

The Path to Self-Governance: How the Alliance of American Indian Leaders envisioned a new relationship between American Indian governments and the federal government

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Abstract

In 1986 - 87, ten Indian tribes from throughout the United States began to meet in order to explore the constitutional relationship between the federal government and the Indian tribes. They called themselves the Alliance of American Indian Leaders. In partnership with the Indian Rights Association, these Tribes began a movement that led to the Congressional approval of Self-Governance Demonstration projects and eventual passage of P.L. 103-413, Title IV – Tribal Self- Governance Act in 1994. This article specifically focuses on the role of the leaders from the Mille Lacs Band of Ojibwe, recording their personal recollections of that journey as well as documenting their strength and determination to change the Federal bureaucracy that had kept the Indian people in perpetual poverty for decades.

Introduction

In 1986 - 87, ten Indian tribes from throughout the United States began to meet in order to explore the constitutional relationship between the federal government and the Indian tribes. Leaders from these ten Tribes included: Joe American Horse, Chairman, Oglala Sioux Nation; Wendell Chino, President, Mescalero Apache Nation; Joe DeLaCruz, President, Quinault Nation; Arthur Gahbow, Chairman, Mille Lacs Band of Ojibwe; Ernest House, Chairman, Ute Mountain Tribe; Rodger Jourdain, Chairman, Red Lake Band of Chippewa Indians; Larry Kinley, Chairman, Lummi Tribe; Earl Old Person, Chairman, Blackfeet Nation; Richard Real Bird, Chairman, Crow Tribe; and Jack Thorpe, Principal Chief, Sac and Fox Tribe of Oklahoma. Specifically, these Tribes sought to re-establish the government-to-government relationship, which had been intended in treaties between the Tribes and the United States. These Tribes wanted to explore new methods by which to eliminate the levels of bureaucracy, which tended to separate congress from the Tribes (Oliviero, 1986).

The 1975 Indian Self-Determination and Education Assistance Act, Pubic Law 93-638, provided Indian Tribes the opportunity to contract with the Federal government to operate programs serving their tribal members and other eligible persons. Although this Law allowed Tribes to administer programs previously delivered by the Bureau of Indian Affairs, it did not allow for Tribal governance in respect to funding priorities, program design, or evaluation standards. Additionally, due to the multiple layers of bureaucracy associated with Federal agencies, it was estimated at the time that only \$.11 of every Federal dollar allocated for Tribal programs actually flowed to individual Tribes (Johnson & Hamilton, 1995).

In the late fall of 1987, the House Appropriations Committee took a bold step and appropriated one million dollars for these ten Tribes to explore their various ideas by which to improve the relations between Congress and the Tribes. By agreement among the Tribes, each was allotted \$100,000.

Eventually, Public Law 93-638 was amended and Title III elaborated on these Self-Governance Demonstration Projects. While some of the Tribes viewed these amendments as an additional series of

regulations to work through, specifically the mandated reporting requirements, they also realized the possibilities of the projects.

In short, Congress was making a good faith effort to establish better relations with Tribes. The amendments in Title III of 93-638 provided for limited involvement by the Bureau of Indian Affairs; however, the clear goal of these projects was to greatly reduce the Bureau's involvement in Tribal self-governance.

The Mille Lacs Band was one of the original ten Tribes involved in the Self-Governance Demonstration Project. The goal of the Mille Lacs Band was to obtain direct funding from Congress on a government-to-government basis. Hence, Mille Lacs sought to eliminate BIA involvement in any of its dealings with Congress.

The Path to Self-Governance

In December of 1986, Arthur Gahbow, the Chairman of the Mille Lacs Band of Ojibwe received a phone call from an old friend from the Red Lake Reservation. His friend was also a tribal leader. Over two decades later, Gahbow's Commissioner of Natural Resources Don Wedll remembered the call well. "Art said to me that 'Roger and Wendell want us to go to Kansas City to talk about doing away with plenary power'", Wedll recalled (Wedll, 2014).

Gahbow despised the overriding power the United States claimed over Indian tribes, and he liked big ideas. Wedll recalled, "That was all it took for Art to want to go."

"So we got into my Dodge pickup, the Band had no money to fly at the time, and Art told me to start driving to Kansas City in December of 1986. We stayed in a room together outside of town because we couldn't afford the downtown rates," Wedll remembered.

