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Wabanaki Tribal Self-Governance

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The Importance of Education and Trust Building for Wabanaki Self-Governance

by Katie Tomer

Abstract

Education and trust building are inextricably intertwined parts of addressing failed efforts of the state of Maine and the Wabanaki tribes to resolve tribal self-governance issues. Lack of structural and financial support for the delivery of Wabanaki Studies Law content directly affects tribal-state relations and Wabanaki self-determination in Maine. In this article, I look at legislative proposals, current laws, and scholarly research and explore how they relate to tribal self-governance. I argue that, in addition to legislative mechanisms, Maine needs strategies for trust building and increased educational experiences for all Maine residents about Wabanaki people and ways of knowing.

still treated differently by the state compared to how other federally recognized tribes are treated; they are afforded less self-governance, and this treatment contributes to tribal-state relation issues. In this article, I look at legislative proposals, current laws, and scholarly research and explore how they relate to tribal self-governance. I argue that, in addition to legislative mechanisms, Maine needs strategies for trust building and increased educational experiences for all Maine residents about Wabanaki people and ways of knowing. A true working partnership between the state and the

Indigenous peoples of Maine will support Wabanaki tribal self-governance and effective tribal-state relations in Maine.

INTRODUCTION

The relationship between the Wabanaki tribes and the state of Maine is long and complicated. Wabanaki people have been traversing the territory now known as Maine for over 13,000 years, and the effects of colonization were “violent and devastating, and its impacts ripple into the present day” (Arthur and Burns 2020: 17). According to Arthur and Burns (2020), indigenous people of Maine have needed to focus on healing and strategies to thrive while simultaneously encountering the ongoing harms of colonization. These efforts are a burden that Wabanaki people bear; this fact has been largely overlooked by the state. Any recognition of Maine’s statehood is inherently connected to the direct assault on Wabanaki sovereignty and the well-being of Wabanaki people.

According to HP 1307—Joint Order, Establishing the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act—tribal nations and tribal members have “a legal political status recognized by the United States Constitution, including in Article I, Section 8, and by the Constitution of Maine...and pursuant to various treaties entered into by the tribal nations and what is now the State of Maine.” Yet, the Wabanaki tribes are

HISTORICAL OVERVIEW

Even though the tribes were acknowledged in the US Constitution as distinct governments, between 1820 and the 1970s, the state of Maine used a number of laws to directly limit Wabanaki tribal self-governance (Abbe Museum 2010; MSDIA 1973). In the 1970s, however, the relationship between Maine and the tribal nations shifted as Penobscot and Passamaquoddy tribes received federal recognition (Abbe Museum 2010). With this federal recognition, tribes forced the US government “to carry out its trust responsibility by suing the state for a violation of the federal Non-Intercourse Act” (G. Dana-Sacco, personal communication, 2021).

As the tribes initiated a lawsuit against the federal government over the illegal sale and transfer of Wabanaki territory, the US government and the state of Maine agreed to a negotiation process that resulted in the Maine Indian Land Claims Settlement. Despite the initial victory that the settlement appeared to be for the tribes, the state

inserted language that produced “the most restrictive tribal-state jurisdictional framework” in the country today (Dana-Sacco 2020: 11). Because of this added section, known as section 1735 B, the Penobscot and Passamaquoddy tribes are not afforded the same rights and privileges as all other federally recognized tribes in the United States. The agreement specifically states that no future federal laws pertaining to Indians would apply to Maine tribes unless the Wabanaki tribes were mentioned specifically. Since 1980, there have been 151 laws that pertain to all federally recognized tribes from which the tribes in Maine are excluded (Dana-Sacco 2020).

Maine laws, together with settlement act provisions, continue to constrict Wabanaki tribal self-sufficiency compared to tribes under federal jurisdiction....

Some non-Native members of the Maine legislature, however, have highlighted how the settlement restricted the jurisdiction that the Wabanaki tribes already possessed. Representative Rachel Talbot Ross (D-Portland) asserts that the settlement caused the state of Maine to move in the opposite direction of federal policy, which began to support tribal sovereignty. According to Talbot-Ross (2020), “the state has failed to recognize the potential benefits of more harmonious and effective Tribal-State relations based on mutual respect for governmental sovereignty.”

