

Policy Issues in the Self-Determination Era

Richard C. Witmer, PhD
and
Margaret O'Conner
Creighton University

Abstract

The advent of self-determination, and the ability of Native Nations to engage the federal policy process in a way that includes Native voices, ushered in a new era in the relationship between American Indians and the United States government. Yet self-determination policy as initially implemented failed to meet the needs of many Native communities. As a result, self-governance was offered as a way to expand the policy making power of Native Nations. This was an important step forward in the ability of Native Nations to make as well as carry out policy. Yet numerous challenges remain for tribal governments as they seek self-determination and self-governance. This paper will examine the self-determination to self-governance policy process. We then outline briefly a number of the challenges to self-determination including inadequate federal funding of Indian policy, continued oversight of Indian policy by non-Indian governments and limited tribal capacity to make and implement policy. We conclude by calling for additional research focusing on public policy in the self-determination era.

Introduction

There is general agreement among Native, legal and policy scholars that the contemporary policy relationship between American Indian Nations and the United States Government is best described as self-determination. Beginning with Public Law 93-638, the Indian Self-Determination and Educational Assistance Act of 1975 (ISDEAA), Native leaders have greatly expanded their role in the making and implementation of federal policy in Indian Country. Yet self-determination remains elusive for many Indian nations. In this article we address a number of the policy issues that have emerged in the self-determination era by initially focusing on the concept of self-determination as public policy and noting key events in the evolution of federal/Indian policy. More specifically, we focus on the contemporary era including the build up to the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) and subsequent amendments. Our focus then shifts to our understanding of self-determination and the extension to self-governance that emerged in the late 1980's, including how self-governance developed as a natural next step in self-determination policy. Next, we examine the challenges that American Indian Nations face as they seek self-determination in the years since ISDEAA. Importantly, while many policy issues remain, tribal governments are actively practicing self-determination in ways unavailable prior to ISDEAA. Finally, we call for additional scholarship in the area of self-determination and self-governance policy. Whether through case studies of tribal governments that have successfully designed and implemented self-governance agreements, or via large-n studies that identify similarities and differences of tribes that have implemented self-determination policies, the need to better understand federal/Indian policy in the contemporary era remains.

Self-Determination and Self-Governance

Self-determination in the contemporary era is a term first coined by the National Congress of American Indians (NCAI) in 1966 in response to efforts of then Secretary of the Interior Stuart Udall's to continue the policy of termination (Deloria and Lytle 1984). Here the intent of NCAI in using the term self-determination was to advance American Indian efforts at achieving greater input into the policy

process. In the 1960's this included establishing a Native voice in efforts to alleviate poverty among Indian and non-Indian populations. As originally envisioned, self-determination meant, "that the government should provide the funds and transfer the responsibility for administering the (poverty) programs to the tribes" and that "the trust and its services would also continue unhampered and undiminished" (Deloria and Lytle 1984, pp 216-217). In effect, tribal governments would assume a much greater role in making public policy and implementing those decisions for the native population while the federal government would continue to respect treaty provisions.

NCAI efforts were part of a larger transition that began in the Kennedy administration and continued with his successor, Lyndon Johnson, to stop and undo the disastrous effects of termination begun during prior administrations. Throughout the 1960's, calls by the NCAI were part of a larger discussion on Native policy that included members of the Kennedy and Johnson administrations, members of Congress, and Indian Nations themselves. Out of this discussion came early efforts to focus federal policy on the economic and social/educational development of American Indians as part of the larger war on poverty (Robbins 1990, Deloria and Lytle 1984). The culmination of these early efforts was the first Presidential address to Congress on the state of American Indian affairs on March 6, 1968, which was delivered by President Lyndon Johnson. While Robbins' (1990) analysis suggests that the speech was not as pro-Indian as some had expected, it was important for noting the increased, if limited, role that Native nations should have in the policy making process, and laid the groundwork for the self-determination policy that was to come.