Roger Jourdain of the Red Lake Band of Chippewa and Wendell Chino of the Mescalero Apache were the quintessential voices on American Indian issues. Five years later, at Gahbow's funeral both Jourdain and Chino spoke eloquently about how the three of them spent their lives. Gahbow's former attorney, Tadd Johnson, recalls, "At Art's funeral, Wendell said in his booming voice, 'We were three men, short of stature, but loud of voice. But we needed a loud voice in those days so we could fight for the rights of our people'" (Johnson, 2014). Jourdain wanted to add the voice of his friend Arthur Gahbow to the national rumble he was starting.

Jourdain's staffer, Deborah Allery (now Allery-Skinner) remembered what had gotten the Red Lake Chairman so fired up in late 1986. "I was opening mail, and there was a letter from the Indian Rights Association of Philadelphia. They wanted to know how Indian tribes wanted to commemorate the 200th anniversary of the Constitution. When I told Roger, he was livid and he told me to get Wendell on the phone," Skinner recalls (Skinner, 2014).

Skinner got in touch with Melanie Beth Oliviero of the Indian Rights Association of Philadelphia. The organization was conducting a survey of Indian tribes to obtain their views on the Constitution. Jourdain decided he would work with the Indian Rights Association, and through Deb Skinner's diplomacy, he got the Philadelphia organization to agree to meet with tribal leaders in Kansas City, Missouri in late December.

Skinner's recollection, "Roger grumbled that Indian tribes had nothing to celebrate with regard to the U.S. Constitution." The Red Lake Band had a reputation for being tough negotiators. The Band had managed to avoid the implementation of allotment policies of the 19th Century and Public Law 280 in the mid-20th Century on their reservation. Jourdain was the epitome of a hard-nosed Red Lake leader with the ability to mobilize other tribes and at the same time befriend politicians from Hubert Humphrey to Walter Mondale.

Former Vice-President Mondale recalls, "Roger was my buddy! One day he showed up at the Carter White House with a group of Red Lake dancers. He wanted his people to dance on the White House lawn. So we arranged that" (Mondale, 2013).

From the Mille Lacs Band's perspective, their Red Lake neighbors to the north were doing very well. Red Lake had a Bureau of Indian Affairs Agency on its reservation. Because of their larger population, the Red Lake Band received larger funding amounts from the Indian Health Service, and because of their larger land base the Red Lake Band received a larger allocation of funds to maintain their reservation. Tadd Johnson recalls, "Mille Lacs was not jealous of Red Lake, quite the contrary – they admired Red Lake's courage. What Mille Lacs was after was a fair share of federal dollars, something they felt they were not getting."

Mille Lacs DNR Commissioner Wedll remembers, "Red Lake had its own BIA Agency, but Mille Lacs shared an agency with five other Bands. The larger Bands received more funding, but there was very little left for Mille Lacs which was far south of the other five members of the Minnesota Chippewa Tribe."

"We had no idea what to expect at Kansas City," Wedll recalled. "But anything that changed the system was good in Art's mind."

II

Arthur Gahbow had in fact once been President of the Minnesota Chippewa Tribe. The six member bands (White Earth, Mille Lacs, Leech Lake, Bois Forte, Fond du Lac and Grand Portage) choose their officers and in 1972, they chose Gahbow for President. In spite of his position, Gahbow could not get the kinds of services he wanted for his home Band at Mille Lacs. After he was defeated by White Earth Chair Darrell "Chip" Wadena, Gahbow sought other solutions for Mille Lacs in the late 1970's and early 1980's.

Former Secretary-Treasurer of the Mille Lacs Band Doug Sam recalls, "In the early 1980's, Art and I wrote up a proposal for a Separation of Powers form of government, and we brought it up to the other members of the Minnesota Chippewa Tribe. They all criticized it so much that I collected all the copies and I left. Art came with me" (Sam, 1999).

The Minnesota Chippewa Tribe Constitution was a product of the Indian Reorganization Act. The six Chippewa Bands of Minnesota (everyone except Red Lake) were placed under the aegis of a single constitution. Each Band has a "Reservation Business Committee" with a Chairman, a Secretary-Treasurer and three committee people. Tadd Johnson notes, "The IRA was an important step in the 1930's. By the 1980's some of the Bands wanted a structure that resembled a government more than a business committee. Mille Lacs was one of those Bands."

