

Headline News: Wabanaki Sovereignty in the 21st Century

Sovereignty is the right of a nation to exercise its own government and authority over the people living within its borders. Since the first Europeans came to the Americas, the sovereignty of American Indians has been recognized through treaties. A treaty is a legally binding document signed between two nations recognizing specific international relations, alliances, or agreements.

Nationally:

With the creation of the United States federal government, the process of negotiating treaties was formalized. Leaders from both the United States and Indian nations signed agreements, which then needed to be ratified by Congress. For the tribes living in what is now Maine, treaties over land use and ownership were originally signed with European nations or the Commonwealth of Massachusetts.

Maine:

When Maine became a state in 1820 it inherited, and was compensated for, the agreements made between Massachusetts and the four tribes of the Wabanaki. Despite protections guaranteed through these treaties, the Maliseet, Micmac, Passamaquoddy, and Penobscot had much of their land taken away from them. The tribes battled to keep their sovereignty, independence, and hunting and fishing rights in the state. This continued until the tribes successfully petitioned the United States for federal recognition in the 1970s.

Upon receiving federal recognition as sovereign nations, the tribes were able to sue the state of Maine for lands that had been illegally taken, which they claimed equaled 2/3rds of the state. In 1980 the Maine Indian Claims Settlement Act was signed, and the Maliseet, Passamaquoddy, and Penobscot tribes received a cash settlement enabling them to purchase lands back from the state. The Micmac settled their land claim in 1991. In addition, the Settlement Act created a unique relationship between the state and the tribes. Maine gained more control over Indian affairs than any other state in the country. The result is that for some purposes the Wabanaki are limited as a municipality, “subject to all the duties, obligations, liabilities, and limitations of a municipality;” but when dealing with internal tribal matters, the tribes are considered sovereign nations. The nation-to-nation relationship between the tribes and the federal government is non-existent.

Newspaper Headline, Sovereignty:

New England courts show contempt for tribal governments: Settlements of early 80’s continue to haunt tribes

By Jim Adams

Indian Country Today

March 24, 2004

Indian law is different in New England than anywhere else,” said Douglas Luckerman, attorney for the Aroostook Band of Micmacs.

Wabanaki Quotes, Sovereignty:

There is no greater a sovereign act than to assert your sovereignty in the face of oppression. We don't need permission to be sovereign. There is a misunderstanding that the government will issue sovereignty to the tribes, but our sovereignty is inherent and we retain it.

James Eric Francis, Sr.

Penobscot

Tribal Historian, Penobscot Indian Nation

One thing that often is misunderstood is why we get federal services. When the United States government was established, a commitment was made to always provide the tribes with certain services. It could have been interpreted at the time as rent, but this was the promise given by the founding leaders of the United States and our acknowledgment of that promise was passed down through Native generations.

Richard Phillips-Doyle

Passamaquoddy

Sakom/Chief, Passamaquoddy Tribe

The Maliseet don't have recognized sovereignty, not by the State of Maine, anyway. We were one of the first tribes contacted by Europeans and even though we had signed treaties with the U.S., our rights have been eroded over time at an alarming rate. So much so, that present day people think that we no longer exist.

Brian Reynolds

Maliseet

Tribal Administrator, Houlton Band of Maliseet Indians

We're different from the 1980 tribes because we didn't sign the Settlement Act, so we're not under control of the state. The U.S. Congress signed the Micmac Implementing Act. We don't want anything from Maine. We didn't sign any agreement with the state to give them control over the tribe.

Victoria Higgins

Micmac

Chief, Aroostook Band of Micmacs

The Maine Indian Claims Settlement Act and the Implementing Act

In 1980 President Jimmy Carter signed into law the Maine Indian Claims Settlement Act (the Settlement Act). This unique agreement was reached between the state, the federal government, and Maliseet, Penobscot and Passamaquoddy tribes over the tribes' claims that 2/3rds of the state of Maine was illegally taken. The Settlement Act broke new ground and was the largest cash settlement awarded at that time to an American Indian tribe.

The Penobscot and Passamaquoddy tribes each received \$26.8 million for the purpose of buying back more than 300,000 acres of land from the state and paper companies. The Houlton Band of Maliseet Indians received \$900,000 to acquire land. The settlement also included an additional \$13.5 million for the Passamaquoddy and Penobscot to be held in a federal trust account, from which the tribes may draw interest for use without

restriction. One million dollars was earmarked to fund projects that benefit tribal elders. The Maliseet did not receive a trust fund.

In exchange, the tribes dropped their claim to 12.5 million acres of land, and agreed to abide by most state laws and provide services similar to a municipality. The settlement also stipulated that any federal Indian policies enacted after 1980 which “would affect or preempt the laws or the application of the laws of the State of Maine...shall not apply within the State of Maine, unless (the) Federal law is specifically made applicable within the State of Maine.” Wabanaki leaders contend that this last stipulation was added in the 11th hour, without thorough discussion from the signatories.

