

# Indian Self-Determination the Ideal and Indian Self-Governance the Reality

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Quinault Indian Nation

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No right is more sacred to a nation, to a people, than the right to freely determine its social, economic, political and cultural future without external interference. The fullest expression of this right occurs when a nation freely governs itself

We call the exercise of this right Self-determination. The practice of this right is Self-Government.

The Quinault Indian Nation and other Indian Nations in the northwest part of the United States take the practice of self-government seriously. Each of our nations has worked unceasingly to resume self-governing powers - powers which were eroded by U.S. government and state government interventions. Instead of asking for the return of the right to govern ourselves, the Quinault Indian Nation and neighboring Indian Nations have taken the initiative to take back those powers. The Quinault Indian Nation's goal is to fully resume self-government, and we are making substantial progress in that direction.

The road back to full self-governance is long and difficult. Indian Nations must overcome more than six generations of U.S. inspired erosion of their governmental powers.

Not since before the United States government decided in 1871 to cease making new treaties with Indian Nations have Indian nations fully exercised self-determination or self-government. Since 1871, one hundred eighteen years ago, Indian nations have not been able to govern themselves, or

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they have only been partially self-governing. For nearly twelve decades, Indian nations have been governed by a U.S. government agency - the Bureau of Indian Affairs - and the United States Congress and the U.S. Federal Judiciary. The U.S. administrative agency, and the legislative and judicial branches of the United States government have assumed either absolute, or nearly absolute authority to govern Indian nations, that these nations neither conveyed or granted such extraordinary powers to the United States. By its own independent act in 1871, and subsequent assumptions of power, the United States government exercises powers over Indian nations comparable only to dictatorial powers exercised by the most absolutist governments in the world. This prolonged erosion of Indian governmental powers has never been agreed to by any Indian nation, yet formerly self-governing nations now exercise very limited powers of government.

In recent years, the United States government proclaimed its commitment to a policy of Indian self-determination. Succeeding U.S. administrations since 1970 elaborated on this concept. They endorsed the policy of Indian self-government and later a policy to carry out relations with Indian nations on a government-to-government basis.

The difference between stated U.S. policy and its actual implementation is an excellent measure of misunderstandings and misconceptions. This is clearly true for the U.S. Congress and past Administrations in their conduct of Indian Affairs. President Reagan in his White House Indian Policy Statement of January 1983 spoke eloquently of his support for government-to-government relations with Indian Tribes. In his Presidential proclamation 5745 of November 19, 1987, issued on the occasion of "American Indian Week" November 22 - 28, 1987, Mr. Reagan said:

The Constitution affirmed the special relationship of the Federal government with American Indians when it stipulated: "the Congress shall have power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian Tribes . . . ." This unique government-to-government relationship continues today and has been reinforced through treaties, laws and court decisions. During the Bicentennial of the Constitution, it is especially fitting that we recognize and celebrate

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the many contributions of American Indians.

I agree with Mr. Reagan's sentiments in principle, but certainly not in the practice of the policy.

Despite these pronouncements, the U.S. government has continued to hold on to its monopoly over tribal governmental powers. The U.S. government's policy commitments seem irreconcilable with the commitment to continue its assumption of greater powers over Indian nations and the consequent erosion of Indian government powers.

This paradox was clearly described by Milner S. Ball in the introduction to his fascinating American Bar Foundation Research Journal article: Constitution, Court, Indian Tribes. He wrote:

We claim that the "constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land." But we also claim to recognize the sovereignty of Native American nations, the original occupants of the land. These claims - one to jurisdictional monopoly, the other to jurisdictional multiplicity - are irreconcilable. Two hundred years have produced no resolution of the contradiction except at the expense of the tribes and the loss to non-Indians of the Indians' gift of their difference.

There is no doubt in my mind that the U.S. Constitution is profoundly contradicted by the past policies and practices of succeeding U.S. governments toward Indian nations. It is equally clear to me that the contradictions between the U.S. Constitution and U.S. government practice are irreconcilable within the framework of the U.S. government and the U.S. legal system alone. The remedy is not solely within the U.S. government and its legal system, but in the resumption of governmental powers by Indian nations as a result of negotiations between the United States and each Indian government. The only acts of substance the United States government must initiate is the repeal of its 1871 denial of treaty negotiations; the implementation of the policies of Indian self-determination and the conduct of relations on a government-to-government basis.

