



Tribal Sovereignty – an Explainer

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What is tribal sovereignty?

There are three types of sovereign governments in the United States: the federal government, state governments, and tribal governments. Tribal sovereignty refers to the **inherent authority** of tribal nations to self-govern, including the authority to establish their own form of government, determine citizenship, preserve cultural identity, and make and enforce laws.

There are currently [574 federally recognized tribal nations](#) in the United States, including four Wabanaki nations in Maine: the [Houlton Band of Maliseet Indians](#), [Mi'kmaq Nation](#), Passamaquoddy Tribe (at [Motahkomikuk](#) and [Sipayik](#)), and [Penobscot Nation](#). Federal recognition means that the US government acknowledges tribes as sovereign governments, as well as its own [“trust responsibility”](#) to protect tribal land rights and natural resources, preserve tribal sovereignty and self-governance, and carry out legal mandates of federal Indian law.

Despite the recognition of tribal sovereignty in the Constitution, it wasn't until the 1970s that the federal government began to take steps to support, rather than undermine, tribal self-governance. This followed more than four centuries of settler and colonial [extermination](#), [state-sanctioned genocide](#), and US government-directed efforts to forcibly [remove](#), [dispossess](#), [assimilate](#), and [terminate](#) tribal nations. **While the restoration of self-governance has proved critically important for tribes throughout Indian Country, unique provisions in federal and Maine law have led to the Wabanaki nations being left behind, unable to access the full benefits of their sovereign status.**

Why is tribal sovereignty and self-governance important?

Sovereignty is an inherent right of Indigenous governments

- Tribal governments predate the sovereignty of the United States by thousands of years and derive their sovereign power from their people and connection to ancestral territory. Sovereignty is not a power given or taken away by an external government.
- Lands historically inhabited and utilized by Indigenous people were not [“discovered”](#) by Europeans. They were [discovered by Indigenous people](#).
- Tribal sovereignty is confirmed in [treaties](#), the [US Constitution](#), [Supreme Court decisions](#), and by the [United Nations](#).

Self-governance preserves Indigenous cultures, languages, and resources

- The values, culture, and needs of tribal communities are best understood by tribal governments. Strong tribal governance systems also lead to [better tribal-state cooperation](#).
- Self-governance results in tribes devoting greater resources to [shared infrastructure](#) and improved [environmental and resource management](#).

- Only 175 of more than 300 [Indigenous languages](#) spoken in the US remain. Without restoration efforts, most of those will be lost by 2050. Sovereignty and self-governance help preserve language education, and oral traditions also help [preserve tribal sovereignty](#).

Self-governance spurs economic growth for tribes and their neighbors

- Since colonization, the restoration of tribal self-governance in Indian Country is shown to be the only policy to produce [positive economic outcomes](#) for Native people. Widespread implementation of self-determination policy in the late 1980s saw per capita income on self-governing reservations grow three and a half times faster than the US as a whole, and poverty cut almost in half.
- Tribal governments that provide municipal services and infrastructure and diversify their economies often become [economic drivers of their regions](#). Collectively, tribal governments directly support an estimated workforce of 350,000 as well as an additional 600,000 indirect jobs, \$40 billion per year in wages and benefits, and an additional \$9 billion spillover impact in state and regional economies.

Why doesn't Maine recognize the sovereignty of the Wabanaki nations?

In the 1970s, the Passamaquoddy Tribe [asserted](#) (and federal courts affirmed) that the US government was bound by its trust responsibility to protect Wabanaki land rights illegally claimed and sold by the state of Maine. Maine's claim to the tribal land – amounting to almost two thirds of the state – was ruled [invalid](#) because the tribal land transfers and sales were [never approved by Congress](#). That ruling set up a pair of unprecedented land-claim suits filed by the US Department of Justice on behalf of the Passamaquoddy Tribe and Penobscot Nation against the State of Maine. After [four years of negotiations](#) aimed at resolving the dispute out of court, and with the tribes facing intense public and [political pressure](#) to accept an agreement, the federal [Maine Indian Claims Settlement Act](#) (MICSA) and the state [Maine Implementing Act](#) (MIA) were ratified in 1980.

