Brief Interpretive History of the Alaska Native Claims Settlement Act (ANCSA)
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Preface

Some anniversaries grow in meaning as the event being commemorated continues to shape the course of history. This is the case with ANCSA. The lengthy struggle by Alaska Natives to secure legal resolution of their land claims was settled in 1971 but the issues surrounding the implementation of the settlement continue in the years since passage. Fifty years later, we take stock of the Act, not so much as an accomplishment or culmination, although it certainly was monumental, but instead, as a point in the continuing struggles by Alaska Natives to exert their rights to manage their land and the financial resources that were part of the settlement.

This is the story of an evolving relationship between Native and Settler, reflected in differences over land rights, legal rulings that defined Native opportunity, and a legislative solution that created Native corporations as a way to resolve Native land claims. Three themes frame the discussion and are reflected in the history to be presented. First, this is a cross-cultural story that emphasizes the differences between Native and Settler aspirations and assumptions. Second, this is a story of the opportunities and limitations of the Western legal system to accommodate the needs of Alaska Natives. Third, this is about corporate structure and the role of the Native corporations who negotiate difficult questions about who owns shares, how revenue is distributed, and the role of the corporation in serving and representing the Native community. Written on the eve of the anniversary of ANCSA, this overview provides a broad historical understanding of the major issues that led to passage, the major elements of the Act, and the key amendments that followed. [1]

[1] It is important to state what this document is not. 1) It is not a legal analysis of ANCSA; 2) It is not a section by section analysis of the Bill; and 3) it is not a detailed description of the legislative process. Instead, this is more akin to a view of the historic landscape from the tree tops with major features described but with fuller detail reserved for more extensive book length treatment by others. (see for instance, Robert Arnold. **Alaska Native Land Claims**. Anchorage. Alaska Native Foundation.1976. and Donald Mitchell's **Take My Land,Take My Life: The Story of Congress's Historic Settlement of Alaska Native Land Claims,1968-1971**. 2001. Fairbanks. University of Alaska Press.Extensive footnotes are provided in this manuscript for those who wish more detail. Key points in this document are highlighted in bold, for emphasis.

Introduction

The Alaska Native Claims Settlement Act (ANCSA) became law on December 18, 1971.[2] It is tempting to claim the movement to Native land claims began with Alaska Statehood in 1959 when the conflicting language of the Statehood Act opened the door for State selection of land while also prohibiting the new State from selecting any land that might be claimed by Alaska Natives.[3] Alaska Natives rose up in protest when the State began to select land and make plans for sale and development,Native concerns were not just limited to State actions. There was also concern about federal plans for development and regulation of fish and game. The issue in each case was control of the land Natives depend upon for survival, and this was an

[2] Public Law 92-203

[3] Section 6 of the State Constitution allows for State selection of lands while Secton 4 disclaims rights to land that might be subject to Native title (see Haycox, Stephen, "Contingency and Alaska History: How Congress's Cessation of Treaty Making Helped Create ANCSA A Hundred Years Later." In *The Big Wild Soul of Terrence Cole, An Eclectic Collection to Honor Alaska's Public Historian*. 2019. Fairbanks. University of Alaska Press. (171-179).

impetus for Native groups to organize and mobilize,[4] These were issues that prompted Native action, but they weren't the first .[5]

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[4] Project Chariot, a federally proposed plan to detonate an atomic explosion to create a port at Cape Thompson in Northwest Alaska prompted deep concerns in the Native community. This prompted the village council in Point Hope to seek help. The Association on American Indian Affairs (AAIA) responded by sending their Executive Director, La Verne Madigan, and Dr. Henry Forbes, Chairman of the Association's Committee on Alaskan Policy, to meet with the villagers. This led to AAIA support for the first Inupiat Paitot conference in 1961 at Barrow. The meeting brought Northwest Coast and Arctic leaders together to express their concerns about subsistence and the impacts of development plans and governmental regulations..(O'Neill, Daniel. 2007. **The Firecracker Boys: H-Bombs, Inupiat Eskimos,and the Roots of the Environmental Movement.** New York. Basic Books. P.226-232). Just a year earlier Barrow residents had clashed with a Fish and Wildlife official over the prohibition of spring waterfowl hunting and had approached the AAIA for help (James, Elizabeth, "Toward Alaska Native Political Organization: the Origin of **Tundra Times"**. **Western Historical Quarterly**. Autumn, 2912. Vol. 41. , 285-303, P292). At issue was the enforcement of the ruling that prohibited waterfown hunting at a critical time in the yearly subsistence cycle. (Arnold, 1976. P.96 and Blackman, Margaret. **Sadie Neakok Brower Neakok, An Inupiaq Woman**. Seattle. University of Washington Press, 1989.P.180-184). One of the results of the 1961 Inupiat Paitot meeting was the expressed desire for a way to keep informed on Native issues. This was the basis for approaching Henry Forbes to support the development of **Tundra Times**, a statewide Native newspaper.(O'Neill, P.236-237). Henry Forbes' investment in **Tundra Times** and faith in Howard Rock to guide it is described in a speech he gave in Fairbanks in October of 1965, Forbes told the audience: "…the need was real; the plan was good, and the personnel just right. So I agreed to support the **Tundra Times** in its early stages." (Lael Morgan Collection, University of Alaska Fairbanks, Alaska and Polar Regions Collections, Box 7, Folder 17.)

[5] As significant as these associations were in formulating and expressing regional land issues it is important to note that in Southeast Alaska, the Alaska Native Brotherhood and Sisterhood, established in 1912, had established a long history of organizing to fight for land rights, most notably their efforts beginning in 1929 to seek compensation for land taken and re-appropriated by the federal government. Their successful legal battle and continuing efforts in support of land claims laid the groundwork for the eventual passage of ANCSA. (Metcalfe, Peter. **A Dangerous Idea: The Alaska Native Brotherhood and the Struggle for Indigenous Rights**. Fairbanks. University of Alaska Press. 2014. P8.

Background: Conflicting Visions and Relationships with the land

While statehood marks the most recent era of Native land claims, Alaska Natives have worked for over a hundred years to defend their way of life, and assert their right to the land and the resources that sustain them in realms largely defined by Western social, economic, and legal structures . This is a contested history because of the differences in cultural perspectives of Native groups and the settlers. A big difference centers on what it means to have rights to land. ,In the Native traditions, customary use rights to land and resources were based on kinship and social ties that dictated terms of access for fishing, hunting, trapping, and gathering. Each Native group, in their own way, recognized a system of "property relations" that dictated land use and resource use.[6] Land ownership by which we mean the rights to control exclusion, inclusion, and inheritance use rights were the purview of groups at the tribe, band. clan, and extended family levels, unlike the Western concept of individual ownership.[7] This generalization about Native conceptualization of land and use rights is offered to present what this author sees as a basic lived reality for many Native people and a perspective quite different from that of most others who come to the subject of land ownership from a perspective of individual purchase and sale..

