University Press, 1957), 2-6, 35-42.

⁴⁴ Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010), 4-5, 15, 19, 31-33.

⁴⁵ Kent McNeil, "Sovereignty and Indigenous Peoples in North America," *Osgoode Hall Law Journal* 34, no. 1 (1996): 93-104.

their countries de facto sovereignty, as they know they can face punishment for disobeying their nation's laws. To another world leader who accepts that nation as having a right to rule, they value de jure sovereignty.

Applying these concepts to the Wabanaki-English relationship can help explain how each party advocated for their unique legal positions in respect to each other. To the English in the seventeenth century, the Wabanaki did not possess de jure sovereignty, at least in an all-encompassing sense. While treaty conferences and other English-Wabanaki joint legal systems did affirm a limited acceptance of Wabanaki sovereignty, it was not complete. Each Wabanaki tribe exerted de facto sovereignty over their society even as they pledged themselves subjects of the Crown. Thus, these two systems competed as the Wabanaki sought to be recognized as an independent nation in alliance with the Crown while the English sought to envelop them as subjects fully subservient to English law.

Native notions of community authority, what we refer to as sovereignty, differed in many ways from Europeans. Native cultures used kinship terms to describe the sort of power relationships they engaged. For instance, calling a tribe or individual "brother" denoted an equal relationship, with each party obligated to help the other out in times of need. The terms "nephew" or "father" could denote greater responsibility one partner had in providing for the other.⁴⁶ These kinship terms did not claim any tribe held complete control over the other, rather they implied a set of mutual treaty obligations. Yet their use inversely affirmed Wabanaki sovereignty. Every time a kinship term was used, it established that the conversation was between partners with obligations to each other and not simply between a subject and ruler. The Wabanaki rarely applied the term "father" to the English Crown as they did for the French. Word

⁴⁶ Calloway, *Linking Arms Together*, 71-74.

choice here reflected the concept of sovereignty from the Wabanaki perspective. While the English did not frequently employ kinship terms, they heavily used the term “brethren.” Brethren denoted a standard of friendship that is associated with the term “brother”, without exclusively accepting a familial and equal relation. The English did realize the value the concept of friendship and partnership had to the Wabanaki and thus incorporated it, but also ensured they would not use language that weakened their own claims of sovereignty.⁴⁷ Diction symbolized the larger ideological and political struggles that had emerged between the Wabanaki and English since first contact. These were not simply metaphors of diplomats, but the sentiments of each culture towards each other.

Wartime heightened the need to employ this language, particularly concerning conflicting claims over sovereignty. A 1724 report from Lieutenant William Canady of St. George’s Fort, located in present day Thomaston, Maine, illuminates the larger animosity around the topic of sovereignty during Drummer’s War. With tensions high and diplomacy out the window, speakers argued unrestrainedly their legal positions on sovereignty. This interaction between soldiers demonstrated how they themselves became a part of both of their cultures larger battle over the question of sovereignty.

The report began by outlining how several Wabanaki vessels approached St. George’s Fort. They promised safety for the English soldiers if they gave up the fort. In this way, the Wabanaki were formally treating with the English by dictating terms of a surrender while offering quarter. The Wabanaki also offered a captive Englishman to the English soldiers for money. The English soldiers treated these offers as legitimate, which demonstrated that they recognized that the Wabanaki did possess de facto sovereignty. In that moment, they had the

⁴⁷ Baxter, *Documentary History*, 36, 136, 231.

means and power to act as a European nation would. Despite this implicit recognition by the English, publicly these Wabanaki did not possess *de jure* sovereignty because there was no political reason for the Crown to offer that recognition. War had already begun and what better way to harm the enemy psychologically by framing them as a nationless people.⁴⁸