Collectively known as the Settlement Acts, MICSA and MIA required the Passamaquoddy and Penobscot nations to give up claim to their dispossessed lands in exchange for a federally funded pathway to buy back just 2.5 percent of the 12 million acres unlawfully claimed by Maine. Congress enacted separate federal laws to address [similar claims](#) brought by the [Houlton Band of Maliseet Indians and the Mi'kmaq Nation](#). The Settlement Acts allow Maine to exert an unusual level of jurisdiction over tribal affairs not found in any other state. Running in [stark contrast](#) to federal Self-Determination Policy evolving at that time, the interpretation of this regressive and paternalistic element of the settlement has been disputed ever since. **For more than 40 years, the state of Maine has used the Settlement Acts to deny Wabanaki nations' sovereignty and authority to self-govern, a position [in direct conflict](#) with the inherent sovereign rights of all federally recognized tribal nations and the foundations of Federal Indian Law.**

How does the denial of tribal sovereignty impact Wabanaki citizens and all Mainers?

Wabanaki nations are blocked from accessing many benefits of federal Indian laws

- Unless Wabanaki nations are *explicitly named* in a federal Indian law, those laws are blocked in Maine if they “affect or preempt” Maine's jurisdiction. Since 1980, Congress has enacted over [151 federal laws](#) for the benefit of tribal nations. Maine has fought to block Wabanaki

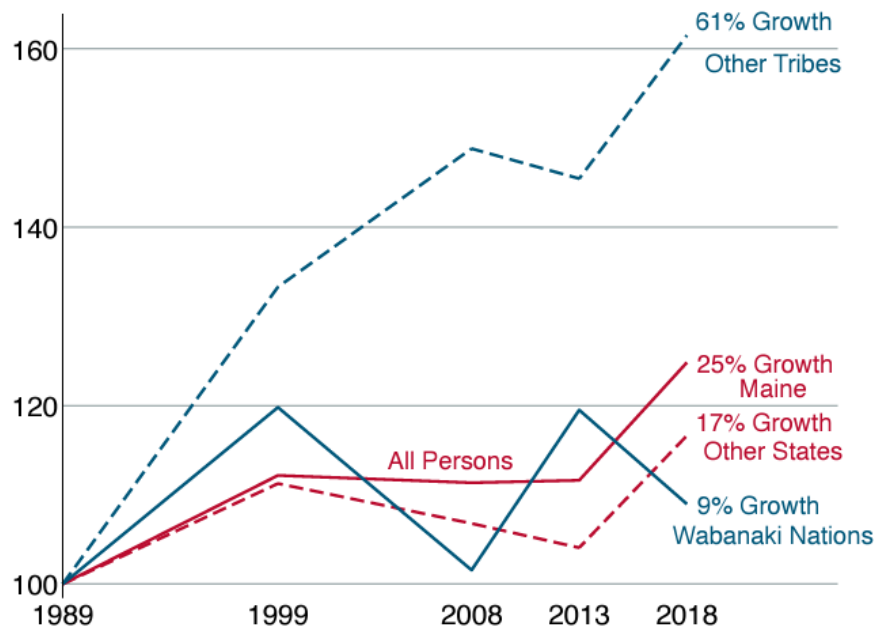
access to many of them, including those that address public safety, health care, and environmental quality.

- Only one federal law, the [Violence Against Women Act](#), has been successfully extended to the Wabanaki since the Settlement Acts passed – a full 17 years after provisions protecting Indigenous women were included.
- The cost and failure rate associated with fighting for inclusion in federal Indian laws discourages the Wabanaki from hiring and investing in new programs, resulting in a cycle of [underdevelopment of tribal governments](#) that leads to stunted economic growth in the Wabanaki nations as well as their surrounding rural communities.

Economic growth is severely restricted for Wabanaki nations and surrounding communities

Chart from research report [“Economic and Social Impacts of Restrictions on the Applicability of Federal Indian Policies to the Wabanaki Nations in Maine”](#) by the Harvard Project on American Indian Economic Development, December 2022

Figure 3: Relative Growth Since 1989



Real (i.e., inflation-adjusted) population-weighted Indians on reservations per capita income (1989 = 100) for Wabanaki reservations and other reservations in the lower forty-eight states. ACS 5-year averages are plotted at their middle years (2008, 2013, 2018). (FRED, 2022; Taylor and Kalt, 2005; Census, 2010, 2015, 2020a)

- Compared to tribes outside of Maine, all four Wabanaki nations [lag severely](#) in economic development, even when adjusting for the tribes’ size and rural location. Since 1989, income growth for the Wabanaki nations has been consistently below that of other tribes and of Maine more broadly. Economic growth in Maine does not extend into tribal communities as it does in other states.

