

ABBE MUSEUM
ANNUAL MEETING
May 19, 2010

Sovereignty Perspective in the 21st century

Who gets to decide?

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Any discussion of sovereignty can get complicated very quickly. Rather than trying to engage in a legalistic discussion of sovereignty, my discussion today focuses on the foundations of that concept which is self-governance, the right of any independent group or society to govern itself free from outside interference and how we as native tribes continue to struggle for our proper sovereign status to be recognized and respected.

The 1980 Maine Indian Claims Settlement Act created a unique legal relationship between the State of Maine, the Penobscot Nation and the Passamaquoddy Tribe. This modern day treaty was intended to enhance the sovereignty of the Maine tribes and promote self-governance, but it has failed miserably. The United States senate report for the Settlement Act indicates, **“From this day forward the tribes of Maine will be forever free of state interference when it comes to matters internal to the tribes”**. Support for tribal sovereignty is also found in the U.S. Constitution, federal statutes, executive orders and numerous court cases. Of course, the reality for the Penobscot Nation since we entered into this treaty has been less than full respect for our sovereignty. While our native nations are making great progress, we are still very much under attack by outside corporate and government interests in our internal affairs. So while the focus of my discussion is self governance, it will also include examples of pre-settlement issues and how the settlement act affects our sovereignty today in the 21st century.

Tribal sovereignty is rooted in the recognition that Indian tribes are distinct political entities with governments long pre-dating the United States and as such possess an inherent right to govern themselves.

Tribal sovereignty is very much about self-governance and who gets to make the decisions about governance, how we choose our leaders and the form of our government? Who gets to decide the form of land ownership or how our lands within tribal territory are developed and utilized? Who decides the rules around hunting and fishing? Who decides when and where roads are built and the speed limits for those roads? Who enforces contracts and resolves disputes? Who creates the environmental laws regulating the tribal lands and waters? Who decides what crimes apply to the citizens of our communities? Who decides all the myriad issues related to governance? Of course our answer is “we do”!

At one time there was no question about sovereignty and governance over this continent and the lands of what is now called Maine. It obviously rested with the native tribes as this areas first people being here since time immemorial. The Wabanaki came together as distinct societies and communities and the power to govern emanated from ourselves as free people and from our creator.

For Indian people, when we discuss sovereignty, we are talking about cultural survival and who we are as a people. We have to take responsibility for ourselves and our resources, and our right to do so must be recognized. Because when we allow others to take that power from us, we lose the ability to protect our communities, to protect our people and ultimately our unique culture and before you know it we are not Penobscot anymore. That is the situation the Wabanaki tribes experienced through the State of Maine claiming control and governance of the tribes, their territory and resources. Our history under state domination has not been a positive one. We have not flourished or been able to adequately provide for our people. In fact, the tribes struggled just to survive during this period of state control.

Our native communities have historically been some of the poorest in the state with high unemployment, high substance abuse rates, high infant mortality, low life expectancy (which is still unacceptably low even today with an average age of death of 57 at Penobscot). It is interesting to look

back at the old state statutes contained in Title 22 that regulated every aspect of our lives from our form of government down to dogs roaming at large on the reservations. This paternalistic approach is also evidenced by the attitude of the legal system towards the Wabanaki. In a case decided by the Maine Supreme Judicial Court in 1842, Murch v. Tomer, 21 Me. 535, the court asserted in reference to the tribes:

“Imbecility on their 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”.

It is only within the last 30 years that the tribes have started the process of taking charge of our own destinies and began to emerge from the difficulty of living under state control and termination era policies such as boarding schools, urban relocation, and allotment to name a few, we have done this through self-governance and self-determination. We understood the Settlement Act to recognize our right to govern ourselves free from state intrusion. Unfortunately, old habits die hard with some, and the state continues to try to assert control over us.

In 2006, we embarked on a mission through the Tribal-State Work Group, created pursuant to an executive order of the governor and comprised of state and tribal leaders, to identify the problems with the Settlement Act and focus on potential solutions to address them. From the tribes' perspective this effort reinforced that this document has strayed from its original intent and has been used to try to turn us into state political subdivisions, essentially perpetuating the tribes as wards of the state. After a two year process, a report was generated that outlined concerns with the Settlement Act and contained several recommendations for positive change. Although the tribes felt these recommendations fell woefully short of fully addressing the issues involving tribal sovereignty, we viewed them as a step in the right direction and we cooperated in this state process in good faith.