When the English refused the offer, the Wabanaki threatened the life of the English commander at the fort. The following tense back and forth reveals the ways the Wabanaki confronted sovereignty claims.⁴⁹ An Indian speaker disputed the claim that the land the fort stood on was English. After the English retorted that the land was King George's, the speaker stated, "Whats the reason this King George's Land, me no go to King George to get any of his Land."⁵⁰ At first glance, this statement may appear as just another criticism of the current situation by a frustrated Wabanaki. However, it implied that this speaker believed in an equal land for land exchange and thus the English should have negotiated with the Wabanaki tribes as sovereign entities. The speaker made a logical, legal assertion that the English had no claim to the land because they had not pursued a fair means of first acquiring that land, as would be the case between two nations under international law. This followed similar patterns of early miscommunications between Massachusetts Natives and English settlers in the seventeenth century, who often used kinship terms to describe the English monarchy. Some Natives outright called the King himself an ally while others labeled themselves as subjects while applying the Native concept of an alliance. In Native alliances, power differences and subservience were acknowledged yet leaders still retained control over their own tribes' affairs. How the monarchy

⁴⁸ Ibid 163-167

⁴⁹ Ibid 163-167.

⁵⁰ Ibid 165.

was culturally perceived by a tribe, whether as an ally or competitor, could not be determined by Native's declared submission to him.⁵¹

When the English responded that Wabanaki fathers had sold the land to them for money, thereby justifying their claims, they signified that they selectively accepted the Wabanaki's de jure sovereignty.⁵² When English speakers referenced past deeds or agreements that they could use in their favor, they portrayed the Wabanaki as sovereign and able to sell land rights. This was critical because if the Wabanaki did not have this status, current English land deeds would effectively be legally worthless. But when the Wabanaki negotiated in the present day, English leaders treated them as English subjects with recognition of limited autonomy yet none of the same land rights.⁵³

The 1725 Report of Indian Commissioners also demonstrated Wabanaki resistance and assertions of sovereignty in a wartime setting. Three Englishmen went to Montreal to convince the Wabanaki to formally negotiate at a conference in Boston. However, the Wabanaki were not open to any peace terms. Tribal leaders alleged that if the English had Native prisoners and settlements on their land, no conference proceedings would take place because the English were not acting in good faith. Instead, they stated that the English could come to Montreal to negotiate if they brought back the Wabanaki messengers and if the Canadian governor was present.⁵⁴

By asserting specific demands that the English would have to meet, the Wabanaki exemplified their claims de facto sovereignty. Only Wabanaki leaders could exercise a degree of political control over the Wabanaki people. The English, despite their many declarations and

⁵¹ Jenny Hale Pulsipher, "Models of Authority," in *Subjects unto the Same King: Indians, English, and the Contest for Authority in Colonial New England* (Philadelphia: University of Pennsylvania Press, 2005), 8–36.

⁵² Ibid 165.

⁵³ Ibid 267-271.

⁵⁴ Ibid 173-174.

desire to subjugate the Wabanaki, had no such influence or control over individual tribe members. The appeal to the Canadian governor demonstrated another tactic used by the Wabanaki to protect their sovereign status. Although heavily favoring the French, they fluctuated back and forth between each European power for leverage. The English could not ignore that exerting strict demands on their Wabanaki “subjects” could lead to Wabanaki collusion with the French. More importantly, the Wabanaki’s actions cemented themselves as an independent party to negotiations. The Wabanaki reminded the English that they retained the option to negotiate with the French if they chose to because they were an independent polity. No true subject of one empire would negotiate with another without the consent of their own government. Furthermore, the French acceptance of the Wabanaki, even just for their political goals, meant the Wabanaki possessed de-jure sovereignty, further supporting their own independence. The English had to acknowledge this uncomfortable truth even as they repeatedly pressured the Wabanaki to submit to English authority as subjects.

When tensions were high and war seemed just over the horizon, sovereignty was worded diplomatically. The 1740 Treaty Conference held at Boston involved Governor Belcher and Penobscot Chiefs. It illustrates a unique moment where both sides spoke cautiously, intent on preserving a fragile peace and leaving adequate space for further negotiation. The unique diction of this conference also captures how sovereignty was framed in terms of alliance when it was politically necessary to prevent full-blown war. From the onset, Governor Belcher mentioned strengthening “friendship” between the tribes, something Penobscot chief Loren repeated just a few moments later.⁵⁵ It’s important to note how friendship denoted traditional ideals of a treaty alliance. While not a kinship term, expressions like “friend” were most distant from familial

⁵⁵ Ibid 262-263.

terms like brother and were used to establish both sides as relative equals. Friendship signified a legal bond beyond treaty stipulations and promoted an ideal of wide-ranging implied reliance on each other.