A more forceful statement on American Indian self-determination came two years later when President Nixon, in a 1970 special message to Congress on Indian Affairs, focused on efforts to return policy development and policy implementation to tribes and tribal leaders. Importantly, during the speech he also strongly advocated for an end to the policy of termination (Nixon 1970). From a Native policy perspective, Nixon's assertion that tribal governments should assume a greater role in making and administering federal Indian policy was an important step forward in the process of self-determination.

Nixon's speech was also significant because it marked the beginning of a more active and more positive American Indian policy era in both the legislative and executive branches of the federal government. As Wilkins and Stark (2011) note, a series of laws passed Congress in the years that followed Nixon's speech, each with the intent of improving the lives of Native people and increasing Indian input into the policy process. Of these laws, the Indian Self-Determination and Educational Assistance Act of 1975 provided the most far-reaching policy directives. ISDEAA Section 3(a) specifically commits the United States to recognize Indian self-determination...

"by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities."

Section 3(b) of ISDEAA then expands on how this policy is to be carried out.

"The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-

determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities."

Therefore self-determination became codified in federal policy with the passage of ISDEAA in 1975. With this codification came an official directive to expand Native participation in the creation and implementation of federal Indian policy. Thus nearly ten years after NCAI first called for self-determination, Congress and the President formalized Native participation in the policy process.

Yet self-determination as implemented following ISDEAA was fraught with problems. These included barriers to the participation of Native leaders that became evident as tribes sought to exercise their rights of self-determination. Perhaps most importantly, ISDEAA as passed in 1975 did not include a provision for tribes to assume full responsibility for making and implementing policy as Nixon had called for. Rather it created a system where Indian nations would contract with federal agencies to implement policy on Native lands. So instead of transferring power from the Federal bureaucracy to Indian nations, secretaries and other administrators within the Federal Government retained significant say over which contracts to approve. This created a system in which federal officials were charged with transferring policy responsibilities from their organization to Tribal governments. Not surprisingly, many of the federal bureaucrats in charge of the transfer process, including agencies like the Bureau of Indian Affairs that had a large number of Native people working in the bureau, were reluctant to relinquish their agencies' role in Native policy making and implementation. This reluctance created problems for Indian nations and undermined their hopes of achieving self-determination (Prucha 1984).

Despite the limits on self-determination and the impediments placed in their way, a number of tribal governments were quick to embrace their expanded role in the policy process. In fact, by 1980, just five years after the passage of ISDEAA, 370 tribal governments had contracts totaling over \$200 million to provide federally funded programs to Native people (Prucha 1984).

Yet challenges remained. The problems faced by Indian nations in the years after ISDEAA were central to the findings of Senate Report 108-412 (2004). Here an investigation into the implementation of ISDEAA found that tribes encountered resistance from agencies responsible for implementing self-determination, especially when Indian nations sought to provide services that were different than those previously provided by the federal government. Moreover tribal efforts were hindered by a burdensome federal contract monitoring system and an expanded administrative bureaucracy, both of which slowed the transfer of resources and policy implementation power to tribal governments.

In response, tribal governments undertook a new strategy to advance their call for self-determination. By the late 1980s a number of tribal nations sought alternative means to fully achieve the stated policy goal of self-determination through self-governance amendments to ISDEAA (See especially *Shaping Our Own Future*). Self-governance as envisioned by tribal leaders moved beyond implementation of policy designed by non-Indians with Indian input via contracting, to a system that relied on tribal

leaders to make and implement Indian policy via compacting. With self-governance compacts, tribes would be able to make and carryout policy appropriate for their Nation.

