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THE HON. THOMAS R. BERGER

Conflict in Alaska

INTRODUCTION

The article that follows is a condensed version of the findings of hearings conducted in village Alaska by the Alaska Native Review Commission in 1984 and 1985. In many cases the testimony of the Native people is quoted. It is their words that define the conflict in Alaska, the conflict generated by the Alaska Native Claims Settlement Act.

The indigenous peoples of the world are raising profound questions that cannot be answered by technical science, material progress, or representative democracy. All of these questions must be answered in Alaska.

The article is organized into two sections: the Act and its provisions (Subsistence, Economic Development, Assimilation), and the Alaska Native Review Commission (In Their Own Hands, The Village Hearings, Conflict Resolution).

THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

"We had some great hopes in that we would be living a better life as a result of ANCSA and that we would be reaping some of the benefits. That has not been the case. . . . The intentions are good but it's just not working the way it was intended."¹

The Alaska Native Claims Settlement Act (ANCSA) was hailed as a new departure for the resolution of aboriginal claims. By its terms, Alaska Natives would have land, capital, corporations, and opportunities to enter the business world. By its terms, Alaska Natives would receive title to 44 million acres of land and \$962.5 million in compensation. By its terms, Alaska Natives were obliged to set up corporations to serve as vehicles for the ownership and management of this land and the money, which became corporate assets. For twenty years, Alaska Natives would be the only voting shareholders in these corporations.

Although Congress recognized the necessity of a land base for the native subsistence economy, it nevertheless insisted that economic development of the land must become the principal means of improving social

1. Interview with Ronald Brower, village of Barrow, Alaska. (All public hearings and roundtable discussions were recorded, and verbatim transcripts have been produced in ninety-five volumes. Information may be obtained from the Inuit Circumpolar Conference, 429 D Street, Suite 211, Anchorage, Alaska 99501. Telephone (907) 338-6917 [hereinafter Interview].

and economic conditions in village Alaska. By this means, Congress intended native people to go into business and to participate actively in the economic development of Alaska. The report that accompanied the final House bill explained that "in determining the amount of land to be granted to the natives, the Committee took into consideration the land needed for ordinary village sites and village expansion, the land needed for a subsistence hunting and fishing economy by many of the natives, and the land needed by the natives as a form of capital for economic development."² Congress regarded this last use of the land as paramount. "The acreage occupied by villages and needed for normal village expansion is less than 1,000,000 acres. While some of the remaining 39,000,000 acres may be selected by the natives because of its subsistence use, most of it will be selected for its economic potential."³ It may seem that 44 million acres is a great deal of land, and indeed it is. But it should be kept in mind that in 1971 Alaska Natives held aboriginal title to virtually all of Alaska, a title based on native use and occupation of the land since time immemorial.

Native land claims date back to 1867. Immediately after the sale of Alaska to the United States, the Tlingit Indians of southwest Alaska protested the sale, arguing that they were the owners of the land they occupied.⁴ In 1912, the Tanana chiefs asserted their aboriginal title to lands in interior Alaska because of the impingement of the white settlers on traditional hunting and fishing activities in the region.⁵ In 1935, the Tlingit and Haida sued to establish their aboriginal claim to lands taken from them for Tongass National Forest. In 1959, the Tlingit and Haida secured a judgment in the action they had brought in 1935: they were entitled to compensation for the land taken from them. The U.S. Court of Claims explicitly declared that the Treaty of Cession in 1867 did not extinguish aboriginal title. Finally, the Tlingit and Haida Indians were awarded \$7.5 million in 1968.⁶

When Alaska became a state in 1958, the settlement of native land claims acquired a new urgency. Although the Statehood Act disclaimed any right to land and property held by Alaska Natives or held in trust for them, it granted to the new state the right to select from the public domain more than 103 million acres "which are vacant, unappropriated, and unreserved. . . ."⁷ Despite the fact that aboriginal title had never been

2. FEDERAL FIELD COMMITTEE FOR DEVELOPMENT PLANNING IN ALASKA, *ALASKA NATIVES AND THE LAND*, H.R. Rep. No. 523, 92d Cong., 1st Sess., (1971) [hereinafter *FEDERAL*].