The Early History

The Russian expansion to Alaska in the latter half of the 18th Century was based on a desire to acquire furs; control of Native land was of little interest as long as the Russian fur traders could continue to extract valuable pelts

[6] The concept of "property relations" may be the best way to emphasize the social, cultural, and personal relationships that marked the way Alaska Natives conceived of and how they ordered their lives in order to survive with each other and insure access to the fish and game that sustained them. This conceptualization is proposed by Paul Nadasdy, in a discussion of Yukon First Nations land claims in Canada where he emphasizes the difficulties of merging European and Aboriginal concepts of property. While his study area is the Yukon, the discussion is applicable to Alaska and reflects the inevitable dilemmas of aboriginal land claims agreements settled under European systems of justice. As Nadasdy acknowledges, there is a range of responses and people often operate in both what we might recognize as traditional or customary ways of managing resource issues and in other cases Western legal ways. This complicates any generalizations. (Nadasdy, Paul. 2002. " 'Property' and Aboriginal Land Claims in the Subarctic: Some Theoretical Considerations**". American Anthropologist**. 104 (1) 247-264) specifically P.251.

[7] The notion of land as "private property" held by individuals and subject to acquisition and alienation was foreign.to Native groups but central to the settler's concept of civilization and the assimilationist policies. Authority often rested in leaders who acted with the support of the group.

from Native hunters. When the United States acquired Alaska in 1867 under the Treaty of Cession, the U.S. government assumed responsibility for the future of Alaska Natives, the so called "uncivilized tribes"[8] **The Alaska Treaty of Cession was the first time the U.S. government acknowledged responsibility to Alaska Natives.[9]** In the early years of the American period (1867 – 1936), before the extension of the Indian Reorganization Act to Alaska, the Trust operated on the assumption that the best course for the government was to encourage Natives to change their lives and live like non-Native people The question of their "aboriginal title" to the land[10] lingered faintly in the background removed from social relations and government policy, but recognized in key court cases such as United States v Berrigan[11] and in the First Alaskan Organic Act in 1884 that provided for the rights of Natives to the land they use for hunting, fishing, trapping, and other resource gathering[12] **Despite any limitations on extent, t**he 1884 Organic

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[8] Article III of the Treaty of Cession states: "The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time adopt in regard to aboriginal tribes of the country."

[9] The federal Trust responsibility to all Natives has its roots in the history of federal rulings that relate to American Indians. The basic principle that guides the relationship is one of "wardship" as defined by Chief Justice Marshall in 1831. Natives are treated as sovereign nations but the federal government functions as overlord with special responsibilities for the welfare of Natives beyond rights that might be gained by citizenship. (Fact sheet, Administration for Native Americans, March 19, 2014, "American Indians and Alaska Natives: the Trust Responsibility" **)** see also David Case and David Voluck.. **Alaska Natives and American Laws**. 3rd edition. 2012. Fairbanks. University of Alaska Press.p1.

[10] "Aboriginal Title" was the subject of an essay by Felix Cohen. There he quoted a 1923 Supreme Court ruling (Cramer Case) where the Court found: "Unquestionably it has been the policy of the Federal Government from the beginning to respect the Indian right of occupancy, which could only be interfered with or determined by the United States." (Cohen, Felix.1947. "Original Indian Title". *Minnesota Law Review*. Vol. 32, NO. 28. (28-59). P. 30.

[11] Unitd States v. Berrigan, 2 Alaska 442 (1905) June 21, 1905, United States District Court for the District of Alaska, No. 270.

[12] Section 8 of the Alaska Organic Act states: "That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them…" Section 8 has generally been accepted as applying to all lands in Alaska but Stephen Haycox has pointed out: "As written this section of the Organic Act applies only to filing mining claims. Mining claims could not be filed on any land utilized , occupied, or claimed by Natives or other persons ..The provision that Natives were not to be disturbed in possession of any land actually in their possession has been taken out of context and used to argue for a blanket rational protection of Native lands in Alaska." (Presentation by Haycox at 2020 Alaska Historical

Act is the earliest legislative action by the U.S. government to legally recognize Alaska Native land rights. However, when Natives met with government officials and asked for clarification of their legal rights, they were told the only options available to them for acquiring their land was either reservations or allotments. Reservations were discouraged and allotments depended on demonstration of their conformity with the norms and practices of Western civilization[13] Even though the law continued to recognize unresolved Native claims to land and the government's responsibility to Natives[14], the dominant culture had little interest in and made little room to recognize or accommodate aboriginal ways of living. That is until the Tlingit and Haida Indians successfully demonstrated their

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Society Meeting. " Complex Circumstances and Unforeseen Consequences: The End of Treaty –Making and ANCSA". October 16, 2020, further clarified in personal communication August 12, 2021 where Haycox points to the specific reference to mining claims in the language in Section 8 that prefaces the protective clause on Indian land: "…and the laws of the United States relating to mining claims, and the rights incident thereto, shall from and after the passage of this act, be in full force and effect in said district.").

[13] On December 14, 1898, Tlingit Chiefs met with Alaska Territorial Governor Brady and were told that they needed to conform with White society if they were to succeed. He told them "God did not make the fields and did not make all the roads, but he made the men and men had to do all the labor. Now if any Tlingit in this country goes and does likewise and by his labor makes fences, improves ground and builds a house, it is the duty of every official to see that he is undisturbed." (Hinckley, Ted. 1970. "'The Canoe Rocks-We do not know what will become or us' The Complete Transcript of a Meeting between Governor John Green Brady of Alaska and a group of Tlingit Chiefs, Juneau, December 14, 1895." **Western Historical Quarterly**. Vol. 1. No. 3. 265-290.P.286. In 1915, Indian Chiefs and representatives from the Tanana River met with Judge Wickersham. Wickersham concluded their meeting by imploring them to take up the Whiteman's ways. He said to one of the delegates: "You tell them that as soon as they have established homes and live like the white man and assume the habits of civilization they can have a vote." (From original transcript of the 1915 Tanana Chiefs meeting in Fairbanks, Alaska. State Library Historical Collection, Wickersham State Historical Site Manuscripts, 1884-1970s. ASL-MS-0107-38-001_Indian_talk_small-2pdf) In both the Governor Brady and Wickersham meetings, reservations are mentioned as possibilities even though the government policy after 1871 was not to make treaties with Indians.

[14] The Indian Citizenship Act of 1924 recognized that citizenship did not abrogate property rights. The Act atates "Provided that the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.".It is unclear from the wording of the Act whether the intent was for existing federally recognized holdings as well as claims that might be pending at the time and those in the future,

possessory rights to land in Southeast Alaska, land where the federal government had issued permits and leases on land claimed by the Natives.

Legal Recourse for Native claims in Southeast Alaska

The legal fight first began in 1929 and continued until 1959 when the Tlingit and Haida successfully demonstrated through the courts their possessory rights to land taken in the Tongass National Forest. With passage of the Tlingit-Haida Land Settlement Act, aboriginal land rights for the Tlingit and Haida of Southeast Alaska were legally upheld and the tribes were paid compensation for land taken.[15] **This demonstrated the validity of Alaska Native claims in western legal terms and based on recognition of Aboriginal Title that had never been terminated.[16] This settlement paved the way for the larger statewide Alaska Native Claims Settlement Act.**

Statehood

In the movement to Statehood, Alaska Native claims were sidelined as an issue for the federal government to settle.[17] Politicians like Ernest Gruening and Bob Bartlett were reluctant to even have Native claims mentioned in the statehood bill.[18] This is an indication of how wary politicians were of Native rights as a possible impediment to achieving the economic prosperity that statehood might bring. The final language in the State Constitution both

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[15] Peter Metcalfe explains: "The land ownership issue came down to who was entitled to occupy areas long used by Alaska Natives for subsistence purposes. The U.S. government, without regard for any prior claims by the Native people, issued use permits for fox farms, recognized mining claims, and granted land title to cannery owners and others." (Metcalfe, P.21) Joaqlin Estus points out that the compensation amount was set well below the actual value of the land when it was taken. Joaqlin Estus, Personal Communication, July 9, 2021). William Paul, the Tlingit lawyer who initiated the claim against the government went on to play a prominent part in the larger statewide land claims movement.