Congress responded to this call for an increased tribal role in Native policymaking in 1988 with Public Law 100-472 (Indian Self-Determination Amendments of 1987), which created tribal self-governance demonstration projects within the Bureau of Indian Affairs (BIA). These projects were initially limited to twenty tribes that would meet a specific set of federally designed criteria. This included: completion of a self-governance planning grant, the completion of two or more mature contracts (five-year self-determination contracts as outlined in ISDEAA), have a formal request from the governing body of the tribe, and have demonstrated financial stability and fiscal management for the prior three years.

After clear evidence of the success of the self-governance demonstration projects at BIA, the program was extended in 1992 to the Indian Health Service (IHS) with Public Law 102-573. At the IHS, demand for self-governance compacts was strong as tribal governments sought additional policymaking and implementation powers in the area of health care. The early success at IHS was followed by the rapid expansion of the program in 1994 in Public Law 103-435. Just six years later, in 2000, permanent authority for IHS self-governance agreements came with title V of Public Law 106-260. By 2013, 83 self-governance compacts, covering 340 of the 566 federally recognized tribes, had been implemented (IHS.gov). Beyond the IHS, self-governance also expanded to include Indian nations entering into compacts with federal agencies like the Department of Interior, Health and Human Services and the Department of Justice (Johnson and Hamilton 1994).

Importantly, self-determination has come to include both contracting and compacting. While Tribal-federal contracts, which were the only means of Native implementation of policy in the original law, remain an option for Indian nations, later amendments to ISDEAA added tribal/federal compacts. With these options, tribes have greater flexibility to decide how to make, as well as carry out, appropriate policy in Indian Country.

The end result of this twenty-five-year policy process was the transition from federal oversight of policy creation with tribal implementation of policy via tribal contract, to tribal control of both policy-making and implementation via tribal compact. This transfer of authority is clearly articulated in the sample compact of self-governance generated as part of the Tribal Self-Governance Demonstration Project workshop. Here tribal expectations and understanding of the relationship between Indian Nations and the United States of America as part of the self-governance demonstration projects are laid out (See especially pages 43-56 in *Shaping Our Own Future: The Next Step Towards a True Government-To-Government Relationship*). These expectations include unprecedented tribal control over planning and program operations while allowing Native governments the opportunity to adapt federally funded programs as needed. The end result has been to facilitate a stronger government-to-government relationship between Indian nations and the federal government while also fostering tribal preservation through self-governance (*Shaping Our Own Future: The Next Step Towards a True Government-To-Government Relationship*). The success of self-governance programs, if measured in the number of tribal governments participating and the amount of federal funding going to self-governance programs, is generally very positive. This is true in a number of policy areas including the IHS, tribal law enforcement, and social services like temporary assistance to needy families, where Indian nations have negotiated an increasing number of self-governance agreements.

The Impact of Self-Determination Policy

The impact of self-determination can be measured by the policy gains that tribal governments engaged in self-governance have enjoyed. Warne (2011), for example, outlines a number of advantages for tribal control of Native health care programs, although many of these benefits extend to other policy areas as well. First, he suggests that tribal governments benefit from greater local control of policy, as tribal decision-makers are better able to design programs to meet local needs. Second, self-determination agreements have increased revenue for local programs as federal funds flow directly to Native decision-makers are not funneled through federal agencies that may take a share of the funding to cover their overhead costs. Third, tribal administrators have much greater flexibility with government funds under self-determination, including the opportunity to target resources where most needed rather than relying on federal officials to approve funding choices. Fourth, with self-determination, tribes have the ability to procure external grants for tribal health and other services rather than relying on often-insufficient federal funds. Fifth, self-determination affords increased legal protection for tribal healthcare providers that were previously not available. Finally, with self-determination agreements, tribes have an increased ability to lobby federal, state and local governments for health and other policy related issues (Warne 2011).

In sum, increased self-determination has occurred in the years since ISDEAA as tribal governments have assumed greater control over policy-making and policy implementation. Yet there are a number of challenges that tribal governments still face as they work toward even greater self-determination. We touch on a few of these challenges below.