Maine laws, together with settlement act provisions, continue to constrict Wabanaki tribal self-sufficiency, and Maine tribes are unable to self-govern due to the lack of federal protections. For example, per the Indian Gaming Regulatory Act (IGRA), the federal government permits gaming operations on tribal territory as long as they meet outlined regulations.¹ Although voters have approved two casinos in Maine, they have voted down several initiatives dealing with Indian gaming (Ross 2020). Because the Wabanaki are federally recognized tribes, however, Maine voters should not be able to determine whether the tribes

can operate gaming facilities. Gaming is just one example of how tribal sovereignty has not been recognized in the state and how the state has interfered with potential socio-economic advancement of the tribes.

WAYS TO SUPPORT TRIBAL SOVEREIGNTY

Maine Indian Tribal State Commission, LD 2094, and LD 1626

The Maine Indian Tribal State Commission (MITSC) and three task forces focusing on tribal-state relations have identified a number of negative impacts on tribal self-governance created by the Maine Indian Land Claims Settlement Act. The MITSC is responsible for reviewing the effectiveness of the settlement act along with the social, economic, and legal relationships between Wabanaki tribes and the state of Maine (LD 2118—An Act to Establish an Enhanced Process for Tribal-State Collaboration and Consultation and to Develop a Process for Alternative Dispute Resolution). As a result, the MITSC and the Maine Indian Claims Task Force have the legal authority to make recommendations to the legislature and the tribes, which they manifested through a bill known as LD 2094—An Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act. LD 2094, which pointed to needed changes to the settlement act, received both support as well as opposition. Support for the bill came from Native and non-Native community members as well as members of the legislature. For example, former member of the Maine House of Representatives Sara Gideon stated, “this bill represents an opportunity to turn the page on an era of Tribal-State relations in Maine that began with the passage of a law which has unfairly deprived Tribal Members of their rights for far too long” (Casale 2020).

While some Maine public officials acknowledged LD 2094 as a pathway for Wabanaki tribal communities to obtain the same rights as other federally recognized tribes, opposition to the bill also surfaced. In particular, David Trahan, executive director of the Sportsman’s Alliance of Maine and former Maine state senator,² objected to the bill out of concern that in some areas wildlife management would be turned over to the tribes and the federal government, which would be confusing for the management of state and tribal land. Additional pushback on LD 2094 came from Maine Attorney General Aaron Frey who

advised that task force recommendations be cautiously implemented. Governor Janet Mills wrote about the “sweeping nature of the bill” in a letter to members of the Judiciary Committee. Her concerns were based on the impacts that the bill would have on non-Native citizens and communities and to what level those impacts would be considered and a fear that LD 2094 could lead to conflicts and the decline of tribal-state relations (Sharon 2020).

LD 2094 proposed a list of changes to current state law that would allow tribal communities the same privileges that other federally recognized tribes have (Dana-Sacco 2020). The bill, however, died at the end of the 129th Maine Legislature, and increased tribal self-governance was thwarted due to a lack of understanding of the government-to-government relationship that should exist between Maine and the Wabanaki tribes.

In the first special session of the 130th Maine Legislature, a new bill, LD 1626—An Act Implementing the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act, surfaced to ensure that the conversation on Wabanaki tribal self-governance continued. LD 1626 is an all-encompassing bill that addresses the cornerstones of tribal sovereignty, land- and water-use rights. The bill consists of 22 amendments to the Maine Indian Claims Settlement Act. Penobscot Nation ambassador Maulian Dana shared that the Maine Legislature’s Judiciary Committee decided to table the bill so that it could be workshopped in January in the next legislative session. Dana’s statement to *Tribal Business News* rings true: “it’s been a big learning curve getting lawmakers and everybody in government to understand federal Indian law and how that should apply to the tribes in Maine” (Kunze 2021). For Wabanaki tribes to truly self-govern, it is critical that federal Indian law applies to them and that tribal land- and water-use rights are fully acknowledged within the state.