These proceedings included testimony by State negotiators of the Settlement Act that stated that the document is not set in stone and that they always knew that it would one day have to be revisited and changes likely would be necessary. This idea seems fairly self-evident, otherwise why would

Congress have specifically provided in the Act for the right of the parties to make changes? The recommendations of the work group went to the State legislative committee of jurisdiction, the judiciary committee. However, in the end not one of the recommended changes were adopted by the committee; our sense is that the state through its representatives is simply not prepared to recognize us as sovereigns. This triggered my tribe to take a strong stance against this continued institutional oppression. Penobscot announced very publicly that we were severing all ties with State government, and that we would no longer participate in its proceedings because to do so we felt legitimizes their process over our affairs and allows the continued marginalization of our people and very much minimizes our governmental status.

The Maine Indian Tribal State Commission (MITSC) which was created by the Settlement Act to continually review the effectiveness of the Act and the social, economic and legal relationship between the state and the tribes and basically to help resolve issues between the parties has been largely ineffective due primarily to the State government's unwillingness to give due consideration to its decisions. The State government seemingly prefers going to court (state courts) rather than engaging in a true government-to-government resolution process, a role MITSC was envisioned to facilitate.

The example that first comes to mind is the issue involving waste water regulation by the State of Maine, pursuant to the National Pollutant Discharge Elimination System program of the federal Clean Water Act (often referred to as "NPDES"). The background of this case is that Maine applied to EPA to obtain control over the issuance of all wastewater discharge permits in the state. Since such a delegation by EPA to the state would have significant impacts on tribal water resources, the tribes became involved in that process opposing this delegation at least as it applied to our reservation waters. Our opposition being grounded primarily in that the federal government owes to us a trust responsibility to protect our lands and resources while the state has no such obligation and has acted in total disregard of our concerns many times. Seemingly, because of concerns about this tribal role, the paper companies, through their attorneys and pursuant to Maine's Freedom of Access Act law, served requests upon the Penobscot Nation and Passamaquoddy Tribe requesting access to tribal documents related to communications between the tribes and federal and

state representatives about this NPDES delegation matter. When the tribes refused based on their view that such law did not apply to them because it was an intrusion upon tribal government in violation of the terms of the Settlement Act, the companies sued the tribes. Keeping in mind that it was intended that we would forever free of these intrusions, the tribes felt confident our rights would be upheld.

Even though the expressed application of this law is to governments, and the Settlement Act clearly designates tribal government as an internal tribal matter not subject to regulation by the state, a Maine superior court judge determined this state law does indeed apply to us and threatened tribal leaders with jail if they chose to uphold their oath and tribal law and protect tribal documents. On appeal, the Maine Supreme Judicial Court likewise concluded that this law applies in part to the Maine tribes and that we must turn documents over to the paper companies. Interestingly, MITSC had twice previously determined that FOAA did not apply to the tribes; reasoning tribes are responsible to their citizens in this manner but to no one else. By the way, the documents requested could have been obtained through the EPA. Further, the tribe has its own Freedom of Information Ordinance that provides members with access to tribal governmental documents as well as limited access for non-members.

Of note, the federal case involving the NPDES delegation to the state was also lost. The Federal courts determined it was appropriate for EPA to delegate full authority to the state for all discharges even those from the reservations. The courts concluding that the state has regulatory authority over all waters even those within Indian Territory. With the strokes of their pens, the federal courts took away the ability of the Maine tribes to have a meaningful voice in how the water resources of this state are managed. For some that may not be a big deal but for us it is tragic.

We are a riverine people and have relied on the river and its resources for thousands of years, think about that, thousands of years. We care deeply about the river, its health and vitality. Our very reservation includes the islands and the river itself, and our way of life is tied to its resources. With the state in control of how the river is managed, it has become degraded and polluted, including the fish that live within it. Fish that our people had relied on for food now became contaminated. What has been the cultural cost of

that situation to our tribe? I doubt anyone can truly quantify that. The paper companies were not concerned about documents when they filed those requests with the tribes. They knew we would resist such an intrusion. They wanted to get that issue into the courts where they could make the arguments to establish that the Settlement Act diminished our rights as a tribal government. I believe it was part and parcel of a legal strategy to eliminate the tribes' voice for the river. Why? Because they feared if tribal rights to influence how the river is managed were recognized, it would create additional financial responsibilities on their companies because the tribes would press to insure the river is protected. For them it is all about money, for us it is about so much more.

The Penobscot Nation has not harvested a fish for subsistence since 1985 due to the lack of numbers and the condition of our sacred river making the fish unfit to eat; this is not acceptable and should not be allowed to happen. On one hand the State agrees we have treaty fishing rights (sometimes) and on the other they are saying it is alright to use our river as a waste dump for big industry without a thought as to the cultural and physical health of Penobscot people. Again this goes back to a paternalistic mindset of "we will decide what is best for you even if that means losing your way of life". "Trust us we know what is best for you". It is demonstrated to us time and again that when others decide things for us it does not result in the best interest of the Penobscot Nation, and how could it? Other people's decision making processes do not take into account any of the things of cultural importance to the tribes but are formulated around their own agenda, their own worldview.