Challenges to Tribal Self-Governance

While the policy challenges that tribal governments faced, and continue to face in many cases, as they worked toward greater self-determination are many, we focus on three. These include: the underfunding of Indian self-determination policy, continued government oversight of Indian policy that reaffirms federal, and at times state, control and/or oversight of Indian programs, and the capacity of Native nations to meet the policy demands of self-determination given years of federal government's failure to adequately address the needs of Indian Country.

First, the underfunding of Native policy is a consistent theme in federal/Indian relations (Wilkins and Stark 2011). The self-determination era is no exception. In fact, in 1975, the year ISDEAA was passed, per capita funding for Native programs was nearly \$5,000. By 1989 per capita spending had dropped to just under \$2,800 before inching up to nearly \$2,900 in 1999 (Walke 2000, Evans 2011)¹. So just as tribal governments were beginning to assume greater input into Indian policy-making and policy implementation, funding levels for Native programs were dropping. Overall, spending on Indian programs grew at less than one-half of one percent a year from 1975, the year ISDEAA became federal law, until 2001. In contrast, federal government spending grew nearly three percent a year over the same time (Walke 2000, Evans 2011).

The 1980's were especially challenging to self-determination as steep federal budget cuts to Native programs have lead scholars to call the Reagan years "termination by accountants" (Morris 1988). The

¹ All dollar amounts are in constant 1997 dollars (Walke 2000, Evans 2011).

drastic budget cuts across a wide range of federally funded Native programs were especially pernicious for American Indian policy as the promise of self-determination was met with fewer resources for tribal nations than had been available prior to ISDEAA. Yet for some Indian nations, the budget cuts compelled them to take control of policymaking at the local level (Cook 1996). The results were increased local control of policy at the tribal level and a push for self-governance that emerged in the mid and late 1980's. Importantly, the 1980's reduction in overall financial support for Native nations was uneven, with non-contracting tribes receiving less federal funds while at the same time the growth in self-determination was met with an increase in federal funding for contracting tribes. This was consistent with the Reagan Administration's push for increased local control and was reflected in an expansion of tribal contracts from \$203 million in 1980 to \$315 million by 1984 (Cook 1996). Thus, throughout the 1980's, federal programs that addressed important needs in Indian Country were reduced for non-contracting tribes while at the same time the amount of funding for self-determination projects were increasing.

More recent figures suggest that the funding of self-determination projects has continued to increase while financial support of Native policy in general continues to lag behind other areas of the federal budget. For example, the percentage of the federal budget that goes to Indian programs has decreased over the last twenty years. By 2013 just .07% of the United States' budget went to Indian programs. This represents a drop of 33% from 1995, when Native funding levels had already suffered a major decline over the prior fifteen years (Maria Cantwell, Nov 14, 2013). Thus during the era of self-determination the amount spent on Native programs has dropped in real dollars and as a percentage of the United States' budget, with contracting and compacting tribes affected a bit less than tribes receiving direct federal services.

Funding challenges are not only related to overall funding levels and their relative decline in the years since ISDEAA, in addition, tribal governments must deal with uncertainty in the annual reauthorization of Native programs (King 2007). For Native nations that seek to plan programs and services into the future, the insecurity of yearly budget appropriations presents numerous challenges. First, successful programs may not be renewed or when renewed may not be funded at current levels. This is especially troubling as policies that have a record of positively impacting Native peoples are funded at a lower level than the previous year or forced to continue without funding increases that could expand successful programs. In response, block grants, or the transfer of funds to tribal governments to use as they see fit in a policy area were implemented. Yet even with increased flexibility in the use of self-governance program funds as well as the ability to seek and use funding from other sources, yearly budget battles undermine the success of Native programs (Warne 2011).