The outcome of negotiations between the United States and

individual Indian governments should be many self-governing Indian nations which are freely associated with the United States. Each Indian nation should be politically autonomous, but with a formal agreement of political association with the United States. This means that each nation ought to exercise full internal control over economic, social, political and cultural activities within established territorial boundaries. It must have full internal self-governance. External relations would be conducted in consultation with the United States government.

Just as the United States has free association agreements with other nations like the Federation of Micronesia, similar agreements ought to be concluded with Indian nations.

The U.S. government's Indian self-determination and government-to-government policies should directly advance tribal self-government and tribal self-sufficiency. Between the U.S. Administration's current monopoly over tribal administration and the U.S. Congress' legislative monopoly which is justified by the United States under the "plenary power doctrine," tribal self-government and tribal self-sufficiency will remain an ideal and never become a reality. The administration of the Bureau of Indian Affairs and the Indian Health Service is persistently criticized by Indian leadership. This persistence is in particular aimed at the unwillingness of these agencies to conduct meaningful, two-way consultations with Indian officials about agency policies and programs. These agencies consistently formulate poorly conceived policies behind closed doors, and then promote their adoption by the U.S. Congress. Indian government officials have constantly been faced with the need to stop or alter these negative policies in the halls of the U.S. Congress. This is the current practice of "government-to-government" relations which evolved historically and remains entrenched in practice to protect bureaucratic self-interest and U.S. interests.

Since the enactment of the Indian Reorganization Act of 1934, United States policy has attempted to promote social and economic self-sufficiency within Indian nations. How the U.S. government carries out this policy has remained an issue of controversy. This is due, in part, to the widely divergent views of U.S. administrators and legislators over what the outcome of this policy should be. To some, self-sufficiency means the perpetual social, economic and political existence

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of Indian nations - exercising the full powers of self-governance. To others, self-sufficiency means the elevation of social and economic standards on Indian Reservations equal to neighboring, non-Indian communities; and, the ultimate elimination of Indian nations through assimilation.

Self-sufficiency among Indian peoples means that Indian nations are able to govern their own country and peoples without external interference; Indian peoples can renew their natural creative abilities to feed themselves, house themselves, and clothe themselves. Indian people will be self-sufficient when they rely on their own labor and natural resources to become prosperous. Self-sufficiency also means that Indian peoples can freely decide how to best serve their social and health needs and refine their cultural life. Clearly, self-sufficiency is the means to ensure the perpetual existence of a nation as a distinct social, economic and political society.

In response to the extensive dislocation of Indian peoples caused by the General Allotment Act of 1887, and observing the extreme poverty of Indian Nations, the U.S. government enacted the Indian Reorganization Act of 1934 as a kind of "New Deal" for Indian Country. Indian nations were to have an economic and political relationship with the U.S. that would "maximize political democracy and self-government" among Indian peoples and ensure sufficient economic support to achieve social and economic self-sufficiency. Though apologists for the Indian Reorganization Act thought the law would liberate Indian nations and promote their social, economic and political self-sufficiency, as a practical matter it became the instrument by which the U.S. government assumed greater autocratic rule over Indian Country.

Felix Cohen observed in his 1942 Handbook of Federal Indian Law, "Self-government is the Indians' only alternative to rule by a government department." He noted that self-government "includes the power of an Indian tribe to adopt and operate under a form of government of the Indian's choosing, to define conditions of tribal membership, to regulate domestic relations of members, to prescribe rules of inheritance, to levy taxes, to regulate property within the jurisdiction of the tribe, to control the conduct of members by municipal legislation, and to administer justice." All of these are the attributes of political sovereignty - of

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political autonomy. The U.S. government effectively undercut the exercise of these and other natural powers of governance by Indian nations.

While the U.S. government has moved to assume greater powers over Indians and their territories, Indian leaders have not sat idle accepting every encroachment. Wary of the possibility that the United States could withdraw its meager support and crush each nation, but alarmed at the disastrous affects of U.S. encroachments, many Indian leaders attempted to push back the onslaught. From 1948 through 1957, Indian leaders meeting in the National Congress of American Indians adopted many resolutions conveying their concerns to the United States government. In 1957, the efforts of Indian leaders culminated in the drafting of U.S. Congressional legislation called Concurrent Resolution No. 3. Though never adopted, this resolution became the most comprehensive statement of Indian government policy opposing termination and advocating Indian self-government and economic reconstruction of Indian Country.

N.C.A.I. President Joseph Garry, the renowned Chairman of the Coeur d'Alene Tribe, endorsed Concurrent Resolution 3 in his testimony when he noted that efforts to terminate Indian nations by private citizens and the Bureau of Indian Affairs "kept the Indians so busy defending themselves they had no time or even energy for constructive planning or actions" which would enhance self-sufficiency. Though the U.S. Congress did not accept Concurrent Resolution 3, it did provide a forum in which Chief Garry and other Indian leaders began to formulate an Indian agenda for Indian Affairs.