Public Education on Wabanaki Tribes

The imbalance of power between the state and tribes is exacerbated when public officials are not aware that tribal-state relations are a government-to-government relationship. According to Johnson et al. (2009: 7) “Public education does not teach that tribes are governments, and many adults—including state legislators—perceive tribes and tribal members as minorities or special interest groups.” When state government officials lack awareness of

tribal sovereignty, Native communities are unable to self-govern and self-determine. Given the challenges that arise from this general lack of knowledge about Wabanaki tribes, it is clear that Wabanaki studies need to be taught in schools and other educational spaces.

The Wabanaki Studies Law (WSL) (LD 291—An Act to Require the Teaching of Maine Native American History and Culture in Maine’s Schools) was sponsored by Donna Loring, former tribal state representative and enacted in 2001. The law was meant to be a catalyst to support tribal self-governance in Maine. According to Wabanaki scholar Rebecca Sockbeson (2019: 105), “WSL was intended to function as an educational policy grounded in anti-racism and decolonization.” The law intended to make Wabanaki people visible and to ensure that most Mainers learn about Indigenous people. Loring saw LD 291 as a way to challenge Indigenous epistemicide, the killing of Native ways of knowing and being, and as a way to ensure that non-Native Mainers know who Wabanaki people are, where they are from, and their rights (Sockbeson 2019).

The required components of WSL address the following: Wabanaki tribes as governments and their relationship with local, state, national, and international governments; Wabanaki cultural systems and experiences throughout the state’s history; Wabanaki territories in what is now known as Maine; and Wabanaki economic systems.³ The education of Maine’s school children can increase public understanding of the Wabanaki people and their government-to-government relationship with the state (Sockbeson 2019). When youth who will enter leadership roles in the state are educated on Wabanaki tribes, the likelihood of understanding and awareness of tribal sovereignty increases.

Despite the need for effective education on Wabanaki issues, the state has taken no action to fulfill the 2003 Wabanaki Studies Commission recommendations. Sockbeson (2019: 108) believes that not attending to these recommendations is “a statewide education and human rights issue.” Based on Sockbeson’s observations, the state needs to incorporate assessment strategies and funding to support the implementation of WSL. Without support from the state, barriers to successful WSL enactment persist and the Indigenous people of Maine remain ignored or worse, subject to continued “institutional processes of dehumanization and inferiority” (Sockbeson 2019: 109).

Tribal Impact Statements

According to Johnson et al. (2009: 8), “Successful state-tribal relations must include an education mechanism to help to establish this mutual understanding, acceptance and credibility both in terms of general understanding of the intergovernmental dynamic and understanding of the parties’ concerns about specific issues.” Educational vehicles and consistent opportunities for trust building can include the following: tribal impact statements as part of proposed legislation, formal government-to-government consultation processes, and representation from all four Wabanaki tribes to the legislature.

Although the Maine Legislature passed LD 2—An Act to Require the Inclusion of Racial Impact Statements in the Legislative Process—in March 2021, racial impact statements are designed to simply provide an analysis of the possible impact that historically disadvantaged populations could experience with proposed legislation. LD 2 was not designed to acknowledge the legal political status of

any new legislation on tribal governments.” If a bill requiring tribal impact statements is enacted, any proposed legislation in Maine would need to be accompanied by an examination of the ways that Wabanaki tribes as governments could be affected. This consideration of the impacts should reduce and prevent conflicts with tribal self-governance.

Tribal Representatives

W. Ron Allen, chairman of the Jamestown S’Klallam Tribe in Washington, expressed how it is difficult for tribes to accomplish anything with the state if Indigenous people have to prove who they are and why they have a right to be involved in certain issues every time they interact with public officials (Johnson et al. 2009). The inclusion of tribal representatives from all four Wabanaki tribes—the Penobscot, Passamaquoddy, Maliseet, and Mi’kmaq—in the Maine legislature can serve as a reminder of the government-to-government relationship and support trust building between the state and Wabanaki tribes. Former Tribal State Representative Loring shared that Indigenous representation in the House teaches legislators about Wabanaki tribal issues. The presence of Wabanaki tribal representatives reduces the need for Wabanaki tribes to re-teach the basics of tribal sovereignty in state government settings (Johnson et al. 2009). As a result, barriers to larger state-tribal issues can be removed and issues of Wabanaki self-governance can be more readily addressed.

