Tribal self-governance or Tribal self-determine: Is there a difference?

Wilkins, David . News from Indian Country ; Hayward, Wis. [Hayward, Wis]15 Jan 1992: 10.

ABSTRACT (ABSTRACT)

At least 6 more tribes will contract with the federal government before the end of 1991. Thus far 28 tribes have received or will be receiving planning grants to determine the feasibility of this bilateral process for their nations. Joe De La Cruz, President of the Quinault Tribal Business committee, testifying at an oversight hearing on Tribal Initiatives for the 1990's before the Senate Select Committee on Indian Affairs in May of 1990, stated that his tribe had already encountered stiff opposition to their self-governance efforts from the BIA. "There hasn't been cooperation," De La Cruz said, "We didn't expect it from the BIA or the Department of Interior." Cruz observed that not only was the BIA refusing to comply with his tribe's requests to provide independent negotiators, but was lethargically responding to other tribes' requests for assistance.

It is far too early to tell how this latest in a long line of federal "experiments" will go. Any effort to recast a part of the tribal-federal relationship is bound to create enormous difficulties and will encounter serious opposition from entrenched institutions--both tribal and federal. I say only a "part" of the relationship because the more fundamental issues relating to tribal land-title, congressional "plenary" power, and to use Deloria's apt phrase, the Federal Court's plenary interpretive power, are not addressed at all in this process. Besides these major flaws one other obvious problem concerns the still significant role enjoyed by the Department of Interior in the planning, organizing, and negotiating phases of these Self-Governance Grants. In fact, by order of the Secretary of Interior in August 1990, a Council was established to provide "policy guidance" for the self-governing projects. The Council membership, interestingly enough, consists of the following: Assistant Secretary of Indian Affairs, Counselor to the Secretary, Deputy Assistant Secretary for Indian Affairs, the Acting Deputy Commissioner, and a legal mind from the Interior Department's own Solicitor's office. This cadre of administrative folk has control (sound familiar?) over the distribution of much of the federal money that is earmarked to the seven original tribes. This is very worrisome. However, unlike the 1975 Self-Determination Act which was stymied by old alliances involving BIA staff at the local and area level and certain tribal officials, and which actually returned very little direct power to tribes, the current process, because of more direct tribal involvement, including more experienced tribal leaders, plus the procedural and substantive safeguards included in contracted agreements, has significantly greater potential to restore some semblance of tribal autonomy.

FULL TEXT

Tribal self-governance or Tribal self-determination: Is there a. difference? You be the judge

The Bureau of Indian Affairs (BIA) is under siege. Again. Auditors from the Interior Department's own Inspector General's Office (the BIA is lodged in the Interior), recently reported that the Bureau has misplaced $23.8 million in equipment it claims to own, and has "overestimated the value of other machinery by $536 million." This institutional memory lapse and messy bookkeeping is nothing new for the BIA. Need proof? Just ask Indians and their governments. Tribal people, dependent on the BIA for the enforcement of the United States' legal obligations

to Indians, are all too familiar with these kinds of stories. Examples of Bureau mismanagement, incompetence, paternalism, and even outright racism are legion in Indian Country. Other federal agencies involved in administering Indian programs are guilty as well.

By the spring of 1990, less than a year after the release of the final report, several important developments were underway presaging political change. In April, the Senators who had constituted the Special Committee on Investigations, (DeConcini, McCain, and Daschle) followed up on their principal recommendation and introduced S. 2512, the "New Federalism for American Indians Act." DeConcini acknowledged that the bill would have to undergo "extensive review and discussion" and he viewed it as merely a starting proposal for "discussing" the best way the U.S. Government can fulfill its legal and moral responsibility to its Native American citizens."

The bill contained several of the major recommendations of the Special committee: 1) Establishment of an Office of Federal-Tribal Relations (OFTR); 2) Description and process of New Federalism Agreements; 3) Outline of the duties and responsibilities of the Director of the OFTR; and 4) Provided authorization of appropriations. Even as this bill was being introduced, the federal government was in the process of negotiating Self-Governance Demonstration Project (SGDP) contracts with seven tribes. These projects had been authorized in the 1988 law which amended the Indian Self-Determination and Education Assistance Act of 1975. A new section, "Title III -- Tribal Self-Government Demonstration Project," was added to the existing titles. This part authorized the Secretary of Interior to select 20 tribes from a list of petitioning tribes who completed a "successful" planning grant proposal to the department.

The first wave of tribes testing the self-governance waters are the Quinault, Jamestown Klallam, and Lummi Tribes of Washington, the Hoopa Valley Tribe of California, the Mille Lacs Chippewa of Minnesota, and the Abesentee-Shawnee and Cherokee Nations of Oklahoma. This original five-year project, was aimed, no doubt, at implementing what the Special Committee called for: eliminating tribal dependence on the BIA and other federal agencies. The SGDP contracts grant to tribes the right to establish their own budgets, run their own programs, and negotiate directly with the federal government for services. But isn't this what the original 1975 Self-Determination law was supposed to do for tribes? Is there some sparkling difference between the concepts "Self-Determination" and "Self-Governance?" Apparently there is, though what that difference is eludes me.

