Maine's Indians and the State: A Survey of the Challenges

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When the State of Maine was established in 1820, separate treaties were made with the Penobscot (on the river of that name) and the Passamaquoddy (on the St. Croix watershed), acknowledging them as sovereign nations having their own Chiefs, Councils, and governmental organization. Almost immediately, however, the State began to create laws, to be called "the Blue Book" by the Indians, that ignored such important functions as the election of Chiefs, their terms of office, and the time of elections, and replaced them by statutes modeled on the election laws devised for Maine towns.

By the mid-twentieth century, most Maine Indians had given up the traditional hunting life. Officially designated as paupers, they were treated as wards of the State, with the Director of the State Health and Welfare Department exercising extraordinary powers over them. In the words of Penobscot Governor Albert Nicolar, "Maine Indians [are] being dictated to ..."1 In 1956 State Governor Edmund S. Muskie even considered the dissolution of Maine's Indian reservations.2

The Penobscot reacted by seeking to recover their status as a sovereign nation. Their petition to the United Nations Committee of Human Rights created headlines but had little practical effect.3 Attempts to seek redress in the courts only drained tribal funds: Maine's Indians have never won a case in Maine courts.

The following survey of the situation in Maine at the beginning of the twenty-first century is based on almost sixty years of close observation. In presenting what is of necessity a political – and highly personal – essay, and in many respects probably not as impartial as one might expect

of an historical treatment, I want to thank John Dieffenbacher-Krall and Donald Soctomah for the information they provided.

**Clean Water Act**

Most of the lands belonging to the two Maine tribes are bounded by rivers, which over the years have become more and more toxic. They no longer were a safe place for children to swim, or for subsistence fishing. Cancer and birth defect rates were much higher for people on Indian reservations than for those in the rest of Maine.

About twenty years ago, the Penobscot, concerned about the river that flows around the 240 islands making up their reservation, attended Bureau of Indian Affairs (BIA) classes in water pollution detection and started an intensive monitoring program. Considered the best in the State, their water quality reports show the specific toxins and locate their exact point of entry into the rivers. However, the Tribes have no enforcement powers. Both Tribes, moreover, only own the land on one side of the river, not on the other.

While paper plants are among the worst offenders, they are also the principal employers in many towns, and both the Federal and State Departments of Environmental Protection usually find ways to protect them. On one occasion, in fact, the Attorney-General’s Office declared that Maine laws protect the rights of the majority, and that there is no law prohibiting the consumption of toxic fish.

In 2000 the State and its Indians were close to an agreement on water quality when the Penobscot were alerted that the State’s Environmental Protection Agency (EPA) had in the meantime lowered their water quality standards. The Indians sued for the Federal EPA, rather than the State’s, to assume jurisdiction. Then the paper companies sued the Indians for copies of their documents (even though they were available in government agencies). When the Indians refused, suspecting that the paper companies already had the information they were requesting, the State Attorney-General threatened the Chiefs with jail if the documents were not produced by a specific date. But the State Governor finally realized that it would be awkward to jail the Chiefs for their high water quality standards, while the Chiefs did not want to go to jail, and both sides gave in. The Maine Supreme Judicial Court decided that the Maine Freedom of Access Act does not apply to the Tribes when they act in their municipal
capacities with respect to internal tribal matters. But the larger issue of water quality remains open.

**Clean Air Act**

The Air Quality Program introduced by Maine's Indians is an effective clean air monitoring system that has been in effect for seven years; it cooperates with the Maine Air Bureau and the Federal EPA, and their reporting system has been included in the State and Federal Clean Air programs but, as in the case of water quality, the State and Federal agencies ignore monitoring system reports on toxic emissions, and charges are shrugged off as "the Indians are complaining again."