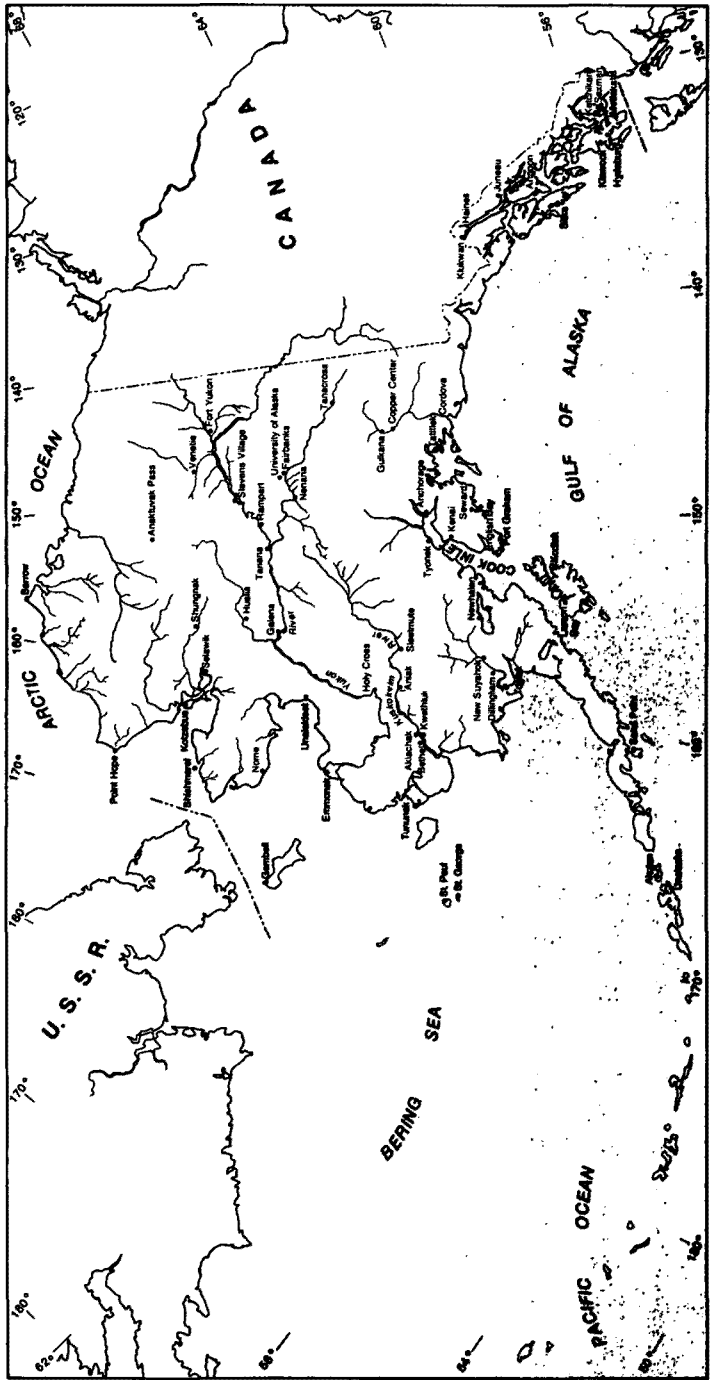
3. *Id.*

4. T. BERGER, *VILLAGE JOURNEY* 22 (1985).

5. *Id.*

6. *Tlingit & Haida Indians v. United States*, 177 F. Supp. 452 (Ct. Cl. 1959); 389 F.2d 778 (Ct. Cl. 1968).

7. T. BERGER, *supra* note 4, at 22.



Map prepared by Arctic Environmental Information and Data Center, University of Alaska—Fairbanks

extinguished, the state considered lands used by Alaska Natives for subsistence activities to fall within the public domain. Secretary of the Interior Stewart Udall froze the conveyance of state-selected lands in 1966, after the Alaska Federation of Natives recommended that action.⁸ Then, with the 1968 discovery of oil at Prudhoe Bay, the oil companies also aligned themselves with the proponents of a legislated settlement. An increasing number of persons believed that Congress had a moral obligation to settle native claims. Legislators in Alaska and Washington, D.C. recognized that the question of aboriginal claims in Alaska could be postponed no longer.