[16] The final settlement of the Tlingit-Haida case in 1959 was bolstered by a decision in 1941 involving Arizona Indians and the Santa-Fe Railroad. The case, "United States v. Santa Fe Railroad" confirmed the Arizona Natives' aboriginal title. (Haycox. 2019. P174)

[17] While there was some discussison of Native land claims at the Constituitional Convention, notably by Marvin (Muktuk) Marston, delegate Vic Fisher noted that the delegates generally considered Native land claims a federal issue to be solved. (Fisher, Victor. 1975. **Alaska's Constitutional Convention**. Fairbanks. University of Alaska Press. P. 137-139.

[18] Haycox, Stephen. "The Uneasy Relationship of Biography and History in Alaska: Anthony Diamond, Ernest Gruening, and Bob Bartlett." In **Alaska History**. Fall. 2019. Vol.34. No.2 (45-59). P.57.

provides for State selection of land in section 6 but in section 4 it disclaims rights to lands that might be subject to Native title.[19] Only one Native served on the Alaska Constitutional Convention and the issue of Native land rights was a minor discussion, and was viewed as a federal problem.

Shortly after President Eisenhower signed the Alaska Statehood Act in 1959, the young state, eager to build a financial future, began to select land and propose development projects. Throughout the 1960's, villagers protested against incursions on their land. They wrote letters to officials describing how State actions were imposing on Native land and they called for settlement of their land claims.[20] They formed local organizations to represent regional interests[21] The statewide Alaska Federation of Natives was formed in 1966 and became a forum for the diverse Native population to meet and develop common recommendations .[22] This same year, William (Willie) Hensley wrote an essay that sparked his commitment to work for Native land claims. The essay was titled: "What Rights to Land Have the Alaska Native: the Primary Issue" Since then this document has gained

[19] Haycox, Stephen. 2019. P.175-176.

[20] See for instance, John Luke from Tanacross Council writing on behalf of Chief Andrew Isaac and stating: "Our people and the people we represent wants us to fight hard for our blanket claim first then State can do whatever they want with it." John Luke to Senator Ernest Gruening Januarary 15, 1968. In Gruening Papers. Box 718, Folder : "Office CorrsponsdenceLand-1-2 Indian land bill 5, 1964. Fairbanks. UAF. Alaska and Polar Regions Collections.

[21] On July 14, 1971, Tundra Times published an article: "They Play Increasingly Important Roles-Department of the Interior Compiles Major Native Organizations in Alaska" where 22 Native organizations including the Alaska Federation of Natives were listed. (**Tundra Times On-line Archives**, Tuzzy Consortium Library, Utkiagvik, Alaska.) One of the most important organizations to form was the North Slope Native Association comprising the villages of the North Slope who organized to protest the State and federal leasing of lands for mineral development on the North Slope. They enlisted the support of the Tlingit lawyer William Paul to represent them in taking legal action to halt development. (Gallagher, Hugh. 2001. *Etok, A Story of Eskimo Power*. Clearwater, Vandamere. P119-123.

[22] In 1984, Marilyn Richards paid tribute to Nick Gray who helped organize the Cook Inlet Native Association, the Kuskokwil Valley Native Association, the Fairbanks Native Association and the Copper River Native Association. She points out that Gray's dream was for all of the Native organizations to join as one strong voice. "His legacy, however remains in what he envisioned. The first meeting of the Alaska Federation of Natives, included many members of associations Gray helped create." (Richards, Marilyn. "Remembering Nick Gray, Philosopher, Visionary" in **Tundra Times**. Vol21. Number 25. June 20, 1984.

widespread attention because it argued Native rights within a legal and historical framework that could be understood and defended by Natives and non Natives.[23]

Charlie Edwardsen, Jr. an Inupiat from the North Slope was a key figure in the events leading up to land claims. In response to the State sales and leases on the North Slope, land claimed by the Native people of the region, he wrote to William Paul, the Tlingit lawyer who had been so instrumental in the Tlingit-Haida settlement. He asked for Paul's help to legally assert Native claim to the land. In a letter to Governor Egan Paul initiated the legal claim of Native ownership of the North Slope. The letter was signed by Inupiat leaders, Guy Okakok, Samuel Simmonds, Charlie Edwardsen, as well as William Paul, their legal council. Edwardsen's biographer pointed out this was the first land claim from the Arctic and " …the largest blanket claim in the history of the United States."[24]

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[23] The essay was written for a graduate course in Constitutional Law at the University of Alaska Fairbanks in 1966. When it was reprinted in 2001, Hesnsley wrote in the introduction about the impact his research had on his decision to work for land claims: " It was as if scales were lifted from my eyes at the conclusion of that spring semester. If the state land selection continued , it was clear that the hope of retrieving Native land or getting compensation, would perhaps never come . I knew we had to act and to act quickly." The essay was one of the first historical compilations of how Alaska Natives were treated under Western law. The conclusion of the essay is a rallying cry: "Will America treat a small uneducated, and culturally different people with more than equal justice, when these people offer no threat but hope that they will be allowed their living lands to live and hunt upon as freely as may be possible in a rapidly changing and ever-evolving society,"(www.Alaskool.org 1-9. P.7..) Article accessed under title on July 4, 2021. The essay is referenced here to point out how it has become a hallmark document in the history of ANCSA, not just to point out the contributions of one Native leader..

[24] (Gallagher, Hugh Gregrory.20001 edition. **Etok: A Story of Eskimo Power**. Clearwater. Vandemere Press. P.122-123.) Edwardsen like others who lived on the North Slope, knew there were rich oil reserves on the land and they wanted to insure that the North Slope residents benefitted from any development. (Gallagher, P. 176). During the debate by AFN over language in the land claims bill, Edwardsen, Eben Hopson, and Joe .soun maintained that a fair settlement had to account for the vast area of their region compared to other regions, its low population compared to other regions, and the abundant oil resource that the nation was so eager to develop. Don Mitchell has chronicled in detail the efforts of the Arctic Slope Native Association to demonstrate the disparity between their oil rich region, vast in size, and low in population and its vulnerability to lose the most of any region if a settlement didn't account for these factors.(Mitchell, P. 346-491). The Arctic Slope Native Association would reject any proposal that didn't account for these factors. At this point in the negotiations, AFN needed a united front and they needed the Arctic Slope Native Association. AFN

Two Major Events Bring Alaska Native Claims to a Head

Two major events brought Alaska Native Claims to a head. First, in 1966, Secretary of the Interior, Stewart Udall, recognized the impact State land selections were having on Native land so he issued a freeze on State land selection until Native land claims were settled.[25] **This stands out as one of the most, if not the most, strident exertions of the federal government's Trust responsibility for Alaska Natives**. Udall's land freeze pitted the State's desire to develop against the Native desire for settlement of their land claims. There was a growing recognition that the land portion of the settlement was going to be very large.[26]

