

Historical Context of the Maine Indian Land Claims Settlement

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SLIDE 2. Historic Relationship between the Tribes, the State of Maine and the U.S. Government

- The historic relationship between the federal government and the Wabanaki Tribes has been fundamentally different than the relationship between the federal government and “western” tribes.
- The United States did not exercise trust responsibility.
- Almost no federal funding.
- The State assumed it had pervasive authority over the Tribes.
- Maine Department of Indian Affairs- numerous State laws concerning Indian welfare, housing, education...etc.
- When the Wabanaki Tribes asserted land claims in the 1970s, alleging that their tribal lands had been acquired by the State in violation of the Nonintercourse Act, they first had to overcome the claim by the State that they were not really bona fide Indian tribes at all.

SLIDE 3. Court Decisions Prior to the 1980 Settlement

- Indian Trade and Intercourse Act of 1790 - codified fundamental choice by Constitutional Convention that States had no role to play in Indian Country.
- Joint Tribal Council of the Passamaquoddy Tribe v. Morton (1975)- Federal government has trust responsibility to Passamaquoddy Tribe.

The Morton decision had several significant effects on the relationship between the Tribes and the state.

- First, pursuant to the newly recognized federal trust relationship, a fiduciary duty was imposed upon the federal government, requiring it to act on behalf of the Tribes to investigate the validity of their claims against the State of Maine.
- Second, the continuation of Maine's jurisdiction over the Tribes began to be questioned because the Tribes could potentially invoke the application of other federal statutes on their behalf.

SLIDE 4. Subsequent Court Decisions Prior to the 1980 Settlement

- State v. Dana (1979)
The State of Maine lacked criminal jurisdiction over crimes committed by tribal members on tribal lands.
- Bottomly v. Passamaquoddy Tribe (1979)
Maine tribes retained the full attributes of sovereignty as defined by federal Indian Law.

SLIDE 5. What is the Federal Trust Responsibility?

- The U.S. Government has a responsibility to protect tribal resources and act in the best interests of Tribes and their members.

SLIDE 6. 1820 to 1975

- Me. Const. art. X, § 5
 - ...Fifth. The new State shall, as soon as the necessary arrangements can be made for that purpose, assume and perform all the duties and obligations of this Commonwealth, towards the Indians within said District of Maine, whether the same arise from treaties, or otherwise;
- State v. Newell, 24 A. 943 (Me. 1892)
 - Passamaquoddy tribal member was hunting deer on the reservation and charged with violation of State hunting laws. The court stated:

Whatever the status of the Indian tribes in the west may be, all the Indians, of whatever tribe, remaining in Massachusetts and Maine, have always been regarded by those states and by the United States as bound by the laws of the state in which they live. Their political and civil rights can be enforced only in the courts of the state...what tribal organization they may have is for tenure of property and the holding of privileges under the laws of the state. They are as completely subject to the state as any other inhabitants can be.

SLIDE 7. Development in Federal Indian Policy

- Termination policy ended. Public Law 280 (1953 expansion of state jurisdiction) was amended and restricted in 1968 by the Indian Civil Rights Act. Tribal consent required. PL 280 further limited by Bryan v. Itasca County decision in 1976.
- 1970 - Nixon Administration- New federal policy adopted that supports tribal self-government.
- 1970's - Congress enacts Indian Self-Determination Act and numerous other laws that support tribal self-government. Federal vacillation on Indian policy ended.
- 1980 - With the Settlement, Maine moves in the opposite direction from federal support of tribal self-determination. Former state control over Indians is largely reinstated by the Settlement.

SLIDE 8. Legal Status of the Tribes as of 1979

- Before the settlement, the state and federal courts had clarified that the tribes in Maine were already sovereign tribal nations within the United States, as defined in federal Indian law.
- The tribes already had federal recognition and were being treated accordingly by the federal government.
- The settlement was not a grant of new authority to the Tribes. It was a restriction of the jurisdiction they already possessed.

SLIDE 9. Maine Indian Claims Settlement

- Federal Component- Maine Indian Claims Settlement Act- 25 U.S.C. §§ 1721 et seq. (MICSA)
Enacted by Congress, extinguishing the land claims, compensating the Indians for their claim, ratifying the Maine Implementing Act and limiting the application of existing and future federal laws in Maine.
- State Component- Maine Implementing Act - 30 M.R.S.A. §§ 6201 et seq. (MIA)
An agreement between the State and the Indian Tribes that was enacted by the Maine Legislature. This outlines the laws that are applicable to Indians and Indian lands in Maine. Ratified by Congress.

SLIDE 10. **MICSA Provisions on the Applicability of Federal Indian Laws in Maine**

- **Section 1725(h)** Except as otherwise provided in this subchapter, the laws and regulations of the United States which are generally applicable to Indians . . . shall be applicable in the State of Maine, except that no law or regulation of the United States **(1) which accords or relates to a special status or right of or to any Indian . . . , and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.**
- **Section 1735(b)** The provisions of **any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine,** including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, **shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.**

SLIDE 11. **The Settlement Act Was Intended to be a Flexible Document**

“Based on the understanding which State and tribal officials now have, we fully expect that this relationship will prove to be a workable one. Furthermore, our proposed amendment to the bill would give Congress’ consent to future jurisdictional agreements between the State and the Tribes. Thus, there is flexibility built into this relationship.” -Letter from Interior Secretary Andrus to the Senate Select Committee on Indian Affairs, Aug 19, 1980

“And I recognized that the MICSA and the MIA might well just be the beginning of an ongoing relationship that might well have a considerable amount of dynamism in it and it might well be revisited from time to time to be adjusted, there was a mechanism for that to happen and I have to say in retrospect it’s been a surprise to me that it really hasn’t been amended at some point...” -Tim Woodcock, addressing the Tribal State Work Group, November 19, 2007

SLIDE 12. **The Maine settlements have not succeeded in creating flexible and effective relationships between the Tribes and the State.**

Whatever view one has on particular issues, it is fair to say that none of the parties could have predicted that the 1980 settlement would remain essentially unmodified for all these years; that so many issues would be submitted to the courts instead of being worked out between the parties; or that the courts would interpret jurisdictional language in the particular ways that they have.

SLIDE 13. **Maine Has Not Developed an Indian Policy**

- The settlement and court decisions have effectively become the State’s governing Indian policy.
- The Task Force presents an opportunity for the State to work with the Tribes to adjust policy to fit current circumstances.