The Mille Lacs Band took the IRA Constitution of the Minnesota Chippewa Tribe and stretched it to its limits. Gahbow had his staff put the separation of powers concept in place while still staying under the Minnesota Chippewa Tribe's Constitution. Tadd Johnson recalls, "They took the Chairman position from the MCT Constitution and called him the 'Chief Executive'. Under Art, the Chief Executive, they placed Commissioners of Administration, Education, Natural Resources, Health and Human Services and other areas. In Art's cabinet, they placed a Commissioner of Corporate Affairs who also reported to a corporate board."

"They took the Secretary-Treasurer of the RBC and him, at the time it was Doug Sam, the Speaker of the Band Assembly. The Band Assembly is the legislative branch. The other three committee people became District Representatives who represented different geographical parts of the reservation."

"Then they did something that had not been done before. They created a Judicial Branch and a court based entirely on their inherent sovereign status. For several years, the BIA took the position that since there was no provision in the MCT constitution for courts, for the most part, the MCT Bands could not have courts. The exception was Bois Forte which retroceded Public Law 280 in the 1970's, but outside of Bois Forte the BIA had the view that the other Band's had no judicial authority. That view was changed in the Clinton administration, and after that all the MCT Bands implemented some type of court. However, early on the Mille Lacs Band just did it" (Johnson, 2014).

Ultimately, the Mille Lacs separation of powers form of government landed on the desk of the Department of Interior's Field Solicitor's office in Minneapolis. The opinion provided essentially that if Mille Lacs wanted to call its Chairman the "Chief Executive" that was fine. If they wanted to call the Secretary-Treasurer the "Speaker of the Band Assembly," that was also acceptable. If they wanted the other three elected officials to act as a legislative body and refer to it as a "Band Assembly" rather than a Reservation Business Committee the Interior Department did not have a problem with that. However, when it came to the tribal court, the DOI Solicitor would not bless it and noted that the court was "subject to challenge."

The Mille Lacs Band wrote its own statutes and published them. They began holding an annual "State of the Band" address. "Art's view was that our Commissioner of Education should meet with the federal Secretary of Education or the state Commissioner of Education" (Johnson, 2014). In short, the Mille Lacs Band began acting more like a government and less like a Reservation Business Committee.

Tadd Johnson stated, "In the 21st Century, the idea of tribes having courts and separating out business decision making from political decision making has become the norm. In the early 1980's, the Mille Lacs Band was looked on as a group of oddballs and Art was considered a little crazy. Now he is probably viewed by some as ahead of his time."

"Art's level of frustration peaked in the mid-1980's. When the MCT was rejecting Art's ideas about governance and he felt he was not getting a fair share of federal funds, he went to our Senators and got a bill introduced to separate from the Minnesota Chippewa Tribe," remembers Wedll. Senator Rudy Boschwitz introduced a bill which would have divorced the Mille Lacs Band from the other five Bands of the Minnesota Chippewa Tribe. The bill did not move, but Chairman Gahbow had proved he was serious about his longing for change.

III

In Kansas City, Roger Jourdain and Wendell Chino talked for several hours about the United States Constitution, Don Wedll recalls. “They wanted to return to a time before the Europeans made treaties with Indian tribes. They wanted to see some legal scholarship challenging plenary power. Roger wanted Lawrence Tribe of Harvard Law School to write it, but ultimately a law professor from Georgia named Milner Ball wrote the piece.”

In Kansas City, the group decided to call itself the Alliance of American Indian Leaders. It was to be outside of the National Congress of American Indians and the National Tribal Chairman’s Association. Attorney Phil Baker-Shenk recalls, “They viewed themselves as a movement, not so much an organization” (Baker-Shenk, 2014).