- Even while income in Maine grew faster than the national average, Wabanaki income grew far slower. Between 1989 and 2018, income in Maine grew 25%, far better than the 17% growth in the US as a whole. But for Wabanaki citizens, income growth was just 9%.
- In 2021, the average income for Mainers was more than twice as high as Wabanaki citizens'. Compared to the rest of Maine, the Wabanaki child poverty rate is almost four times higher.
- [Researchers estimate](#) that restoring self-governance capabilities for the Wabanaki nations would result in the direct and indirect addition of more than 2,700 new jobs – 85% of which would be gained by non-tribal citizens. It would also add an estimated \$330 million each year to Maine's GDP, with the benefits of this growth concentrated in rural and economically deprived portions of Aroostook, Penobscot, and Washington counties.

The Settlement Acts are widely regarded as a failure

- [Four decades later](#), neither Passamaquoddy nor Penobscot nations have been able to [acquire land](#) promised to them, the laws have been unevenly applied among the tribes, legal disputes persist, tribal-state relations remain contentious, and economic prosperity for both tribal and non-tribal citizens is stunted.
- Beyond the [Maine Indian Tribal State Commission](#), created through the settlement as a structure for evaluating its effectiveness, [multiple task forces](#), [resolves](#), [reports](#), and [work groups](#) have all recommended substantive changes to the settlement over the decades, but only the state (unlike the tribes) is empowered to enact them. With legislative, executive, and judicial systems weighted entirely towards the benefit of the state, recommendations are consistently rejected.

What is being done to restore recognition of Wabanaki nations' sovereignty?

Widespread bipartisan support for restoring recognition of Wabanaki sovereignty continues to grow in Maine. In 2020, a bipartisan task force issued [22 consensus recommendations](#) to modernize the Settlement Acts and restore self-governance over a range of issues, including criminal justice, natural resource management, gaming, taxation, and land acquisition. These recommendations formed the basis of state legislation in [2022](#) and [2023](#) that received strong bipartisan approval in the legislature, but were [ultimately blocked](#) by [Governor Mills' opposition](#). In Congress, [legislation](#) sponsored by Rep. Jared Golden that would have extended the benefits of federal Indian laws to the Wabanaki nations [failed to advance](#) in the Senate following opposition from Sen. Angus King. Other legislative efforts continue:

- [LD 2007, An Act to Advance Self-determination for Wabanaki Nations](#): still in concept draft form, this bill is expected to make changes to the Settlement Acts in line with the [consensus recommendations](#) of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act. This bill was carried over to the 2nd half of the legislative session, which starts January 2024.

Dive deeper

[Understanding Tribal Sovereignty - Wabanaki Alliance](#)

[American Indian Self-Determination Through Self-Governance: The Only Policy That Has Ever Worked - The Harvard Project on American Indian Economic Development](#)

[Eli-Tpitahtomek Tpaskuwakonol Waponahkik \(How We, Native People, Reflect on the Law in the Dawnland\) - Hinton and Giles](#)

[One Nation, Under Fraud: A Remonstrance - Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations](#)

[The Drafting and Enactment of the Maine Indian Claims Settlement Act - Suffolk University Law School](#)

[Task Force on Changes to the Maine Indian Claims Settlement Implementing Act: Final Report - Maine Indian Tribal State Commission](#)

[Economic and Social Impacts of Restrictions on the Applicability of Federal Indian Policies to the Wabanaki Nations in Maine - Harvard University Ash Center](#)

[The Growing List of Reasons to Amend The Maine Indian Jurisdictional Agreement - Maine Law Review](#)

[Land Access for Indigenous and African American Farmers in Maine – Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations](#)

MECEP wishes to acknowledge and thank the external reviewers who provided valuable time and insight:

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