By 1959, the Indian agenda for Indian Affairs began to take shape with the National Congress of American Indians adoption of a Statement of National Policy. In a more comprehensive statement of the Indian agenda, 460 Indian leaders from 90 tribes met in the American Indian Chicago Conference and developed the Declaration of Indian Purpose and adopted it on June 20, 1961. D'Arcy McNickle chaired the steering committee for this conference. This Declaration can be summed up in these two sentences which I quote from its creed:

We believe in the inherent right of all people to retain spiritual and cultural values, and that the free exercise of these values is necessary to the

normal development of any people. Indians exercised this inherent right to live their own lives for thousands of years before the white man came and took their lands. It is a more complex world in which Indians live today, but the Indian people who first settled the New World and built the great civilizations which only now are being dug out of the past, long ago demonstrated that they could master complexity.

Another great leader, Chairman Earl Old Person of the Black feet Tribe, was president of the National Congress of American Indians in 1966. He saw that despite Indian efforts to persuade the United States to change its attitudes toward Indian nations, the patterns of the past continued. He sharply reacted to heavy-handed Bureau of Indian Affairs efforts to undermine Indian nations. He spoke before a conference in Spokane, Washington when he said:

Again, I say, "let's forget termination and try a policy that has never been tried before - development of the Indian reservations for Indians and development of Indians as human beings with a personality and a soul and dreams for a bright future." Why is it so important that Indians be brought into the "mainstream of American life?" What is the "mainstream of American life?" I would not know how to interpret the phrase to my people in our language. The closest I would be able to come to "mainstream" would be to say, in Indian, "a big wide river." Am I then going to tell my people that they will be "thrown into the Big, Wide River of the United States?"

Just as President Joe Garry before him called for a new Indian Affairs agenda "setting aside the idea that Indian Nations should be terminated," President Earl Old Person called for Indian Nations and the United States to focus on "rebuilding Indian Country." Both N.C.A.I. Presidents called upon the United States to recognize the inherent intelligence of Indian people and "their ability to decide for themselves what future they shall have." This is the essence of self-determination.

After more years of Tribal demands for tribal self-determination, President Richard Nixon finally announced a U.S. policy of "Indian Self-Determination" in 1970. Five years after the U.S. Administration proclaimed its support for the self-determination of Indian Nations, the U.S. Congress enacted the Indian Self-Determination and Education Assistance Act. The principle of the self-government of Indian Nations had been finally agreed to by the United States. Even with this clear commitment, the Bureau of Indian Affairs continued its practices of dominance and intrusion into the affairs of Indian governments. When the American Indian Policy Review Commission completed its two-year study in 1977, it became clear that while the principle of Indian self-governance and the promotion of Indian self-sufficiency functioned as "buzz words" in the U.S. bureaucracy, the practical application of Indian self-government was far from being achieved.

The Department of the Interior and the Bureau of Indian Affairs so distorted the U.S. President's Self-Determination Policy, and the Congress's Self-Determination law that the practical effect of the policy resulted in "handing the responsibility of providing services and assistance to Indians over to Indian governments, but holding back the authority to decide with flexibility how to meet the needs of Indian communities." Indian Nations were achieving self-determination in name only, while the Bureau of Indian Affairs became more powerful and intrusive into Indian Affairs.

When I became the President of the National Congress of American Indians, I became determined like my predecessors to press for the Indian Agenda. I proposed in a speech before the Fortieth Annual Convention of the National Congress of American Indians in Green Bay, Wisconsin (1983), "that we make a decisive departure from the recurring issues that divert our attention from the most important priorities and initiatives necessary to establish meaningful government-to-government relations with the United States." I proposed to Indian leaders that we take "the next logical step beyond the Indian Self-Determination Act" with the enactment of a Tribal Grant-in-Aid-Act. I urged that such an Act:

would authorize five year financial agreements between Indian Nations and the United States, negotiated to cover Tribal government operations,



economic development, housing, health and human services, and other Tribally-determined needs. The Grant-in-Aid would require a line item appropriation from Congress for each Indian government concluding an agreement with the United States and funds would be disbursed through the Department of the Treasury. The Act would include a transition clause allowing Tribal governments a supportive bridge from PL 93-638 contracting to grant-in-aid management. Each agreement, of course, would provide that the trust relationship and obligations of the United States will be upheld . . . .