With the passage of ANCSA in 1971, Congress extinguished by legislation the aboriginal title Alaska Natives held to their lands throughout Alaska, and it also extinguished their aboriginal right to hunt and fish on these lands. The natives would receive title to 44 million acres of land, about ten percent of Alaska's territory. After the passage of ANCSA and the Alaska National Interest Lands Act (ANILCA)⁹ in 1980, the federal government had reserved for itself 197 million acres of land, about sixty percent of the state. The State of Alaska was allowed to select 124 million acres, about thirty percent of the state. In compensation for the 321 million acres of land, ninety percent of the state, that the federal and state governments had appropriated, ANCSA provided for the payment to Alaska Natives of \$962.5 million, about three dollars per acre.

ANCSA required the establishment of twelve regional corporations and more than 200 village corporations. Most natives enrolled both in their local village corporation and in the regional corporation established for the region in which the village was located. The typical village shareholder holds 100 shares in the village corporation and 100 shares in the regional corporation. Natives who do not live in a village but are nevertheless identified with a region became stockholders only in a regional corporation: they are known as at-large stockholders. Natives who did not permanently reside in the state were allowed to join one of the twelve regional corporations or a thirteenth regional corporation, which is based in Seattle. In total, some eighty thousand native persons who claimed to have at least one-quarter native blood became either village or at-large shareholders. There was only one issue of shares. No one born after December 18, 1971, the date on which Congress passed ANCSA, received shares.

The village corporations received only surface title to their lands. The regional corporations received only the subsurface title to the village lands

8. *Id.* at 23.

9. ANCSA, 43 U.S.C. §§ 1601-28 (1982). ANILCA of 1980, Pub. L. No. 96-487, 94 Stat. 2371 (codified as amended in scattered sections of 16 U.S.C. and 43 U.S.C.).

within their region, as well as surface and subsurface title to the land they received independently of village selections.

ANCSA gave villages the option of incorporating as a profitmaking or a non-profitmaking corporation, but they were advised that, under Alaska law, there could not be distribution of dividends to members of a non-profit corporation. All of the villages chose to establish profitmaking corporations; indeed, they were expected to make this choice as the best way to enter a brave new world of commercial enterprise and prosperity.

What had seemed like an enormous sum of money, nearly a billion dollars, turned out to be quite a modest sum, once it was distributed among all the corporations and their shareholders. Thus, as individuals and as tribal entities, Alaska Natives received little money and no land. What they received were shares in the native corporations. The point is a significant one; it is the basis for present concerns about the future of native land in Alaska.

Having relinquished aboriginal title to and aboriginal rights in the whole state, Alaska Natives confidently expected that their ownership of the 44 million acres that ANCSA had conveyed to them would be secure and their way of life protected. This expectation is precisely what ANCSA has not achieved. ANCSA offered no guarantee in perpetuity of native ownership of land nor did it protect native subsistence. Millie Buck, speaking at Gulkana, concluded, "It is no settlement as long as we have to worry about losing our land."

In 1991 the final provisions of the ANCSA will be implemented. On December 18, lands conveyed in 1971 to native-owned corporations will become available for public purchase as corporate shares. It is widely feared in the native communities that the corporations, many of which are suffering severe economic setbacks, will be pressured into offering these shares for purchase by non-natives. This would have the effect of final extinguishment of aboriginal rights to all of the lands in Alaska. Natives in Alaska are anticipating conflict over ANCSA and are putting into place alternative mechanisms to resolve this conflict. By framing the conflict as a dispute over subsistence and what that word means, Alaska Natives have clearly defined the conflict arena. Alaska Natives are unwilling to negotiate their right to subsistence.

