

Center for World Indigenous Studies

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DRAFT 103

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20 July, 1995

298 Self-Governance Process Evaluation

Research and Evaluation Design

Self-Government for Indian nations effectively came to an end in 1872 after the United States Congress enacted its 1871 Appropriations Act. It was in that Act the United States of America declared its intention to cease to negotiate and ratify treaties with Indian nations. It was also in that Act that the United States Congress declared itself the sole governing power that would make laws controlling the lives and property of Indian nations and individual Indians. The U.S. Congress, in effect, declared a legislative dictatorship. For many decades after this infamous enactment, U.S. legislators, tribal officials and attorneys would quietly suggest that Indians directly decided their interests by presenting testimony to Congressional Committees which in-turn pass laws. One problem with this conception of "indirect representation" is that the Congress was able to take any action it pleased without "consulting" with Indian leaders. Indian people were supposed to rely on the good will of Congressional representatives elected to office by other people whose interests were often in violent opposition to Indian interests. A second problem arises when Indian leaders appear before Congressional hearings. Their very presence before committees effectively condones the Congresses' usurpation of Indian governmental powers.

Beginning with talks between Indian leaders and Congressional Representatives in late 1987, the subsequent insertion of specific language reversing the 1871 Appropriations Act language, and the enactment of the 1988 Appropriations Act containing a provision for the Self-Governance Demonstration Project, a first step was taken by Indian governments and the U.S. Congress to restore self-government in Indian Country. The center-piece of the effort to fully restore self-government to Indian Country was the negotiation of a Compact of Self-Governance between the governments of each of seven "first tier" Tribes and the United States government in 1991. These Compacts spelled out a framework for a relationship between each Indian government and the United States government, made promises and commitments and set principles for a government to government framework. The treaty-making process had begun anew in 1991. Each Indian government negotiated a protocol called an "Annual Funding Agreement" which described the process by which funds, functions, services and activities would be transferred from a U.S. government agency (Bureau of Indian Affairs) to each Compact tribe. What began as talks in 1987, became a series of new treaties in 1991 intended to reverse the flow of power from Indian nations to the

U.S. Congress. The basic principle guiding the development, negotiation and ratification of each Compact of Self-Governance was: Each Indian Nation must have a mutually defined government to government framework between itself and the whole of the United States government and not with individual agencies of government. The significance of this principle is that it defines and asserts the essence of a treaty relationship between Indian nations and the United States of America.

Since 1991 more Indian governments have negotiated Self-Governance Compacts, more agencies of the U.S. government (Bureau of Indian Affairs, Indian Health Service, and other Interior Department agencies) have become subjects of new protocols. In addition, new legislation making the Self-Governance policy of the U.S. Congress permanent, identifying the BIA Central Office as a subject of protocols, and establishing a role of Indian governments in the Agency rule-making process was enacted by the Congress between 1992 and 1994.

After a review of the documents and literature, it is apparent that only one study has been undertaken, Northeastern State University's May 1993 "Annual Assessment," to consider the "impact of self-governance" on Indian nations. The Study concluded: "generally that Self-Governance had a positive impact at the Tribal level and should continue." The process of defining a government to government framework, negotiating Compacts, and further elaborating arrangements between Indian governments and other parts of the U.S. government was not the subject of the "Annual Assessment" authorized by the Department of the Interior's Office of Self-Governance. No overall study has been undertaken to determine whether or to what degree Indian governments are achieving the goal of self-government, and whether or to what degree the process between Indian governments and the U.S. government is building an effective government-to-government framework that assures a mutually acceptable balance in the exercise of sovereign powers. A first phase evaluation of the process and the goals of Indian governments in connection with shifting powers from the Bureau of Indian Affairs to Indian governments will give answers to these questions.

The Self-Governance Process Evaluation Project will be conducted from July 1, 1995 to March 1, 1995 under the direction of Rudolph C. Rýser as Principal Investigator under the Center for World Indigenous Studies' Fourth World Documentation Program. It will be identified by its Project code: 298SGPE. The purpose of 298SGPE is to evaluate and analyze the specific measures demonstrating changes in tribal government self-government activities, changes in the level of control exercised by the Bureau of Indian Affairs over Compact Tribes, and the effectiveness of negotiations and a government-t-government framework established to advance self-government and the initiative generally. The goal of 198SGPE is specific in relation to this more broadly presented purpose: Evaluate changes in the Compact Tribal governments, the U.S. Government and provide a negotiation and framework analysis with recommendations in two discrete reports to all of the Compact governments in the form of a Preliminary Findings Report in September 1995 and a Final Report by or before March 1, 1996.