As the conference went on, Loren explained Penobscot grievances concerning land encroachment and trade. What seemed to raise the ire of Governor Belcher is when he was informed that another tribe, the Arresaguntacooks, encouraged the Penobscot to go to the French and not the English for assistance. Belcher stated, “This Government don’t take it kindly they should advise with the French-Such things will make us Jealous.”⁵⁶ Just as before, international recognition of the Wabanaki as an independent entity directly contradicted the narrative established in prior treaties that they were English subjects. The Wabanaki’s open treaty making not only served as an opening for French manipulation within the frontier, but also blatantly exposed the lack of English power in the region. Despite multiple wars and English settler encroachment, the Wabanaki retained considerable autonomy.

Belcher’s use of the word “jealousy” also personified the Massachusetts government and continued the theme of friendship between the Wabanaki and English. He explained that it was natural for anyone to be angry when a friend went behind his back. Belcher further appealed to the underlying legal precedent of kinship relations, by suggesting that the Penobscot and Wabanaki had been unfaithful. English “jealousy” symbolically represented their political disapproval and the belief the Wabanaki were violating the binding agreements of past treaties. The statement was carefully worded to avoid any outright threats of violence or suggestions of hierarchical political power. Instead, the profession of jealousy was designed to invoke shame. Within this argument, the English and Wabanaki were equals.

⁵⁶ Ibid 267.

Relatively soon after, Loron stated, “We are not dependent on the French, We are a free People,” reaffirming that Wabanaki society was independent and outside the bounds of European power.⁵⁷ By suggesting non-reliance, Loron dispelled the notion that all Natives were doomed to be eventual subjects of Europeans or required European assistance for their survival. However, it also revealed his personal views on what a sovereign nation was. If a nation was completely dependent on another nation, it seems Loron viewed that nation as non-sovereign.

The 1749 Indian Conference at Boston also illustrated how sovereignty related issues played out in peace time negotiations. The goal of this conference was to re-establish connections with various tribes after King William’s War. The Penobscot and their chief Oosunk were present along with the Norridgewock tribe. After standard greetings, Massachusetts governor William Shirley repeatedly asked if the tribal representatives present spoke for the tribe. He questioned who sent them, what they had power to consent to, and if they had any credentials (Wampum). Shirley was aiming to determine if the Wabanaki leaders had full authority to negotiate for their tribe. Tribes had loose political structures with informal social contracts that constituted a form of collective sovereignty.⁵⁸ This interaction reveals that at this point, the English realized that just because an agreement had been reached at a conference does not mean that the tribe had to comply with what their leaders agreed to. This line of questioning was designed to prevent any future confusion and affirmed a European concept of sovereignty.⁵⁹

Shortly after, Oosunk further exemplified Wabanaki legal strategy to maintain sovereign status by speaking carefully when asked if a peace treaty would be broken upon the outbreak of a French and English War. Oosunk bluntly stated, “We cant answer that, if we though there would

⁵⁷ Ibid 267.

⁵⁸ McNeil, “Sovereignty and Indigenous Peoples in North America”, 15-18.

⁵⁹ Baxter, *Documentary History*, 307–308.

soon be a French warr we could.”⁶⁰ This statement was purposely vague and illustrated how Oosunk likely lacked the full authority to speak on such terms by the tribe. In remaining a sovereign nation, the Wabanaki alliance with the French was crucial. Committing to a single side in the conflict meant an admission to significant limitations on tribal de facto sovereignty. Thus, it was in the Wabanaki’s best interest to remain vague.

To their credit, the French never sought to exert total control over the Wabanaki, something the Wabanaki admitted at the treaty conference. Governor Shirely asked, “Do you look on yourselves as Subjects to the French King or to be a free People.”⁶¹ The way this question was worded does imply certain notions around Wabanaki sovereignty. For instance, by asking how they themselves viewed their sovereignty, Governor Shirley avoided recognizing the Wabanaki Confederacy as having de jure sovereignty within the English legal sphere on the written record. It also reflected a flawed comprehension about the subtle dynamics of traditional Indian alliances. He suggested the Wabanaki had to have been either subjects of the French or entirely independent but failed to suggest they might have been equal partners.

