Native American Nationalism and Nation Re-building

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I am suddenly aware of the changes in the earth’s surface, especially when I find that I must change the trail that leads to my little house, because a ravine has been gradually eating toward it practically unnoticed. When it comes within a few feet of my road, I must do something immediately, or one day I shall find my road to town blocked.

—John Joseph Mathews (1945, 83)

This chapter concerns itself with anticipation and what anticipation does and does not do in the preservation of juridical and territorial self-rule in a Southern New England, tribal homeland. This is a narrative, a narrative that traverses thirty years of contestation, documenting the struggles of a small tribal community and its intimate engagement with what is known in legal nomenclature as a “settlement agreement.” Anticipation throughout this account can be observed in a state of contextual and ideological fluctuation, as tribal and nontribal regimes seek to affix conflicting desires, interests, and anticipations onto the settlement document. I am about to argue that though seemingly destabilizing in its effects, the antics of anticipation as represented here are not altogether a bad thing. Rather, they beckon new openings and create new tensions in a reassertion of tribal rights and the political prowess of tribal governments. This chapter, then, invokes the sentiments of other contributors to this volume who demonstrate through particular histories an enduring and adaptable commitment to indigenous relationships to nation, power, and place.
As a reconstruction, this chapter does not aspire toward chronological simplicity but meanders both systematically and spasmodically across a field of juridical and political events, most of which are propelled by the fear of loss. The narrative starts in the twilight years of the twentieth century, jumps back some three centuries, and then jettisons forward to moments of critical contemporaneity. The saga of how anticipation intervenes in a tribal project of political preservation begins in 1983 in the Indigenous island community of Aquinnah, Massachusetts, known at the time—and even now—as “Gay Head.” The ancestral territory of Aquinnah is perched on the southwestern tip of Noëpe, known by its colonial name, “Martha’s Vineyard,” a one hundred-square-mile acreage of shrub, vine, and dune that sits like a humpback whale seven miles off the coast of mainland Massachusetts. This story of Aquinnah ends without finality, reflecting the ongoing, never-ending labor in the reaffirmation of tribal nationhood and self-rule.

Strategies of “Will”

When Anne, president of the Wampanoag Tribal Council of Gay Head, Inc., signed a settlement agreement in November 1983 with the town of Gay Head, with a nontribal citizens’ rights group calling itself the Gay Head Taxpayers Association, and with the Commonwealth of Massachusetts, her people had been acquainted with the vagaries of juridical texts for more than 300 years. One of the most dramatic of these historical texts was Mittark’s “will.” As archival records tell it, it was in the late seventeenth century when Mittark, sachem of the Wampanoags of Aquinnah, declared that Aquinnah’s territorial sovereignty would remain sovereign “forever.” The declaration, believed to have been uttered by Mittark in a speech two years before he died in 1683, allegedly was committed to textual form, bearing the date September 11, 1681. The document was resurrected some years later when the Aquinnah Indians sought redress in the Massachusetts General Court in an effort to halt English expansionism and exploitation (C. Banks 1966, 9; Silverman 2005, 143).

In Native Writings in Massachusett, Ives Goddard and Kathleen J. Bragdon published a translation of the document, which originally had been written in a Romanized alphabet superimposed on what had been an Indigenous oral language.

I am Muttaak, sachem of Gay Head and Nashaquitsa as far as Wanemessit. Know this all people. I Muttaak and my chief men
and my children and my people, these are our lands. Forever we own them, and our posterity forever shall own them. . . . I Ummuttaak say this, and my chief men: if any of these sons of mine protects my sachemship, he shall forever be a sachem. But if any of my sons does not protect my sachemship and sells it, he shall fall forever. And we chief men say this and our sachem: if any of these sons of ours protects our chieftainship, he shall forever be a chief man. But if any one of our sons does not protect our chieftainship and sells it, he shall fall forever. I Umuttaag, sachem, say this and my chief men; this is our agreement. We say it before God; it shall be forever. I Ummuttaak, this is my hand (X), on the date September 11, 1681. . . . (Goddard and Bragdon 1988, 97)

Arguably, it was anticipation, as much as anything else, that provoked Mittark to craft what was essentially a will and testament. Aquinnah at the time was a small peninsula, separated from the rest of Noëpe by a body of water. Not long after the explorer Bartholomew Gosnold landed on Noëpe in 1602, the Indigenous designation of the island was displaced by the English name, “Martha’s Vineyard” (C. Banks 1966, 59). The name stuck, and Noëpe over time evolved into what it is now, a signifier of nonindigenous leisure, wealth, and prestige. But at first contact with the English, Noëpe was the home of an estimated three thousand or so Wampanoags spread across four major sachemships or kingdoms, one of which was Aquinnah, an island within an island (C. Banks 1966, 39; Jennings 1976, 26; Manning 2001; Mayhew 1694, 24). In the years surrounding the period in which Mittark produced his “will,” colonial and European imperial interests competed for proprietary control over Aquinnah and so, too, did other Natives (C. Banks 1966, 80; Silverman 2005, 17). Not surprisingly, Mittark’s document forebodingly reflects the anxiety of a set of indigenous leaders worried over territorial alienation of their homeland.

As historical interpretation suggests, anticipation in this moment of juridical confrontation performed in what was essentially a parroting of English textual practice mixed with Native tradition of that era. Observing English legal custom, the Aquinnah Wampanoags no doubt expected Mittark’s declaration—which was, after all, a written document—to safeguard the geopolitical integrity of their sachemship and keep outsider hands off of Aquinnah land into perpetuity. We can only surmise what Mittark’s people had in mind, strategically, when they presented the document to a colonial court. Perhaps, as historian David J. Silverman speculates, “the
Indians were shrewdly playing the colonists’ old game of manipulating the printed word” (2005, 144). Or having accepted or at least professed acceptance of Christianity and the promise of redemption through faith and literacy, Mittark and his lieutenants might have anticipated, naively, a favorable outcome from a document crafted for another kind of salvation. Neither strategy succeeded. The general court dismissed Mittark’s will as a forgery.

Three centuries later, in the waning years of the twentieth century, the signing of a 1983 settlement agreement would add yet another chapter to an ongoing, seemingly eternal epic narrative in the political assertions of indigenous Aquinnah. Like the maneuvers of a dying sachem, anticipation stands at the epicenter of this ongoing, contemporary struggle, a struggle that remains, to date, unresolved. This chapter examines the ways in which anticipation, articulated through legal form, simultaneously reaffirms and constrains an indigenous relationship to self-government over a thirty-year period that began in the early 1970s and extended into the start of the twenty-first century.

This study is the result of four years of ethnographic and ethnohistorical research, focusing primarily but not exclusively on Wampanoag-settler relations in the tiny Indian town of Aquinnah. During my tenure on Noëpe from 2000 to 2004, I lived year-round on the island, floating from one living situation to another because of the high cost of island living. I was employed off and on by the Aquinnah Tribe, working mostly as a clerk and administrative assistant and at times as an assistant in the Tribe’s shellfish hatchery.