PROVISIONS OF THE ACT

The Meaning of Subsistence

Anthropologists and lawyers have made many attempts to define subsistence, for them a technical term. For Alaska Natives, however, subsistence is a way of life. "We, the native people, the Eskimos, we are very proud of one thing, that is our culture and our native way of life,

to live off the land, because we know culture and our tradition and way of life cannot be bought, cannot be taken away from us, no matter what happens. We live through this life, thick and thin, but that is one thing that we have, and that is, our way of life through our culture, our tradition, and the . . . words that were given to us by our forefathers and elders. Our times and what we have learned will not be taken away from us. We will hold it and try to pass it on as our elders have."¹⁰

The traditional economy is based on subsistence activities that require special skills and a complex understanding of the local environment that enables the people to live directly from the land. It also involves cultural values and attitudes: mutual respect, sharing, resourcefulness, and an understanding that is both conscious and mystical of the intricate inter-relationships that link humans, animals, and the environment. To this array of activities and deeply embedded values we attach the word "subsistence," recognizing that no one word can adequately encompass all these related concepts.

Subsistence patterns follow a seasonal cycle of harvestable resources, and young hunters learn slowly and through experience the lore and skills preserved through countless generations.

Subsistence activities link the generations and the extended family into a complex network of associations, rights, and obligations. This network both reflects and re-creates the social order and gives meaning and value to each person's contributions and rewards.

Subsistence activities link the native peoples with the animals and the land on which they all depend. Many Alaska Natives believe that spiritual ties bind their own success in hunting to the welfare of the animals on which they depend. The Koyukon Athabascans of interior Alaska extend their policy of reciprocity beyond their own kin to the wolves, by leaving a portion of their harvest for the wolves. This is done because the Koyukon believe that the wolves kill animals and leave them for the Koyukon.

Subsistence links the village in many ways with its past; it informs the present, and it is the means whereby the village can survive in the future. The land, of course, provides the resources and remoteness on which this way of life depends.

For Alaska Natives, subsistence lies at the heart of culture, the truths that give meaning to human life of every kind. Subsistence enables the native peoples to feel at one with their ancestors, at home in the present, and confident of the future.

The common use of the word "subsistence" in English implies a low standard of living and clearly has no application here. In Alaska, sub-

10. Interview with Axel Johnson, village of Emmonak, Alaska. See Interview, *supra* note 1.

sistence produces an abundance of good food and other products. Because these are not controlled by market conditions and commercial profits, nor are they subject to government taxes, it is impossible to say how much these products cost or what they are worth. This feature of the subsistence economy leads bureaucrats to dismiss its importance and makes governments unwilling to strengthen it.

Subsistence is more than a means of production, it is a system for distribution and exchange of subsistence products. The system is not random: it operates according to complex codes of participation, partnership, and obligation. Traditional rules of distribution ensure that subsistence products are available to every village household, even those without hunters.

Subsistence activities in Alaska are governed by unwritten laws and beliefs that ensure the survival of families and villages. They include codes of customs and behavior that ensure a proper spiritual relationship between humans and animals, and conserve resources. They strictly define the rights and duties and the obligations and privileges of tribal members. These laws operate effectively without any system of patents, land titles, or restrictions except self-imposed restrictions that have their origin in the natives' age-old knowledge of and reliance on the natural world.

In 1971, Alaska Natives believed that, if they owned their own land, they could protect the traditional economy and a village way of life. Subsistence is at the core of village life, and land is at the core of subsistence. You cannot protect the one unless you protect the other. The law has protected neither.

One of the ironies of ANCSA is that, in Alaska, where the native peoples live closer to the land and the sea, with greater opportunities for self-sufficiency than natives of any other state, they have not clearly defined tribal rights, or the rights as native peoples to fish or wildlife. Elsewhere in the United States and Canada, native communities enjoy special rights.¹¹ ANCSA extinguished aboriginal hunting and fishing rights throughout Alaska. Native rights now depend on a network of state and federal law.