**Conservation**

Using recognized conservation methods, the Indians want to restore the fish species formerly found in their waters. For more than 200 years Penobscot have been complaining that fish they rely on for subsistence are blocked from coming upriver by dams erected below. In the sixteenth century, according to Clem Fay, the first Director of the Penobscot Department of Natural Resources, an estimated 60,000 salmon came upriver each summer; in 1999 only 986 were counted. Maine Indians have also introduced a program to return fish to their parts of the river by breaking dams that no longer serve their industrial purpose and by constructing fish elevators at the remaining dams. Business rejected this concept as too radical, while sports fishermen backed the move. Several small dams that no longer served mills were taken down, and the results astounded even the most optimistic: shad, salmon, and even sturgeon made their way into waters where they had not been seen for many years. Recently a large sea trout surprised the up-river monitors. This program has been approved for advancement.

In the course of the past two years, Penobscot Chief James Sappier

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6. 'Address by Penobscot Indian Chief John Neptune to Maine Governor William King and his Executive Council,' Maine Senate chambers, Portland, Maine, 11 July 1820.
7. See Susan Hand Shetterly, 'The river they call home,' Audubon, July-August, pp. 79-84, 2000; p. 82.
was elected chairman of the National Tribal Environmental Council having a membership of 182 tribes;\(^8\) the Council recognized John Banks, Penobscot Indian Nation Environmental Director, for his outstanding leadership in tribal environmental issues,\(^9\) and the Penobscot hosted the 24th Annual Conference of the Native American Fish and Wildlife Society, attended by more than 300 members from 47 tribes.\(^10\)

In June 2006 Maine Indians attending the United South and Eastern Tribes Coalition were among the 24 tribes endorsing the Kyoto Protocol.\(^11\)

**Economic opportunities**

Maine's Indians depended on "country food" long after the Europeans began settling on Indian lands. Some hunters continued to range the forests well into the twentieth century, considering it their inherent right.

When sportsmen began coming to northern Maine and the Maritimes, they largely relied on Indian guides, who had reliable knowledge of the forests, seemed never to tire, were good cooks, and practically guaranteed game for the sportsman to take home. It was a life the Indians enjoyed, and the sports tipped well, providing money essential for winter supplies.

From about 1880 to 1930, sports periodicals and *The Bangor and Aroostook Railroad Magazine* included many marvelous photos of Indian guides and their camps, fine images to attract the tourist trade. Now Indians make up only a small percentage of the Maine guides. In 1897, 35 Penobscot were listed as guides.\(^12\) Passamaquoddy guides were popular on both sides of the U.S.-Canadian border, but by mid-century their number had declined sharply because of increasingly rigid State regulations: as most male Indians had no schooling beyond the sixth grade at that time, the introduction of a written test posed a formidable obstacle. In addition, fees for guide licenses have increased beyond what many Indians can pay. In 1950 there was only one sports camp left in all of Maine.

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that was completely owned and operated by a Penobscot with all Indian guides. Guiding is no longer an important factor in the Maine Indians' economy.

As casinos proved an important source of revenue for Indian tribes across North America, the Penobscot were confident that their sophisticated casino plan that included retail space, motels, golf courses, a museum, and other tourist attractions would relieve their economic plight, but in 2005 the State Governor, the Legislature, and the people, in a State referendum, voted the plan down. At the same time, a casino-and-racetrack in Bangor, his home town, was approved by Governor John E. Baldacci. When the Passamaquoddy in turn sought the approval of the State Governor and Legislature for their casino-and-racetrack, their request was rejected on the grounds that Maine's population is not large enough to support two such enterprises. Now the Passamaquoddy are hoping to meet petition requirements to place their proposal on a statewide ballot in 2007, and some local politicians near the Passamaquoddy Reserves, increasingly aware of the economic benefits realized at Bangor, have reversed their stance (but in the southern part of the State a morals-oriented group, who have no interest in the Indians' situation, are fighting plans for another casino).