My experience on the island during those years is indelible, etched in the raw brittleness of small-town, intercultural politics. I witnessed firsthand the social and political tensions that erupted when tribal officials decided in the spring of 2001 to ignore a key provision of the settlement agreement by refusing to ask town officials for permission to build a shed at the Tribe’s newly constructed shellfish hatchery. I witnessed, as well, the dismay of nontribal seasonal and year-round Aquinnah residents who, on a number of public occasions, articulated the sentiment that tribal people in a tribal town wielded unfair advantage in matters of land rights and economic resources, including the question of who should be able to lease souvenir lots at the Gay Head Cliffs. For a core group of these nontribal complainants, the settlement agreement represented a way in which nontribal citizens’ rights could be championed, if not always assured.
My interest in “anticipation” evolved a few years after my field experience, when I began researching the history of the settlement agreement itself. The research revealed, among other points, that the settlement process embodied three sets of political actors and three diverging sets of anticipations. As suggested above, the nontribal people who engineered and favored the settlement sought and anticipated constraints against future assertions of tribal self-governance. Within the tribe itself, the agreement signified two oppositional trajectories: the anticipation of loss—that is, the loss of tribal power—and a mode of anticipation that would remain securely moored to the political formidability of an Indigenous past, no matter what. So, some tribal people wanted the settlement, believing it would bring good things to the Tribe in spite of its defects. Others adamantly opposed the settlement, fearing and anticipating its lethal hold on tribal sovereignty.

This chapter tries to work through some of these conflicting anticipations, but it also reveals much about the challenges and performances of tribal nationhood. A few key arguments stand out. At the outset, this chapter underscores the historical fact that the Aquinnah Wampanoags possess a sense of nationhood that predates colonial intrusion and certainly a relationship to nationhood that predates a document crafted a mere thirty years ago. Tribal relationships to governance, however, have changed by necessity. Writing in separate essays in the text, Rebuilding Native Nations: Strategies for Governance and Development, Stephen Cornell and Alutiiq scholar Sarah L. Hicks saliently observe the ways in which the tools of tribal nationhood and governance have adapted under the political and legal manipulations of federal and state regimes (Cornell 2007, 59; Hicks 2007, 251).

What has remained constant, though, is what I am calling a “sense” of tribal nationhood, an Aquinnah Wampanoag political identity that understands itself as enduring. Mittark epitomized durability some three hundred years ago when he proclaimed Aquinnah to be the land of his people “forever.” This enduring sense of tribal nationhood and self-governance arguably has never faltered in Aquinnah, which may explain, to an extent, the fearlessness of signing onto a settlement arrangement that would, if it could, endanger the very core of an Indigenous identity. In their anticipations, tribal leaders who favored the settlement remained steadfast in their belief that no settlement document, however determinate its intent, could dismantle what has been sustained in Aquinnah for centuries.
Dualities

This interest in anticipation and its encounter with what is typically called tribal sovereignty is complicated all the more by the geopolitical context of the place itself. As a contemporary signifier, Noëpe has been remarkably fluid across time. Popularized over the last two centuries as a small island community that attracts eclectic Americans wanting to escape America, long known for its appeal to African-Americans and Jewish-Americans wanting to elude the worst articulations of racism and anti-Semitism, and recognized as a venue for bird watchers and conservationists, Noëpe in its most recent articulation seems irrecoverably enchanted by the force of material and symbolic wealth and prestige: money and class.

When I was on the island in the opening years of the twenty-first century, beachfront land was selling at nearly a million dollars an acre, if not more, in some locations. I recall a woman boasting to me of summering in “the Hamptons” and then declared that she now was thinking about building a home on Noëpe. I knew of not-rich islanders who lived outdoors in tents during the summer, while they rented out their homes for $3,000 a week or more. The commodification of the island was so extreme in the opinion of some islanders that a down-island shopkeeper and friend of mine intoned one day, “We’ve got to save this place. We can’t let it go the way of the bucks.”

Yet, even more intriguing than the social performance of money is the way the isle performs as an icon for the liberal, Democratic aristocracy (Appadurai 1988; Bourdieu 1993). As heads of state, both U.S. President Barack Obama and former U.S. president Bill Clinton have made ritual appearances on Noëpe. The Kennedys have sustained a long though sometimes tragic relationship with the island, and it was the late Jacqueline Kennedy Onassis who pursued privacy on Noëpe, retiring to Aquinnah. An exhaustive list of public personas linked to “Martha’s Vineyard”—people like African-American writer and journalist Dorothy West, U.S. Senator Edward W. Brooke, Pulitzer Prize-winning novelist John McCullough, and actors Patricia Neal and Michael J. Fox—would weigh down this chapter (Hayden and Hayden 1999).

Indeed, so dense is “the Vineyard” as a signifier that the reanimation of “Noëpe,” a Wampanoag place, would be a daunting and implausible endeavor, if not for the active presence of the Aquinnah Tribe, a federally recognized tribal nation of some eleven hundred members, whose administrative and ancestral headquarters remain situated in Aquinnah. With less than three hundred and fifty year-round residents, Aquinnah
is the second smallest town in the Commonwealth of Massachusetts. Not so long ago, Aquinnah was listed on state records as “Gay Head.” Then, in 1997, members of the island tribe successfully petitioned the state to resurrect the sachemship’s indigenous name.5

Aquinnah itself is poised so far west on the island that the sun can be seen sinking into the cold Atlantic like a giant, sizzling orange. Being so close to the ocean, Aquinnah understandably is a wet place, a place of bog, dune, and thick, enshrouding fog, all of which accentuate its petulant beauty and stubborn simplicity. There are wild orchids and a menagerie of fauna in Aquinnah—egrets, raccoons, and an overabundance of deer. Yet even at the beginning of the twenty-first century, there is no gas station, no post office, no place to buy eggs and milk in Aquinnah. It is this lonely, brooding hinterland that the island Wampanoags and a nontribal, local, regional and state regime fought over from 1974 to 1986 and again in the spring of 2001 during my tenure of fieldwork on Noëpe.

Another Mittark Moment

If Mittark imagined enduring tribal nationhood through the invocation of a written “will,” tribal inhabitation of legal textuality would make an even more dramatic statement when the Aquinnah Wampanoags sued for the return of unoccupied, communal tribal land in 1974. The Wampanoag Tribal Council of “Gay Head” officially filed the suit in a U.S. district, federal court. Representing the council was a feisty, white lawyer, Tom Tureen. Tureen was working then for the Native American Rights Fund, which offered legal services pro bono for struggling tribal communities seeking the recovery of ancestral land. In 1974, Tureen was making a name for himself by deftly invoking a two-hundred-year-old piece of federal legislation—the 1790 Trade and Intercourse Act—on behalf of the Passamaquoddy and Penobscot nations in the state of Maine (Eisler 2001). Typically called the “Indian Nonintercourse Act,” the Trade and Intercourse law gave Congress, not the states, the exclusive power to sanction land transactions with Native peoples.

Tureen’s legal strategy was welcomed news for tribes throughout Southern New England. Many of the indigenous land dealings with settlers and settler polities in the region were carried out within the political domains of states or colonial versions of states, not with the U.S. federal government. Indeed, when Southern New England sachems engaged in seventeenth-century and early eighteenth century land deals
with European colonials, or when early settlers expropriated unoccupied Indian lands outright for private use and profit, there was no federal government.

Like a ghost reinvigorated for battle, the resurrected Nonintercourse Act gave Tureen what he needed. In 1972, the lawyer successfully maneuvered a reluctant U.S. Justice Department into suing the state of Maine on behalf of the two tribes there. By the time the suit was settled in 1980, the Passamaquoddies and Penobscots jointly were awarded $81.5 million and the authority to purchase 300,000 acres in Maine’s “unorganized” territories (Clifford 1988, 278; Eisler 2001, 74).