Federal laws and policies have recognized the right of Alaska Natives to wildlife for the purposes of subsistence for a long time. As early as 1870, a federal act prohibited the killing of fur seals on the Pribilof Islands by non-natives, except during certain months of the year, but the act preserved the natives' right to hunt seals for food and clothing.¹² In 1897, an act recognized the natives' right to take fur seals by traditional

11. T. BERGER, *supra* note 4, at 60.

12. Ch. 189, 16 Stat. 180 (1870).

means in the north Pacific Ocean.¹³ All of the migratory-bird treaties made exception in favor of the native peoples.¹⁴ Under the International Whaling Convention, 1946, the International Whaling Commission allowed a special exception to enable natives and aboriginal peoples in other nations to hunt whales for subsistence.¹⁵

Although hunting regulations in Alaska have long recognized the native interest in subsistence, they usually define subsistence in some restrictive way. For example, native harvesting under the Fur Seal Treaty is limited to traditional means and excludes the use of firearms and power boats.¹⁶ Exceptions in the migratory-bird treaties are limited to a few species.¹⁷ However, the Marine Mammal Protection Act of 1972 recognized the right of Alaska Natives to hunt without restrictions.¹⁸ The act explicitly permits Alaska Natives to take marine mammals for subsistence purposes. Under the act, Alaska Natives are allowed to hunt walrus, polar bear, sea otter, beluga, sea lion, and five species of seal.

ANCSA broke sharply with this tradition by extinguishing aboriginal hunting and fishing rights. Congress assumed that the protection of wildlife resources used for subsistence would be a joint federal and state responsibility. It sets the stage for large-scale state and federal intervention in native subsistence activities. In practice, state¹⁹ and federal policy have provided little protection for native subsistence activities. Restrictions on such activities were justified on the grounds of biological necessity, convenience of management, and increasing demands by non-natives for wildlife resources that historically had been committed to native use for subsistence.

ANILCA leaves no doubt about the priority, on constitutional, historical, and legal grounds of the Alaska Natives' right to subsistence.²⁰ In effect, ANILCA is a partial restoration of native hunting and fishing rights, but it does not go far enough. More is required if subsistence is to remain a permanent feature of native life and culture.

Alaska Natives are not prepared to give up their way of life merely because the federal government or the state government has passed an unwelcome law or regulation. When a law stands between the natives and their resources, when it does not take basic economic realities into

13. Ch. 3, 30 Stat. 226 (1897).

14. T. BERGER, *supra* note 4, at 63.

15. International Convention for the Regulation of Whaling, 62 Stat. 1716, T.I.A.S. No. 1849 (1946).

16. T. BERGER, *supra* note 4, at 63.

17. *Id.*

18. 16 U.S.C. §§ 1531-43 (1982).

19. 1978 Alaska Sess. Law 151 [codified at scattered parts of Alaska Stat. § 16.05 (1987)].

20. T. BERGER, *supra* note 4, at 63.

account, when it conflicts with native principles or beliefs, compliance with the law is low.

For Alaska Natives, health and well-being are functions of the material and spiritual nourishment that the land provides: ill health and demoralization are results of estrangement and dispossession. Public policy, which we assume to be basically benign, has had consequences in Alaska that are cruel; a policy intended to be passively protective has proved to be destructive in its consequences.

ANCSA and ANILCA divided and classified lands that had hitherto been undivided and unclassified. Boundaries are now drawn between villages and between regions. Rights to surface resources are now separated from rights to subsurface resources. State, federal, and corporate lands are marked off. The surface of the land supports the many kinds of renewable resources used for subsistence. The subsurface of the land holds the nonrenewable and exportable resources on which the growth of the state and the native corporations is predicated. ANCSA aims to replace a viable economic system with another system that, for villagers, is of limited potential. Land that provides renewable resources on which the villagers subsist is now considered to be primarily a source of non-renewable mineral wealth.

Economic Development

The imposition of a settlement of land claims that is based on corporate structures was an inappropriate choice, given the realities of native life in village Alaska. The serious changes that ANCSA has introduced to native life are becoming ever more apparent with the passage of time. ANCSA has affected everything: family relations, traditional patterns of leadership and decisionmaking, customs of sharing, subsistence activities, the entire native way of life. The village has lost its political and social autonomy.