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members reached a compromise: they agreed that the land distribution would be based on the principle of "lands lost". Each region would be granted acreage based on the size of their region, in comparison to the total acreage of the State and the available acres in the proposed legislation. Land would be distributed according to the region's relative size to other regions (Arnold, P. 236). See also (Mitchell P.484.) Money from mineral development , however, would be shared among t.P, he regions." [Arnold136]. These two provisions, settlement based on land lost and revenue sharing were incorporated in the final settlement (Arnold p. 137). The Arctic Slope Native Association still had objections and voted no on the final language proposed by AFN.(Mitchell. P. 492.see also letter to President Richard M. Nixon, December 18, 1971 from Arctic Slope Native Association, Joseph Upicksoun, President and Charles Edwardsen, Jr. Executive Director, reported in article, "Why the Arctic Slope Inupiat said NO to ANCSA" reported in **Alaska Native News**, September 1984, V. 2.P.16 and reproduced on alaskool.org).

[25] Secretary Udall's "land freeze" in 1966 brought State land selection and development to a halt and facilitated the move to settle land claims (Arnold. `976. P.117-118.)..

[26] When passage of ANCSA was finally announced, Walter Hickel, a past and future governor and past Secretary of the Interior remarked on how shocked he was to learn about the extent of Native claims and how conceivable it was that they might very well lay claim to all of Alaska. He referenced the Federal Field Committee publication, **Alaska Natives and the Land** (Federal Field Committee for Developmental Planning in Alaska..Washington. Government Printing Office. 1968). This was a document prepared to brief Congress as they approached debate on Alaska Native land Claims : "I don't know of any of us have read that (the full report) cover to cover but there is one line I remember, 'It is conceivable that the natives can prove ownership of all of Alaska.'" (**Tundra Times**, December 22, 1971, Vol. IV, #15. Madelyn Shulman, Staff writer.) The Field Report line in question stated: "Should the granting of surface title be the means of assuring the Natives uses of the lands for subsistence, it would require a grant in varying amounts according to geographic location and biotic carrying capacity, totaling at least 60 million acres." (P.540) .

The other major impetus to settle land claims was the discovery in 1968 of oil at Prudhoe Bay on Alaska's North Slope. The discovery was made on North Slope Native land. Development could not proceed until claims were settled as well as the establishment of rights to build a pipeline across disputed Native land from the North Slope to tidewater at Valdez, the ice free port where the oil is transported by ship to market. Native land claims had to be settled if the oil was going to be developed.

In order to resolve their respective interests, Governror Walter Hickel established a Governor's Task Force on land claims with representation from AFN, Native leadership from around the State, members of the State administration and representation from the Department of the Interior. The Task Force was chaired by State Representative Willie Hensley. Their report was delivered in January, 1968. One of the most significant recommendations to come out of the task force was a call for a Native land settlement of 40 million acres.[27] The recommendation of 40 million acres would prove to be close to the figure of 44 million that Congress would sign into law. A corporate business structure and revenue sharing between corporations were also key provisions of the Task Force report.[28]

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[27] One recommendation of the Task Force was for a grant of 40 million acres to the villages (Proposal for Settlement of The Alaska Native Land Claims by Alaska, Governor's Task Force on Native Land Claims, "Porposal for settlement of the Alaska Native Lnd Claims: A Report", submitted by Willie Hensley, Chairman. Governor Walter Hickel, Juneau, January 10-16, 1968.) (Years later Hickel recalled in an interview with Ronald Spatz: "After I was elected governor, I put together a group called the Governor's Special Task Force on Native Land Claims to study this issue. They recommended that 40 million acres of Alaska's 265 million be conveyed to Native Alaskans through for profit corporations while allowing Natives to continue to use the remaining federal lands for subsistence purposes." (ANCSA@30 interview on Litsite Alaska. litsitealaska.org).

[28] Corporate structure is discussed in the Task Force Report in general terms under "Miscellaneous" point 6, P.6 of the Task Force Report. See also Arnold, P.153. Another section of the Task Force Report to Governor Hickel called for the State to make royalty payments as part of the land settlement. A version of this provision became incorporated in Section 9 of ANCSA under Revenue Sharing and pertains to minerals.. Section 9 (b) states: "With respect to minerals…State shall pay into the Alaska Native Fund from the royalties, rentals, and bonuses hereafter received by the State." Arnold explains further: "The act established the Alaska Native Fund in the U.S. Treasury and authorized the appropriation of $462.5 million to be paid into it over an 11-year period. It also provided for the payment of $500 million into the fund from revenues obtained from certain mineral resources from federal and State lands in Alaska. Such payments (chiefly based on oil and gas), by the State and federal governments would continue until the total amount was reached." (Arnold,.P. 151-152).

The Bill and Amendments

The Alaska Native Claims Settlement Act that became law in 1971 is a corporate solution: 44. million acres of land transferred to Alaska Native regional and village corporations in compensation for settlement, and close to a billion dollars in cash to be used to develop business ventures that would generate revenue for Native shareholders.[29] To insure that this was a final settlement that would avoid future litigation over land, and would provide unfettered access to the oil as well as a pipeline corridor; the Act abolished Aboriginal Title to the land.[30] **This helped insure that the State and federal government could be free from further land claims that might impede development.[31]** Section 4B of ANCSA also abolished Aboriginal hunting and fishing rights which means that on Native regional and village lands. Villagers do not have management authority over fish and game resources, even though they own the land. Fish and game are managed by the State and the federal governments.

National Interest Lands

In another provision of ANCSA, sections 17 set aside federal lands as potential conservation units (national parks, preserves, wildlife refuges, and forests). After nine years of study and proposals, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Title VIII of that legislation, recognized rural subsistence users and established a rural

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[29] On the "corporate solution" Charles Wilkinson points out how drastic the corporate solution really was: "Because ANCSA land was held by state-chartered private corporations, not tribal governments, Alaska state regulatory law applied on all of it. This led to one especially ominous consequence, ANCSA extinguished all aboriginal hunting and fishing rights, making subsistence living- the core of cultural and economic life in bush Alaska-subject to state law, the situation that treaty tribes in the lower forty-eight states fought so hard to prevent.". 2005. **Blood Struggle :The Rise of Modern Indian Nations**. New York. Norton & Company. P.237.

[30] Section 4B of ANCSA states: "All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished." Public Law 92-203.

[31] Jenny Bell-Jones notes: "This action removed any cloud on the land title. It did not prevent future litigation over other matters." (Personal communication, July 7, 2021).

subsistence preference on federal land.[32] This provision was in part a recognition of the extinguishment of aboriginal hunting and fishing rights in ANCSA and the need to accommodate rural subsistence users. The State, because of the State constitution, cannot comply with the rural preference in Title VIII of ANILCA.[33] As a consequence, Alaska fish and game are managed by two systems. The State of Alaska is in charge of fish and game management of subsistence on State land, and the Federal government has jurisdiction on federal land.[34] **The federal response to subsistence is anchored, in part, in the Trust responsibility to Alaska Natives who depend on subsistence and whose Aboriginal hunting and fishing rights were extinguished under ANCSA**. The Title VIII provision also recognizes Non-Natives living in rural Alaska and dependent on subsistence to sustain their life in rural Alaska. Disputes over the State's right to manage navigable waters through federal land is now challenging the future of dual management of fisheries and could affect the rural subsistence preference on federal land. For now, subsistence fisheries on rivers that run through federal land remain under federal control [35]

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[32] In Section 801, part 4 of ANILCA it states: "in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs …and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents" 43USC160.