The Wampanoags on Noëpe must have been buoyed by the legal gyrations coming together in Maine, but Tureen’s coup d’etat may not have been the only thing that stirred political resistance in Aquinnah. A wave of refashioned American Indian resistance enveloped Indian Country in the 1960s and 1970s. Known popularly as “Red Power,” Native activism during this period sought redress through nationally publicized political theatricality, much of it articulated in the form of marches and occupations. Indians were not alone in the deployment of such strategies. As Joane Nagel has noted, Red Power “did not emerge in a social vacuum” but was immersed in an era that also belonged to the Black Panthers, Cesar Chavez’s National Farm Workers, the turbulent protests over the Vietnam War, and youthful resistance to “Establishment” hair, politics, and gendered identities (Nagel 1996, 130).

One of the earliest demonstrations of American Indian activism were the fish-in protests organized in the early 1960s by the Pacific Northwest tribal nations, among them the Nisqually, Puyallup, and Duwamish peoples of Washington (Smith 2007, 152). Notably, tribal organizers of the fish-ins enlisted the support of actor-activist Marlon Brando in 1964, and in 1966 the Survival of American Indians Association (SAIA) invited the thirty-three-year-old African-American comedian Dick Gregory to “fish the Nisqually River” (Smith 2007, 149). Brando was especially effective in attracting national attention to the protests for the limited time he was associated with them, but fish-in leaders were dismayed by Gregory’s participation, contending that Gregory primarily played to Southern black activism, exhibiting far less interest in Indian fishing rights. When the relationship with Gregory fizzled out, the SAIA invited actor Jay Silverheels to support their cause. Silverheels portrayed the character Tonto in the Lone Ranger television series (Smith 2007, 150).

Native activism would shift to an occupation mode in the late 1960s. In the early morning hours of November 20, 1969, eighty-nine Native
Americans college students, identifying themselves as “Indians of All Tribes,” landed on Alcatraz Island in San Francisco Bay and for nineteen months claimed the island by “right of discovery.” The young activists demanded clear title to the island and called for the establishment of an American Indian university, an American Indian cultural center, and an American Indian museum. Indigeneity has a long history with Alcatraz. Thousands of years before European contact, a diversity of indigenous groups used the rocky, barren island alternately as a way station in their canoe travels, as a designated holy place, and as a place of ostracism and isolation for violators of laws and taboos (Johnson 2008).

Interestingly, Alcatraz Island in the mid-twentieth century would perform as a site of isolation of a different sort when it became a prison for some of America’s most notorious violators, felons like Al “Scarface” Capone and Robert Stroud, the “birdman of Alcatraz.” Alcatraz operated as a prison for some thirty years before being closed by U.S. Attorney General Robert Kennedy in 1963. After its doors were shut down, the prison captured the attention of Texas business developer and oil tycoon Lamar Hunt, who dreamt of transforming a “warehouse for the living dead” into a capitalist venture about the size of Texas (Mankiller and Wallis 1993, 186–189). Hunt’s dream would install manicured gardens, an underground space museum, and a futuristic tower topped off with a revolving restaurant; but the prison’s main cellblock would be preserved for the enjoyment of tourists. Hunt’s memorial to Alcatraz would have completely ignored and obliterated Indigenous history. In a memoir recounting her days as a protestor at Alcatraz, Wilma Mankiller, a former principal chief of the Cherokee Nation of Oklahoma, lamented:

For a year after the last inmate was removed, Alcatraz sat like an aging derelict surrounded by water, a symbol of past punishment and acts of brute force. Visitors to San Francisco stood on Fisherman’s Wharf and gazed at “the Rock.” Some of them circled it in tour boats. In the dying sunlight when the fog moved in, it seemed to be only a mirage. The island was no longer as it had been centuries before, when free-spirited native people stopped there as nature’s guests. (Mankiller and Wallis 1993, 187)

Native activism would continue to escalate, becoming increasingly bold. In 1971 and again in 1972, members of the American Indian Movement (AIM) organized an occupation of the U.S. Bureau of Indian Affairs build-
ing in Washington, D.C. Then, in 1973, AIM members, as well as Natives from as far away as Mi’kmaw country in Nova Scotia, shared hunting rifles and powdered orange juice with Oglala Lakotas in a seventy-one-day siege at Wounded Knee on the Pine Ridge Reservation in South Dakota. Gunfire was exchanged during the siege, leaving two Indians dead and a U.S. Marshall wounded (D. Banks 2004; Cobb and Fowler 2007; Crow Dog and Erdoes 1995; Nagel 1996).

Eventually, Indian activists and their nontribal supporters would turn away from highly publicized protests and look to lawyers and the courts, seeking and receiving help from the Seattle Legal Services, the Native American Rights Fund, and finally the U.S. Justice Department, which in 1974 affirmed the rights of Washington Indians to half of the harvestable fish and mandated co-management by the tribes and the state. These legal interventions, born of a climate of life-threatening activism, produced important developments on behalf of Native treaty and land rights (Smith 2007, 156). Aquinnah's 1974 lawsuit against the town of Gay Head and the anticipation of recovery and preservation of tribal, ancestral land represented, then, both the spirit of an age and a pivotal moment in Native American pride and agency.

Anticipating “Forever Wild”

There were other anticipations astir during the 1970s, anticipations linked to another concept of preservation. In 1973, U.S. Senator Edward M. “Ted” Kennedy of Massachusetts introduced the Nantucket Sound Islands Trust bill, a revised version of a bill Kennedy had introduced a year earlier. The 1973 bill S.1929 would have placed a significant portion of beachfront land in Aquinnah, under the protectorate of a national preserve. The ethnographic analysis of Gloria Levitas, whose 1980 dissertation describes this period of anticipation in detail, suggests that Kennedy introduced the bill for reasons that seem connected to an intense period of lobbying by a well-placed coterie of “Vineyard” seasonal residents and other island enthusiasts, a group calling itself “Friends of the Island.”

One of the charter members of the “Friends” was Anne W. Simon, described by Levitas as the “ex-wife” of a well-known developer responsible for the conception and construction of the planned community of New Town in Reston, Virginia (Levitas 1980, 537). In her 1973 conservation memoir, “No Island is an Island,” Simon self-identified as one of the charter members of “Friends” and listed a number of other founding members in what adds up to be an enumeration of public figures, such
as Jerome Wiesner of the Massachusetts Institute of Technology and a member of John F. Kennedy’s cabinet during the Kennedy presidency; Leona Baumgartner, a retired Commissioner of Public Health; Richard Pough, the “well-known” conservationist and officer of the Audubon Society; Michael Straight, novelist and former editor of the New Republic; John Oakes, then editorial page editor of the New York Times; actress Katharine Cornell; and artist Thomas Hart Benton, whose family thirty years later would join a lawsuit against the Aquinnah tribe (Simon 1973, 21).

The discursive fervor of Simon’s conservationism is organized around an argument in which local islanders on Noëpe, acting alone, were perceived as ineffectual in their ability to protect the island from future incursions of overdevelopment. Championing the idea of federal intervention and the Kennedy initiative, in particular, Simon wrote, “The Vineyard can no longer plead innocence or trust in its insularity for protection” (1973, 79). Much of Noëpe still remained pristine and virginal in the public imagination of the early 1970s and thus was perceived by Simon and the other “Friends,” as worth saving.