The 1750 Boston Conference further revealed how symbolic questions of sovereignty became much more tangible due to recent events. The year prior, three Englishman had been suspected of killing a Wabanaki man and injuring two others. The Wabanaki stated, “We sh(oul)d not require his life that spilt ye blood to be taken away, but that Atonement be made.” Governor Shirely replied that, “by our Laws they must be brought upon trial.”⁶² In this sense, the English asserted the sovereignty of their legal jurisdiction over the Wabanaki. The Wabanaki were the aggrieved party, and they had openly stated they did not seek the death penalty for the

⁶⁰ Ibid 310.

⁶¹ Ibid 310.

⁶² Ibid 310.

killers. Although they conceded English authority to punish the offenders, the Wabanaki clearly had no real choice in the matter, just as English subjects would not. In this case, the English pushed for a middle ground in how they handled a tense diplomatic situation. They worked quickly and eased Wabanaki tensions about the killing yet refused to relinquish any jurisdiction they held over criminal matters.

These treaty instances illustrate how diverse sovereignty was as a legal concept within conference proceedings. The specific political context greatly influenced how the English viewed Wabanaki sovereignty. Simultaneously, certain situations allowed the Wabanaki much greater recognition and autonomy. In this way, times of tension could be beneficial to the Wabanaki by forcing the English to relinquish authority they believed they deserved as a bargaining tool.

Chapter 4: Treachery and Trade

The trade of goods was a crucial part of indigenous society yet was simultaneously a crucial factor in the gradual breakdown of traditional Wabanaki cultural practices. Both the English and Wabanaki had their own trading systems and legal regulations for these systems before the colonial era. How they understood the terms of trade and how an alliance member was supposed to provide certain products for its fellow members determined what negotiators would demand at conference proceedings. By the eighteenth century, some Wabanaki, had become increasingly reliant on European goods due to land encroachment and warfare that had left traditional means of survival nonviable. Trade negotiations thus became crucial parts of conference in times of peace and war, often contributing to the success or failure of overall treaty agreements.

The British government practiced what many historians describe as a “mercantilist” economic system. This was a system defined by protectionist nationalist policies that aimed to maximize state self-sufficiency by exerting as much control as possible over external trade supplies. Mercantilist nations preferred colonies to independent nations because they could control resource flows from that region while preventing competition from any external manufactured goods. Although there are many reasons settlers were afforded personal property in America, from an economic standpoint, granting land to settlers encouraged a more productive colony. The English state also encouraged a wide variety of peoples to immigrate, believing a more populous colony would produce more resources while simultaneously consuming more English manufactured goods.⁶³ Thus, the English government’s economic principles indirectly promoted Native land encroachment because there was little reason for colonial governments to

⁶³ Curtis P. Nettels, “British Mercantilism and the Economic Development of the Thirteen Colonies,” *The Journal of Economic History* 12, no. 2 (1952): 105–14.

discourage practices that were harmful to Natives. From a mercantilist perspective, Natives were only useful if they participated in the colonial economy through the fur trade or sold their land. While diplomacy reduced costly wars that could harm colonial industry, increasingly the desire for frontier land and an expanding settler population led to more emboldened English acts in Northern New England.

The English employed what was known as the truck system to maintain formal control over English trade with the Wabanaki while establishing themselves as the supreme economic power in the region. Established by the general court in 1699 following King William's War, the government constructed trading posts called truck houses. Situated along rivers, the truck houses were administered by the "truck master" who sold goods to Natives that he obtained from trading vessel at low prices while purchasing pelts for sale in Boston. The English operated these at a loss for the sole purpose of obtaining a monopoly on trade and limiting French influence on Native peoples like the Wabanaki. Notably, despite selling goods at a loss, sometimes Wabanaki became frustrated when the price for furs declined while cost of the goods they purchased did not.⁶⁴ In some instances, truck masters seemingly disobeying their orders by selling goods at prices that did not match private traders, further stoking Native animosity. In this context, the truck system seems like less of a benefit than a burden upon the Natives, restricting their access to the free market, although many would continue to trade with the French and private traders.