The concepts central to ANCSA emerged during the 1960s. The act itself was based on a report by the Federal Field Committee for Development Planning in Alaska, which considered Alaska Natives to have a culture of poverty and did not take into account the strengths of native culture, economy, and government.²¹ ANCSA is a domestic application of theories of economic development that had been applied to the Third World. The premises of the foreign-aid programs greatly affected consideration of the problems to be found among the native peoples at home. The central thesis is that, with large-scale economic development, the modern sector of the economy will expand to incorporate persons still active in the

21. See FEDERAL, *supra* note 2.

traditional sector and, in this process, the traditional sector will disappear.

With ANCSA, the village shareholders waited eagerly for a new era of development to begin. But it came only in capital expenditures by government, often in the form of inappropriate technology, beyond the means or the capacity of village people to manage or to operate without massive and continuing infusions of state or federal funding. Natives have been employed to build these new institutions and their infrastructures. There is more cash in the villages, but the specific promises of ANCSA, the promises of development, have not been and cannot be fulfilled.

The native corporations were created by a reversal of the usual process whereby some individuals notice an economic opportunity, then organize to exploit it by forming a corporation and looking for capital. The native corporations were not formed to meet a particular need in an established market. ANCSA required natives to organize corporations, provided them with capital, then urged them to find or create economic opportunities. They had to formulate their business purposes after the fact. Nor were the native shareholders investors in the sense that Wall Street understands the word. They were not a random group of shareholders, but a people bound together by land, culture, and kinship ties.

The artificial nature of the native corporations confounds their purposes and functions: directors need not declare dividends in order to attract and keep shareholders; shareholders are assigned to them by an act of Congress; shares cannot be sold or traded for twenty years; if, through inheritance, non-natives receive stock, they cannot vote it until 1992. If one of the twelve regional corporations sells timber or receives income from subsurface minerals, it must share seventy percent of the revenue among all twelve regions; corporations that are losing money on their own operations must nevertheless share their revenues.

The regional corporations are far from eager to share seventy percent of their revenue from the sale of natural resources. If such an investment fails, the corporation must bear the whole loss; if it succeeds, more than two-thirds of the profit must be shared with other regional corporations.

Some village corporations that have no surface assets or business opportunities have banked their capital; they may be profitable, though inactive. Others have no business to carry on and they have little capital left; they do nothing more than comply with formal statutory requirements. Larry Evanoff of Chenega Bay said of his village corporation, which has only 69 shareholders, "We pay our taxes, we pay for our audits, and that's about it." Others have ceased even to do this much.

During the early days of ANCSA, Professor Monroe Price wrote: "In a sense, the gospel of capitalism has gripped the leadership of the regional corporations just as in another day, another kind of gospel was introduced

for its educative and assimilative influence. The profitmaking mandate has become a powerful vision, a powerful driving force. The corporate executives will be those who are willing to forego subsistence activities, to place a higher priority on board meetings than on salmon fishing, and to spend time talking to lawyers, financiers and bankers rather than the people of the villages. It is possible that there will develop a leadership cadre in the native corporations that will become somewhat removed from the shareholders. The native corporations, in this sense, will approximate other large businesses and that management will, more and more, be separated from ownership."²² To the extent that this has happened, it represents the fulfillment of the expectations Congress had. It also means that corporate executives in the urban centers may be estranged from their shareholders in the villages.

ANCSA's greatest claim to success is that the hundreds of millions of dollars the corporations received have contributed to the development of the Alaskan economy. The ANCSA money, nearly a billion dollars, was not paid directly to Alaska Natives nor was it expended directly for their benefit. The economic benefits of ANCSA have been greater for non-natives than for natives.

It is true that in the past decade, health, housing, and education in village Alaska has improved, not because of ANCSA, however, but because of increased federal and state spending.²³ Despite ANCSA and its millions of dollars, native people who had little money before 1971 have little money today. If they have more now, it is not because of ANCSA. Where there was unemployment, there is still no work. Where unemployment has been alleviated, it is not because of ANCSA.