So, if the locals could not protect and preserve this island paradise from the scourge of development, then a partnership with the federal government, “jointly conceived and carried out,” clearly was called for. “Without a working partnership, even the wish to protect will not survive” (Simon 1973, 80). Simon admitted that the future of the Kennedy bill could not be assured when she said, “It may become a law or it may serve its purpose by inspiring other action” (1973, 203). However, what was perhaps more critical for Simon was the way in which the visions of conservationists and their local, state and nation-state “friends” brought the conservation issue before “the people.”

As the legislation worked its way through public review, island detractors complained indignantly at the prospect of losing “home rule.” In Aquinnah, Wampanoags and nontribal, island residents alike reportedly were “infuriated” by that part of the Kennedy bill that would have designated the “entire coastline” of Aquinnah “forever wild.” Levitas wrote, “Forever wild” lands were to be free of all building or development, owners of homes on this land would be allowed to keep them until they died, or to sell them to the government at any time for a fair market valued. If they failed to sell during their lifetimes, the government had a right to make a payment to the heirs and take the land. In no other town was privately owned beachfront property designated as “forever wild.” (1980, 546; quotes in original)
The Kennedy legislation never was enacted. Rather, in its place, Noëpe islanders accepted the imposition of state land-use laws—the Wetlands Act—and the 1978 creation of the Martha's Vineyard Commission, an island-wide regulatory body, charged with the oversight of island preservation and development.

Wampanoag Intervention

It was within this intersection of disparate and conflicting relationships to anticipation, punctuated by a politicized atmosphere of heightened Indianness and bourgeois sensibilities seeking desire in legislation, that members of the Aquinnah Wampanoag community succeeded in gaining a state charter in 1972, codifying the already structured Wampanoag Tribal Council of Gay Head. The formation of an officially incorporated tribal council, a legal entity, allowed the island Wampanoags to pursue more effectively their own strategies for protection. What mobilized the Aquinnah natives, wrote anthropologist Christine Grabowski, was the prospect of losing their “common lands,” a discontinuous acreage of beach, bog, creek, dune, and the once-multicolored shoreline cliffs fronting the Atlantic Ocean (Grabowski 1994, 5). The cranberry bogs, in particular, are infused with symbolism as a place in which Aquinnah Wampanoags still gather communally to harvest cranberries in a private annual ceremony.

The Aquinnah Wampanoags worried over the possibility that, once declared “forever wild,” the common lands of their ancestors would be removed from tribal control. Once again invoking legal formality, the Aquinnah natives initially tried to transfer the common lands to the newly incorporated Tribal Council. The effort was foiled by an injunction filed by a group composed largely of nontribal, “summer people,” a collective of financially advantaged, urban lawyers and business people organized under the “Gay Head Taxpayers Association.”

The transfer of the common lands already had been approved by the three town selectmen, all of whom were tribal members. The Taxpayers, however, successfully asserted through their injunction that the selectmen were unfairly safeguarding only the interests of Wampanoag residents in the ‘town” and thus were ignoring the interests of nontribal, townspeople (Grabowski 1994, 8). Tribal strategies shifted. With the transfer plan blocked, Tribal Council members turned to lawyer Tom Tureen, and in December 1974 the council filed suit against the town of Gay Head for the return of what eventually would add up to roughly 485 acres of
tribal land, a fraction of the 3,400-plus acres Mittark tried to protect with another juridical document three hundred years earlier.9

In Pursuit of Stasis

The Aquinnah lawsuit initiated in 1974 tried to manage a field of multiple, unruly elements—anticipation, human agency, market forces, desire, and fear—none of which seemed at all inclined to perform the role of the fixed object. That did not stop people from trying. The desire for fixity appeared especially pronounced within the Taxpayers Association. A couple of years after the Aquinnah Tribal Council filed its lawsuit, the Taxpayers officially intervened in the litigation. Panicked by the lawsuit underway in Maine, fearing that white islanders would lose their year-round and seasonal homes and worried that the tribe eventually would put a hotel or casino on “the Vineyard,” the Taxpayers pressed for out-of-court, settlement negotiation as a means by which the tribe’s lawsuit could be brought to closure expeditiously and with minimal damage to nontribal economic and political interests. No less consequential was the desire to produce a legal instrument that would constrict tribal anticipation into an unspecified future.

Tribal Council members for their part did not immediately embrace the first round of proposals. Indeed, negotiations grew so tense and embittered that in 1977 Massachusetts Governor Michael S. Dukakis appointed Albert M. Sacks, dean of Harvard Law School, to mediate a settlement package acceptable to all parties. The mediation attempt failed. Negotiations broke down in the spring of 1979 when a tribal faction resisted a plan that would grant tribal title to common lands in exchange for relinquishing all other titles and claims to tribal lands and natural resources (Grabowski 1994, 352).10

By 1983 differences on both sides of the proposed settlement debate seemed irreconcilable (Grabowski 1994, 360). On August 5, 1983, the Taxpayers Association placed an ad in the Vineyard Gazette, seeking island-wide support of the settlement and blaming the Tribal Council for the lack of progress in the lawsuit. Fueled by anticipation, the ad read,

What is at stake?

The answer to this question is simple. For the residents of Gay head (sic), the loss of the case could mean loss of our property.
Like most Americans, our homes represent our major asset in our lives. We view the possible takeover of our property with alarm. (Vineyard Gazette, August 5, 1983)\(^\text{11}\)

Popular discourse during the settlement talks reflected, as well, the now familiar sentiment of nontribal citizens’ rights groups whose relationship to equality and indigenous rights claims, as Alyosha Goldstein (2008) observed, conveniently detaches itself from historical inequities. Indulging in the cant of temporal innocence, one defense lawyer for the Taxpayer’s Association remarked in 1986,

> Consider for a moment who the people are whose rights are threatened by the assertion of this ancient (land) claim. The vast majority of them are homeowners who have acquired land and homes in Gay Head within the last twenty or thirty years, completely unaware of any ancient legislation or conveyance which forms the basis of the plaintiffs’ claims. (United States Senate 1986, 149)

The defense lawyer quoted above was a member of the Boston law firm Hale and Dorr, the same firm that successfully derailed the Mashpee Wampanoags in the 1977 Mashpee land-recovery lawsuit filed against the town of Mashpee on Cape Cod. The sister tribe to the Aquinnah people on Noëpe, the Mashpees lost their land-recovery suit when a nonindigenous jury ruled that the Mashpees no longer constituted a “tribe” (Campisi 1991; Clifford 1988). Hale and Dorr not only represented nontribal interests in the Mashpee and Aquinnah cases of the 1970s and 1980s but would litigate on behalf of nontribal landowners in the hatchery lawsuit filed against the Aquinnah Indians in 2001.