This system in many ways resembled the mercantilist system imposed by England upon the colonies. Just as England prevented colonial trade with non-empire partners, the truck system prevented Native trade with the French. And like mercantilism, the truck system was built upon

⁶⁴ Douglas Edward Leach, *The Northern Colonial Frontier, 1607-1763* (New York: Holt, Rinehart and Winston, 1966), 147-149. I

the acquisition of raw pelts that could be further manufactured by the English and sold while keeping Natives reliant on and purchasing English goods. Even if it was at a loss, it still manipulated the Wabanaki into increasing dependence on trade with the English, forced to give the money they earned from the English back to the English. It also divided them from their French allies.

Native peoples across the continent transferred items of value in a complex system of exchanges or gifts. The Wabanaki's own views on trade influenced their later participation in the colonial economy. The Wabanaki used an interconnected system of waterways and pathways to exchange goods from far away. Some of these exchanges also allowed the transfer of cultural traditions, evidenced by similarities between New England Native burial practices and those of others in regions thousands of miles away.⁶⁵

To Europeans, many of the trade goods exchanged would be considered worthless trinkets lacking value or use. However, Native groups had different conceptions of these items that made them useful for spiritual and political reasons. For instance, crystal and other reflective shell items were valued highly and backed by tribal mythology. Such items believed to have held immense power and were found only in nature, not artificially manufactured. To tribes, these items held value because they were not from the land but otherworldly, and thus possessing one was possessing a source of great power. Europeans, when they brought similar goods like mirror or copper for trade, initially were able to capitalize on the ceremonial value these goods held to tribal leaders. However, as trade increased, some of the ceremonial and spiritual value of items

⁶⁵ Christoph Strobel, *Native Americans of New England* (New York: Bloomsbury Publishing USA, 2020), 56-57.

Europeans brought faded as they became commonplace and associated with European markets rather than extraterrestrial in origin.⁶⁶

Native gift giving was a crucial part of economic activity within tribal regions across the continent, both preceding and following colonization. Underlying gift giving was the belief in reciprocity, something that Europeans struggled to fully understand in trade negotiations. With the gifting of physical items and the expectation of gifts in return, tribes used principles of honor to create a system of ceremonial trade. Not taking gifts and thus not participating in the system was generally unacceptable. So too was not giving gifts for certain occasions. Although most heavily documented in the Pacific Northwest, this system extended everywhere, including in New England.⁶⁷

Gift giving was heavily involved in treaty conference ceremonial ritual. The French, when dealing with Natives involved in the fur trade, realized how crucial gift giving was to treaty success. Formal proceedings would not begin without constant gift exchanges and a well-maintained alliance meant sending gifts for occasions the other party experienced, like funerals. The French, as a “Father” to the Wabanaki, were expected to provide numerous goods and military protection to them in exchange for fur trade participation, something that cost them large sums of money. Natives believed that goods the French did not use were entitled for their use as treaty partners.⁶⁸ This reflected the ideal that Native peoples generally did not hoard goods but shared them if they had excess. The French were expected to act as any other tribe would. When

⁶⁶ Christopher L. Miller and George R. Hamell, “A New Perspective on Indian-White Contact: Cultural Symbols and Colonial Trade,” *The Journal of American History* 73, no. 2 (1986): 314–27.

⁶⁷ Marcel Mauss, *The Gift: The Form and Functions of Exchange in Archaic Societies*, trans. Ian Cunnison (London: Cohen & West, 1966), 34–41.

⁶⁸ Calloway, *Linking Arms Together*, 107.

the English entered treaty conference proceedings with the Wabanaki, tribal leaders often asked for a wide variety of goods and expected English gifts before negotiations began.

In the colonial era, fur and wampum became crucial items for trade with Europeans. Furs had traditionally been used to make clothing that was both water-repellant and warm. However, both the French and English had a major demand for furs and were willing to trade European and Asian goods in exchange for them. Goods like iron tools were highly appealing to Natives because they made daily tasks far easier. Other items like colored beads or mirrors were appealing because they could be used ceremonially. Wabanaki and other New England Natives thus began to hunt extensively to purchase trade goods, leading to the depletion of wildlife stocks and intertribal fighting over hunting grounds.⁶⁹ Insidiously, the fur trade in particular perpetuated the gradual loss of Native lands, as traders sold goods to Native's on credit. When the fur trade stagnated due to overhunting, Natives were forced to pay their debts by relinquishing land.⁷⁰

The adoption of the fur trade led to cultural conflicts. European capitalists rewarded productive workers and investors with greater profits. Profit was not equal and instead based upon proportional work or resources put in. The Wabanaki and other Natives generally had no such principle and instead rewarded productive work with status and honor. Wealth was divided fairly by tribal leaders and the success of the whole tribe was what was valued. This led to some inter-tribal tensions as some Native leaders adopted European notions of individualized profit.⁷¹ Native proposals for regulations on individual trading agents and for pricing controls reflect this disparity in thought between the two parties.