Defenders of ANCSA argue that the corporations it established have been going through a period of learning. Having learned from experience, the corporations, they say, will soon be making substantial profits and paying dividends to their shareholders. This prospect seems unlikely.

Since 1971, the government structures in Anchorage, Juneau, and Fairbanks have doubled in size, an effect of the oil boom. Two-thirds of the new jobs in rural Alaska are with government, and most of these jobs have been created to provide social services to Alaska Natives. There has been little or no expansion of the state's resource base; Alaska's major employer is and will continue to be government. Comparatively few natives secure any of these jobs. ANCSA was based on false assumptions about the economy of village Alaska and false assumptions about the economy of Alaska as a whole.

22. Price, *ANCSA in Perspectives*, in *MINUS 31 AND THE WIND BLOWING* (J. Haines ed. 1980).

23. T. BERGER, *supra* note 4, at 43.

Native corporations have been able to sustain their early losses because, until 1981, they continued to receive injections of capital from the Alaska Native Fund. Now that these annual payments have ceased, there are likely to be losses on a scale that banks, suppliers, and shareholders will not tolerate. The likelihood of failures and bankruptcies in the years before 1991, and thereafter, is greater than ever. Improved business practices are unlikely to avert these dangers, although there is no doubt that native executives are better managers now than they were during the first decade of operations. But the weaknesses inherent in the theory of development on which ANCSA is based have not changed. The limited number and extent of economic opportunities in rural Alaska have not changed. Costs are high, markets are far away, and resources are scarce. None of these facts are going to change, and they militate against the success of most of the native corporations, especially the village corporations.

For the villagers holding shares in these corporations, the important point is not that they will never realize the value of their stocks, it is that they are very likely to lose their land.

Perhaps development should be redefined. Consideration should be given to native ideas of development and to strengthening the native subsistence economy. Subsistence can be a means of development, of enabling a people to be self-sufficient, and of strengthening family and community life. It entails enhancement of an existing economic mode. Now that ANCSA has failed Alaska Natives, it is not surprising that they have begun to look for new ways of strengthening the subsistence economy and the village way of life.

Assimilation

ANCSA is the result of an encounter between two very different societies. ANCSA can be understood only in the context of this encounter; this conflict between two cultures. The focus of this conflict is the land.

To one culture, the land is inalienable. Alaska Natives believe that land is held in common by the tribe, a political community that is perpetual. Every member of the community in succeeding generations acquires an interest in the land as a birthright. But to western society, land is a commodity to be bought and sold. The native peoples clearly understand that land is at the heart of this prolonged conflict. The protection of their land has always been their primary concern. "The single biggest fear that we Inupiat have concerning ANCSA is the fear of losing control over our lands, which we need for subsistence purposes."²⁴ "Our land is like our parent. It provides us food, clothing and shelter. Without our land, we would be homeless, we would be like orphans."²⁵

24. Interview with Jimmy Stotts, village of Barrow, Alaska. See Interview, *supra* note 1.

25. Interview with Louie Commack, village of Ambler, Alaska. See Interview, *supra* note 1.

How does a society that claims to be based on the rule of law justify the taking of native lands for homesteading, building railroads, or producing oil and gas? Some theorists have relied on God's commandments and on Christianity's civilizing mission. Others have referred to the greater obligation to dedicating the land and its resources to agriculture and industry rather than to hunting and gathering. John Winthrop, the Puritan leader, combined both arguments: he argued that the Indians had only a natural right to as much land as they had improved or could improve and that the rest of the country lay open to any who could and would improve it. "If God were not pleased with our inheriting these parts," he asked, "why did he drive out the natives before us?"²⁶

The European nations interested in the New World espoused the rule of law; all were Christian, and all regarded themselves as civilized. Each of them issued declarations, some of them promulgated laws to uphold the moral obligation to deal fairly with the Indians and not to take their lands without consent. In 1542, Spain passed the New Laws to ensure that native land rights would be respected. But the Spanish in Mexico and Peru paid no attention to them. The settlers in Mexico threatened to revolt against Spanish authority; in Peru they did revolt. The New Laws went unobserved.