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DESCRIPTION:

The Self-Governance Process Evaluation Project is a "documents and records" research effort which emphasizes "descriptive information" and coding of that information in consistent ways to measure "frequency." On the basis of pre-defined measures for self-government and measures for diminished self-government, descriptive information will be compared with these measures and coded accordingly. These measures will be based on definitions as set out in the "Report of the Meeting of Experts" to review the experience of countries in the operation of schemes of internal self-government for indigenous peoples. (UN Economic and Social Council, Commission on Human Rights, Nuuk, Greenland, 24-28 1991 - E/CN.4/1992/42/Add.1) and "Study of treaties, agreements and other constructive arrangements between States and indigenous populations; First Progress Report," Dr. Miquel Alfonso Martinez, Special Rapporteur, UN Economic and Social Council, Commission on Human Rights, Geneva, Switzerland, (E/CN.4/Sub.2/1992/32) 25 August 1992. Also we will rely on measures provided in **Indigenous Peoples Experiences with Self-Government**. Edited by W.J. Assies and A.J. Hoekema. International Working Group on Indigenous Affairs and the University of Amsterdam, Copenhagen 1994. Measures will be further informed by contributions of Indian scholars in **Indian Self-Governance** (Center for World Indigenous Studies, 1989) and by "Constitution, Court, Indian Tribes," by Milner S. Ball *American Bar Foundation Research Journal*, Chicago. Vol 1987, No. 1, 1987. And finally, measures will be formulated on the basis of "initial goals" set by the "First Tier Tribes" who originally defined and formulated the Self-Governance initiative in various documents and reports generated by these governments between Fall 1987 and Fall 1989 including the **Red Paper** (Hoopa, Lummi, S'Klallam and Quinault) 1989. Raw documents will be requested from all the governmental parties directly connected to the self-government initiative. The information will be codified as data in five databases which will be associated into one relational database. From the documentary consolidation, and codification investigators will analyze data results, conduct cross-referenced comparisons of coded results, and evaluate frequency scales to draw conclusions and formulate recommendations in a Final Report.

Information Collection and Data Compilation:

Thirty-three Indian governments (including Alaskan native corporations and villages) concluded Compacts with the United States government and protocol "Funding Agreements" in relation to the Department of the Interior's Bureau of Indian Affairs between the Summer of 1991 and Winter of 1995. The United States government's Office of the President in the White House, Secretary of the Interior and Assistant Secretary of the Interior for Indian Affairs were the executive participants in the formulation of compacts and protocols. Documentary information will be collected from all of these entities and agents acting on their behalf under the following categories:

1. Key communications and minutes of meetings in connection with negotiations and "framework setting" activities for the period of October, 1987- June, 1995.
2. Compacts formally concluded between 1991 and Spring 1995 and protocol "funding agreements" concerning the Bureau of Indian Affairs.
3. Constitutions of all Compact parties.
4. Resolutions, laws, binding motions and directives adopted and issued by all Compacting Indian governments for the periods of October 1987 to August 1990, and from September 1990 to March 1995.

Requests will be made of the Self-Governance Coordinators for each of the thirty three Indian governments and of the Self-Governance Director for the U.S. Department of the Interior to supply the materials listed above. Request will be made of SENSE, Inc. for documents and records relevant to this study for the periods indicated.

Documents will be filed by [a] Government, [b] Classification (Key Communications, Compacts, Constitutions, Laws and Resolutions) and [c] Time period.

Five databases will be developed (Dbase III) as follows with potential fields:

289SGPE Databases - Potential

Database	Description	Potential Fields
Governments	Names, addresses, telephone numbers and descriptions of each Indian government, the nation.	Government ID Code, Entry Date, Indian nation: Address1, Address2, town, state, reservation, government form, population, BIA region, Treaty/Exec Order status, Reservation size, Property ownership (Tribal, individual, non-Indian) Organizational Affiliations, Chairman, Council members, terms, Senior Government personnel.
Compacts	Date of negotiation, key provisions codified in terms of Self-Government or reduced self-government	Government ID Code, Entry Date, Compact Ratification, Actions by Indian Government, Actions by US government, Code: (by provision)
Constitutions	Date of constitution and the kind of constitution codified in terms of self-government or reduced self-government	Government ID Code, Entry Date, Constitution Date, Amendments, Amendment dates, type of constitution, enumerated powers Code: (by provision)

Laws and Resolutions	Date of each measure and the kind of decision being made is codified in terms of self-government or reduced self-government. Particular emphasis will be placed on identifying specific references to exercising or relinquishing powers of self-government	Government ID Code, Entry Date, Date of Measure, classification of decision, type of decision, key provision (1,2,3,4) Code: (by provision)
Treaties and other Agreements	A tabulation of specific external agreements (bi-lateral and multi-lateral) and a description of provisions advancing self-government, neutral or relinquishing self-government.	Government ID Code, Entry Date, Date of Agreement, Classification of agreement, type of Agreement, key provisions (1,2,3,4) Code: by provision.

