

C O M M E N T A R Y

Tribal-State Relations

by Donna M. Loring

Stephen Brimley's article is very good, and the historic facts and issues surrounding the Maine Indian Claims Settlement Act are clear and accurate. He does an excellent job in presenting the importance of the settlement act and its implications in policy development. Brimley's view, however, is that of a non-Indian. I would like to address tribal and state relations involved in the settlement act from a tribal perspective. It is my belief that communication and education equal understanding, and with understanding comes respect and equality.

It is essential to know something about the historic foundation upon which the relationship between the tribes and the state is based. The situation is well-described in *The Wabanakis of Maine and the Maritimes, A Resource Book About Penobscot, Passamaquoddy, Maliseet, Micmac and Abenaki Indians* (1989: A21):

When Maine became a State in 1820 they immediately took over the obligations that Massachusetts had with the tribes. Between 1821 and 1839 the State Legislature authorized the harvesting of timber from Passamaquoddy land in violation of the treaty of 1794. Over the years, also in violation of the treaty, the Legislature authorized sale or lease of various pieces of Passamaquoddy land without compensation and without consent of the Passamaquoddy tribe. Several of the Penobscot islands were sold

without compensation. In addition in 1833, in violation of its own deed procedure as well as a former treaty, four townships, or 95% of the Penobscot land at the time, were transferred to the State of Maine... The State placed \$50,000 dollars into trust when it took these townships without tribal consent.

One of the townships held the sacred mountain of the Wabanaki people—Mt. Katahdin.

Maine then made the tribes settle in one place and put an agent in charge to monitor them and to dispense clothes, food, wood, commodities, etc. The agent used monies from Penobscot resources to do this. The state of Maine also put monies from the sale of lands and leased timber into a trust fund and distributed the money to tribal members.

...The State's treatment of the tribes was paternalistic and the Legislature assumed it had authority to do whatever it wanted to do whenever it wanted to do it.... The courts' treatment of Indians was no better. In a case decided by the Maine Supreme Court in 1842 *Murch V Tomer* 21 Me. 535, the court said: "[I]mbecility on their [the Indians'] part, and the dictates of humanity on ours, have necessarily prescribed to them their subjection to our paternal control; in disregard of some, at least, of abstract principles of the rights of man" (*Wabanakis* 1989: A21).

Tribal members grew up believing they were paupers and totally dependent on the state. They were left with little or no dignity or self-respect. They were not aware that the goods and services for which they were begging from the Indian

agent were bought with the tribes' own money. The state of Maine stole tribal lands and resources and impounded the trust fund monies during World War II to pay for state expenses incurred by the war, totally draining the trust funds (Proctor 1942). Through years of abuse and neglect, the tribes built up a total distrust for the state of Maine. The state has kept tight control over the tribes, and has maintained a position that tribal governments are not sovereign. The state of Maine has challenged the tribes' jurisdiction at every turn.

The Maine Indian Claims Settlement Act was thought to be the instrument by which the tribes could become equal and respected. The tribes saw it as a way out of poverty, abuse and control. The state looked at the land claims act much differently. Governor Longley used the situation to his political advantage by coining the phrase "Nation within a Nation" and playing on the fears of the general public that the Indians were going to take away their homes and land. Longley said he would not pay one penny to the Indians, nor would he give up the state's jurisdiction over the tribes. He also was determined not to allow the state to be held responsible for any wrongdoing in the past. The land claims act never went to federal court, but was negotiated. Brimley covers this well in his paper. Governor Longley got most of what he wanted. The land claims settlement act was a state's dream. The federal government paid every penny, the state kept most of its jurisdiction, and most important of all, the state was held harmless for all its past injustices and abuses.

After the settlement act was signed into law on September 10, 1980, the state of Maine eliminated its office of Indian Affairs, thereby cutting any formal ties the

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executive branch had with the tribes. This did nothing but totally stop communications between the tribes and state government. The settlement act now was the sole source that determined tribal-state relations. Tribal-state views of the act were very different.

Some people feel that the settlement act was supposed to settle the question of jurisdiction once and for all. The settlement act created the Maine Indian Tribal-State Commission to help reach consensus on issues and to make decisions on some land use regulations as well as land purchases for Indian territory. The act now defines the relationship between the tribes and the state. It continues to be a relationship of litigation and contention. This was evidenced by the walkout of Passamaquoddy and Penobscot representatives at the last Maine Indian Tribal-State Commission meeting held in November 2003. Brimley mentions this walkout briefly in his paper, but fails to articulate the real reason for it. The walkout was significant symbolically, as it was a result of the tribes' total loss of trust in state government. Governor Baldacci took such a highly visible stance in opposition to the casino initiative that the tribes felt totally abandoned in their quest for economic self-sufficiency. In the 2003 elections, the "racino" referendum, with its 1,500 slot machines, was approved by Maine voters who voted against the tribes' casino initiative by a two-to-one margin. Having the governor add the "Power Ball" lottery in Maine only advanced the atmosphere of distrust and resentment. The tribes felt this was the absolute height of hypocrisy.

