

Historical Injustice and Wabanaki Tribal Sovereignty in Maine

By Zeke Crofton-Macdonald

Qey, ntoliwis Osihkiyol Crofton-Macdonald, nil Wolastoqey nuceyiw Meduxnekewiyik naga Welamukotuk.

Hello everyone, my name is Zeke Crofton-Macdonald.

I am a Wolastoqey or Maliseet person from the Houlton Band of Maliseet Indians in Maine and the Oromocto First Nation in New Brunswick Canada. I serve as my Nation's Tribal Ambassador at the Houlton Band of Maliseet Indians. I'm grateful for the invitation to speak today and grateful the Universalist Unitarian Church has offered to include Wabanaki voices in your service.

I'd like to take the time I have to speak on issues of justice here in the State of Maine. I am a political representative of my people, but I'll try not to get bogged down in too much politics. I am also a treaty historian. I attended the University of New Brunswick for my graduate studies and wrote a thesis on the history of unceded Wolastoqey territory in Aroostook County Maine. So I hope to share a bit of history today as well.

First, I think it might be helpful to explain a little bit about my introduction. I introduced myself in my traditional language, called Wolastoqey Latuwewakon. The ability to introduce myself is part of the very limited language I carry. As a people we are actively working to reclaim a lot of the language that we lost and language that was forcibly taken from us. Part of that reclamation process is the effort to reclaim our traditional name. Most of you probably recognize the term "Maliseet." It is part of the name of our reservation, after all. The origin of the word "Maliseet" is actually a Mi'kmaq word. It roughly translates into "slow talkers," or those who speak slowly. It's a reference to the differences between our dialects in the language. The term "Maliseet" was proscribed to us by the French centuries ago and it has remained in use through colonial documentation, but it was never the way we referred to ourselves. Our traditional name in the language is Wolastoqey. It is a reference to our home along the Wolastoq river, or in English, the St. John River. In Wolastoqey Latuwewakon, Wolastoq means the beautiful and bountiful river. As the Wolastoqey, we are the people of the beautiful and bountiful river.

For a point of reference, Wolastoq River Basin extends from its headwaters in Quebec, through Aroostook County Maine, through New Brunswick and out to the Atlantic Ocean. Nearly the entirety of Aroostook County is traditional Wolastoqey Territory. Actually, it might interest you to know that the name of the County has its origins in the Wolastoqey language. The county itself is named for the Aroostook River, but the Aroostook River got its name from a mistranslation of an old French map, which labeled a Jesuit settlement between the intersection of two rivers "Arusitook." The settlement "Arusitook" was most likely named after the other river alongside the settlement, which was the "Wolastoq." And by a quirk of fun historical fate, the name of that Jesuit settlement became the name of the Aroostook River. Perhaps Aroostook County would be more aptly named "Wolastoq" county.

As a nation, our territory extends onto both sides of the international border. That was the main reason why I chose to attend graduate school at the University of New Brunswick. I wanted to reconnect with my nation on the Canadian side and gain access to the British and Canadian archives. When I was a kid, I was constantly wondering how so many of my relatives ended up on the Canadian side of the border and how my family and I ended up in the United States. Perhaps more importantly, I wondered why the government of Canada treated Wolastoqey people so differently than the US government.

I learned from my elders at a young age a history that didn't line up with the history that is taught in the United States. I learned that the land I am on right now, Aroostook County, had always been our land and we never sold or intentionally alienated any of it. I learned words like "unceded." Many of you might not be familiar with that word, it's not something the State of Maine teaches. It means that the land has never been conquered militarily, or legally purchased or ceded in a treaty. The word "unceded" is actively used in New Brunswick in regard to Wolastoqey territory, but we don't often hear the word here in Maine. It implies that the land was stolen from Native people without just compensation, which is a scary concept

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for most American people. If we claim to have a nation built on things like law and justice, then the injustices against Native people need to be taught. And they need to be rectified.

When we talk about historical injustices against Native people, most Mainers want to talk about Christopher Columbus, or the Trail of Tears or manifest destiny. Few want to talk about the history of our own State. The atrocities of Christopher Columbus were terrible and should be talked about, but we can't ignore injustice here at home. The land of the Wolastoqey people was stolen on the belief that we were incapable of claiming territory. That the way Wolastoqey people lived and used the land was so foreign to European ideas of land ownership that by definition, Indians could not have claim over territory. That idea still exists in the minds of many Americans by the way, but thankfully, we are actively working to correct prejudices like this.

Just because the way we cultivated forests and lived on the land without significantly changing the natural environment did not mean we did not have claim or ownership over our own lands. Of course, we did. We as the American people today need to expand our understanding of land cultivation to include more than just clear cutting or road building or resource extraction. In fact, I believe that in order to live in sustainable harmony with the planet today and into the future, we must relearn these ancient practices.