⁶⁹ Strobel, *Native Americans of New England*, 44.

⁷⁰ Banner, *How the Indians Lost Their Land*, 51, 55.

⁷¹ Morrison, *The Embattled Northeast*, 29-30.

While some spiritual items faded in value, items like wampum continued to have cultural and legal significance. Used as both a currency and ceremonially, both the Wabanaki and European powers traded for it.⁷² Goods like copper kettles became associated with control and dominance. Possessing these items gave Natives power over the Europeans they had purchased them from. Natives adapted European manufactured goods for their own purposes, seeking items for trade that they could use to legitimize their political power and autonomy.⁷³ In this way, certain material acquisitions affirmed Native sovereignty.

The stark divergence between how each side understood the purpose of trade led to complex negotiations at conferences. The Wabanaki, with their notions of reciprocity, believed in a trade system based on diplomacy and genuine need. The English recognized a market system that concentrated wealth among individuals and valued products for their specific value. These conferences reveal that both sides did recognize to a significant extent the other side's trade system to reach agreements. The Wabanaki adopted principles of value for items and recognized and to some extent accepted the English desire for profit. The English acknowledged the centrality of Wabanaki ceremonial gift giving and that trade was an act of benevolence between allies rather than a purely economic transaction. A pluralistic view of trade regulation was the only way to create an English-Wabanaki trading system that had any chance of lasting.

At the further ratification of Drummer's treaty, conference proceedings flared as allegations of corruption and fraud were leveled at the English by the Wabanaki. Native speakers urged the English to consider the dispute by bringing up the words of the governor, who had previously encouraged Natives to address their grievances with him. They alleged that a Captain

⁷² Strobel, *Native Americans of New England*, 57-58.

⁷³ Daniel K. Richter, "That Europe Be not Proud, nor America Discouraged': Native People and the Enduring Politics of Trade," in *Trade, Land, Power: The Struggle for Eastern North America* (Philadelphia: University of Pennsylvania Press, 2013), 58-62.

Smith, who served as the current truckmaster, was offering low prices for beaver pelts and feathers.⁷⁴

Natives alleged that they could not, “Tell the price of mink skins and don’t tell the price they are received at.”⁷⁵ The Wabanaki openly expressed their dismay that the system was unfair, lacked transparency, and functioned as a monopoly with no competitors. Without knowing the price of skins in Boston, they were unsure if the truckmaster was lying to them. The Wabanaki were also upset that the truckmaster seemed to not take certain pelts, perhaps outright rejecting them due to their quality. This rejection in their eyes seemed deceitful when they were not allowed to trade with anyone else, at least according to the English. In this instance, a system designed to win over the Wabanaki ended up driving them away.

The House of Representatives held a session to discuss this matter, and the proceedings demonstrate how the Wabanaki used certain tactics to push for their own legal agency and an end to the truckmaster’s corruption. For instance, some appeared in court and stated that after showing the skins to another trader in Boston, that trader offered more than the truckmaster had promised. By directly going to Boston and verifying the price, the Wabanaki reclaimed agency in their own economic dealings. They obtained expert testimony to question the character and expertise of Captain Smith. The Wabanaki here did not behave like captive suppliers but instead circumvented the truck system entirely by accessing the larger market to prove their point.⁷⁶

The truckmaster defended himself by stating the treasurer told him prices were at his discretion and, “he did as well as he could to prevent losses to the Government.”⁷⁷ This legal defense exposed the fundamental faults of the truck system in that it had to be subsidized by the

⁷⁴ Doc. Hist. State of Maine, vol. 23, 220.

⁷⁵ Doc. Hist. State of Maine, vol. 23, 220.