Given the ideological divides evident in the settlement talks in the late summer of 1983, it seems all but incredulous that a settlement proposal was endorsed by Tribal Council and approved in a majority vote within the tribe’s general membership by mid-November.\(^\text{12}\) The final document, the one signed by Anne in November 1983, returned to the tribe 238 acres of tribal common lands, another 175 acres of negotiated land of a bankrupted private estate, known as the “Strock” estate, plus a controversial, seven-acre coastal parcel known as the Cook Lands.\(^\text{13}\) In exchange for these lands, the tribe agreed to the extinguishment of all other “aboriginal” land claims.
Settlement agreements must at least appear magnanimous. Thus, there are moments when the document teasingly gestures toward tribal autonomy, only to rip it away in the next discursive breath. For instance, the Tribal Land Corporation, created in the settlement process, was to have established safety and protection regulations that would apply to hunting on settlement lands. Tribal regulation, however, would extend only to hunting carried out by means “other than firearms or crossbow,” which as defined in the settlement only would allow tribal regulation of hunting methods such as trapping or, taken to a ludicrous extreme, something like stone throwing. Yet, even within the tribal corporation’s narrow domain of jurisdiction, tribal oversight still was regulated. The tribal corporation’s standards of safety and protection were subject to state and local “judicial review for reasonableness.”

Unbounded

As previously indicated, the discursive labor that constructed a local agreement from a field of conflicting anticipations was distinctly not local. About a decade after he introduced the Islands Trust legislation, the “forever wild” bill, Senator Ted Kennedy intervened once again in island politics, this time sponsoring Senate bill S.1452, which would ratify the proposed Aquinnah settlement agreement and provide up to three million dollars in federal and state funds to purchase the Tribe’s common lands. In effect, congressional approval would transform a local agreement into a federal “act,” a federal law. Kennedy’s settlement legislation also foreshadowed federal recognition, which would be granted to the Aquinnah Tribe in April 1987, a few months before the enactment of S.1452.

In its immediacy, the legislation purported to “remove all clouds” on land titles in Aquinnah (United States Senate 1986, 3). What had become standard, metaphoric discourse of that period was the assertion that the unresolved, 1974 Aquinnah lawsuit had disrupted land transactions in the town, creating “clouds” that had disabled a lucrative real estate market. The “clouds” metaphor even appears in the preamble to the S.1452 settlement “bill” and survives verbatim in Section 2, paragraphs 2 and 3, of the congressionally approved settlement “act:”

(2) The pendency of this lawsuit has resulted in severe economic hardships for the residents of the town of Gay Head by
clouding the titles to much of the land in the town, including land not involved in the lawsuit.

(3) The Congress shares with the Commonwealth of Massachusetts and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claim. (United States Congress 1987)

Tribal members who opposed the proposed settlement critiqued the “clouds” rhetoric as a “scare tactic” and “false argument” (United States Senate 1986, 201). However, as noted above, these counterarguments lost their potency against an apparent fear that the Aquinnah Natives would replicate the phenomenal land acquisition of the Passamaquoddy and Penobscots in Maine.

As a matter of procedure, congressional intervention demanded the airing of all sides of the debate. In early April 1986, a number of Aquinnah tribal members traveled to Washington, D.C., and personally testified before the Senate Committee on Indian Affairs, arguing why the settlement agreement should and should not be ratified by Congress. The hearing was conducted on April 9, 1986. While much of the testimony was oral, a number of tribal testifiers also submitted written statements to the committee. My reconstruction of these testimonies is derived from both written accounts and transcribed oral accounts.

Schisms of Anticipation

The settlement deal, as proposed and eventually enacted, is represented in this chapter as a saga of anticipation embodied in texts. During the thirteen-year period in which the settlement agreement was negotiated, drafted, and codified, anticipation makes its appearance from within a temporal field of conflicting perceptions and interests. As the Taxpayers Association activated its own agenda, attempting to forestall and foreclose tribal anticipation through a settlement process, the Aquinnah Tribe itself split into a factional field that would be sustained for more than a decade. The split calcified around those tribal members who championed the proposed settlement and detractors who opposed the land deal as an affront and threat to the future of tribal sovereignty.

Based on the Senate testimony, as well as legal archival documents obtained from the National Archives office in Waltham, Massachusetts,
Aquinnah tribal members opposing the settlement over the life of the 1974 lawsuit made several attempts to intervene in the settlement process and reconstruct many of the settlement’s key features. During the Senate hearings themselves, members of the antisettlement group—sometimes referred to as the “James” faction or the “James Group,” and at other times more generally referenced as the “dissenting faction” or simply the “dissenters”—cast the settlement as shortsighted, offensive, and a lethal blow to the future of tribal power. “The settlement is an insult to any intelligent thinking human being,” one tribal member wrote in a pithy piece of 1986 testimony (United States Senate 1986, 213).

In another piece of oppositional testimony, another tribal member singled out the settlement provision that required the tribe to relinquish all “aboriginal” land claims and titles. The tribal member characterized the provision and the proposed settlement act in its entirety as “disastrous” for the tribe, “legally and morally.” She argued further that “federal trustship” over the settlement lands should be granted “before” any land settlement was made. “Then and only then can we be assured that the Gay Head Wampanoag Tribe interest will be secure” (United States Senate 1986, 227).

Members of the antisettlement group prolifically articulated their concerns and grievances, the result of which is a near volume of memos, letters, and legal texts produced across more than a decade of legal and political wrangling. One of the documents lists certain provisions the opposition leaders said they would require of any acceptable settlement. The proposed features, which for the most part were ignored, would have modified the settlement to provide:

- Conveyance to the tribe of the Cook lands without restriction;
- Conveyance to the tribe of all the beaches as part of the common lands;
- Conveyance to the tribe of all unclaimed lots in Aquinnah, with the right of access to those lots;
- Recognition of Wampanoag hunting and fishing rights;
- Right of refusal to redeem land “put up by the town” for tax sale, giving the tribe the right to obtain land before land was made available to other potential buyers;
- Land owned by the tribe “to be held without restriction”;
• Conveyance of immediate areas surrounding a number of sacred and cultural sites and access by tribal members to those sites, including sacred sites located on private property occupied by nontribal residents.

The list of requisite items appears in a separate, stand-alone document and is also incorporated in a letter written by a member of the dissenting camp. Dated April 5, 1986, the letter is addressed to Senator Mark Andrews, then chairperson of the Select Committee on Indian Affairs. In the letter, a tribal member criticizes the settlement for not going far enough to accomplish what was originally intended to “preserve and maintain Wampanoag culture and heritage for our future generations.” The letter identified the settlement detractors not as a collection of tribal “dissidents” but as “reconstructionists” seeking to recast the negotiation in a manner “which will strengthen our Indian heritage and not bury it.”

Yearnings

In contrast to the angry prescience and argumentation of tribal opposition to the settlement, Anne, the tribal co-signer of the settlement document, installs temporal and political coherence as a foundational argument against which tribal members so inclined were able to justify their support of the settlement process and its congressional codification. In both her written and oral statements at the Senate hearing, Anne argued that her people would be able to sustain the political integrity of the Tribe across time, a position of confidence that refuses to capitulate to the increasing presence and intervention of nontribal residents in Aquinnah. She noted in her testimony,

At present, all three selectmen—the town clerk, the tax collector, both constables, the chief of police, and the shellfish warden—are all Gay Head Indians, and, with a few exceptions, have always been Indian. If this legislation is enacted, the tribe, with a land base and the opportunity to develop economically and socially, will continue its control (sic) of the leadership position in the Gay Head community. (United States Senate 1986, 99)

Anne’s relationship to anticipation seems anchored to a historically familiar politics in which the Aquinnah Wampanoags, even when
under the colonial gaze, have been able to maintain a politically coherent community across the centuries. Indeed, during my fieldwork, I came to understand that Anne proudly traced her lineage to Zachariah Howwaswee, an Aquinnah preacher and tribal leader born in 1738 (Silverman 2005, 179–182). Anne herself served many years in tribal government and is credited for being largely responsible for shepherding the Tribe through the lengthy federal recognition process. Anne's immediate family members also have been involved in local politics. Her brother, Donald F. Malonson, was long-time chief of the Tribe. After his death in 2003, he was succeeded by the current chief, his son Ryan. All three of Anne's sons—Marc, Donald, and Carl—were involved in tribal and town politics over the last two decades, maintaining positions such as tribal chair and town selectmen. Anne died in 2012 at the age of 97.