[33] Section 804 of Title VIII of ANILCA states three conditions for providing a rural preference in times of resource shortage. Local residency is one of the criteria and this conflicts directly with the Common Use Provisions of the Alaska State Constitution that prohibits favoring any particular user group. The wording in Article 8, Section 4 of the State Constitution states: "Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses." Sections 3, 15, and 17 are explicit on this point.

[34] The dual system of management creates a contentious situation for subsistence users and managers of the resources. The State, eager to gain management control of all Alaska fish and game tried to comply with the federal requirements for a rural subsistence preference but the efforts were defeated in key legal challenges (Madison v Alaska Department of Fish and Game,1985 and McDowell v State of Alaska, 1989), and in several ballot initiatives and special sessions of the legislature ("Subsistence-Alakka's Contentious History". **Anchorage Daily News**. Sunday May 12, 2002. Cover Story. A-8.) Without an amendment to the constitution, the State is bound to uphold a prohibition against favoring certain categories of users such as rural subsistence residents.

[35] In 1985, Katie John, an Ahtna elder challenged the State's right to regulate her access to the fishing site of Batzulnetas on the upper Copper River. Her claim that the federal government protected her rights to fish at the site under Title VIII of ANlLCA was finally upheld in federal court after years of legal challenge (Schneider, William. " When

Key Amendments to ANCSA

Over the years since passage of ANCSA, there have been many amendments. One of the most important concerns who is eligible for shares in the settlement. The original Act prohibited the sale or transfer of shares in stock for twenty years after passage. This provision was amended to extend the prohibition beyond the twenty years unless a majority of the shareholders vote to allow such sales. This was a major change because it helps to insure that the Native corporations can remain in Native ownership. From a purely economic perspective it raises challenges for infusing new shareholder leadership from the general population.[36]

The original Act stipulated only those born before passage of the Act on December 18, 1971 could become shareholders of the Native corporations.[37] The only way for those born after that date to acquire stock was by inheritance or gifts of shares. This posed an obvious problem for those born after passage. The Act was amended in 1988 and 1991 to accommodate Natives born after December 18, 1971 if a majority of corporation shareholders agree to make the change.[38] Not all corporations have agreed to make this change. posing economic and ethical dilemmas about who can and should benefit from the corporation's profits and how people identify

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a Small Typo has big Implications". In **Alaska History**. Vo. 36. No.1. Spring 2001. 1-30. P14-16..

[36] Stephen Colt points out the economic drawbacks: "The prohibition removed the threat of takeover as a powerful discipline mechanism and eliminated the actual takeover as a corrective mechanism. Finance theory suggests that with no takeover threat and no information feedback from a market in shares, shareholders would be forced to monitor their corporation's performance in costlier and less effective ways." (Colt, Stephen. 2005. "Alaska Natives and the 'New Harpoon': Economic Performance of the ANCSA Regional Corporations". **Journal Land Resources and Environmental Law.** Vol. 25. No. 2. (155-182) P.158.

[37] Maude Blair explains that ANCSA was a legal document signifying settlement of claims with Alaska Native people living on December 18, 1971 and not with future generations,(Maude Blair. " Issuing New Stock in ANCSA Corporations". In **Alaska Law Review**. Vol. 33.2. 2016. (273-286) P.274.

[38] The pertinent legislation is Public Law 100-241- February 3, 1988. Reference is to "Alaska Native Claims Settlement Act Amendments of 1987. Specific reference is to Sec.4(B)(i)(I). See also, London, J.Tate. 1989. " 'The 1991 amendments' to the Alaska Native Claims Settlement Act: Protection for Native Lands?". **Stanford Environmental Law Journal**. 8. 200-228. P.219-220.

with the regional corporation.[39] Both provisions (whether to open shares to the general public and who in the Native community born after 1971 should qualify for shares) pose difficult questions for shareholders about who can qualify to participate in ANCSA.[40] **The result is that cultural, economic, and identity decisions must be resolved in the cauldron of a challenging Western economic and legal framework,**

Native Allotments

ANCSA ended the 1906 Native Allotment Act that had provided up to 160 acres of land to qualified Native applicants. The final deadline for filing allotment claims made it impossible for Alaska Natives serving in the military in Vietnam to file for allotments before the deadline. In 1998 an amendment was passed that created an exception for Alaska Native Vietnam veterans who were unable to apply in time to meet the original deadline.[41] The actual conveyance of land to veterans has been stalled by the lack of

[39] Arctic Slope , Ahtna, NANA, Doyon, Sealaska, and Calista voted to create and issue shares of stock to those born after December 18, 1971. (Blair.278). In the case of Sealaska, the shareholders voted in 2007 to extend shares to those born after December 18, 1971 but have struggled with the question of whether to extend shares to those who are less than ¼ blood quantum Alaska Native. One quarter blood quantum is the federal government's standard definition for determing Native status and is what is in the original ANCSA legislation (Section 2 under definitions). As time passes, the number of Natives with ¼ or more Native blood quantum is decreasing and the existing shareholders must decide whether to extend shares to those Natives. (Rosita Worl. "Blood Quantum Inclusion or Exclusion, Survival or Extinction", posted to the Sharing our Knowledge Clan Conference, Sealaska Heritage Institute, September 27, 2019. Blair summarizes the dilemma sharelholders face: "Overall, though , the decision to issue additional stock is one that must carefully balance the need of the community , the resources of the corporation, and the shared vision for the future." (Blair,P. 286).

[40] Sullivan, Meghan. "Alaska Natives' Complicated Identities." July 15, 2021**. Indian Country Today-Digital Indigenous News.** (indiancountrytoday.com) **.**

[41] This was titled, Alaska Native Veterans Land Allotment Equity Act, Public Law 105-276 . Amendments were proposed in 2002,107th Congress, 2d session, House of Representatives, Report 107-744, "Alaska Native Veterans Land Allotment Act" 1 Section 432, Sec.41(a).. The current program is termed, "Alaska Native Vietnam era Veterans Land Allotment Program" and is authorized under the John D. Dingell, Jr. Conservation Management, and Recreation Act of 2019. Land selection extends through December 29, 2025.

unappropriated lands for selection and the fact that in some cases, the only available land may be miles from where the applicant lives.[42]

Revenue Sharing

Recognizing the different potential of each region for resource development, ANCSA calls for revenue sharing under Section 7(i) of the Act. This states that revenue accrued by Native corporations from mineral and timber on originally selected ANCSA land must be shared between all corporations on a 70 to 30 split.[43] Seventy percent of money earned by a Native corporation from mineral or timber development is redistributed to all the corporations and thirty is maintained by the revenue generating corporation.[44] In the years since passage of the Act, Section 7(i) has been challenging to administer because the original act did not clearly define "revenue" and questions were asked about how revenue from leasing would be handled, whether gross versus net revenue should be calculated, and whether to classify gravel as subject to revenue sharing.[45] One measure of success of this provision in ANCSA is the report of $2,5 billion in revenue sharing in the period between 1982 and 2017.[46] In the early years after passage, some of the regional corporations suffered serious losses. To address this problem and to insure a chance for recovery, Senator Stevens convinced Congress to introduce a provision in the Internal Revenue Code to assist the ANCSA corporations.[47]

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[42] For instance in Southeast the Tongass National Forest is not available for allotments and on the North Slope, the National Petroleum Reserve-Alaska and the Arctic National Wildlife Refuge are similarly not available to allotment applicants. (Van Ness Feldman, LLP. **National Law Review**, September 12, 2021. Vol.XI, no, 255.P. 1

[43] Jenny Bell-Jones makes the important point that the revenue sharing provision does not apply to their natural resource development in other locations than originally selected lands (personal communication, July 7, 2021).

