

# Alaska's Conflicting Objectives



*Abstract: The formal treaty-making period between the U.S. government and Native peoples ended in 1871, only four years after the United States purchased Alaska from Russia. As a result, Alaska Natives did not enter into treaties that recognized their political authority or land rights. Nor, following the end of the treaty-making period, were Alaska Natives granted the same land rights as federally recognized tribes in the lower forty-eight states. Rather, Congress created the Alaska Native Corporations as the management vehicle for conveyed lands in 1971. The unique legal status of these corporations has raised many questions about tribal land ownership and governance for future generations of Alaska Natives. Although Congress created the Native Corporations in its eagerness to settle land claims and assimilate Alaska Natives, Alaska Native cultures and governance structures persisted and evolved, and today many are reasserting the inherent authority of sovereign governments.*

**T**he Bureau of Indian Affairs (bia) reported in 1936 that it knew little about Alaska Natives. “Alaska is such an immense country, the Indians so widely scattered, and travel frequently is so tedious, slow and expensive that it is very difficult to plan a program,” wrote bia field representative Oscar H. Lipps. D’Arcy McNickle, who answered directly to the Commissioner of Indian Affairs, added, “eTm (-)T(, )0.5 (r T.78air (Cogn)]l 3littil



would give Alaska Native villages and regions more control because fee-patent land could be managed without oversight from big bureaucrats in Washington, D.C.

Alaska Natives' ultimate goal was self-determination, and they saw the Alaska Native Claims Settlement Act of 1971 (anCSA), a lands-claim settlement drawn up by the U.S. Congress, as the pathway. Congress, on the other hand, saw anCSA as an opportunity to "assimilate" Alaska Natives with corporations, cash, and fee simple title. anCSA created twelve regional Native corporations (Alaska Native Corporations, or ancS) as well as more than two hundred village corporations. These entities would receive title to 40 million acres of land and be paid nearly \$1 billion in exchange for the extinguishment of their aboriginal claims to 330 million acres of Alaskan land.

The main goal for both the state and federal governments was to establish clear title to Alaska lands to allow for unimpeded economic development. The new law would transform the communal character of Native societies, beginning with the enrollment of tribal members as individual shareholders of the new corporations. The laws even delimited the future of Alaska tribal societies: initially, only Natives who were alive in 1971 when anCSA was signed into law were assigned shares, meaning that future generations would have less and less control over the corporations. Another significant problem for Alaska Natives was that the restriction on the sale of stock in Native corporations would be lifted after 1991, potentially leading to the widespread loss of Native control over Alaskan land.

anCSA also abolished subsistence hunting and fishing rights. Subsistence continues to be a significant source of basic food security for Natives living in rural communities where cash economies are depressed. And, more important, subsistence is the underlying framework of Native culture.<sup>6</sup>

In terms of culture, lifestyle, and attitudes toward land and community, anCSA clearly favored Western values over Native ones (see Table 1).

Ironically, Congress enacted anCSA to promote the assimilation of Alaska Natives into the capitalist economy. But there was a twist: the corporations were to share 70 percent of the profits derived from subsurface and timber development with other Alaska Native Corporations. From its inception to the present, this form of socialism has forced the twelve regional Alaska Native Corporations to share an estimated \$3 billion in profits between themselves.<sup>7</sup>

In spite of the corporations' cultural divergence from Native values, Native corporate leaders recognized and made commitments to the preservation of their traditional cultures, as demonstrated by the mission statements adopted by eleven of the twelve regional corporations. Many regional ancS also created affiliate cultural and educational nonprofit organizations or established dedicated funds to support cultural or educational activities.

In the early 1980s, Alaska Natives began to understand the flaws and dangers of anCSA, and in 1982, delegates to the Alaska Federation of Natives (afN) Convention directed the afN to make the "1991 issue" (referring to the provision in the law lifting restrictions on the sale of stock) a top priority when proposing amendments to the law.<sup>8</sup>

Alaska Natives were also concerned that children born after 1971 were not allowed to become ancS shareholders unless they inherited stock. This restriction conflicted with their traditional values, which held that children born into a tribe are automatically members with full rights to land.

The afN convened five Native leadership retreats and seven conventions to develop resolutions and amendments to anCSA to address these problems and concerns.



ership, and children's rights to land ownership and to their identity. In addition to the cultural and legal protections secured under the 1984 ANCSA amendments, Alaska Native Corporations worked to be federally recognized as tribes for special statutory purposes. One of the first efforts was to secure recognition for the purposes of con-

*Alaska's  
Conflicting  
Objectives* political rather than legal questions) and  
reversed course in tribal status litigation  
by finding that the Tribal Entities List “un-  
questionably” establishes federal recog-

state enactments, have confirmed Alaska tribal authority over tribal members and certain discrete subjects. But the result today remains a patchwork of rules that do not enable tribal governments to provide for the rule of law in their communities, thus impeding the general development of civil society in Alaska Native villages. Legislation is needed to enable Alaska tribal nations to comprehensively govern their communities, conferring to the tribes the security, autonomy, and prosperity to which all peoples are entitled.

**A**t an Alaska Tribal Leaders conference in the fall of 2016, tribal leaders called upon the Alaska Congressional Delegation, the president, the secretary of the interior, the







<sup>12</sup> *American Indian Policy Review Commission Final Report: Submitted to Congress May 17, 1977* (Washington, D.C.: U.S. Government Printing Office, 1977).

<sup>13</sup> *Native Village of Stevens v. Alaska Management & Planning*, 757 P.2d 32, 34 (Alaska, 1988).

<sup>14</sup> *Native Village of Venetie I.R.A. v. Alaska*, 918 F.2d 797 (9th Cir., 1990), [http://www.courtsandtribunals.com/11/2017/04/03/](#).

<sup>15</sup> *John v. Baker*, 982 P.2d 738 (Alaska, 1999); *In re C.R.H.*, 29 P.3d 849 (Alaska, 2001); *McCrary v. Ivanoff Bay Vill.*, 265 P.3d 337 (Alaska, 2011).

<sup>16</sup> *Alaska v. Native Village of Venetie*, 522 P.2d 520 (1998).

<sup>17</sup> *Id.*

<sup>18</sup> *Alaska v. Native Village of Venetie*, *Alaska Daily News*, April 4, 2017, [http://www.adn.com/news/2017/04/03/](#).

<sup>19</sup> *Alaska v. Native Village of Venetie*, *Alaska Daily News*, April 17, 2017, [http://www.adn.com/news/2017/04/17/](#).

<sup>20</sup> *Alaska v. Native Village of Venetie*, *bbnc*, *plp*, *aes*, *Alaska Daily News*, April 13, 2017, [http://www.adn.com/news/2017/04/13/](#).