The first step is to ask Native people. Thankfully, we are still here. The United States, the State of Maine, the British and the Canadian governments all attempted to erase our presence from the land, but we are still here, and we still carry these traditional teachings. We are actively working to reclaim them and within many of our modern-day tribal government mission statements and objectives of governance lies the shared commitment to restore these ancient teachings. Embedded within our attempts to modernize our governments is this shared commitment. It is still a work in progress.

But similar ideas do not exist in the American governmental mandate. The limited protections we, as a nation, have on environmental concerns have been hard fought and diluted to such an extent that any protections necessarily center economic concerns over environmental ones. Protecting the woods and waters for their own sake and protecting those relatives at the cost of our own human comfort is completely foreign to many Americans. In our Wabanaki worldview, the woods, the waters, and the animals are not resources, but relatives. They deserve respect just as much as human beings. They also deserve legal and legislative protection.

That brings me to the modern-day fight for Tribal Sovereignty. And why Tribal governments should be in control of our own lands and waters. Many of you might have heard the phrase "Land Back." It's a bit of a rallying cry for young indigenous people online. Most native people of course, want land back, but that does not just mean claim or title over land, but the rights to use and protect the land.

While I was attending graduate school at the University of New Brunswick, I began work for my community at Welamukotuk First Nation. I grew up in the US, but many of my cousins live in Welamukotuk. My job was the assistant to the resource development consultation coordinator. In Canada, there exists something called the Duty to Consult. It is a law passed by the Canadian Supreme Court which established that any company or proponent interested in developing natural resources in a province needs to consult with the Native Nations whose treaty territory they are in. In New Brunswick, for instance, the Canadian federal government recognizes the treaty territory of the Wolastoqey and Mi'kmaq Nations. My job was to help handle the correspondence between these proponents and the Welamukotuk First Nation government.

The system in Canada is in need of a lot of improvements, but it is an example of what rights to territory might potentially look like. The fight for tribal sovereignty and the rallying cry "Land Back" does not mean taking away the family farm, it means Native people deserve a say in what happens within their territory. It

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means that as tribal governments, we deserve to manage our lands and waters and should have the opportunity to have a say in any projects that happen within that territory.

Under American federal Indian policy, the term “tribal sovereignty” refers to a specific definition as defined by the U.S Supreme Court. The following was taken from an explanation issued by the state government of Oregon:

“A tribal government derives its sovereign power from the people and from its connection to ancestral territory. Tribal sovereignty is not a gift bestowed by an external government and is not outlined in the U.S. Constitution, although the sovereign status of tribes is recognized by the U.S. government and has been upheld by the U.S. Supreme Court.

Sovereign nations have the right to form their own government, determine membership or citizenship, make and enforce laws, regulate trade within borders, and form alliances with other nations.

Sovereignty is the internationally recognized right of a nation to govern itself, and American Indian tribes existed as sovereign governments long before Europeans settled in the Americas.”

This explanation is very, very different than the way tribal governance is talked about in the State of Maine. Here in Maine, it is taught that the State settled its obligations to any Native Nation with the 1980 Maine Indian Land Claims Settlement Act. The Settlement Act is premised on the assumption that the only thing the State is required to recognize regarding the Native nations within its borders are the treaties specifically signed between the Nations and the State. Any other agreements or proof of sovereign control and occupation of territory are not valid unless there is a treaty specifically outlining territorial claim. This is problematic as our people did not establish claim to territory through treaties. We established it through the act of occupying and controlling our own land. Establishing claim to territory through treaty-making was only ever the European and American reason behind signing treaties. The reason we signed treaties was to create relationships between allies.

This is particularly apparent in Maine history in one of the few American-Wolastoqey treaties, remembered as the Watertown Treaty of 1776. In 1776, the Second Continental Congress signed a treaty with representatives of the Wolastoqey Nation in which the Wolastoqey offered to contribute warriors to fight alongside the United States in the American Revolution and the United States offered to engage in meaningful and constructive trade out of a truck house located in Machias. This treaty did not outline either Wolastoqey or American claim over territory, it was simply a treaty of military alliance and trade. It created a relationship between sovereign nations and allies.

Despite this, eight years later, the United States claimed the entirety of their supposed allies’ territory as their own in the Peace of Paris of 1784. When I was younger, I thought there must be something missing from this story. How could that have happened? I searched the written versions of the treaties, I searched the minutes of the treaty negotiations, I was sure somewhere in this documentation someone representing either the British or the American side might have spoken up about this. In short, after years of historical research, I can explain that the United States did not consider Wolastoqey or any Indigenous claim to territory as legitimate. Even in 1784, they considered the recognition of reserved Indian territory to be an issue of domestic policy to be determined after they had negotiated with Great Britain.