Budget challenges to self-determination were especially evident in the 2013 sequester which cut federal spending across most government programs. The sequestration cuts, which excluded general health and safety-net programs like Social Security, Medicaid, Children's Health Insurance and veteran's benefits, did not exclude Native health programs in the Indian Health Service (New York Times March 20, 2013), nor other federally funded Indian programs. Thus while programs aimed at the most vulnerable in the general population were excluded from cuts, programs aimed at the Native population were not excluded. Overall, cuts to American Indian policy areas within the federal budget amounted to more than \$500 million (NCAI 2013). These cuts had a devastating impact on self-governing tribes. At the Indian Health Service for example, where nearly 40% of the budget goes to support 108 self-governance agreements, including 340 of the 556 federally recognized tribes, cuts of \$220 million were damaging as services were reduced or eliminated to vulnerable populations (NCAI 2013, IHS Fact

Sheet 2014). Significant cuts to other Native programs at the BIA, in Housing Block Grants, Education and Head Start programs (NCAI 2013) also had a major impact on the ability of tribes to further their goals of self-determination.

An additional, and ongoing, financial blow to self-determination is contract support costs (Dean and Webster 2000). Contract support costs are the fixed costs that tribal governments incur to carryout self-governance contracts and compacts including audit and property expenses, workers compensation insurance and other required expenditures. As part of the initial legislation, PL 93-638 required that these costs be paid in full to tribal governments. This is currently not the case. Instead, Native nations have been forced to make up the differences from other funds, or reduce programs and eliminate jobs. Such underfunding of contract support costs also violates the federal trust responsibility, as programs guaranteed in numerous treaties and agreements are not fulfilling their mandate (NCAI Contract Support 2014). Moving forward, self-determination requires that the federal government fully fund Native programs and the associated costs, like program support costs, that return policy-making and implementation to American Indian tribal governments.

For policy scholars, the impact of underfunding tribal contracts and compacts would add vital information to our understanding of how self-determination has yet to meet the needs of Native people. Further, how some tribes are able to bridge the gap that exists in contract and compact funding, including support costs, would add important insight into how some Indian are able to deal with the fiscal concerns that continue with self-determination. Large-n studies could also explore whether self-determination is essentially reserved for tribes that already have some available resources. Preliminary work by Witmer (2014) points in this direction as he finds that gaming tribes are more likely to engage in IHS compacting. Whether this applies to other policy areas remains unexplored.

Second, beyond a funding shortfall, tribal governments must also deal with federal officials, both within the Bureau of Indian Affairs (Prucha 1984, Quetone 1984) and outside of the BIA (Woods 2007, Wilson 2012) that may be reluctant to transfer policymaking and policy implementation to American Indians. The root cause of the problem is the discretion that agencies and bureaus within the federal government retain when negotiating agreements with Indian Nations. In examining the relationship between the National Park Service and Indian nations, Woods (2007) finds the National Park Service (NPS) reluctant to transfer oversight, via self-determination contracts and compacts to Native nations. Here the NPS is unwilling to cede control despite clear indications that Native rights of self-determination may be violated. Importantly, the NPS is only obligated to negotiate with tribal governments, it is not obligated to come to an agreement with them. Decisions about self-determination and Native policy therefore remain in the hands of those that may be adversely affected by the transfer of policy-making and implementation to Indian nations (Woods 2007). Quetone (1984) notes similar reluctance among BIA employees, especially among administrative employees, who at times used their advisory role to negatively interpret rules and regulations, thus limiting the effectiveness of Native self-determination programs and policies. In fact, PL 93-638 provides that “the Secretary of the Interior may decline to enter into any contract requested by an Indian tribe” if the Secretary finds that the services to be provided to Indian beneficiaries would be unsatisfactory. As a result, decisions about which programs to support are not made by Indian Nations, but rather federal officials, including at time Native employees of the federal government, who interpret whether the requisite criteria have been met.