With its funds from the 1980 Land Claims almost depleted, the Passamaquoddy Tribe is in great need of economic opportunities. After liquified natural gas (LNG) developments were defeated by southern and mid-coast towns, and despite the objections of their neighbors on both sides of the U.S.-Canadian border, Passamaquoddy leaders began to work on plans for an LNG facility on tribal land, and ultimately Split Rock, considered a sacred place by many Passamaquoddy, was identified as the best site for an LNG terminal. At this, conservative Passamaquoddy formed the group, We Protect Our Homeland, and in two suits against the Bureau of Indian Affairs (BIA) contended that four federal laws were broken when the BIA approved the lease of land at Split Rock. On 16 November 2006 U.S. District Judge John Woodcock ruled that We Protect Our Homeland represented only six private individuals, not the Tribe, and since none of them owned Split Rock land, they did not have standing to file the lawsuit. A third suit, claiming that members of We Protect Our Homeland have been denied access to public documents concerning the lease of land, is still pending in the U.S. District Court.
In the meantime, some of the politicians in neighboring White communities who originally opposed the LNG project, have come to see the economic benefits for their county, while others are taking the part of the We Protect Our Homeland group. In the words of a former Tribal Councilor, who wishes to remain anonymous: "They are hijacking the Passamaquoddy culture and using it to achieve their end." With reference to an activist couple from Eastport, former Tribal Councilor Eddie Basset added: "Whenever I think about what the Godfreys are doing, I think of the Boston Tea Party, because a bunch of locals went and dressed up as Indians and caused all kinds of havoc and that's what they’re trying to do; ... All I hear from the Godfreys is please protect ‘these’ people from themselves. It is sad to see people with such a mentality when they publicly state that they know better than the Indians do what is good for the Indians.”

The Legislature

The Penobscot and Passamaquoddy each have one Tribal Representative in the State Legislature, who can introduce and comment on Indian bills but who lack the privilege of voting on them. After the Education Committee had approved “An Act to Establish the Penobscot Language Preservation Fund” (LD 1807), requesting $150,000 each for the current and the following year to develop a program to maintain the Penobscot language, the Appropriations Committee and the legislative leadership trimmed the funding to a one-time appropriation of $50,000.

“An Act to Provide Funding for Tribal Economic Development for the Penobscot Indian Nation and Other Federally Recognized Tribes” [within the State] (LD 1911), introduced by Penobscot Representative Michael Sockalexis, was a package of practical business opportunities put together by the Tribes, from which not only they but the State as a whole would benefit; for the most part, these projects were conservation oriented, such as windmills and tidal power. After 50% of the requested funding of $200,000 had been cut by the Financial Committee, an amendment would have given each Tribe $200,000. When it became apparent

that both the amendment and the bill would be defeated, Michael Sockalexis tried to amend the appropriation from the floor to provide the Penobscot with $75,000. This, too, was defeated by a vote of 84-52; fifteen legislators were absent.

Tribal government

While an in-depth description of Tribal government is lacking, the State Legislature has passed many laws that override important elements of Tribal sovereignty, such as procedures for selecting Chiefs and Councilors and rules for Tribal membership. The State’s Attorney-General likes to compare Tribal government to town-level government, but Indian leaders insist that their governments are not the same at all.

Recently two Maine newspapers wanted to attend Passamaquoddy Council meetings but were told that Tribal Council meetings are not open. When they sued under the Freedom of Access Law, the Maine Superior Court Justice Thomas Humphrey ruled that Tribal Councils are not carbon copies of Maine town councils. At least, the Tribes have succeeded in retaining control over their Council meetings.

The prisons

There is one State prison in Maine, and each county has a jail for which sole responsibility rests with the County Sheriff. In the last two years, 16% of the 500 Passamaquoddy in the Pleasant Point community have been incarcerated: 47 men and women in the county jail, and 36 more in State or federal prisons. (The percentage of prisoners for the rest of Maine is less than 1.5% of the population.) Passamaquoddy drug addicts on probation or parole who test positive for drugs are returned to jail. Apparently, no State officials, nor anyone else, has questioned the policies that produce such an outrageously high rate of Passamaquoddy prisoners. 15

The case of Peter Gabriel, whose death in county jail resulted from lack of medical attention, is exemplary. Confined to a wheelchair since suffering a stroke in 1999, he became a diabetic amputee in 2002. Still seeking to provide for his family and, as a Passamaquoddy, without economic alternative, he turned to drug dealing, was caught and, instead of

being given a home sentence, sent to the county jail. There he was iso-
lated, alone in a room for juveniles because his wheelchair would not fit 
through the jail doors, and unable to participate in the routine activities. 
Finally a guard, alarmed by the smell of rotting flesh, noticed that Gab-
riel’s leg was gangrenous and had him taken to the county hospital; from 
there he was airlifted to Bangor.