Beyond Anne's own kinship ties, Edwin D. Vanderhoop, a member of the expansive Vanderhoop family, is cited in historical records as the first Wampanoag to be elected to the state legislature, representing Dukes County in 1888 (Manning 2001, 54). A politically engaged family, two members of the Vanderhoop line have served as tribal chair in recent years: Beverly Wright, who was tribal chair at the start of the shellfish hatchery litigation in 2001, and Tobias Vanderhoop, who is tribal chair at this writing. Other tribal family names often cited in Aquinnah Wampanoag history are the Jeffers, the Smalleys, and the Belains.

I argue that Anne's connection to a Wampanoag past, a past of political achievement, creates, as plausible, a tribal relationship to identity and power that mediates the fear that any settlement agreement (that any mere text, in fact) can or will displace self-rule for her people. Still, some imperfections of the settlement were too glaring to ignore. Anne, for instance, was well aware of the settlement's “limited provision for tribal jurisdiction” (United States Senate 1986, 91). In her written testimony, she noted that at the time the 1974 lawsuit originally was filed, the tribe was advised “by our attorneys” that if the suit for the common lands was successful, “there could be a similar claim for the entire town” (United States Senate 1986, 91). Overall, though, Anne seemed to find a secure refuge in customary practice and the historical facticity of tribal cohesion and control.

A Matter of Practicality

If faith in the sustainability of Wampanoag power, in large part, rationalized tribal support of the settlement, so, too, did more practical interests.
What emerges in the testimony as a compelling selling point in the acceptance of the settlement is the prospect of setting aside land that would allow more off-island tribal members to return to their ancestral homeland, an anticipation that would be fulfilled, at least partially, in 1996 with the construction of a limited number of tribal housing units.

Prosettlement testifiers in the 1986 Senate hearing spoke of the need to obtain a protected land base that would not succumb to financial pressures in the escalating island real estate market. The creation of tribal housing, as well as the preservation of undeveloped common lands, signified for prosettlement tribal members a means by which political and communal continuity would be secured. In the discourse of preservation, the settlement document becomes a bulwark against the vagaries of increasingly aggressive, capitalist encroachment. As one prosettlement tribal member testified, “All we are asking is the chance for us, including our children, as a Wampanoag Tribe, to be granted the right to remain in Gay Head, where our people’s heritage lies and will forever” (United States Senate 1986, 41). Invoking the language of reason, one tribal member offered this statement at the hearings:

I know there are people within the tribe who oppose this settlement, but I have listened to their objections and arguments at tribal and town meetings and find them, in my mind, to be unquestionably wrong.

This settlement preserves the town common lands for the tribe, which has been a major objective from the start of the suit. It also provides that the tribe will require land that can be used for affordable housing. This will ensure that our people are not driven out of Gay Head by the forces of the marketplace.

As a tribe, we have considered the terms of this settlement time and time again. We have conducted open tribal meetings and discussed the settlement at numerous town meetings. I believe that any tribal member who is interested has complete knowledge of the terms of the settlement and is aware that, although not perfect, it achieves our basic tribal goals. I have no doubt that a substantial majority of the tribal members want and need this settlement.

We Indians of Gay Head have always been a tribe. We have always believed that. We have always taken care of our own and have conducted our own affairs. This bill will ensure that our way of life will not be lost. (United States Senate 1986, 24)
Interestingly, tribal yearnings for fixity, for an enduring trajectory of promise, find an awkward resonance with nontribal aspirations. For non-tribal social and legal actors unsettled by the potential of tribal power, the settlement text performs as an energizing source of infinite containment. Similarly, tribal supporters of the settlement sought their own version of lasting assuredness in the body of a text. I contend, however, that the settlement document cannot offer concrete guarantees, even in its most determined performances. Rather, it is the land itself that becomes the settlement’s material underpinning. Tribal land effectively grounds a textual artifact crafted from the cravings of hope and fear. What will endure, perhaps longer than the settlement itself, is Aquinnah land.

Consider yet another segment of oral testimony from the 1986 Senate hearings. What seemed of particular concern to members of the Senate committee was the position of some Aquinnah tribal members who would seek not just the reclamation of the tribe’s common lands but all or nearly all of the 3,400 acres of the entire town of Aquinnah and thus a full recovery of territorial sovereignty. What follows is a transcribed version of the dialogue between the moderator of the hearings, Peter S. Taylor, and R. James, one of the “dissenting” members of the tribal James Group.

MR. JAMES: I am (R.) James, and I am a member of the Gay Head Wampanoag Tribe. . . . I come before you today to speak in opposition to the passage of this bill. Since the dates and figures have been stated over and over again in the many legal documents that have been filed by all parties during the 12 years this settlement proposal has been debated, and, as we all know, statistics can be manipulated to bolster any side one takes in an argument, I do not feel they need to be repeated today. Instead, I am going to speak of the negative impact this bill's passage will have on my people . . . I believe that the one thing that disturbs me most, if you allow this legislation to pass, is never again, and I say never again, will Gay Head Wampanoags, whether singularly or as a tribe, will be able to sue for land, land which is rightfully owned by my people . . . I feel very strongly that it is wrong for any of us, Indian or non-Indian, to feel that we have the right to negotiate or legislate away the rights of unborn generations. . . . The State (sic) corporation has told people that if the settlement, as written, goes through, they will be able to use land as they see fit, perhaps to build homes or make a living. This sounds pretty good on
the surface. . . . We should all realize that once government, be it State or Federal, gets involved, one cannot even build a doghouse without having to go through endless paper drills, impact studies, conferences, meetings, and the like; in short, loss of control forever. . . . If this bill is allowed to pass, we will have a little less than 5 percent of our land, and land that we can never hope to get. . . . I am also disturbed . . . (James is interrupted)

MR. TAYLOR: Mr. James let me ask a question on this.

MR. JAMES: Yes.

MR. TAYLOR: Is it your contention that the land that is currently in private ownership is, in fact, Indian land?

MR. JAMES: I believe strongly that the 3,400 acres that was originally the reservation down there is Indian land; yes, sir.

MR. TAYLOR: That encompasses the entire township of Gay Head, does it not?

MRS. (I): Yes. May I add to that please? I am sorry. I was with (my) aunts at the county courthouse, looking up the land sales that were made between 1974 and 1986. After the lands were described, the lot numbers, and so forth, they all say Indian land. That is how they are described.

MR. TAYLOR: Well, I think the question or the point I am driving at—let’s take Jackie Kennedy’s estate (in Aquinnah). The estate has come up two or three times today. She owns a title from the State of Massachusetts, or at least the county that has jurisdiction in the Gay Head area. What I am trying to get at is, what are we looking at here as an alternative to what is before us? Are you saying that Jackie Kennedy’s estate, as well as all other properties that are within these 3,400 acres, the title has currently been issued to by the State of Massachusetts, that that land should be taken from the current owners and returned to the tribe? Is that what you are recommending?
MR. JAMES: No.