In 1986, I worked with nine key tribal leaders around the country in an Alliance of American Indian Leaders to build a consensus for "the next logical step beyond the Indian Self-Determination Act." These courageous leaders worked hard and long, and produced in 1987 a proposal to the U.S. Congress that it adopt a Concurrent Resolution setting Congressional policy to recognize the role of Indian Nations in the formulation of the U.S. Constitution; and particularly the Congress would recognize the principle of government-to-government relations with Indian Nations. We also worked to develop a comprehensive proposal to the Congress that it support a country-wide process of consensus-building among Indian governments on the principle of self-government. Our proposal was received by the House Interior and Related Agencies Sub-Committee on Appropriations. It still awaits Congressional action.

While the Alliance of American Indian Leaders pressed for reforms in Congressional policy, the Affiliated Tribes of Northwest Indians, of which I had become President, was also pressing for extensive amendments to the Indian Self-Determination and Education Assistance Act. In the Fall of 1987, after major progress had been made by both Alliance Leaders and the Affiliated Tribes, Assistant Secretary of Indian Affairs Ross Swimmer unilaterally initiated a Bureau of Indian Affairs proposal to the Appropriations Sub-Committee calling for "a demonstration project to transfer B.I.A. resources at all levels" to Indian Tribes seeking such a transfer. Mr. Swimmer's proposal contained a provision absolving the U.S. of its Trust obligations to those tribes accepting the transfer.

Congressman Sidney Yates of Illinois, a long-term advocate of reorganizing or dissolving the Bureau of Indian Affairs and Chairman of the House Interior and Related Agencies Appropriations Sub-Committee, asked me and Lummi Tribal Chairman Larry Kinley to meet with him to discuss the Bureau of Indian Affairs proposal. The product of those discussions was a proposal we developed for the establishment of an "Indian Self-Governance Demonstration Project" which would maintain the U.S. government's trust responsibilities. Congressman Yates' Sub-Committee accepted our alternate proposal and included it in the Appropriations Act of December 22, 1987. The first movement toward U.S. and Tribal implementation of self-determination and Indian Self-Governance had begun. Most importantly, it had begun as a result of discussions and negotiations between Indian leaders and the Congress.

The Appropriations Act of December 22, 1987 included two paragraphs which may well change the very nature of Indian Affairs and future relations between Indian Nations and the United States. While the Act provided \$1 million dollars for self-determination grants to support the self-governance demonstration project, it did much more. It directed "the Bureau of Indian Affairs formulate a proposal for the equitable distribution of resources and service responsibilities between" demonstration tribal governments. It also provided that demonstration tribes undertake a self-governance planning period and conduct "legal and budgetary research, internal tribal government planning and organizational preparation, and the negotiation process" with the United States government. The Act specifically provided that negotiations of funding transfer agreements between demonstration tribes and the United States "include a clear delineation of trust responsibility protections assumed by the tribes and retained by the United States government."

The significance of this Act is that it was developed between Tribal leaders and the Congress. It also re-opens a formal process of negotiations between Indian nations and the United States.

By September 1988, the Congress of the United States enacted substantial amendments to the Indian Self-Determination and Education Assistance Act; and included in that Act was a special Title which authorized the Indian Self-Governance Demonstration Project for five years. Under

the dual Acts of 1987 and 1988, Indian Nations and the U.S. Congress have formalized a process which allows for Indian Nations to undertake up to two-years of self-governance planning, conduct negotiations with the United States for Annual Funding Agreements and carry-out the Indian Self-Governance Demonstration Project after successful negotiations.

The Quinault Indian Nation and nine other Indian Nations around the country are the first to initiate the self-governance planning process. Authorizing legislation which we proposed and was made a part of the Indian Self-Determination and Education Assistance Amendments Act of 1988 provides that ten more Indian Nations may begin the process. Forty-two Indian nations have now applied to become self-governance demonstration tribes.

The mechanisms have now been set up between the United States and Indian Nations to permit Indian Nations to take "the next logical step beyond the Indian Self-Determination Act." Not since before 1871, has there be a greater opportunity for Indian Nations to reassume the powers of self-government, and for the United States to turn its policies of self-determination and government-to-government relations into a practical reality.

While I am personally gratified that we have made such progress toward implementing self-determination, I must say I am shocked to see the obstacles to making Indian Self-Government a reality. The Bureau of Indian Affairs, several tribally employed consulting and legal firms, and some Indian professional associations have been among those who are attempting to subvert and undermine the self-governance process. Since the summer of 1987, the politics has been intense.