At its meeting in Kansas City and later at a meeting in Rapid City, South Dakota, the group decided to dedicated itself to looking at five different parts of the United States Constitution; 1) Article I, Section 2, Clause 3: “Excluding Indians not taxed provision”, 2) Article II, Section 2, Clause 2, Power of the President to negotiate treaties; power of the Senate to ratify treaties, 3) Article I, Section 8, Clause 3: Indian Commerce Clause, 4) Article VI, Section 2: “Treaties...are the supreme law of the land...” Article III, Section 2, Clause 1: federal courts have jurisdiction over its citizens who violate the treaties, 5) Article I, Section 10, and Article II, Section 2: Prohibiting states from entering into treaties with Indian Tribes. Ultimately, the Alliance decided to partner with the Indian Rights Association to put on a conference in Philadelphia in October of 1987. The conference would provide a forum for legal scholars and tribal leaders to provide their views of the Constitutional status of Indian tribes, and perhaps provide a road map to the future. (Oliviero, 1987)

The Chief Justice of the United States Supreme Court Warren Burger stepped down from his post and actually retired from the Supreme Court to Chair the commemoration of the signing of the Constitution. The Constitution was completed on September 17, 1787, but it took two years to ratify it. Burger chaired the entity which oversaw a number of events and conferences that were sanctioned by his Committee. The Indian Rights Association managed to get its conference with the Alliance of American Indian leaders officially sanctioned by Burger’s organization.

IV

Tadd Johnson arrived at the Mille Lacs Reservation in the summer of 1987 as a part of the Volunteers in Service to America (VISTA) program. “I later learned that Art Gahbow thought I might be an FBI agent,” Johnson recalls. “He couldn’t figure out why an attorney would go to a reservation and work for free.” Johnson is a member of the Bois Forte Band of Chippewa, “I thought VISTA would send me to a reservation in the west, but they sent me a hundred miles away from my law school” (Johnson, 2014).

There had not been an in-house attorney at Mille Lacs prior to Johnson’s arrival. “I was supposed to help develop the tribal court – which is what they asked VISTA for. Then I found out they weren’t supposed to have a court. In a short time, I got caught up in their issues.”

At the time, the Band's meager budget came from three sources, Don Wedll remembers, "One third came from BIA, one third came from IHS, and one third came from state contracts." When Johnson arrived, the Band had decided to go without its state contracts.

"The State of Minnesota was requiring all the tribes to waive sovereign immunity when entering into state contracts," Johnson recalls. "Mille Lacs took a stand and refused to take the money from the state if they had to waive their immunity. They saw it as denying their sovereign status. I thought they were both courageous and a little crazy at the time, but I admired their guts. Especially when I learned that Chairman Gahbow and Secretary-Treasurer Marge Anderson went without their salaries to stand up for this principle."

After a rocky start, Gahbow traced Johnson's tribal lineage and called him into his office. Johnson recalls, "Much like my grandmother, he thought in Ojibwe – his first language. He talked to me for about an hour at some point it occurred to me that he was asking me to go to Philadelphia with him. When he finished, we stared at each other."

"Are you asking me to go to Philadelphia?" Johnson asked and Gahbow replied in the affirmative.

For the young lawyer, the trip to Philadelphia was life changing experience. "I met Chino and Jourdain. I heard legal scholars present papers on some huge topics, and I watched Roger Jourdain chew out Congressional staff people." Johnson came into the room as Jourdain was laying into Alex Tall Chief Skibine of the U.S. House Interior and Insular Affairs Committee. The Indian Gaming Regulatory Act was about to pass in Congress and Jourdain viewed this as a classic abuse of the plenary power which Congress claimed to possess. Puzzled, Johnson turned to the person next to him and said, "Why is he yelling at the French guy?" Deputy Counsel on Indian Affairs Alex Skibine, an Osage Indian, spent his childhood in Europe and retained a bit of accent. Ironically, when Skibine would leave the House in three years, Johnson would take his place.

"Milner Ball and Arlinda Locklear presented a couple of really interesting papers," Johnson recalls. "Chino and Jourdain talked passionately about the plenary power of Congress and its abuses. They took the long view of history. They were very bright, had great mutual respect and when they were together - they kidded each other without mercy."

"A lot of things came together that fall," Johnson recalled. "The Arizona Republic did a series of articles about how few appropriated dollars actually reached Indian tribes." The Chairman of the U.S. House Appropriations Subcommittee on Interior and Related Agencies, Representative Sidney Yates, held hearings and members of the Alliance testified. Yates ended up appropriating \$1 million to the ten alliance tribes to come up with alternative approaches for the Bureau of Indian Affairs.