[44] Commenting on this arrangement and referencing Jamie Linxweller, Aaron Schutt describes the arrangement: "Without the sharing of the revenues from timber and mineral development with Natives statewide, there would have been a gross disparity between the 'have not' regional corporations and the 'haves'." Schutt, Aaron. 2016. "ANCSA Section 7(i): $40 Million Per Word and Counting." 2016. **Alaska Law Review**. Vol. 33.2. (229-271) P.234.

[45] Ibid. P. 235 and 242-245.

[46] Schutt, Ethan G, and Aaron M. Schutt. "The Grand Compromise: the ANCSA Section 7(i) Settlement Agreement" 2017. **Alaska Law Review**. Vol. 34:2. (201-236). P.202.

[47] Don Mitchell reports how this worked in the case of Doyon Ltd.: "Doyon intentionally created the 238 million paper loss in order to take advantage of a provision Ted Stevens had quietly arranged for Congress to insert into the Internal Revenue Code that allowed

Regional Corporations

Despite these challenges, in the 50 years since passage of ANCSA, the Alaska Native regional corporations have become economic drivers for the stockholders, the State, and the nation. Alaska Native corporations own businesses in many sectors of the economy including construction, government contracting, and service industries. In fiscal year 2017, the Resource Development Council of Alaska reported the combined revenue for all 12 Alaska Native regional corporations was $9.1 billion, with an employment record of more than 15,000 people in Alaska during the previous year.[48] They reported a combined payroll of $950 million. The Alaska Business Report for 2020 listed 21 Native corporations in their Top 49er listing.[49] This economic record is impressive, but does not equate with the prosperity of most Alaska Natives and over the years, the "corporate solution" has been critized by some because it erodes the relationship of Alaska Natives to the land by transforming land from communal ownership

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ANCSA corporations to sell their operating losses to other corporations (which then were authorized to use the losses to lower their own tax liabilities). (Mitchell, P. 507-508).

[48] Writing in 2005, James Mills reported, "Currently, most Native corporations offer hiring preference to Alaska Natives in some form either to Native Americans, Alaska Natives, shareholders. or those closely related to shareholders of ANCSA stock. These corporations provide jobs for 3,100 Alaska Natives within the state and hiring of Alaska Natives is considered to be part of 'the Native corporations'commitment to welcoming shareholders and Native participation in company operations and growth,'" Mills, James P. "The Use of Hiring Preference by Alaska Native Corporations after *Malabad v North Slope Borough*". **Seattle University Law Review**. 2005.Vol.28.:239, (403-434) P.404-405. The thrust of Mills' article concerns the effort of the federal government to provide a legal basis for Native corporations to offer Native preference hiring and the State objection to any racially based criteria for preferential hiring. At the time of his writing (2005), it seemed to that author that a priority hire based on status as a shareholder might avoid State challenge. Of course, not all Alaska Natives are shareholders of any Native corporation; others are shareholders in corporations other than the corporations located where they were born or grew up. In fact, as Meghan Sullivan points out, Alaska Native identity is complicated. Enrollment in tribes and corporations may be forms of identity but some Natives are neither and maintain other forms of cultural identity that shape their reality as Alaska Natives. Sullivan, Meghan. "Alaska Natives' Complicated Identities." July 15, 2021**. Indian Country Today-Digital Indigenous News.** (indiancountrytoday.com) In The mix of possibilities complicates any attempt to use one or more criteria to determine eligibility for benefits such as preferential hiring.

[49] Alaska Business Report, akbizmag.com

into property controlled by private commercial companies that operate apart from tribal control.[50]

Conclusion: A Work in Progress

In areas such as providing shares of stock to those born after passage of the Act, opening up shares for sale, determining profits for distribution to other corporations under 7(i), and establishing preferential hiring to encourage Native employment opportunities, ANCSA has raised serious cultural and economic considerations.

At a very fundamental level, ANCSA represented an attempt by the U.S. Congress to address Native claims using the tools of the Western legal system. The result was a corporate, not a tribal solution. It highlighted the use of Western law to define how Native claims could be formulated, codified, and administered under U.S., not tribal law. Native leaders worked within this framework to achieve the best possible results for their tribal members. Nevertheless, ANCSA is an economic and land settlement designed to provide financial footing and a land base for Native corporations. It is not grounded in the sovereignty of Native land ownership under tribal control.The 44 million acres represents a land base no different than private property and subject to State and federal regulation, particularly contentious in the area of fish and game management[51]

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[50] With reference to timber sales in Southeast Alaska and prospects for opening up the Arctic National Wildlife Refuge to oil development, Roy and Shari Huhndorf remark: "Corporate ownership diminishes tribal control over ancestral territories, while pressures for profitable development can undermine community uses of land for cultural and subsistence purposes." Huhndorf, Roy and Shari Huhndorf. "Alaska Native Politics Since the Alaska Native Claims Settleement Act." **The South Atlantic Quarterly**. Spring, 2011. 110:2. (385-401) P.395. Eve Tuck writes: " The settlement process required Alaska Native leaders to negotiate in terms of land as property and people as land owners. These represent significant departures from the ways in which Alaska Native peoples have described their relationships to land and place." Tuck, Eve. "ANCSA as X Mark: Surface and Subsurface Claims of the Alaska Native Claims Settlement Act." In **Alaska Native Studies in the 21st Century, Proceedings from the Alaska Native Studies Conference 2013**. Beth Ginondidoy Leonard, JeaneTa'aw xiwaa Breinig, Lenora Ac'aralek Carpluk, Sharon Chillux Lind, Maria Shaa Tla'a Williams (editors). (240-272) P.262.

[51]. The 1993/1994 Tribal Recognition Act is an example of an attempt years after ANCSA to clarify tribal authority and opportunities for Native members in management of village affairs.. Tribal recognition is important because it provides a legal basis for Native groups to assert a degree of sovereignty in their local affairs.(Press release.

