

Village Journey: The Report of the Alaska Native Review Commission

*Thomas R. Berger
October 1985*

*Excerpts from **Village Journey: The Report of the Alaska Native Review Commission** by Thomas R. Berger, 1985, pp. 155-172, used with permission of [Inuit Circumpolar Conference-Alaska](#), for educational purposes only.*

I have now completed my journey to the villages of Alaska, and I have written my report. It boils down to three subjects: land, self-government, and subsistence.

Land

My first and most important recommendation is my recommendation for retribalization of Native corporation land at the village level. I put this recommendation ahead of all others.

The 1971 Alaska Native Claims Settlement Act and 1980 Alaska National Interest Lands Conservation Act constitute a great division of Alaska lands among the federal government, the state government and the Native people. Alaska Natives received 44 million acres of land, approximately 10 percent of all the land in the state. Deep structural flaws in ANCSA make it likely that the Native people will lose their land.

Native people in the Bush want to keep the 44 million acres received under ANCSA in Native ownership. They sense, quite rightly, that as long as it remains a corporation asset it will be vulnerable. The fact is that the majority of the village corporations are in financial difficulty. Many will be facing bankruptcy before 1991. So, long before 1991, Native lands may be lost to creditors.

After 1991, shares in the Native corporations can be sold to non-Natives. After 1991, there will be corporation takeovers, and whoever takes over a Native corporation will control the assets of the corporation, including the land.

Later on in the 1990s, ANCSA land, even where it is underdeveloped, will become taxable by the State. This could lead to Native land being forfeited to the State.

The great urgency lies in ensuring the village people retain control of their land. So I have urged that the village corporations should transfer their land to the village tribal governments. This will keep the land in Native ownership; it will also solve the problem of the New Natives, or "after-borns," who would, as tribal members, have the same rights to access to and use of tribal lands as anybody else. To do this without having to cash out dissenting shareholders, Congress would have to pass enabling legislation.

I am making a distinction between village corporations and regional corporations. The village corporations were under-capitalized, the regionals received millions. I have suggested, nevertheless, that any legislation enacted for the benefit of the village corporations should also be available to the regional corporations. Their situation is not perilous but some of them might wish to take advantage of such measures.

Debts owing by village corporations to third parties would be paid out of a fund to be established by Congress, and the treasury would be repaid out of revenues accruing under Section 7 (j) of ANCSA.

There is no reason why village corporations that are engaged in successful business activity should not continue in business. Where land in tribal ownership is to be developed, it can be leased to the Native corporations.

Once the land is in tribal ownership, the next step is to assert tribal jurisdiction over it. I am talking about ANCSA land that is now held by village corporations. It is private land. Its owners have every right to determine how it is used. Non-Natives do not have any right to enter ANCSA land. A transfer of land to tribal jurisdiction would not diminish their right of access to such land, because they have no right on it now.

My objective is to ensure that Native people do not lose their land. The only way to do that, the only way to ensure that Native land remains in Native ownership, is to retribalize the land. I have been driven to

this conclusion. I do not see any alternative. As long as the land is a corporate asset, it will be vulnerable.

Self-Government

My second main recommendation is that tribal governments assume a greater role in local government. I think that tribal governments should be recognized as appropriate vehicles for delivery of municipal services to Alaska. The state already makes grants to 55 tribal councils in unincorporated villages in Alaska. The state can delegate some of its functions to tribes. Such arrangements already exist in Florida, Idaho, Maine, Montana, New York, South Dakota, and Wisconsin. This would bring the practice in Alaska in line with the "Lower 48." In fact, the State of Alaska enacted legislation in June this year to enable the tribal government of Metlakatla to provide municipal services to all residents of Metlakatla, both Native and non-Native.

This entails state recognition of Native sovereignty, but this is a well-recognized expression in United States law, denoting Native self-government. Tribal councils would have enhanced authority, but subject to the precepts of United States law. I envisage a much greater degree of cooperation between federal, state, and tribal governments.

I have recommended that, in the villages, in-holders should be protected. Conveyances under Section 14 (c) (1) and (2) would be required to be made by tribal councils, but the tribal councils would retain political jurisdiction over such lands.