"Mille Lacs wrote up some ideas," Don Wedll remembers drafting a budget with attorney Doug Twait. Attorney Fran Ayer of Washington, DC represented both Red Lake and Mille Lacs and provided a legal analysis for the report. Johnson notes, "Ultimately, that was an exercise in brainstorming, but it was a great opportunity for the ten tribes to talk directly to the Congress. In January of 1988, Don Wedll drove me through a snowstorm to get me to the Minneapolis airport to attend a meeting with other Alliance staff people in Washington DC. We were in the office of SENSE, Incorporated and people were kicking around ideas. All of this was very new to me, and I had little to contribute. Ultimately,

after looking at different ideas the consensus came that a new title should be added to the Indian Self-Determination Act. The tribal leaders liked the concept and it went forward.”

The new title would be a demonstration project which would allow a limited number of tribes to obtain funding from the Bureau of Indian Affairs in a new way. A share would be taken from the Central Office, the Area Office and the Agency. Tribes in the Demonstration project would be allowed to prioritize their own spending, redesign programs, and not be subject to regulations.

“The problem they were trying to solve,” Johnson recalls, “Was the micromanagement of tribal programs on the reservation by the BIA. Mille Lacs was in this odd position of getting a few Self-Determination contracts and very few dollars, but those contracts were micromanaged by the Agency or the Area office. It was not a good way to provide services to people. Usually the folks closest to the problems knew the best way to provide services, frequently that was not pursuant to some BIA reg.”

Shortly after that meeting, the group met with Senate Indian Affairs Committee counsel Alan Parker. In time, Alan Parker and other Senate staff and Alex Skibine working with Frank Ducheneaux and others on the House side put the Alliance idea of a Title III into the Self-Determination amendments of 1988. But this did not come without backlash from the Bureau of Indian Affairs.

As the discussion on Title III ensued, the BIA suggested amending the Self-Determination Act with a new “Section 209.” This would have allowed for many things the Alliance tribes were seeking, but would divorce the Demonstration tribes from the federal trust responsibility. This suggestion from the BIA was sent to the Congress without tribal consultation, and was vehemently opposed by the Alliance tribes. Congress ultimately rejected the Bureau’s suggestion and “Section 209” went into the trash heap of history. For some it was intellectually difficult to grasp, but the United States would maintain its trust responsibility to the demonstration project tribes while allowing the tribes to perform services using the tribes own inventiveness and knowledge of its community.

V

The Self-Governance Amendments of 1988 included Title III, the Tribal Self-Governance Demonstration Project. Twenty tribes were allowed to participate in the Project. Shortly thereafter, the Indian Health Service was included in the Demonstration project. The implementation of the BIA Self-Governance Project took a considerable amount of time. Similar to the Indian Gaming Regulatory Act which also passed in 1988, the Compacts for Self-Governance were not negotiated by the Mille Lacs Band until 1990.

The Mille Lacs Band made the strategic decision that the negotiations should not be in Washington or Minneapolis, but rather on the Mille Lacs Reservation. Chief Executive Arthur Gahbow chose to allow his staff and outside counsel Phil Baker-Shenk to negotiate the Compact and the Annual Funding Agreement. Since the Bureau was sending the Associate Solicitor for Indian Affairs and other Department of Interior Representatives, Gahbow felt the negotiations should be at the staff level. He stayed out of the room and from time to time the staff would leave the room to discuss matters with Gahbow.

The negotiations began with a pipe ceremony. Because there was no catering or restaurants near the Mille Lacs Reservation, the Bureau and the tribal negotiators ate their lunches and dinners at

community pot lucks. The Mille Lacs Band was among the first tribes in the country and the only tribe in the Minneapolis Area to negotiate a Self-Governance Compact. Ironically, in spite of Roger Jourdain's leadership on Self-Governance and many other issues, he was voted out of office in 1990 and the new Red Lake leadership chose to not participate in Self-Governance.

A key problem of Self-Governance was determining the share to which the Mille Lacs Band was entitled. The Band was hoping for a fair share of the Central Office, the Minneapolis Area Office and the Agency Office. During the negotiations, the Band was told it would not obtain any Central office shares and this later became the position of the Department of the Interior. The other members of the Minnesota Chippewa Tribe were somewhat wary of the Mille Lacs Band pulling a share from the Agency at Cass Lake, recalls Don Wedll. "They weren't quite sure what to make of Self-Governance, but saw the move Mille Lacs was making as a potential threat to their funding."