Part of what makes ANCSA continue to be important to us today is the persistent question of self-determination for Alaska Natives. How well has ANCSA addressed the dual goals of Native self-determination and the government's continuing responsibilities to uphold the Federal Trust for Alaska Natives? When ANCSA was enacted, it was praised by some as representative of President Nixon's Indian policy. Nixon supported a change in perspective towards Native American relations and policies from one of "termination" to one of "self-determination", a move away from the old model of assimilation.[52] Answering the question of how well ANCSA has moved the needle from termination to self-determination is a more nuanced question but not a new one. Robert Arnold posed it in his 1976 book (P.279-280), and it is testimony to how difficult it is to answer that we are still asking. ANCSA provided land and wealth but removed Aboriginal Title to the land and Aboriginal hunting and fishing rights. ANCSA created a western business structure for success but this remains foreign still to many rural villagers who live a subsistence lifestyle. Many amendments to ANCSA have helped shape the Act to meet needs overlooked in the original legislation, while also

"Interior Publishes revised List of Alaska Native Tribes Eligible for services fom Bureau of Indian Affairs" October 15, 1993). It is reasonable to assume this position is reinforced by Secretary of the Interior Order No. 3335: "Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries." Sally Jewell, Secretary of the Interior. August 20, 2014. Despite these efforts, on issues of authority over fish and game, the Native community has no legal control.

[52] Barbara (Bobbie) Kilberg worked in President Nixon's White House and on at least three public occasions spoke about his commitment to ANCSA, his commitment to changing Indian policy, and his commitment to redefining the government's relations with Natives from "assimilation to self-determination." She told presidential historian, Richard Norton Smith: "…it basically redefined Native American policy from one of assimilation to one of self-determination. And part of that also included two major land mass returns. One was Lu[Blue] Lake, which belonged actually to Taos people, which had been taken inappropriately by the Bureau of Land Management …And the Alaska Native land claims which were both very important and a great economic importance, including the ability to drill oil." (Interview with Richard Norton Smith at the Gerald Ford Presidential Foundation, May 5, 2010), President Nixon addressed Congress on several occasion and presented his Indian policy. Particularly notable was the July 8, 1970 address.(Nixon, Richard. "Special Message to the Congress on Indian Affairs." July 8, 1970. President's speech file. 1969-1974; President's personal Files (White House Special Files: Staff Member and Office Files) Boxes 41-95.

raising new issues of who qualifies and in what ways for corporate participation.

It is popular today to hear and see written statements such as: "We acknowledge that we are living in the homeland of the (name inserted of particular Native cultural group)". For some who speak, read and hear these words it is obviously a formality and given little thought, but one hopes that the 50th. anniversary of ANCSA provides new opportunities for a longer pause to consider the road Native leaders have travelled to gain recognition for their land, for their rights, and the challenges they face to preserve and express a degree of sovereignty over their lives.

How is ANCSA different from other Native American Settlements?
In 1871, after, after the United States purchased Alaska, Congress ended treaty making with Native Americans. Unlike many Native groups in the rest of the country, there are no treaties signed with Alaska Natives. One argument is that this worked in their favor because they weren't bound by previous agreements that extinguished their aboriginal title, In 1941, the courts ruled in the United States v. Santa Fe Railroad case that aboriginal title had legal standing in the courts. This opened the door for arguing Native land claims in Alaska, a possibility that bore fruit in the Tlingit-Haida settlement in 1959. This further created opportunity for all Alaska Natives to legally argue their case against State selections of their land in the years after Statehood. Haycox argues persuasively that if Congress hadn't put a stop to treaty making in 1871 and if there had been treaties in Alaska, there would be no ANCSA in 1971 and Alaska Natives would be left with diminished land holdings and much fewer economic opportunities. This is based on the assumption that there wouldn't have been good treaties negotiated in Alaska that would last through time. The Santa Fe Railroad decision opened up vast new possibilities for Alaska Natives, first with the Tlingit-Haida land claims and then with ANCSA.If there had been previously existing treaties they most likely would have been far less generous than ANCSA,[53] In terms of acreage and payment, the ANCSA settlement of land and money dwarfs any of the treaty settlements that Native Americans received in the years before 1871 and the prosperity of Native corporations today is indisputable.[54]

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[53] This is the argument presented in Haycox. 2019 (P.171-179).
[54] Jenny Bell-Jones cautions that we need to keep in mind that if ANCSA had been implemented as originally intended the "generosity" would have been short lived when

Others have pointed out that provisions in some of the old treaties made with Native groups in the rest of the country, years before 1871, have favored Native management and Native access to hunting and fishing rights today. In some cases these special rights established in the treaties extend even beyond reservation boundaries and have been upheld in modern judicial decisions.[55] Perhaps Alaska Natives could have negotiated for reservations that might have survived and provide greater sovereignty to Alaska Natives today, particularly on issues of fish and game.[56] That is a point of debate but what we do know is that the overall record of treaty making and establishment of reservations reflects an overall dismal picture of Native loss of control over their landholdings.[57]

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original restricted shares were recalled and replaced with shares that could be publicly traded at which point lands and money would quickly have moved out of Native control. (Personal Communication, August 16, 2021.

[55] The most dramatic example of this concerns the Boldt decision in Washington state where extensive Native fishing rights established under Treaties in 1854 and 1855 were upheld. Federal District Court Judge George Boldt in his 1974 decision stated, "…treaty tribes have been systematically denied their rights to fish off their reservations." His ruling was upheld in the Supreme Court in 1979. (Brown, Jovana. 1994. "Treaty Rights:Twenty years after the Boldt Decision." In **Wicazo Sa Review.** Vol. 10. No.2. (1-16).P.2 The rulings in the state of Washington reflect the language in the Department of Indian Affairs Manual. Section b) Off-Reservation Hunting, Fishing, Gathering by Indians. It states: "Non-exclusive treaty hunting, fishing, trapping, and gathering rights outside the boundaries of Indian reservations have been reaffirmed for some Tribes by federal courts, in these cases, a state may not deny those rights, but may enforce reasonable conservation regulations applicable to all citizens of the state." Indian Affairs Manual, Part 56 chapter 1. Fish, Wildlife, and Recreation Authority and Responsibilities. #16-64, Issued 2/13/17. P.1 &2.

[56] Will Mayo, in his review of the transcript from the 1915 Tanana Chiefs meeting with Judge Wickersham reflected on the chiefs' rejection of reservations. His perspective, is shaped by personal knowledge of tribes today who have benefitted from treaties and he laments the chiefs' reluctance to pursue reservations. From this perspective, he said: "I think that the reading of the transcript is a little bittersweet for me. I can't ever read that transcript without interjecting myself in the conversation and saying 'Guys , listen up, this is really amazing, an amazing opportunity.' But of course, the chiefs could not understand the experience of tribes in the rest of the country.(Mayo, Will. "Alaska Native Leader Will Mayo Shares His Perspective on the 1915 Tanana Chiefs Meeting" in **The Tanana Chiefs: Native Rights and Western Law**.William Schneider, editor. Fairbanks. University of Alaska Press.2018.(49-56), P.51.