Until we began the self-governance process, I would never have believed that some of the most vocal advocates of Indian self-determination would become the most vigorous opponents of self-governance in action. Indians and non-Indians alike are among the small, but vocal minority, working to subvert the self-governance process. Using resources provided by the United States government and by Indian governments, these individuals and their associations charge that self-governing nations will have graft, waste and frivolous expenditures of revenues if they control their own economic, social and political destiny. They have attempted to frighten tribal

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staff members into believing their jobs are in jeopardy. They even suggest that those of us in self-governance planning governments and the people we hire to work with us are "in it for the money" - suggesting that the self-governance demonstration process is merely a ploy to rake off funds from the U.S. government.

In the face of these petty charges and maneuvers, self-governance planning tribes have remained steady. We know that the process of evolving self-governance and self-sufficiency is a complex task. We also know that many people and institutions will be threatened by our efforts to reassume tribal self-governance. We remain steady because we know that the future of Indian Nations in the United States depends on our becoming self-sufficient and self-governing societies as we were once before. We seek to have recognized the inherent intelligence of Indian people and "their ability to decide for themselves what future they shall have."

The Self-Governance Process which has been set in motion will require great discipline, careful dialogue, sometimes heated debate and serious government-to-government negotiations. The new Indian Affairs agenda has now been set in place. It involves discussions and negotiations about the process of government-to-government relations between Indian governments and the United States. It includes the need to discuss in detail and without bias, the nature of tribal governmental powers of legal and political jurisdiction and the future relations between tribal governments and the citizens and residents living inside reservation boundaries. The New Indian Affairs Agenda means consideration of future relations between self-governing Indian Nations and neighboring counties and states. It means fundamentally restructuring the political shape of Indian Affairs. What will be the political status of self-governing Indian nations in relation to the U.S. Federal System? What will the economies of self-governing Indian nations look like? How will they be defined and organized?

The prospect for self-governing Indian nations freely determining their own social, economic and political future is becoming a reality. It is happening because Indian Nations took the initiative, and have begun already to determine for themselves in discussions and negotiations with Congressional leaders, what the principles and processes leading to self-government will be. The prospect of negotiations between



self-governance planning tribes and the United States still looms on the horizon. How or whether individual negotiations actually proceed will become an important test of the process agreed to with Congress. Since the Quinault and the other nine tribes are the first to consider the prospect of negotiations, I do not anticipate an easy road. If we are successful at this stage, other Indian Nations which follow will doubtless have an easier time of it.

After negotiating a compact with the United States for Annual Funding, several Indian Nations will then be in the actual Self-Governance Demonstration phase of things. For up to three years, these self-governing nations will be tested in a way never before tried. If my government decides to enter into negotiations with the United States, I expect we will experience some of the most exhilarating and difficult times. No one ever said the exercise of self-government is an easy thing. Several Indian governments have begun the planning process and many more wait for the opportunity. All must now seriously consider the implications of Indian nations reassuming the powers of government. Of that I am absolutely certain.

I began these remarks by saying the Quinault Indian Nation and its neighboring Indian Nations have made substantial progress toward resuming full self-governance. Our experience over the last twenty-years demonstrates that the reality of self-government comes only when Indian Nations take the initiative themselves. The leadership of northwest tribes to negotiate the early steps of the Self-Governance Demonstration Project with key leaders of the U.S. Congress has already begun to show promise. Twenty-four Pacific Northwest Tribal representatives directly participated in the negotiations of the U.S./Canada Pacific Salmon Treaty which was ratified in 1985. As an expression of their growing self-governing powers, these Indian Nations now have representatives sitting on the Treaty Commission and fisheries panels along side representatives of Canada and the United States. Many of those northwest tribes involved in the U.S./Canada Salmon Treaty negotiations also negotiated an agreement with the State of Washington to protect, preserve and rehabilitate the environment. This Timber, Fish & Wildlife Agreement ensures tribal governmental authority in these critical areas. As a result of discussions with the State of Washington, ground-work as been laid to deal with social and

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health administration and tax jurisdictional issues between Indian Nations and the State of Washington. Each of these steps have contributed to the resumption of Indian governmental powers.

The political landscape is changing. The test of self-determination is now before us. The prospect of fully self-governing Indian Nations is now a probability and not merely a possibility. The New Indian Affairs Agenda is now unfolding, and Indian self-governance and Indian self-sufficiency are the primary topics of that agenda. We cannot turn back. We must now muster all of our creative energies and leadership powers to achieve the full exercise of Indian self-determination - an ideal that is now becoming a reality.