When the negotiations were completed, the Band obtained Bureau of Indian Affairs dollars in a relatively small amount. However, they were allowed under the Act to prioritize the dollars as they saw fit. The Mille Lacs Band had been able to manage some funding as part of the Community Action Programs under the Great Society initiative of the Johnson Administration. They had been provided some Self-Determination contracts under Public Law 93-638. But they had not been provided with funding which they themselves could determine the use for, and they had not been allowed to recreate programs, services and functions in the way that would best serve the people of the Mille Lacs Band.

The Indian Tribes of Minnesota, much like those in other States, had weathered the storms of Federal Indian Policy. Minnesota had its own unique allotment act, the Nelson Act, which became law in 1889. The policies of allotment, assimilation, boarding schools, and termination had taken their toll on Minnesota Tribes. From the 1800's until the 1930's, the Minnesota reservations had become pockets of poverty in the State. Things had not improved much by the 1980's. There was no money to manage. Consequently, management skills could not be developed. Capacity building was needed for the Tribes to take the next step forward. "This [Self-Governance] allowed for capacity building within the Band, specifically in the areas of management, leadership, and budgeting. We stopped talking about separating from the Minnesota Chippewa Tribe," Don Wedll observed. "Suddenly, we had some funding to govern ourselves and we had the authority to implement programs as we believed they could be implemented. For us, Self-Governance changed everything."

VI

The Mille Lacs Band had a small bingo operation in 1988 and some trust land in Hinckley, Minnesota. However, its bingo facility was located on a major north-south corridor and its Hinckley trust lands were near Interstate 35. Grand Casino Mille Lacs opened in April 1991 and Grand Casino Hinckley opened a year later. The Band had negotiated gaming compacts with the state that allowed for blackjack and video slot machines. Suddenly, in addition to its Self-Governance funds it could build schools, clinics and provide college scholarships for Band members.

When Chief Executive Arthur Gahbow passed away in 1991, the Speaker of the Band Assembly and Secretary-Treasurer Marge Anderson stepped in to serve the remainder of his term after the other elected officials urged her to do so. Unlike Art Gahbow, Marge Anderson was soft spoken. But like Gahbow, she was a fervent believer in the sovereignty of Indian tribes and in the Self-Governance movement she had watched and participated in as Secretary-Treasurer (Johnson, 2014).

The Mille Lacs Band weighed in each time the Congress took steps forward in the Self-Governance movement. In 1992 the Band supported the bill sponsored by Senator Paul Simon of Illinois, which became Public Law 102-477. This law allowed for a consolidation of several programs so that Indian tribal governments could integrate the employment, training, and related services they provide in order to improve the effectiveness of those services; and reduce joblessness in Indian communities. Eligible tribes could streamline tribal services by submitting a consolidated plan for employment, training, and related services to the U.S. Department of Interior (DOI).

Chief Executive Anderson provided testimony to the Congress when it was looking to make Self-Governance permanent in the 103rd Congress. In 1993, former attorney for the Mille Lacs Band, Tadd Johnson became the Staff Director and Counsel to the United States House Subcommittee on Native American Affairs. Johnson recalls, “Phil Baker-Shenk who represented Mille Lacs came to us with the idea of putting negotiated rulemaking in the bill. None of us on the Committee staff had heard the term before. When we broached the subject with the Department of the Interior, they noted that this type of rule-making was used for limited entities such as the nuclear power industry. In that instance, you have a limited number of stake holders and you can get them all in the room. They had their doubts about whether it would work for 500 tribes.” However, the Committee added negotiated rule-making in spite of the qualms of the Interior Department.

VII

After the permanent Tribal Self-Governance Act passed and became law in 1994, the Mille Lacs Band continued to be active in the movement. When the opportunity came for participation in the negotiated rule-making Committee, District III Representative Bernida Churchill of Mille Lacs became the tribal co-chair of the Committee along with long-time Self-Governance activist Ron Allen of the Jamestown S’Klallam Tribe. The rulemaking process took five years. According to participants, if the rulemaking had only involved the Bureau of Indian Affairs, the group probably could have finished in a year or two. One problem was defining the scope of what Self-Governance tribes could negotiate for – and where the line was drawn as to what was an “inherently federal function.” Ultimately, these lines would be drawn by the Department of the Interior’s Solicitor’s office.

However, two provisions in the Tribal Self-Governance Act allowed tribes to negotiate for other programs in other Agencies of the Department of the Interior. It was the involvement of the other agencies outside of the Bureau of Indian Affairs that delayed the process. “As the Act was pending in the Congress, the remark was actually made that tribes could take over the Washington Monument,” one Congressional staffer noted.