This may be changing. At the Indian Health Service for example, officials are generally accommodating to Native self-governance, but only if certain provisions are met. When these criteria, established in ISDEAA and subsequent amendments, are met it is assumed that policy-making and implementation will transfer to a Native nation. The criteria for an IHS compact include three steps. First, a planning phase that requires a tribe to consider legal and budgetary issues, government planning and organizational arrangements necessary to assume control and implementation of health care programs must be completed. Second, Tribes must formally request a self-governance agreement. Third, Tribes must show three years of financial management capacity and stability sufficient to warrant control of IHS programs.²

While the merits of these criteria have been debated and are generally accommodating to tribal governments, the fact remains that there is a formal process that requires Indian nations to meet federal government requirements to enter into a self-determination agreement. Having a formal process created by the federal government also means that the process can be amended or changed in the future. As a result it may become more difficult for Indian nations to enter into these agreements should Congress interpret their trust responsibility differently and change the process in the future. This is in line with the work of Barsh and Trospen (1975) who suggest that ISDEAA may actually strengthen federal oversight by using contracting language, which constrains Native decision-making and reinforces federal control. Senese (1991) goes a bit further and suggests that these contracts are not really contracts as the parameters of the agreement are defined by the federal government and not by both parties involved. The solution, according to Wilson (2012) is to generate unrestricted funds, rather than those with restrictive federal oversight, that can be used by Tribal governments in ways that best meet the needs of the Native population. This will remove the federal government and federal officials from an supervisory role and allow for local values and priorities to shape policy.

Challenges to tribal control of policy in the self-determination era also emerge at the state level. Here tribal governments may compact and contract for social services that compete with state governments. The temporary assistance to needy families program that emerged in the late 1990's is a prime example. Here, federal funds are distributed to either state or tribal governments as block grants. Yet this process is zero-sum, meaning that money allocated to tribes is drawn directly from any allocation that would have been made to the state.³ In this case, the potential for self-determination policy to meet opposition from states is clear as both states and tribes compete for federal funds. For policy scholars, the forced federalism framework may be instructive as tribes and states compete for funds and policy oversight (Corntassel and Witmer 2008). Moving forward, policy research that can outline the policy history of federal oversight and its changing role with contracting and compacting will also help fill the gaps in our knowledge of self-determination policy. This could include case studies of individual Indian nations and the transition from contracting to compacting and how they were able to increase local input into a policy area, or policy areas, to best reflect the needs of local communities. With large-n studies, the inability of Indian nations to engage in self-determination policy-making could show the reluctance of some officials to relinquish control of Indian policy.

² General terms for eligibility in IHS self-governance programs can be found at <http://www.ihs.gov/selfgovernance/documents/PocketFolderBrochure.pdf>.

³ See <http://www.acf.hhs.gov/programs/ofa/programs/tribal/about> and <http://www.acf.hhs.gov/programs/ofa/programs/tribal/tribal-tanf> for an overview of the process of tribal TANF and the programs covered.

Third, an important policy challenge that tribal governments face is the capacity to make and carryout policy on tribal lands. Following years of underfunded tribal schools, high rates of unemployment and poverty, and weak tribal governments, the ability to engage in self-determination policy-making and implementation is likely beyond the reach of many tribes until they build sufficient domestic capacity (Cornell, Jorgensen, Kalt and Spilde 2005, Taylor and Kalt 2005). This may take reforming tribal governments and governmental institutions, increased training in a policy area or areas, and/or increasing educational outcomes to improve human capital (Cornell and Kalt 1992, Jorgensen 2007).

Building capacity, especially for Indian Health Service agreements, is an important point that Warne (2007) outlines in detail. He suggests that self-determination policy challenges for Indian nations exist as both health policy and educational policy. Health policy, and by extension compacting and contracting in other Native policy areas, must follow improved education policy that trains Native citizens to work in healthcare fields and other policy areas that require requisite skills. For example, without healthcare professions education for American Indians, tribal governments will likely find it difficult to make and implement health policy, as the pool of healthcare workers and policy makers will lack cultural competency. The same is true across the policy spectrum as education and training is needed for social services professionals, law enforcement officers, and others that are familiar with the needs of Native nations. Furthermore, self-determination is more likely to succeed if the capacity to coordinate policy is available at the tribal level as Indian nations work with their counterparts at the state and federal levels (Warne 2007, Hicks 2007).