The Bangor hospital notified his wife that he was now in their care 
and asked her to come; as Mrs. Gabriel could not drive and no public 
transportation was available, she hitch-hiked the 125 miles. On her 
arrival, hospital staff asked her for permission to take her husband off life 
support since there was no chance he would survive. She had not been 
prepared for this at all, did not trust White society, had no one to counsel 
er, and no friend to turn to for help in making this dreadful decision. 
Utterly perplexed, she granted her permission. After her husband was bur-
ried, on his oldest son’s 18th birthday, his widow became a recluse, rarely 
leaving her house, and it was not until three years later that a fellow Pas-
samaquoddy finally heard her story: she was afraid that she had murdered 
her husband. The community was greatly upset, and the Tribal Council 
asked for an investigation.

On 21 February 2005, Jamie Bissonnette, Director of the American 
Friends Service Committee’s Criminal Justice Program in New England, 
reported to the Passamaquoddy Tribal Council on conditions inside the 
Washington County Jail. She found extreme overcrowding, especially for 
women, who are often forced to sleep in the library, without privacy and 
often also without access to showers; a lack of programing related to 
offences, of educational programs, of addiction programs, of AA or NA 
meetings, of programs for Native healing; unnecessary strip searches for 
all prisoners, and often multiple searches after incarceration, including 
cavity searches on women; several reports of sexual harassment, includ-
ing rape; the fear of additional abuse if one reported rape; a lack of detox-
ification facilities, of medical treatment during this process, and of 
pregnancy checks beforehand. The jail’s responsibility for prisoners’ 
health is routinely and dangerously ignored.

Bissonnette also reported that police knowingly ignore the civil rights 
of tribal members, use illegal probation practices, and arrange to have all 
parole cases handled by a single individual who is consistently unsupport-
ive of Indians. Dedicated and well-trained defense counsel are rarely
available, and public defenders do not always take the rights of their Indian clients seriously.

In March 2006 the County Commissioners reviewed the situation. The Sheriff has resigned, but no reason was given. The State’s legislative leaders, the Corrections Commissioner, and the Passamaquoddy Tribal representative are still investigating the situation; by the end of 2006, no official report had been released.

In 2003, with 23 Indian inmates in the Penobscot County Jail, there was no spiritual leader available on a regular basis. There was also no policy on smudging: sometimes it was permitted, at other times not. Unlike the other religious groups, Indians were not provided a designated area for their religious ceremonies; they were usually given an outside area or part of a corridor, where the worshipers were continually interrupted by inmates and guards. Denied their constitutional right, they sued the jail in the U.S. District Court. Ultimately a settlement was reached, permitting the Indians to have a designated area for their religious services and stating explicitly and in detail which religious objects would be permitted inside the jail.

Religious rights are also at risk in the Maine State Prison. Arnold Neptune, a Penobscot spiritual leader, and his wife Jane Smith, a trained nurse, visit Indian prisoners there once a month. Neptune finds it ironic that the Catholic chaplain uses incense in his service but that he cannot burn sweetgrass or sage in his ceremony. Having explained the religious significance of burning sweetgrass to the Warden, Neptune was permitted to perform a smudging ceremony on a trial basis, but when the odor of burned sweetgrass spread into the heating ducts, non-Indian inmates and office staff objected, and permission was again denied. Only during the summer, at outdoor services, was smudging permitted. Sweatbaths also have been denied. The spiritual leader can visit only two prisoners per visit; chaplains can see four inmates per visit.

As a trained nurse, Neptune’s wife, Jane Smith, tries to assess the health of the prisoners during the visits. All information regarding prisoner’s health and medications is withheld from them, and medications, far

from being properly identified, are simply mixed into their food.