The provisions were later implemented by tribes. For example, in the middle of the Grand Portage Reservation in Minnesota a National Monument was placed in which a replica of a fur trading post and interpretive center were placed. Over time the Grand Portage Band, a Self-Governance tribe, took over maintenance positions gradually, pursuant to deliberative and thoughtful negotiations with the National Park Service. The Salish and Kootenai Tribe of the Flathead Reservation for years argued with the U.S. Fish and Wildlife Service over the management of a buffalo herd. Finally, the tribe convinced the federal government that Indians knew something about buffalo.

But this fear of Indian tribes taking over Department of Interior programs slowed the negotiated rulemaking down considerably. The rules were completed and published in 1999.

At the same time, after years of Self-Governance, tribes recognized the weaknesses in the BIA Self-Governance Act. After several years of negotiating annual funding agreements, the Tribes realized the challenges to sustaining effective programs while assuming the uncertainty of annual funding. Despite the uncertainty, attorneys and tribes active in Self-Governance knew how to improve the Act. Hence, when the Congress was drafting the permanent Self-Governance legislation for the Indian Health Service, the tribes came in with several ideas on how to improve the law. Again the Mille Lacs Band weighed in with testimony on the permanent Self-Governance bill for the Indian Health Service, which became law as Title V in the year 2000.

VIII

In her last presentation to the National Congress of American Indians in 2010, the late Marge Anderson, Chief Executive of the Mille Lacs Band, presented her ideas on where Self-Governance should go next. Her thoughts were also published in *Indian Country Today* (2011):

"... 1987, a group of tribal leaders met in Philadelphia. They chose the date and the city for a purpose. It was the very date and city that the drafters of the U.S. Constitution finished their writing, 200 years earlier.

The tribal leaders joined together because they envisioned a new relationship between American Indian governments and the federal government. They believed the Constitution of the United States was the place to start.

Shortly after leaving Philadelphia, these same tribal leaders took their ideas to the Congress. Their ideas were simple, as most great ideas are. First, tribes should have a government-to-government relationship with the United States. Second, tribes should be able to prioritize their own programs and follow their own ways of governance. Third, the United States must keep the promises it made to tribes in exchange for land and resources and pay more than lip service to its trust responsibility. A trust responsibility means upholding, regulating and enforcing their treaty obligations." (Anderson, 2011)

Since 1991, 254 Tribes and Tribal consortium entered into 106 funding agreements, operating \$432 million in programs, functions, services, and activities. Tribes have successfully taken on the responsibilities of Self-Governance, prioritizing their own programs and following their own ways of governance. The result has been the re-establishment of a more government-to-government relationship with the United States. However, Tribes continue to identify areas of opportunity in Title V that would further facilitate efficiencies, ultimately resulting in more effective service delivery to their communities. These areas of opportunity include:

- Conform Title IV to Title V in order to create consistency and administrative efficiencies for Tribes now operating under two compacting regimes;
- Establish a clear "final offer" process and timelines for situations when

DOI and the Tribe are unable to agree on particular terms of a compact or funding agreement, or when DOI delays approval unreasonably;

- Clarify and limit the reasons for which the agency may decline to enter a proposed agreement;
- Protect Tribes from DOI attempts to impose unauthorized terms in compacts or funding agreements;
- Provide a clear avenue of appeal and burden of proof for Tribes to challenge adverse agency decisions;
- Clarify Tribal and federal oversight roles in construction to ensure fiscal prudence and public safety;
- Leave unchanged the discretionary authority to compact non-BIA programs within DOI; and
- Make important amendments to Title I, the self-determination contracting law, such as clarifying reporting requirements, rules of interpretation, and applicability of certain Title I provisions to Title IV agreements (Allen, 2014)

The vision, determination, and leadership demonstrated by the Alliance of American Indian Leaders had a great impact on the trajectory of Federal – Tribal relations. Although it may be said that Self-Governance, as it stands today, falls short of the original intent of the movement they created, the leaders of the Alliance succeeded in exercising their sovereignty to re-establish a true government-to-government relationship with the United States. Tribal leaders today understand that there is still much work to be done and are continuing to build the capacity needed to be truly self-governed nations.

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