It is a mistake to think that tribal ownership and tribal government are anachronisms. The Congress of the United States is 200 years old, but no one says it is not a contemporary institution. Tribal institutions have been around for a long time, too. That doesn't mean that they have no relevance to modern times.

Native sovereignty, the idea of Native self-government within the nation-state, is an American idea, developed by Chief justice John Marshall in the 19th century and affirmed by the Warren Court and the Burger Court in this century. It is as American as apple pie.

Subsistence

My third set of recommendations relates to subsistence. Wherever I went in the villages, people talked about subsistence, so I have made recommendations about subsistence. Native subsistence rights were extinguished by ANCSA; it is not surprising that villagers are concerned about what steps can be taken to restore Native subsistence.

Subsistence for Native people is a matter of survival for the villages in Alaska. In some villages, subsistence will be the main business of tribal governments, and will entail new arrangements with the state and federal fish and wildlife authorities, but these new arrangements will take time to work out.

I have recommended that Congress intervene to protect Native subsistence in the State. As long as Native subsistence is subject to state law, it will not be secure. So I have recommended tribal jurisdiction over Native subsistence on Native lands, guaranteed Native access to fish and wildlife resources on public lands used by Native people, and shared jurisdiction with state and federal authorities over those lands. I'm not talking about all public lands, just the land that Native people use.

This does not mean that non-Natives from Anchorage and Fairbanks can't go out and take a moose or go fishing. What it does mean is that I believe Congress should entrench Native subsistence rights, so they cannot be placed in jeopardy by any future state action. I know the present state administration wishes to secure Native subsistence, but within the context of a subsistence law that tries to do so on the basis of an urban/rural categorization, it has not been easy, indeed, it has so far not been possible. So I have recommended congressional action.

There is nothing unusual in arrangements for Native management of fish and wildlife resources. They exist already, for instance in Washington and Michigan, and in many other states, as well as in the arctic and sub-arctic regions of Canada. In Alaska, too, they already exist under the Marine Mammal Protection Act.

What Can Be Done Now

I have said that the first thing is to get Native land into tribal ownership. Then you can assert tribal jurisdiction over it. Congress will have to act, but in the meantime, there is nothing to prevent you from taking steps to transfer the land where the village shareholders are unanimous; nothing to prevent you from working out, in cooperation with village corporations, land use plans for the lands that are to be transferred; nothing to prevent you from inviting state and federal fish and wildlife authorities to sit down with you and to start working out a joint subsistence management plan. You have to start somewhere; you have to nail the first board to something.

I think that, unless the situation in the villages is addressed, no true solution will be found. The land must continue in Native ownership, there must be increased Native access to fish and wildlife resources, and a measure of Native self-government at the local level, these were the themes that were struck by Alaska Natives. What use they make of it is for them to say, the choices are for them to make. I will be available to appear at congressional hearings and to talk about my journey to the villages in other forums.

Tribal Institutions and Native Organizations

Let me offer you some final thoughts: There is nothing in *Village Journey* that the United Tribes of Alaska (UTA) cannot support. There is nothing in it that the Alaska Federation of Natives (AFN) cannot support.

Is the AFN opposed to tribal ownership of village land? I don't think so. Is the AFN opposed to tribal jurisdiction over the land? I doubt it. Is the UTA opposed to ANCSA corporations continuing in business? If they're making money and employing Native people, who would want them to go out of business? I can't imagine that's what you want. If the AFN wants Congress to pass laws to help Native corporations keep shares in Native hands, surely you can support such a measure?

It is not a case of either/or, either tribes or corporations. I believe there's a place for tribal institutions, and a place for Native corporations. There is no need for conflict here.

Native statesmanship is called for. I believe it will be forthcoming.

*Judge Thomas R. Berger originally delivered this speech to the United Tribes of Alaska in Anchorage. It summarizes the major recommendations that Judge Berger made in his book. **Village Journey**, published in October, 1985 (New York, Hill & Wang), is the report of the Alaska Native Review Commission's study of the effects the Alaska Native Land Claims Settlement Act (ANCSA) had on the lives of the Eskimo, Indian, and Aleut people of Alaska.*

Reprinted courtesy of the College of Human and Rural Development Newsletter.