⁷⁶ Ibid 222

⁷⁷ Ibid 223

Massachusetts Bay government.⁷⁸ The truckmaster argued that he lowed prices as far as possible because he served as an agent of government. This argument falls flat considering Massachusetts operated this system largely with diplomatic, not financial purposes in mind, and the truckmaster by adjusting prices on his own for short term profits, threatened the long term goals of the system. However, it was even more ridiculous because the Wabanaki were legally not supposed to go to any other unofficial trader, so this was far from a fair system of trade. By trading with a profit in mind, the truck master was breaking past agreement terms and risking something even more valuable, peace with the Wabanaki.

Ultimately, the efforts of the Wabanaki worked. The truck master was forced from his position and a new one was put in his place, and English officials claimed he had misinterpreted orders to adjust pricing. The English also offered compensation for the lost fur revenue. This was a rare triumph and illustrated how the Wabanaki could obtain justice in English courts. It is worth noting that the English had no real incentive to oppose the ruling, as it would contradict the point of the truck houses. Any errant trader like Captain Smith risked pushing some Wabanaki back to the French, who were more than willing to trade with them and garner further influence. The Wabanaki knew they had access to French traders, providing a valuable bargaining chip when the truck system imposed conditions they deemed untenable. Thus, when Governor Drummer stated, “I desire you will alwaies inform me of such Mistakes”, upon declaring the ruling, he was acting with English interests in mind.⁷⁹

The 1740 Boston conference between the Penobscot Indians and Governor John Belcher illustrated the cultural differences around a trade-alliance partnership that led to conflicts.

Although they discussed many matters, Sachem Loron emphasized that he wanted price controls

⁷⁸ Douglas Edward Leach, *Northern Colonial Frontier*, 149.

⁷⁹ Ibid 229

set for truck masters. Rather than purchase no lower quality pelts, Loron asked that the truck master purchase them at an agreed upon lower price. Here the pre-existing treaty relationship came into play. Loron acknowledged that he understood certain goods had less intrinsic value. However, simultaneously, the Penobscot used the pelts to purchase goods they needed to survive. He demanded that as a treaty partner, not simply a trading partner, the English were obligated to be more lenient. Loron used harsh language stating truck masters, “throw them (pelts) out Doors” to emphasize that this was an insult between two equal partners.⁸⁰ The historical expectations of reciprocity gift exchange had influenced his position. He argued for the legal action of price controls to remedy what he perceived as a legal violation of treaty obligation.

Loron also suggested that perhaps the Penobscot were not being offered Boston pelt prices. He further appealed to legal precedent, stating, “And it was promised at the Treaty that the Price of Our Truck shou’d be allow’d as they Sell at Boston, But the Truck Masters have not allowed us so much.”⁸¹ Again and again, Loron appealed to binding treaty law to make his case that the truck master’s conduct was blatantly illegal, or a violation of treaty arrangements. Loron went even further by emphasizing how the apparent greed of the truck master was incompatible with the terms of friendship. He emphasized how they pinched every penny and wouldn’t even offer tobacco and a pipe when Natives visited with no furs. From the Wabanaki perspective, the English with their abundance of goods should be more than willing to share. The truck master should have given tobacco because he had a surplus of it and the Penobscot had none. The problem is the English often failed to understand this dynamic or simply chose not to follow it. From their perspective, they were already offering goods at a cheaper price as a token of good

⁸⁰ Ibid 264

⁸¹ Ibid 264

will. Offering them for free or for low quality pelts seemed illogical to their understanding of business. The concept of sharing wealth was also alien to the mercantilist system.

Finally, Loron proposed a trade policy. He asked that no rum be sold to any female Penobscot as they had been selling it to other Natives and causing harm. Loron adapted the English trade system and proposed changes that suited his own interests. Alcohol abuse within Native tribes could lead to indebtedness or disorder. The English also had no interest in seeing alcoholism run rampant among the Wabanaki. Thus, in this rare instance, both sides were mutually agreeable to the proposed policy.⁸²

Governor Belcher in his answer did outwardly accept Loron's statements, both about the truck master and the prohibition on alcohol selling to women. However, his words indicated his lack of acceptance of the concept of reciprocity Loron so vehemently emphasized. He stated, "You complain of the Truck Master – But We must not turn Men out merely because you don't like them" before ensuring justice would be done.⁸³ Belcher did not recognize that Natives "not liking" the truck master was not a reflection on that specific individual, but on the larger system. He also alleged that the price of goods was fair and matched those in Boston, but he would renew the orders anyway. Belcher acted as if Loron's statements were unfounded, but as a gesture of English goodwill he would ensure that orders were being followed anyway. By denigrating the Native position, he protected the English trade system.