At last, on 26 October 2006, State Prison officials, including two wardens, two chaplains, and the Assistant Attorney General of Corrections, met with Tribal leaders Denise Alvater, Richard Silliboy, Brian Alvater, Arnold Neptune and with Jamie Bissonnette (Director of the American Friends Service Committee’s Criminal Justice Program in New England) and Valerie and Rick Cartonio of the Maine Native Prison Project to discuss the rights of Indians incarcerated in Maine. It was agreed that prisoners will have access to spiritual leaders and a Tribal liaison person with relaxed visitation rights. Prisoners will be allowed the use of eagle feathers, smudge bowls, prayer pipes, medicine bags, prayer blankets, sage, sweetgrass, cedar, flag root, bear root and tobacco, and they will have the option of obtaining sacred items and medicines from designated spiritual leaders or a Tribal liaison person. Security protocol for bringing sacred items and medicines into the prison will be modified so that they are not subject to desecration or disrespect. Spiritual leaders will be allowed to have non-contact visits with Native inmates who are in the control unit. Spiritual feasts will be allowed but all food would have to come from the prison; Tribal representatives objected, arguing that traditional food should be brought in. The sweat lodge issue is expected to be settled soon.

Maine Indians and the State at the beginning of the twenty-first century

Under the terms of the Maine Indian Claims Settlement Act of 1980, the Maine Indian Tribal-State Commission (MITSC) was established to deal with problems of interpretation; it has eight members, who select the chair: four named by the State, two by the Penobscot Tribe, and two by the Passamaquoddy Tribe. After more than 20 years, the Indians concluded that they had accomplished nothing under MITSC: the State always won, and they always lost. In 2003, the Passamaquoddy walked out.

But there were many who saw MITSC as their only line of communication with the State, and in spite of some Passamaquoddy opposition an effort at reform was made. In December 2005 Paul Bisulca, a Penobscot, became the first Indian to chair the Commission. 18

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It seems, moreover, that State Governor Baldacci has begun to recognize that the Indians’ complaints have some legitimacy. In the spring of 2006, he called a meeting of the Chiefs, MITSC Commissioners, and the Attorney General, with each person speaking for several minutes on any problem he or she wished to air. As many of the major points raised concerned the Maine Implementing Act of 1980, on 10 July 2006 Governor Baldacci issued “An Order to Create a Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act”; it is to be composed of two members of the Senate appointed by its President, four members of the House appointed by the Speaker, the Chief of each Tribe, the Governor of the State or his designate, and the chair of MITSC.

The Penobscot have a new Chief, Kirt Francis, involved in politics for the first time. James Sappier, the outgoing Chief, is widely respected for his work in establishing pan-American Indian specialist groups and thereby creating a larger, united front. State Governor Baldacci will begin a second term in January 2007. John Dieffenbacher-Krall, Executive Director of MITSC, has a strong background of dealing with state legislatures. Working with the Maine Chiefs, he has become very much aware of Indian concerns and has been guiding legislative leaders towards a more positive stance. They in turn will now have to educate the members of the Legislature; it may help that a sharp increase in population over the past few years will lend new weight to the Indian vote in the foreseeable future.

For the 2007 Legislature – and for the first time, I believe – Maine’s Chiefs were invited to make presentations at the introductory session. Though many remain cautious about Governor Baldacci’s intentions, the leaders of Maine’s Indians have taken the initiative in identifying urgent issues such as the implementation of the Tribal-State Work Group and the inclusion of the Maine Maliseet and Maine Micmac Chiefs. There are also new moves towards a concerted approach among the four groups working to improve Indian conditions in the state: the Quakers’ Maine Indian Program, the Committee on Indian Relations of the Episcopal Diocese of Maine, the Maine Coalition for Indian Sovereignty, and the Maine People’s Alliance. Finally, after many years of sustained work, there are signs of a change in attitude on the other side, too; long-standing suspi-

19. Executive Order no. 19 FY 06/07.
cions about non-Indians who support Indian causes are at last being set aside.

Far too long, Maine’s Indians have remained outside the political process, where all decisions were made by the State, relying instead on a few trusted Whites, usually missionaries, to represent them. We are now on the threshold of a new era, where the State Governor and leaders of the Legislature may listen and attempt to understand the Indians’ point of view. Maine Indians are once again active in their own cause. Governor Baldacci has begun to respond, though it remains to be seen if he can persuade the State Legislature to follow. The next few years should be interesting.