Within the Settlement Act, an agreement between the state and the tribes called the Maine Implementing Act was enacted by the Maine legislature to create the Maine Indian Tribal-State Commission (MITSC) as a means for settling disputes that might arise from issues left unresolved by the settlement. The thirteen member Commission consists of six members appointed by the State, two by the Houlton Band of Maliseet Indians, two by the Pasamaquoddy Tribe, and two by the Penobscot Indian Nation. The thirteenth, who is the chairperson, is selected by the twelve appointees.

The Penobscot have pulled their representatives from the commission, and the chair of the commission, Paul Bisulca, Penobscot, recently declined to serve another term because of the “state’s unwillingness to honor agreements that were meant to affirm and enhance the Wabanaki nation’s sovereignty.”

The Micmac Settlement Act

The Micmac were not part of the 1980 Settlement Act because “historical documentation of the Micmac presence in Maine was not available at that time.” The Band petitioned for federal recognition, and won in 1991 “to settle all claims by the Aroostook Band of Micmacs resulting from the Band’s omission from the Maine Indian Claims Settlement Act of 1980, and for other purposes.”

The purpose of the Act was to “grant the Aroostook Band of Micmacs federal recognition, provide members of the Band with services the federal government provides to all federally recognized tribes, place \$900,000 in a land acquisition fund, and ratify the Micmac Settlement Act, which defines the relationship between the state of Maine and the Aroostook Band of Micmacs.” According to the Micmac, this last clause was never ratified and the Band does not have a relationship with the state of Maine, however they maintain their federal recognition.

Settlement Act Newspaper Headlines:

Chiefs blast attorney general’s ‘distorted, revisionist account’ of Settlement Act negotiations

Indian Country Today

July 27, 2009

While tribal-state relations improved in the Maine legislature this year, the Wabanaki chiefs took offense at what they called ‘distorted, revisionist’ comments Attorney General Janet Mills made to the judicial committee concerning the federal Maine Indian Claims Settlement Act of 1980 and its companion, the Maine Implementing Act, citing that ‘every word was meticulously and carefully chosen’ giving the false impression that the two acts are somehow perfect agreements that should not be changed.

John Paterson, the state's former deputy attorney general, and Tim Woodcock, the former staff director of the Senate Select Committee on Indian Affairs have said that the two Acts were meant to enhance and recognize tribal authority, not diminish it, and that the Implementing Act was supposed to be an organic document that would be revisited and amended as needed.

Speaking a different language: Tribes and the state are deadlocked on the meaning of sovereignty *Maine Times*

May 10, 2001

What, then, does the state think "sovereignty" means? "It's difficult to talk in terms of tribal sovereignty from our point of view," says Maine Assistant Attorney General William Stokes. "We don't necessarily disagree with the fact that [the tribes] are sovereign, but we might not be talking about the same thing as they are."

MITSC chair's departure 'a great loss'

Indian Country Today

January 21, 2010

MITSC was given a broad mandate to continually review the effectiveness of the Implementing Act and the "social, economic, and legal relationship" between the state and the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and Penobscot Indian Nation, and make recommendations.

But the state has blocked most recommendations MITSC has made and instead has used its power and the power of the state courts to diminish tribal sovereignty and self-determination.

Settlement Act, Wabanaki Quote:

It's important to distinguish sovereignty- there is the federal definition, but superseding that is our sovereignty, and that is original or inherent sovereignty. You can't separate that, just like you can't separate our DNA from who we are. So long as we have our DNA this will be so. My grandma said, 'We aren't them, and we don't want to be them and that's ok.' The state and federal government can't define our sovereignty. All tribal people need to hold this dear to our hearts and not relinquish that.

Barry Dana

Penobscot

Wabanaki quotes to go with land holdings map:

The tribe has been purchasing large tracks of land in northern Maine. We're excited about the opportunity to save and protect the land in a wild state. The land is being preserved for camping, gathering the traditional foods and medicines we still use today. It's hard for us to separate ourselves from the land. The land, rivers and streams run in our veins.

Richard Dyer

Micmac

Housing Director, Aroostook Band of Micmacs

We own over 130,000 acres located in eastern, central and western Maine. This provides a variety of different types of resources. There are places the tribe has set aside for nature to rebuild, places for the animals and trees. We just set aside 3,000 acres in western Maine for migratory birds to use as a stopping place during their long trip from South America to Canada.

Donald Soctomah

Passamaquoddy

Historic Preservation Officer, Tribal Representative to the State Legislature

The State's opinion is that we don't have a land base large enough to manage our hunting and fishing rights on, or a mechanism to carry out the management. What I really think they are saying is that they don't think we can manage our own lands, and that they really don't want to give up that authority anyway.

Brian Reynolds

Maliseet

Tribal Administrator, Houlton Band of Maliseet Indians

We have a deep cultural connection to the natural world that translates into responsibility for professional stewardship that insures long term sustainability. The 1980 Settlement Act confirmed our exclusive authority to regulate the taking of wildlife from within Penobscot Indian Territory.

John Banks

Penobscot

Director of Natural Resources, Penobscot Indian Nation