While little work has been done on linking capacity and the number of tribes that engage in self-determination policy, Witmer (2014) tests the connection between education and compacting when he identifies the attributes of tribes that have signed self-government agreements with the IHS. He finds that social capital, in the form of education levels on a reservation, are positively associated with the likelihood that a tribal government will enter into a self-governance agreement. He suggests that education, as a measure of social capital, likely reflects a greater understanding of the process necessary to secure government contracts and compacts, and to carry them out once secured.

Witmer (2014) also measures capacity building by examining tribes that have engaged in negotiations over gaming. Here he finds that tribes with gaming are also generally more likely to have signed an IHS self-governance agreement, likely due to their experience in dealing with non-tribal governments. In addition, gaming tribes may also have the funds necessary to support the costs of the program, like the contract support costs noted above, that are inadequately funded by the federal government (Witmer 2014). Further research that can make the connection between education and training, and tribal success in specific self-determination policy, would be a welcome addition to Indigenous policy research.

We have touched on three policy issues that Indian nations face as they consider whether to enter into a self-determination agreement with the federal government. Yet the list is far from complete. Additional research that focuses on an individual tribe and their decision to pursue self-determination policy or not, will likely identify many additional challenges. Similarly, research that examines a specific policy area is likely to uncover additional concerns that tribal governments face with each issue area. Given the lack of research in self-determination policy and the role that American Indians play in making and implementing policy, there remains much to be done.

Conclusion

In the decades since the transition from termination to self-determination, change in the ability of Indian nations to make and implement policy has come slowly. Yet tribal leaders have been able to influence self-determination policy and add tribal options to the policy process. The result is increased self-determination via contracting, and more recently, compacting.

Yet the transition to an era of self-determination carries some risks. For example, the continued reliance on the federal government remains. Importantly, self-governance is still Native governance overseen by federal officials. In the end, self-determination and self-governance relies on the approval of Congress to make and fund policies that grant Native nations the ability to make and implement policy. Yet this could change should Congress decide another policy approach is best. Similarly, funding decisions remain in the hands of lawmakers that represent non-Indian interests as well as Indian interests. In the end, the ability to give is also the ability to take away—a concept all too familiar for Indian nations.

A second risk as tribal governments embrace contracting and compacting may be the balance between Native culture and ideas and the demands of federal oversight. While we believe that tribes are better able to integrate Native ideas and traditional culture into programs when they are in charge of policy-making, tribal governments must remain vigilant against self-determination acting as a Trojan Horse of assimilation, much like that described by Barsh (1980). Most likely, we believe, the increased role of tribal governments will result in policy that is most appropriate for each group of Native people.

While additional policy research may uncover a more appropriate means of integrating Native ideas into federal/Indian policy, the best course for Native self-determination policy is likely the one currently in process; the expansion of self-determination policy making in ways appropriate for each Indian nation as determined by Native people. What must remain, however, is the recognition that the federal government has a trust responsibility to Native people. This commitment can and should be maintained in a way that facilitates self-determination.

Finally, to better understand self-determination policy, tribal/federal compacting and contracting, much more work needs to be done by policy scholars. This includes examples of successful making and implementation of policy at the tribal level to see what works or does not work. Research could also focus on a particular policy area, like the Indian Health Service, to develop a better understanding of the making and implementation of federal law. Finally, aggregate analyses that examine the attributes of tribes that have engaged in contracting and/or compacting, or have transitioned from contracting to compacting would shed additional light on their common attributes. We look forward to reading these studies in this journal in the future.

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