MRS. (I): No; I have never said that.

MR. JAMES: I believe it was brought out before, when someone mentioned that it could be put into a Federal trust, like the National Seashore on Cape Cod, where these people would be allowed to stay there, and they could will the house to their future generations, and if they decided to sell it, the tribe would get first refusal. I think that was brought out here before. (United States Senate 1986, 69–71)

As moderator of the hearing, Taylor is empowered to determine how much can be said by testimony participants, a role he seems to command readily in his dialogue with James. At a critical transition in the testimony, the moment in which James stated, “I am also disturbed,” Taylor interrupted him and began to rehearse a conversation that had been recorded earlier in a testimony of another member of the James family (United States Senate 1986, 64). The previous testimony explained the strategy by which Wampanoag-owned land could be inhabited by nontribal occupants and how that land might return to the tribe by a process of “first refusal.” Taylor's revisitation of the earlier testimony prompted James to remark: “I think that was brought out before.”

Taylor, however, pressed for elaboration on the issue of occupation, this time invoking the estate of Jacqueline Kennedy Onassis, who purchased about 375 acres of Aquinnah land in 1978 in pursuit of privacy. In Taylor’s dialogue with James, it is as if the Onassis estate—the land holdings of a legendary American aristocrat, former White House “First Lady,” and the widow of a slain, nationally adored U.S. president—becomes the discursive boundary against which no testimony can pass. Taylor did not seem satisfied until he pressed James against that boundary:

Are you saying that Jackie Kennedy’s estate, as well as all other properties that are within this 3,400 acres (of Aquinnah) . . . that that land should be taken from the current owners and returned to the tribe? (United States Senate 1986, 70)

James could only reply, “No,” as did Mrs. (I), another tribal member disaffected by the proposed settlement. So potent is the invocation of Jacqueline Kennedy Onassis that it is barely noticeable that James never
completed the comment that would have identified the other matter that “disturbs” him.

The Taylor-James dialogue all but crumbles from a kind of Bakhtinian dissonance, as the ideologically colliding speakers compete in a textual space produced by transcription. To the extent that the dialogue is ideologically cohesive, it is the mediation of prescience that becomes the binding element. Both sides represent diverging interests but both sides anticipate a similar species of loss. James worries over the loss of tribal control “forever,” and Taylor seeks assurances again and again that nontribal property owners, if placed under the control of the island Wampanoags, would not lose the land holdings upon which a nontribal land and power base is implicitly sustained. Here, the nuances of an intercultural relationship of cohabitation elude nontribal, political actors who remain fixed on a solution of fixity, wanting to produce a text that will perform indefinitely as a legal talisman against nontribal dispossession and loss of power.

Renegotiating “Forever”

Vine Deloria, Jr., and Raymond J. DeMallie have characterized the settlement process as the “modern equivalent of treaty making,” a process by which Indigenous nations and their representatives are directly involved in negotiation, consent, and, ideally, renegotiation (Deloria and DeMallie 1999, 563). Under the settlement process, a settlement document is produced through a collaboration of interested parties. Like the Aquinnah case, the resulting settlement document then is enacted as law in Congress.

Between 1971 and 1996, Congress approved thirty-eight such settlement acts for Indian tribes. The earliest of these acts was the Alaska Native Claims Settlement Act of 1971. Deloria and DeMallie noted that the Alaska settlement act, widely known to be flawed, has been “amended several times since its passage” (1999, 563). The amendments are the result of strong and persistent criticism from within a base of what is now more than 100,000 Alaskan Natives.20 I am unaware, however, of any legislated mandate, federal or state, that actually requires periodic reassessment of settlement terms and conditions.21 In the Aquinnah case, the provision that comes closest to a periodic review is the requirement that any change to the Aquinnah settlement agreement would require a majority vote of the tribe, a vote of the state, and a vote of the town, which would include some of the very people who anticipate and fear tribal power.
As of this writing and to my knowledge, neither the language of the settlement “agreement” nor the language of the settlement “act” has been altered. Locally, tribe and town officials in Aquinnah worked out a revised land use agreement in 2007, but tribal officials have since exited the agreement. The local pact laid out a plan designed to avoid the bitter litigation and community divisiveness that characterized the hatchery litigation, but the 2007 agreement did not supersede the original settlement measure approved in 1983 and codified as federal law in 1987.22

Conclusion

In this chapter I have explored collisions of anticipation embodied in legal texts. I started out with a brief examination of the deployment of Mittark's “will” in the late seventeenth century and then examined more extensively Aquinnah Wampanoag participation in the creation of a 1983 settlement agreement, as well as tribal resistance to the agreement. In each of these episodes, an Indigenous nation seeks, across time, to secure and protect geopolitical self-rule through the inhabitation of juridical, textual practice.

In my examination of the 1983 settlement, I have tried to demonstrate that the settlement document emerged from a temporal field of discord and political theatricality. As detailed above, the 1974 tribal land case and the eventual 1983 settlement evolved from a set of events and developments that coagulated at specific historical moments in the 1970s and 1980s: sizeable, Indigenous land recovery in Maine, a heightened period of Indigenous pride and activism, tribal fear of losing land to Native peoples, island resistance to a federal attempt to legislate “forever wild,” and more than a decade of intercultural and intratribal dispute over the settlement process and content. The end result was a text crafted to anticipate conflicting agendas and impulses.

Despite the destabilizing conditions of its genesis, the settlement text would feign coherence. Like many juridical instruments, the document wants to strip away historical, social, and political variance in favor of a transcendent language that would override any change in context or circumstance. I witnessed such a move toward coherence, when, in the winter of 2003, lawyers for the nontribal plaintiffs in the hatchery case stood before a judge and recited verbatim the language of the 1983 settlement. The lawyers argued that the Aquinnah Wampanoags could not justify a claim of sovereign immunity in the case because they wrote away their sovereignty when they signed the settlement document. Legal
maneuvers like the ones deployed in the hatchery case perhaps are what the tribal “reconstructionists” had in mind when they fervently and steadfastly opposed the signing of the 1983 settlement, grounding their opposition in visions of tribal disempowerment made possible by the legal interventions of the state and a support base of financial elites.