Formalizing the Government-to-Government Relationship

The formalization of government-to-government relations with the state is an important step for tribal self-governance. To this end, Maine Representative Donna Bailey proposed LD 2118—An Act to Establish an Enhanced Process for Tribal-State Collaboration and Consultation and to Develop a Process for Alternative Dispute Resolution, which would have required state agencies to consult with Wabanaki tribes before participating in any action that may directly impact the tribes. The bill would have given authorization to the state of Maine to “enter into cooperative agreements with federally recognized Indian tribes within the State to facilitate cross-jurisdictional cooperation and the delivery of government services and to avoid disputes.” To improve tribal-state relations, the bill directed the MITSC to report on its

The formalization of government-to-government relations with the state is an important step for tribal self-governance

the tribes and potential infringement on Wabanaki sovereignty. Tribes should not be categorized as minorities or special interest groups; instead, tribes should be recognized as political entities with federal recognition. Therefore, racial impact statements are not as comprehensive as tribal impact statements in addressing equity under the law for the Wabanaki tribes and people.

Tribal impact statements can go beyond the reach of racial impact statements due to the acknowledgement of tribes as governments and the additional attention on how proposed legislation may infringe on tribal sovereignty. Johnson et al. (2009: 57) share that the legislative mechanism of tribal impact statements would “require bill drafters to consider and acknowledge the potential effects—financial ramifications, jurisdictional implications, and programmatic and service delivery changes—of

findings of “alternative dispute resolution options and best practices for facilitating resolution of tribal-state disputes.”⁴

Unfortunately, LD 2118 died upon conclusion of the 129th Legislature. The failure to pass proposed legislation to support tribal sovereignty or to ensure complete implementation of legislation frays trust-building opportunities. Strategies to prevent and resolve tribal sovereignty conflicts rely on the passage and effective delivery of legislative decisions that assert tribal self-governance.

CONCLUSION

To resolve conflicts related to tribal self-governance, both parties need knowledge of the inner workings of each other’s organizations and communities and a sense of trust that comes from deep understanding of the other’s value systems. Additionally, the state of Maine needs to examine the systems in which it operates and act on what has been learned about the issues of tribal sovereignty in Maine (Dana-Sacco 2020). The state needs to look at legislation, evaluate how it affects Wabanaki tribes, and take action to eliminate barriers to Wabanaki self-determination.

Resolving conflicts related to tribal self-governance will need more than just improving the relationship between the state and the tribes. It extends to the relationships between the Native peoples of Maine and the non-Native people who call Maine home. Given that the voices of Indigenous peoples of Maine have been systematically suppressed, all Mainers need to start listening to the voices of Wabanaki people as we create a new path forward (Dana-Sacco 2020). Listening to Wabanaki voices can foster mutual respect and understanding of each other’s government systems. The state of Maine and the Wabanaki tribes should focus on building trust to produce sustainable and long-lasting change to the ways in which tribal self-governance is perceived and received in Maine.

Education and trust building are intertwined and directly influence the degree to which tribes can self-govern within the state. The proper implementation of, and compliance with, LD 291 can provide “greater understanding, respect, and appreciation for the Wabanaki” (WSC 2003: 1). Education about tribal self-governance and support for the jurisdiction that the tribes already possess may increase the level of trust between both parties, increase respect for each government’s processes and values,

and ultimately prevent or resolve tribal self-governance issues in what is now known as the state of Maine.

NOTES

- 1 Indian Gaming Regulatory Act. <https://www.nigc.gov/general-counsel/indian-gaming-regulatory-act>
- 2 Sportsman’s Alliance of Maine Institute for Legislative Action. <https://samila.org/staff/>
- 3 http://www.legislature.maine.gov/legis/bills/bills_120th/bill-texts/LD029102-2.asp
- 4 http://www.mainelegislature.org/legis/bills/bills_129th/bill-texts/HP151201.asp

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Katie Tomer, part Penobscot and Maliseet, has co-facilitated Native healing circles in Maine's prisons for over four years through Wabanaki REACH. She works with the International Association for Human Values and teaches at the University of Southern Maine. Tomer dedicates this article to the Wabanaki people of the

past and present, those who have guided her and those who will guide the Wabanaki people to come.