Even before recent events surrounding the casino vote and its aftermath, the state-tribal relationship in Maine has, quite

simply, been an adversarial one, with distrust as its foundation. For example, Maine was the last state in the country to allow Indians to vote in state elections. Maine Indians could not vote in state elections until 1967! One of the most glaring injustices perpetrated on Indian people by the state of Maine was disenfranchisement, an injustice upheld by Maine's highest court in 1941 (Proctor 1942: 46).

Another example of the depth of this mistrust is the litigious situation that exists between the tribes, the state and the paper companies. *Great Northern Paper, Inc. v. Penobscot Nation*, 2001 ME68 plays out the tribes' fears that Maine is only looking to eliminate them as tribal governments. In this instance, the state intervened as a third party to support several corporations (Great Northern Paper, Georgia Pacific Corporation, International Paper). This court action was brought against the tribes by the paper companies because the companies feared the tribes would want to control the amount of toxins they dump into the rivers. The paper companies thought the tribes would have zero tolerance and would basically put them out of business. The state claimed an interest in this case because it involved interpretations "of jurisdictional relationship between the State and the tribes" (*Penobscot Indian Nation; Passamaquoddy Tribe v. Great Northern Paper, Inc.; Georgia-Pacific Corporation; International Paper Company; and the State of Maine*, 12).

This case was a tremendously important issue for the tribes, in that it involved clean water and the very survival of our tribal members, tribal government and culture. If the paper companies could bring the tribes totally under state jurisdiction, with no federal protection, then they could do what they wanted with

toxic discharges. The tribes would no longer be considered tribal governments and would no longer enjoy federal trust status. The tribes consider this case a breach of their sovereign status by the state's interpretation of 30MRSA 6206 ss 1 of the Maine Indian Claims Settlement Act. The state claims the tribes are quasi-municipal entities and therefore are political subdivisions of the state subject to the Maine Access Act.

One could hope that fairness still might be found in the courts. But the Maine Supreme Judicial Court decided this case on May 1, 2001. They found that the Maine Access Act, which was written to give the public access to information about public officials and public issues, applied to Maine Indian governments. I find this ludicrous, since the general Maine public does not elect our tribal officials, nor do they have a say in our internal tribal matters. The land claims settlement act has been used to erode the sovereignty of the tribes. This clearly was not the purpose of the act.

As I have pointed out, there are many areas in the settlement act that can be interpreted in various ways. The most contentious is the section stating that tribes have municipal status. This section, the state contends, makes the tribes into political subdivisions of the state and municipalities. The tribes say not so. This language was used for grant purposes only. It is this section of the act that will cause more litigation in the future, as we can already see in the recent case with the paper companies. The state continues to erode tribal sovereignty at every turn. The tribes see the state as an insatiable beast that just cannot stop taking and taking from them. The tribes fear that the state will erode their sovereignty until they no longer exist as tribal governments.

COMMENTARY

RECOMMENDATIONS

The paradigm from the state's perspective needs to be changed. Times have changed. Tribes should no longer be considered as imbeciles and liabilities. Tribes have much to offer in a partnership of equality. In this world of global competition, tribes and the state need to work together. There is a lot we can do as partners to improve the dire economic situation the state now faces. Tribes should be considered assets, and a foundation of trust must be established.

Brimley recommends a return to the Department of Indian Affairs. Maine Indians have bad memories and do not want to return to the same model that controlled and abused them. I therefore vigorously disagree with a return to such a model.

To begin the groundwork toward renewing a trust relationship, I recommend the following:

- There should be a formal admission of the state's historic maltreatment of the tribes. This would be a beginning and would show the tribes that the state truly regrets its past actions and is willing to treat the tribes as equal partners.
- Reestablish communication with the tribes on an executive level by creating an office of tribal-state relations and appointing a commissioner of tribal-state relations. (This should be a cabinet-level appointment.)
- The office of the commissioner of tribal-state relations would be utilized to explore areas of economic partnership and establish

communication between various state agencies and tribal agencies, as well as act as a resource for both the tribes and the state. The result would vastly improve the tribal-state relationship and would recognize the importance of the tribal governments.

- The governor should create an executive order recognizing tribal sovereignty. This would not jeopardize the state in any way. Other states have done this. For example, the former governor of Minnesota, Jessie Ventura, made such a declaration. 🐾

REFERENCES

Penobscot Indian Nation; Passamaquoddy Tribe v. Great Northern Paper, Inc.; Georgia-Pacific Corporation; International Paper Company; and the State of Maine. On Petition for writ of Certiorari PG 12.

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