Kanienkehaka Mohawk scholar Taiaiake Alfred has foreclosed the kind of courtroom scenes I witnessed in 2003. Alfred has advised Indigenous communities and nations to “challenge,” rather than emulate, the “destructive and homogenizing” manipulations of the state. For Alfred, Indigenous inhabitation of deals associated with settler rule dangerously compromises Indigenous values and relationships to Indigenous nationhood, relationships that cannot be reduced to mere mimicry of Western models of coercive governance. Such inhabitation, Alfred has contended, entails entrapment. He added,

By allowing indigenous peoples a small measure of self-administration, and by foregoing a small portion of the money derived from the exploitation of indigenous nations’ lands, the state has created incentives for integration into its own sovereignty framework. Those communities that cooperate are the beneficiaries of a patronizing false altruism that sees indigenous peoples as the anachronistic remnants of nations, the descendants of once independent people who by a combination of tenacity and luck have managed to survive and must now be protected as minorities. By agreeing to live as artifacts, such co-opted communities guarantee themselves a role in the state mythology through which they hope to secure a limited but perpetual set of rights. In truth the bargain is a pathetic compromise of principle. (Alfred 1999, 60)

Alfred made his points convincingly. Still, I would argue that in the Aquinnah case anticipation complicates this scenario. The writing-in of constraints against anticipated demonstrations of tribal power does not always produce pure containment. Rather, these attempts at prohibition in a settlement text can open up new possibilities for tribal assertiveness and resistance. In the Aquinnah hatchery case, not only did Tribal Chair Beverly Wright and other tribal officials refused to seek approval from the town to build a shed for their hatchery—the refusal that triggered the lawsuit in 2001—but as the litigation moved toward closure, the tribe started building a new community center, also without obtaining a town permit.23
More recently, Aquinnah tribal officials, at this writing, are legally challenging a decision by former Massachusetts governor Deval Patrick, who refused to give the Tribe permission to build a casino on tribal land in Aquinnah. Patrick argued that the Tribe cannot move ahead with plans to build a casino without state permission, noting that the Tribe entered into a settlement that insisted that tribal officials abide by all local and state laws.

While settler anticipation embedded in the 1983 settlement clearly seeks to constrain, anticipation also seems to release impulses of conflict on the level of political practice, giving substance to one of the big social dilemmas of authoritarian law. Anticipation, as Pierre Bourdieu suggested in his construction of time, often may fulfill social expectations, but it also can invite the destabilizing force of rupture (1995 [1977], 211). Without question, the Aquinnah Wampanoag decision to inhabit settler law through a policing settlement has troubled tribal self-rule on Noëpe. Yet, conversely, inhabitation might in some ways fortify Indigenous self-governance, creating new engagements in Indigenous-settler relationships, engagements that can find strength, power, and purpose in the inherent instability of anticipation.

Acknowledgments

This chapter evolved from a 2010 presentation I made at the Theorizing Native Studies symposium, organized at Columbia University by Kahnawake Mohawk scholar Audra Simpson, associate professor of Anthropology at Columbia, and Andrea Smith, associate professor of media and cultural studies at the University of California, Riverside. Much of what appears in this chapter is indebted to the critique I received from that presentation. The chapter has benefited, as well, from the peer review associated with the publication of this volume. I am also grateful to the enduring support of my colleagues Richard Kernaghan and Khaled Furani.

Notes

1. Because of the sensitivity of some of the material in this chapter, I have chosen to change the names of tribal individuals or use only partial names.

2. The use of the term “kingdom” in this context is intended to represent an approximate comparison only. Sachemships were populated, geopolitical
territories under the guardianship of a sachem. Sachems, however, were not absolute rulers or monarchs in the European sense. Rather, their power was dependent on persuasion and performance and thus was continually reaffirmed. Men typically inherited the position of sachem from their fathers, but women also served as sachems among the mid-Atlantic Indigenous peoples. See Bragdon 2009; Robert Steven Grumet, "Skunksquaws, Shamans and Tradeswomen: Middle Atlantic Coastal Algonkian Women During the 17th and 18th Centuries," in *Women and Colonization: Anthropological Perspectives*, edited by Mona Etienne and Eleanor Leacock, 1980, 46–53.

3. Prior to Puritan, colonial intervention, the Wampanoags had no written language. By the time Mittark and his people crafted the will, however, Mittark had been Christianized and would have been familiar with the Puritan insistence of salvation through the written word in the Bible.

4. My friend's remark was made in a casual conversation with me, while I was working in a jewelry shop in the down-island town of Edgartown. The statement was recorded and archived after the conversation. The person quoted is not tribal. The designation “down-island” is a nautical term. Down-island on Noëpe is north; up-island is south. There are six towns on Noëpe. Two of them are up-island: Aquinnah and neighboring Chilmark. The town of West Tisbury is centrally located, although it is sometimes cast as up-island. Vineyard Haven, Edgartown, and Oak Bluffs are down-island towns situated in the northern half of the island.

5. All historical documents refer to Aquinnah as “Gay Head,” and for centuries the Aquinnah Wampanoags were known as the “Gay Head Indians.” Indeed, “Gay Head” even appears in the official name of the tribe, the “Wampanoag Tribe of Gay Head (Aquinnah).” For the purposes of this study, however, I privilege the Indigenous designation, “Aquinnah.” According to one translation, “Aquinnah” roughly translates into “land under the hill” or “land at the end of the shore.” See Manning 2001. Helen Manning, now deceased, was an Aquinnah tribal member and educator.


7. This is probably a reference to developer Robert E. Simon.

8. See United States Senate, *To Establish the Nantucket Sound Islands Trust: Hearing before the Subcommittee on Parks and Recreation of the Committee on Interior and Insular Affairs*, United States Senate, Ninety-Third Congress, first session, on S.1929, July 16, 1973 (Nantucket and Tisbury, MA).

9. Four hundred and eighty-five acres is what the tribe now officially claims as the size of its tribal land base. The acreage includes unoccupied common lands, as well as approximately 160 acres of private land. See the Wampanoag tribe official website at http://www.wampanoagtribe.net (accessed September 2015). In Mittark's day, however, Aquinnah was significantly larger. Aquinnah tribal members continue to complain that the neighboring town of Chilmark encroached on Aquinnah land, thus reducing its original size.

10. The extinguishment of land claims only affects the status of tribal landholdings, not that of tribal members' individually owned parcels.

12. In testimonies made at Senate hearings in 1986, opposing tribal factions concurred that the general membership of the tribe approved the final settlement by a vote of 164 to 29 in November 1983. What was debated, though, was the extent to which tribal members were sufficiently informed of the settlement provisions and the extent to which the general membership understood the provisions. For a discussion on the vote, see United States Senate 1986, 53 and 95.

13. These figures vary from one source to another. The 238 acres of common lands and 175 acres of private “Strock estate” lands are listed in a September 23, 1983, version of the settlement. The originally negotiated tribal lands were expanded once the tribe became federally recognized. The current figure, 485 acres of federal “trust land,” includes parcels added from the isle of Chappaquiddick and from Christiantown, the site of what was once a seventeenth-century Noëpe village set aside for “praying Indians.”


15. Federal recognition was in itself another grueling process, a process that took more than ten years to complete. The U.S. Bureau of Indian Affairs (BIA) initially rejected the tribe’s bid for recognition in a preliminary finding but the decision was reversed after receiving additional input from tribal officials. Anne, then president of the Tribal Council, was cited as a key participant in the recognition process. For an in-depth analysis of Aquinnah’s federal recognition odyssey, see Grabowski 1994.

16. See also United States Senate 1986, 3.

17. The original letter is located in the National Archives office in Waltham, MA.

18. In recent years, tribal officials have expressed the desire to expand the size of tribal housing. Not only would this allow more tribal people to return to their ancestral home, but theoretically, an increase in the size of the tribal population on Noëpe would strengthen the voting power of tribal residents in the “town.”

19. For updates and history of the Aquinnah estate of Mrs. Onassis, see Vineyard Gazette, “At the Kennedy compound,” June 8, 2001, and “Caroline B. Kennedy files land plan to create limited family subdivision,” Nov. 4, 2005. Mrs. Onassis bought the Aquinnah land in 1978 for $1.1 million. In recent years, the estate has been valued at $12 million. Mrs. Onassis died in 1994.


References