[57] The history of reservations is marked by the government's policies and private actions to encourage Native Americans to take up allotments and abandon reservations. Ironically, Judge James Wickersham who convened the 1915 Tanana Chiefs meeting in

How does ANCSA compare with other Aboriginal People's Land Claims: Two Examples

Yukon First Nations

ANCSA was precedent setting and had an influence on Aboriginal people in other parts of the world. Their issues are in some ways similar to Alaska Natives in that they involve land rights. But their paths to settlement of claims and their achievements look somewhat different to us today. For instance, in Canada, the Yukon First Nations reference back to February 14, 1973 when they presented Prime Minister Pierre Trudeau a statement of their grievances and a vision for change.[58] In 1988, in the Yukon, an Umbrella Final Agreement with the Council of Yukon First Nations, the Council of Yukon First Nations, the Government of Yukon, and the Government of Canada was finally reached. This Agreement sets out parameters for individual negotiations by each of the First Nations in the Yukon. Under the Final Agreements (FNFA) First Nations receive land and money as well as management authority on their land holdings. In the section on Rights to Harvest (16.4.2 of FNFA) the Umbrella Agreement provides special rights to First Nations to hunt and fish within their territories, within other first Nation territories where consent is granted, and on Crown land.[59] Like the Alaska Native land claims, the Canadian claims

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Fairbanks pointed to the success of the Payallup Indians. Yet, he was himself a participant in the dissolution of their reservation lands. Referencing Wickersham's participation at the Tanana Chiefs Meeting, Pierre Castile notes: "Of course he failed to mention that the reservation had been abolished in part through his efforts and that its land base was almost completely gone- some of it into his hands." (Castile, George Pierre. 1990. "The Indian Connection: Judge James Wickersham and the Indian Shakers". **Pacific Northwest Quarterly.** Vol. 81. Number 4. (122-129) P.129.

[58] The historic document is "Together Today for Our Children Tomorrow: A Statement of Grievances and An Approach to settlement by the Yukon Indian People".(Copyright 1977. The Council for Yukon Indians. Whitehorse). In his presentation at the Alaska Historical Society Conference, session on The History of ANCSA. October 16, 2020. Grand Chief Peter Johnson of the Yukon First Nations referenced the importance of this document and the presentation to the Prime Minister.

[59] 16.4.2 states under Right to harvest, "Yukon Indian Peoples shall have the right to harvest for Subsistence within their Territorial Territory and with the consent of another Yukon First nation in that Yukon First nations Traditional Territory, all species of Fish and Wildlife for themselves and their families at all seasons of the year and in any numbers on Settlement Land and on Crown Land to which they have rights of access

are based on a struggle to have all aboriginal rights recognized but their settlement is based on a negotiated process for settling each First Nation's claims separately. This differs from the legislated corporate solution that addressed all Alaska Natives in one act of the U.S. Congress. The retention of Aboriginal Title to the land and the protection of hunting rights in the Canadian Yukon First Nations stands in stark contrast to ANCSA's extinguishment of Title and provisions for priority hunting and fishing rights.

Māori Land Claims

In New Zealand aboriginal land claims trace back to the Treaty of Waitangi in 1840, initiated by the Crown (under the authority of the Queen of England) and signed by chiefs from both the North and the South Islands. The Crown explanation for the Treaty was to achieve authority over settlers and their demands for land.[60] The actual understanding of the conditions of the Treaty differed in translation between the British and the Māori versions.. The points of difference were over sovereignty, autonomy, "ownership" and Māori concepts of sharing rights to live and sustain community on the land. Māori thought they were welcoming settlers in mutual trust and that the land "belonged to the people who formed the local community", reflecting the difference between a "social contract" and a "property conveyance".[61] Article 2 of the treaty proclaimed Māori rights and "Crown Pre-emption". Māori would have title to their lands under Māori customary law but this title could be extinguished only by the Crown and not by individual sales.[62] This set up a contentious situation where the government had a monopoly as it began to buy up Māori land and re-sell it to settlers. After 25 years of unbridled purchasing, the Crown finally set up a system whereby customary title would be investigated before land sales. This was reinforced in the Native Land Act of 1862 and 1865 that

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pursuant to 6.2.0, subject only to limitations prescribed pursuant to settlement Agreements."

[60] William Hobson explained to the Māori that "..the British people were free to go wherever they chose and the Queen was always ready to protect them. She was also ready to restrain them, but her efforts were futile because outside British territory she had no authority to do so." Orange, Claudia. 2013 (February). **The Story of A Treaty**. Archives New Zealand. The Department of Internal Affairs. Wellington

[61] Bourassa, Steven C. and Ann Louise Strong, 2002. "Restitution of Land to New Zealand Māori: The Role of Social Structure" **Pacific Affairs**. Vol. 75.No.2. (Summer). (227-266) P.250 and 254.

[62] He Pou Hererga Tangata He Pou Herenga Whenua He Pu Whanre Korero, 150 Years of the Māori Land Court. 2013 Ministry of Justice. Crown Copyright. P12.

established the Native Land Court. The intent was to align Native land ownership with European principles of ownership.[63] The purpose was to convert the customary titles that could be held by tribes, sub tribes, or extended families into limited ownership by no more than ten people. Māori Deputy Chief Judge, Caren Fox, points out in terms of intended results, this Act and these policies look very much like the history of assimilation policies toward Native Americans.[64] By alienating ownership from tribes, and creating single lot sales, Māori would be forced to live like the settlers and would be easy prey for speculators seeking to buy their land. Adequate means of resolution to Māori land claims did not come until 1975 when the Treaty of Waitangi Act (amended in 1985) established the Waitangi Tribunal. This body is charged with hearing Māori land claims, reporting findings, and making recommendations to the New Zealand government for settlement.[65] Because of intensive population settlement on the islands, it is not often possible to compensate Māori with the same land to which they hold claim. Unlike the American and Canadian land claims, this is a judicial process featuring investigation of each claim based on the particular actions that had severed Māori rights to the land going back in some cases to the 1840 Treaty of Waitangi.

As different as the three land claims are, there is a common thread- the struggle by Aboriginal people to assert rights to the land and a degree of sovereignty in systems of governance different from their own traditions. And in each settlement, we can recognize formative and guiding documents that play unique roles in shaping the land claims narratives. In the case of ANCSA, Willie Hensley's 1966 college essay was a personal awakening and is remembered as a rallying cry for land claims, a document that was widely distributed at the time and has been preserved on websites and in archival collections, along with the testimony of many Native leaders in Congressional hearings leading to settlement. Similarly, "Together Today for our Children Tomorrow" represents the collective grievances of the

[63] Bourasso et al. P.234 state: "The Native Lands Act 1862 and the Nativ Lands Act 1865 were intended to 'encourage the extinction of native proprietary customs and to provide for the conversion of such modes of ownership into titles derived from the Crown.'"

[64] Māori Deputy Chief Judge Caren Fox, "Reconciliation: Use of Oral History in the Waitangi Tribunal". Plenary Address, National Oral History Conference. Oklahoma City.

[65] In a presentation for the National Oral History Conference in 2013 Judge Fox described how the Tribunal relies on oral history, genealogies, tribal settlement stories, songs, dances, and eyewitness accounts to determine findings.

Yukon First Nations, is recalled as their primary point of articulation with the National government of Canada in 1973, and remains a touchstone to the struggles that led to settlements. Yukon First Nations leaders proudly recall their leaders' trip to Ottawa to present their grievances and claims to Prime Minister Trudeau.The 1840 Treaty of Waitangi in New Zealand, while initiated by the Crown, is a marker of the struggles and the cultural misunderstandings between the Māori and the government.[66] The Treaty stands today as a beginning point of reference for land claims.

[66] The Treaty grounds are preserved as an historic site where visitors can learn about the Treaty and visit a museum dedicated to Māori history and culture.