At the end of the five-year period, this latest in a series of federal "experiments" (other prominent federal policy experiments included forced confinement on reservations and assimilation, Indian self-rule -- John Collier style, termination, relocation, and self-determination) on the practical application of tribes actually exercising sovereignty, will be evaluated by the pertinent parties -- tribes, Congress, and the Interior Department -- to decide whether it will lose its experimental label and become a national policy available to all eligible tribes, provided they meet the government's conditions.

At least 6 more tribes will contract with the federal government before the end of 1991. Thus far 28 tribes have received or will be receiving planning grants to determine the feasibility of this bilateral process for their nations. Joe De La Cruz, President of the Quinault Tribal Business committee, testifying at an oversight hearing on Tribal Initiatives for the 1990's before the Senate Select Committee on Indian Affairs in May of 1990, stated that his tribe had already encountered stiff opposition to their self-governance efforts from the BIA. "There hasn't been cooperation," De La Cruz said, "We didn't expect it from the BIA or the Department of Interior." Cruz observed that not only was the BIA refusing to comply with his tribe's requests to provide independent negotiators, but was lethargically responding to other tribes' requests for assistance.

Notwithstanding these criticisms, an increasing number of contracting tribes, the Congress, and the Interior

Department continue to push ahead with the program. Senator's McCain and Inouye, introduced legislation in June of 1991, S. 1287, to make several substantive changes to the 1988 law which first authorized these grants. The "Tribal Self-Governance Demonstration Project Act," if enacted, would accomplish four tasks: 1) the demonstration period would be extended an additional three years -- this is because although authorized in 1988, the first projects were delayed until October 1990 and thus more time is needed to ascertain the benefits and pitfalls of the proposed policy; 2) increase the number of tribal participants from 20 to 30 to create a larger study sample; 3) require prospective tribes to participate in a preliminary planning phase to prepare fiscal and legal research and study internal government planning; and 4) authorize an additional $700,000 for planning and negotiations for the 10 additional tribes. This bill was sent to the Senate Select Committee for study.

It is far too early to tell how this latest in a long line of federal "experiments" will go. Any effort to recast a part of the tribal-federal relationship is bound to create enormous difficulties and will encounter serious opposition from entrenched institutions--both tribal and federal. I say only a "part" of the relationship because the more fundamental issues relating to tribal land-title, congressional "plenary" power, and to use Deloria's apt phrase, the Federal Court's plenary interpretive power, are not addressed at all in this process. Besides these major flaws one other obvious problem concerns the still significant role enjoyed by the Department of Interior in the planning, organizing, and negotiating phases of these Self-Governance Grants. In fact, by order of the Secretary of Interior in August 1990, a Council was established to provide "policy guidance" for the self-governing projects. The Council membership, interestingly enough, consists of the following: Assistant Secretary of Indian Affairs, Counselor to the Secretary, Deputy Assistant Secretary for Indian Affairs, the Acting Deputy Commissioner, and a legal mind from the Interior Department's own Solicitor's office. This cadre of administrative folk has control (sound familiar?) over the distribution of much of the federal money that is earmarked to the seven original tribes. This is very worrisome. However, unlike the 1975 Self-Determination Act which was stymied by old alliances involving BIA staff at the local and area level and certain tribal officials, and which actually returned very little direct power to tribes, the current process, because of more direct tribal involvement, including more experienced tribal leaders, plus the procedural and substantive safeguards included in contracted agreements, has significantly greater potential to restore some semblance of tribal autonomy.

Tribal people fearful that this process may actually lead to termination of the federal government's treaty and statutory responsibilities, may rest assured this will not happen, at least not under the current or projected relational changes. Tribes had better remain vigilant, however, especially given the government's insistence on the tribes meeting certain "indispensable conditions," the Department of Interior's high profile role, and the ancient coalitions involving key tribal personnel, local-area-and national BIA officials, and other hidden partners. These are considerable forces which must be reckoned with.

DETAILS

Subject:	Civil rights; Ethics; Federal government; Government; Human relations; Human rights; Interpersonal communication; Minority &ethnic groups; Personal relationships; Political ethics
Location:	United States
People:	De La Cruz, Joe
Ethnicity:	Native People

Publication title:	News from Indian Country; Hayward, Wis.
Volume:	VI
Issue:	2
Pages:	10
Number of pages:	0
Publication year:	1992
Publication date:	Jan 15, 1992
Publisher:	Indian Country Communications
Place of publication:	Hayward, Wis.
Country of publication:	United States, Hayward, Wis.
Publication subject:	Native People, Ethnic Interests
ISSN:	15484939
Source type:	Newspapers
Language of publication:	English
Document type:	News
Accession number:	SFLNSNFIC0392ICLS058000011
ProQuest document ID:	367628817
Document URL:	http://login.ezproxy1.lib.asu.edu/login?url=https://www.proquest.com/newspapers/tribal-self-governance-determine-is-there/docview/367628817/se-2?accountid=4485
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Last updated:	2017-11-09
Database:	Ethnic NewsWatch

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