ANCSA

Annotated Bibliography

Paul Ongtooguk

Arnold, Robert D. *Alaska Native Land Claims*. Revised Edition. Anchorage, Alaska: The Alaska Native foundation, 1978. 367 pages, map of Regional Corporation boundaries, indexed, Appendix includes a complete text of ANCSA. High reading level, dry, an excellent source concerning the historical claims Alaska Natives had to the land, and the history of the passage of the bill. Somewhat dated, an Alaska Native Foundation-sponsored text that cast ANCSA in a very favorable light. It is the standard text to begin learning about the Act.

Berger, Thomas R. *Village Journey*. New York, New York: Hill and Wang, 1985. 202 pages, Appendix and chapter notes included. After two years of travel to over 60 villages, this book is a summary of 95 volumes of testimony, which the author received. He concludes that the corporations are an inappropriate method of controlling the 44 million acres of land retained by Natives under ANCSA. He recommends that the majority of land be transferred to appropriate tribal governments. This text is required reading for anyone interested in ANCSA.

Berry, Mary Clay. *The Alaska Pipeline, The Politics of Oil and Native Land Claims*. Bloomington, Indiana: Indiana University Press, 1975. 282 pages, an excellent source of the interaction between the oil companies, leaders of Alaska Federation of Natives and the government, and how each influenced the nature of the Act.

Bigjim, Frederick Seagoyuk. *Letter to Howard: An Interpretation of the Alaska Native Land Claims*. Anchorage, Alaska: Alaska Pacific University Press, 1974. 15 pages. One of the earliest criticisms of the Act by an Alaska Native. Dated, but many of the questions raised are still relevant.

Case, David S. *Alaska Natives and American Laws*. Fairbanks, Alaska: University of Alaska Press, 1984. 586 pages, indexed, bibliography and footnotes. A lawyer's treatise on the legal history of Alaska Natives. Includes a considerable portion of ANCSA. Very dry, but important reading. A college-level text and then some.

Chasan, Daniel Jack. *Klondike 70: The Alaska Oil Boom*. New York, New York: Praeger, 1971. 184 pages. A well-written picture of Alaska's social and political climate just previous to the Act. Includes a fascinating accounting of the nondiscovery of Prudhoe Bay's oil. Also includes thoughtful questions on the federal government's terms of settlement. Out of print.

Cornwall, Peter G. and Gerald McBeath. *Alaska's Rural Development*. Boulder, Colorado: Westview Press, 1982. 212 pages, indexed. A series of papers presented at a conference held in 1978. Contains several excellent articles concerning the economic and social impact of ANCSA in rural Alaska.

Damas, David and William Sturtevant, editors. *Handbook of North American Indians*. Vol. 5. Washington, D.C.: Smithsonian Institution, 1984. 728 pages, indexed. A series of articles well-illustrated with photographs and maps. A extremely good source of the history, both ancient and current, of the various Arctic peoples. This is one of the best resources to date. Highly recommended.

Gretches, David H., Daniel M. Rosenfelt and Charles F. Wilkinson. *Federal Indian Law*. St. Paul, Minnesota: West Publishing Co., 1979. 660 pages, indexed, high reading level. A legal analysis of

ANCSA indicates that the Act may well be a revival of termination policy. The history of Federal-Indian policy is valuable in setting a legal context for ANCSA.

Alaska Native News. Worl, Rosita, publisher and editor. Anchorage, Alaska: (907)278-3627. This news magazine should also be included as a valuable source for current issues and developments concerning ANCSA. The articles are usually of a high standard and reading level.

Native Claims. Inuit Studies Journal. Vol, 3, Number 1, 1979. Department d'anthropologie, Universite'Laval, Quebec, Canada. G1K 7P4. 157 pages, illustrated, some readings in French, footnotes, references. This journal contains an excellent overview of Alaska Native Claims Settlement Act. For a comparison, the articles referring to the progress and terms of Canadian Inuit claims are helpful.