

It's time to modernize Maine's tribal-state relations



by Jared Golden 4/9/21



A mural representing symbols of Micmac culture is painted along a hallway of the Aroostook Band of Micmacs administrative offices in Presque Isle. Credit: Melissa Lizotte / BDN

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In the last half century, tribal nations across the country have made significant gains in reclaiming their sovereignty and exercising their right to self-government on their own lands. Unlike hundreds of other tribes, however, Maine tribes have not been afforded the respect and dignity that comes with the full recognition of tribal sovereignty.

The reason for this lies in a 40-year-old law called the [Maine Indian Claims Settlement Act](#) (MICSA) and the state law that accompanied it, the [Maine Implementing Act](#). This 1980 deal marked the culmination of years of litigation and at times acrimony between Maine tribes and state leaders over whether a significant amount of land within Maine's borders was wrongfully taken from the tribes in the 18th and 19th centuries.

While the act successfully resolved the land claims challenge for both the state and the tribes, ending one era of contentious tribal-state relations, it has become clear that the unusual jurisdictional arrangement that the law enshrined between the tribes and the state government in Augusta is problematic and increasingly unsustainable. This arrangement, unlike that of almost any other agreement with a federally recognized tribe in the country, treats the tribes more like municipalities within the state rather than sovereign governments.

Since the 1960s, the federal government has increasingly recognized and promoted tribal sovereignty and engaged in a government-to-government relationship with tribes. Because of this, in most parts of Indian Country, states have limited authority on tribal lands. That is not the case in Maine, however, because the settlement act subjects Maine tribes to nearly all state laws. As a result, since 1980 the state and the tribes have routinely gone to court to settle disputes ranging from [fishing rights](#) to [water quality standards](#), all stemming from differing interpretations of the law. With the full view of the last 40 years, it is clear that this agreement has created many challenges where there should have been greater opportunities.

Another problematic issue is that the settlement act explicitly exempted Maine tribes from any laws passed by Congress for the benefit of Indian tribes after 1980. This means that while the more than 500 other federally recognized tribes can take advantage of the policies and services conferred through [more than 100 federal laws](#) passed since 1980, Maine tribes have often been left out or forced to access them through the state. This disparity plays out in a host of arenas, ranging from the inability of Maine tribes to directly apply for federal disaster funds to their exclusion from millions of dollars to implement federal domestic violence legislation.

Fortunately, after years of dispute, there is a glimmer of hope. In 2019, the state Legislature established a bipartisan task force to review and develop recommendations for changes to the Maine Implementing Act. After months of work, the task force produced [a report](#) with 22 recommendations, nearly all of which were agreed to unanimously, forming the basis of a [comprehensive bill](#) to modernize many aspects of the 40-year-old agreement. Unfortunately, just

as progress was being made, the COVID-19 pandemic arrived, and the Legislature adjourned before the bill could receive a vote.

While it is disappointing more action was not taken, this year presents a renewed opportunity. State lawmakers have introduced a bill that picks up where negotiations abruptly ended due to the pandemic. The Legislature is expected to begin hearings soon with the hope that a bill can be passed during this session. I strongly support those efforts and believe that MICSA should no longer be seen as a barrier to compromise and progress.

After 40 years, it's long past time for us to ask ourselves if this agreement could use an update. It is time to modernize tribal-state relations and fully recognize the sovereignty of Maine tribes.