Makes you wonder why the state wants that control when they have been such poor stewards in the past and state leaders must have more important concerns than how the tribes desire to manage their own internal affairs. For tribal people, we have reached the point where we feel we can not compromise any further if we are to survive as a distinct culture with a unique contribution to this country. We have already been deprived of the ability to live our culture within our traditional homeland which at one time numbered in the millions of acres. By the time of the Settlement Act, we were reduced to around 75 miles of Islands and the surrounding river which makes up our reservation. Through the provisions of the Settlement Act we have been able to recover around 100 thousand acres of our aboriginal Penobscot territory. Even then the State tells us that our ability to govern that territory is limited by state interests. It doesn't make sense to us that

after having lost so much of our territory and culture why the state continues to resist any recognition of tribal authority and to contest so fiercely every inch in the tribes struggle for self-determination. The message to the tribes is that the mindset of many is still that of forced assimilation and termination, and of course for us that effort has to be met with equally fierce resistance for the survival of our people and to preserve a future for the yet unborn to exercise their inherent right to exist as a Penobscot.

With the tribes exercising increased self-determination for more than three decades, we are finally starting to thrive again, for example: improved housing. We have constructed numerous new houses on the reservation. We also have built two new apartment buildings to provide housing to single people and small families. We have units specifically dedicated for housing our elders as well as offering them lunch 5 days a week. The Penobscot Nation has also constructed an assisted living center to allow some of our elders to continue to live within the tribal community. We also have our own health care system, providing medical, dental, nutrition, diabetes prevention, laboratory and counseling services, as well as a pharmacy. We have also taken steps in improving our economic condition, as a government we employ over 150 people and our economic development efforts are starting to create real opportunity for our citizens and increased revenue for our Nation. We expect our business development to grow significantly over the next five years which will provide hundreds of jobs and economic self-sufficiency for our tribe.

We once again are encouraging our citizens to embrace their culture through language revitalization and many cultural programs. The tribe is getting back to recognizing the voice of our women, children and elders who have played a vital role in our history and are so important to the prosperity of our community today. We are focusing on our educational systems, trying to create more opportunities for our people to attend some of Maine's best institutions to which we have had limited access in the past. We have expanded our internal social programs to focus on cultural healing and emphasizing the elimination of dependency in any area. We have our own judicial system: featuring a tribal court where our citizens are dealt with in a tribal environment as well as our own public safety, warden service and fire protection departments.

Our largest department is the natural resources department that focuses on the many aspects of our environment, from water and air quality, to managing all our resources in a sustainable and responsible way. All of these activities are tribal self-governance and self-determination. We are providing for ourselves and our community. Because despite other people's perceptions or misperceptions of who we are and whatever stereotypical images they may hold of tribal people, our communities do not want handouts and many of our people do not ask for assistance at all. The Wabanaki tribes are comprised of people possessing great character, integrity and responsibility and only wanting what's best for their families and communities.

Our people care about this state, it is our homeland and we are connected to it no matter what any document or deed may say. We want it to prosper and we must be an equal player in accomplishing that goal, however, it should and must be on terms that reflect our unique culture and perspective. Without this opportunity, it is my firm belief that our state will never truly reach its full potential, economically, socially or spiritually, and we will continue to live in an era of conflict, disharmony and mistrust. It is time that we all put such things behind us.

So sovereignty in the 21st century may mean a lot of different things to different people, but for Penobscot I can define it in two ways. First, sovereignty means what it always did to our people and that is the right to exist freely and exercise our own decision making processes in order to live our culture and shape our own future. And secondly, the continued struggle to obtain recognition and acknowledgment of that right. So, as I said in my opening statement, any discussion of sovereignty can get complicated very quickly, but to Native people it is quite simple and it comes down to one basic question, who gets to decide the things that affect our lives? Although it seems like the answer to that question should be crystal clear to everyone, until it is, I am afraid our vision of walking to a better tomorrow for all people even though on different paths can never truly be realized. Such a result would truly be a shame because we miss out on the opportunity for a better future, a future of mutual respect, tolerance and increased prosperity for all. It has been my pleasure to talk with you today as the proud leader of a proud Nation. If you remember nothing else of my presentation today, I hope you take away that sovereignty comes down to that one basic question

of who gets to decide and you appreciate the tribe's belief that we should have that right for ourselves.

Thank you and I'd be happy to answer any questions.