As the conversation ended, things became tense when Belcher questioned Loron about their relationship with the French. The trade comments showed both sides viewed the situation as unfair. Belcher emphasized how the English offered cheaper goods quicker, going as far as

⁸² Ibid 265-267.

⁸³ Ibid 268.

saying, “You have more of Us for one shilling than of the French for two shillings.”⁸⁴ Loron retorted that they could purchase things cheaper from private traders. Loron provided evidence to show that the argument that the truck system was a pure benefit was wrong. In the context of prior treaty law which ordered the Wabanaki to trade solely with truck masters, Loron’s comment made the system appear as an oppressive annoyance upon the Wabanaki.

Governor Belcher again contradicted Loron, claiming he did not understand how prices worked in general. Loron fired back that trade was as much about peace as it was about profit. This threat of war demonstrated just how far the Penobscot were willing to go for trade and alliance violations. But Loron treated it as a just, legal sanction. This seemed to work, as just a few days later, Belcher stated that the truck master had been reprimanded and that a list of Boston prices would be hung on the truck house for viewing, another of Loron’s suggestions. Governor Belcher’s sudden change in tone was likely brought upon by the threat of war.⁸⁵ Loron was accepting and willing to participate in the English market system just as Governor Belcher was willing to implement aspects of the diplomatic Native trade system. While the English respect for Wabanaki trade customs and alliance obligations was fragile, the fear of a war would still prompt diplomacy.

Wabanaki and English trade negotiations emphasized the stark divide in cultural practices and beliefs. Each side had ulterior motives to trade with one another. The English ultimately forced the truck system upon the Wabanaki without adhering to Wabanaki trade principles as the French had. The Wabanaki needed trade goods and hoped to use the threat of another English-Wabanaki war to sweeten the terms of trade. Yet despite the differences, there were times when agreement could be reached, as both sides knew war was bad for business.

⁸⁴ Ibid 269.

⁸⁵ Ibid 269-271.

Conclusion:

This thesis explored three areas of negotiation in which the Wabanaki and English established pluralistic legal ideals for diplomacy. Analysis of negotiations around property, sovereignty, and trade law reveal a clear argument: Although both parties harbored great animosity towards each other, they collectively worked to adapt the legal principles of each other to form a pluralistic legal system.

The conference process itself became an amalgamation of legal symbolisms and formal procedure. English usage of metaphors, kinship terms, and Wampum were not mere diplomatic procedures, but understandings of the legal value these rituals had to alliance strength. The Wabanaki employed written deeds, formal economic data, and expert witnesses to justify their legal claims in a way the English could not ignore. The conference process transformed into a vehicle for two parties with very different principles to negotiate successfully.

The subject matter of the conferences also reflected a pluralistic legal view. The truck system implicitly demonstrated that the English understood alliance obligations. The English grew to recognize the Wabanaki's view that they were a sovereign power yet simultaneously under the power of a beneficiary nation. Understanding these legal distinctions were critical for obtaining Wabanaki support and keeping a peace in the region. The Wabanaki adopted English concepts of permanent property and a market economy even as they emphasized their own economic and property-based principles as much as possible. Strategically referencing their own fearsome reputation as warriors and highlighting their continued alliance with the French, the

Wabanaki skillfully pushed the English to recognize Native principles for the sake of compromise.

It is profound that despite the growing power imbalance, the Wabanaki in conference proceedings managed to extract many concessions from the English, who were far from willing to recognize their own equality to a Native people. These negotiations are not only a testament to the skill of negotiators in building a pluralistic legal system, but the flexibility of the law itself. The two legal cultures the Wabanaki and English contributed were far from parallel, and often directly opposed each other. Yet painstakingly, compromise was reached because every negotiator recognized legal squabbles were far less costly than war.

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