Key Documents/Minutes

"Documentary instruments" will be developed for each of the database files. After the databases have been developed each will be tested for a period of two weeks to confirm adequate data coverage, consistency of input and utility of coding.

decide how

Three Research assistants working at their own terminals and two consultants working at their terminals will be assigned to review and document data from the documentary sources by entering information either directly into the database or into a "Documentary Instrument."

Methodology:

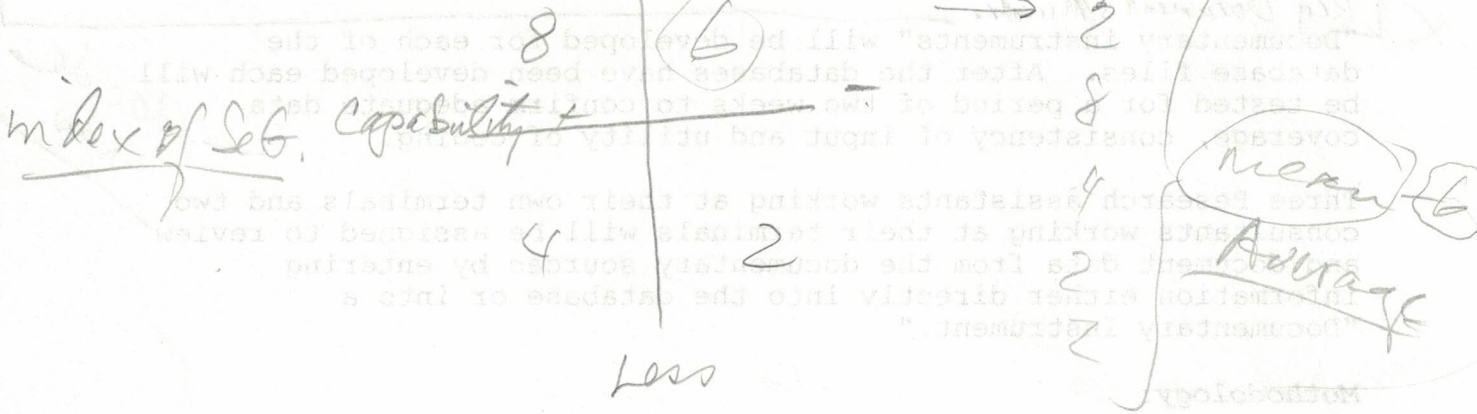
Data compiled by the Research Assistants and Consulting Researchers will be entered into five databases that will be associated into a single relational database. Data will be cross-referenced by government and by one other field and compared on the basis of coding and indexing. Investigators will conduct an extensive analysis of data, and on the basis of that analysis Investigators will evaluate outcomes in terms of initial definitional criteria and "First Tier" goals.

Coding will be defined by two methods: descriptive and matrix. Descriptive coding will use Alpha characters associated with specific characteristics and applied on three levels. There may be as many as eight different descriptive criteria. The results of the descriptive coding will be identification of tendencies-- Primary, secondary and tertiary. A matrix will be used to define a numeric value associated with exercising self-government, relinquishing self-government and neutral effects on self-government. The numeric value will be a variable which is compared to a pre-defined constant which represents a theoretical level of self-government. The combination of descriptive and matrix coding will provide significant comparative outcomes that will indicate changes in levels of self-government as indicated by decisions of government and enhancements or impediments to self-government. The study will be able to identify specifically where enhancements or impediments exist, what action precipitated the consequences and thus point in the direction of possible remedies. Ultimately, the coding will provide an incite into the process of reassuming self-government in Indian Country.

Analyze overall "tribe" 10/30/09
Analyze each Tribe

Government ID Code Entry Date	Date of Agreement Classification	Government ID Code Entry Date	Date of Agreement Classification
Government ID Code Entry Date	Date of Agreement Classification	Government ID Code Entry Date	Date of Agreement Classification

MATRIX - Quantify / Time



Data compiled by the research assistants and consulting researchers will be entered into five databases that will be associated into a single relational database. Data will be cross-referenced by government and by one other field and compared on the basis of coding and indexing. Investigators will conduct an extensive analysis of data, and on the basis of that analysis investigators will evaluate outcomes in terms of initial definitional criteria and "first tier" goals.

Description is Self Government

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Typology