And to this day, the United States and the State of Maine still operate within a similar mindset. In the specific instance of the 1980 Land Claims Settlement, the State sought to settle the land dispute deriving from the 1794 Treaty in which the State of Massachusetts, now Maine, recognized a large section of the modern land mass of Maine as reserved Indian territory. It was only after the signing of the Peace of Paris, and the assertion of their claim over the entire territory, that the United States sought to negotiate treaties with the Wabanaki Nations. The Treaty of 1794 with the Passamaquoddy Nation, for instance, was one of those treaties.

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Yet even despite the existence of this treaty, which unlike the Watertown Treaty, outlined the recognition of a clear territorial claim, over the course of the next century, the Massachusetts and eventually Maine State governments intentionally ignored their recognition of Wabanaki national territory and stole Passamaquoddy, Penobscot, and Wolastoqey land for their own use.

In 1980, the Passamaquoddy and Penobscot Nations put forth a case claiming that much of this territory is still reserved for the Wabanaki Nations on the basis of this Treaty. The Settlement took a long time to finalize, but in the end, the State of Maine considered the issue settled. The Wabanaki Nations were awarded money to buy some land and the State believed that they no longer needed to deal with any questions regarding Wabanaki claim to territory or nationhood. In fact, the wording of the settlement made that clear. It states that the Wabanaki Nations may no longer make any claims deriving from treaties.

This is particularly worrisome for the Wolastoqey Nation, as new evidence has arisen in the past few decades indicating that treaties signed between the nation of Great Britain and the Wolastoqey Nation were misinterpreted in the British archives and Great Britain had not established legal title to the territory of Aroostook County before ceding it to the United States. This is why the Wolastoqey Nation in New Brunswick today uses word like "unceded" and why Aroostook County is still unceded Wolastoqey territory. Unfortunately though, because of the wording of the Settlement Act, no rights or land can be claimed from any treaty by a Wabanaki Nation in Maine on the basis that the single 1794 Treaty had been settled.

I hope you can already see how problematic this is. Our right to practice our sovereign nationhood is not something that can be granted by the State of Maine or the United States. It does not need to be proved in a treaty. If anything, it is proved by history and the well-documented history of centuries worth of international diplomacy between multiple nations, the United States being just one of them. We have always been sovereign, and we will continue to keep practicing that sovereignty. It is long overdue that the State of Maine works alongside us in those efforts.

I think it should be noted that many of these arguments do not appear in our modern-day political fight for tribal sovereignty. From a Wolastoqey or Wabanaki perspective, the entire basis and intent of the Settlement Act is backwards and problematic, yet it was an agreement that was signed and perhaps the best that could have been accomplished in the political environment of the 80s. But we do not need to live with it today. We should be free to re-examine it and modernize it to better suit the needs of the State and the tribal nations today.

It should also be noted that the bill directly pertaining to Tribal Sovereignty in the last legislative session, LD 1626, did not seek to overthrow the Act, but only to amend it. Over the course of 4 years, representatives of the State and tribal leadership sat around a table and negotiated the best way we can improve the Act to better serve the tribal communities and the people of Maine. The outcomes were the 22 Recommendations of the Task Force and LD 1626. In that bill, the solution we compromised on was to incorporate key aspects of federal Indian policy into the State of Maine.

As it is currently written, the Settlement Act bars the Wabanaki nations from benefiting from federal Indian policy. Things such as the Indian Child Welfare Act would not have been accessible to the Wabanaki Nations if the State of Maine did not directly approve its implementation here. As such, before we can access any new federal policy, we must lobby, spend millions of dollars and then only maybe get access to new federal legislation. This is not how the rest of the country operates. Maine is backwards, outdated and needs to change. Just about every one of the negotiators present at the signing of the Settlement Act on both sides agree that the document was never intended to remain static. It was intended to grow and develop as all relationships do. Every time we have attempted to help this relationship grow and improve, we have been turned away by the State. This is not how this relationship is meant to function.

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I don't want to get bogged down on the political arguments. I'm grateful you have invited me to share space with you today. My time as a treaty historian has taught me that our history together on this land has always been about relationships. And not just political relationships between our governments, but relationships between people. I encourage everyone here to engage in conversations with your friends and neighbors about these topics, to pursue more Wabanaki history that is not taught in our schools, and to reach out and connect with Wabanaki people. We have the ability to create a beautiful future together and it begins with all of us.

Woliwon, Nit Leyic. Thank you.