It was impossible for the authorities in Spain to enforce fair dealing in the New World. Neither could the United States, 200 years later, enforce fair dealing in its own backyard. Congress, in the Northwest Ordinance of 1787, insisted that in dealing with Indians "in their property rights and liberty the Indians never shall be invaded or disturbed."²⁷ The settlers simply ignored the ordinance, and Congress could not or would not enforce it.

In the end, of course, white settlers secured nearly all of the Indian territory they wanted. Their motives in taking it were various, and many persons, officials and ordinary citizens, tried to mitigate the harm that white occupation of the continent was bringing to the Indians. Their attempts usually entailed serious and sustained efforts to make the natives over in the image of the white man. Every such effort reflected the dominant culture's idea of the life to which Indians should aspire. The Indian way of life was entirely based on subsistence activities, which required unfettered access to large areas of land. Subsistence is impossible where land has been divided into privately held units suitable for agriculture.

The federal government acceded time after time to the removal of Indian tribes as agricultural settlement pushed the Indians off their fertile

26. T. BERGER, *supra* note 4, at 79, 191-92.

27. 29 U.S.C. § 177 (1982).

lands. Although Andrew Jackson's name is indelibly associated with the policy of removal, it also had been Jefferson's policy.²⁸

While urging the Indians to accept and adapt themselves to the white man's civilization "to maintain their place in existence," Jefferson instructed the War Department to remove the Indians beyond the Mississippi. He justified this policy, which might in a president less revered seem hypocritical, on the grounds that the alternative would be extermination of the Indians by land-hungry frontiersmen.

After the Civil War, Indian reservations, ranges, and hunting grounds were scattered over the western United States. The Homestead Act of 1862 encouraged widespread settlement of the West and, in 1869, the first transcontinental railroad was completed.²⁹ To allow the Indians to continue to hold fertile land encompassed by their reservations was contrary to the idea that land should be made available for ranching and agriculture in the name of progress. Indian use of the land gradually gave way to the inexorable demands of white settlers.

In the mid-1880s, the Indians on their reservations were still holding land that whites wanted for settlement. In 1887, Congress passed the General Allotment Act, also called the Dawes Act, named after its sponsor, Senator Henry L. Dawes of Massachusetts.³⁰ Its supporters claimed that individual proprietorship of land was necessary for the Indians to advance toward full participation in American life. The act authorized the division of communally held reservations into individual parcels or allotments of 160 acres for each Indian family head and 80 acres to each single Indian over eighteen. Congress wanted the Indians to give up hunting and fishing and become farmers.

President Theodore Roosevelt acclaimed the General Allotment Act to be "a mighty pulverizing engine to break up the tribal mass."³¹ But tribal life proved to be far more durable than Congress anticipated. The legislation did not achieve its main purpose, the assimilation of the Indians, because it did not take into account the basis of Indian cultural life—tribal identity.

Under the General Allotment Act, land descended to the allottee's heirs in ever smaller interests. After a few generations the existence of hundreds of heirs caused overwhelming problems of management and little or no return to the individual owners. Because ownership of the land was fragmented into ever smaller units, the land was no longer available for communal purposes.

28. T. BERGER, *supra* note 4, at 81, 191.

29. Homestead Act of 1862, ch. 75, 12 Stat. 392 (repealed 1969).

30. 25 U.S.C. §§ 331-58 (1982).

31. T. BERGER, *supra* note 4, at 83.

The same thing happened among the Osage Indians, who had a reservation in present-day Oklahoma. In 1904 and 1905, substantial discoveries in oil and gas were made, and the Osage tribe accumulated a large trust fund in the United States Treasury from the sale of oil and gas leases and other assets. In 1906, Congress passed a statute to individualize Osage tribal property and to authorize a roll of the tribe's members who were entitled to share in distributions of cash from the Fund.³² Income from the fund was paid out on a per capita basis to the persons on the membership roll or to their heirs.

The distinctive feature of the Osage scheme is the use of a tribal roll established in 1906 to serve as the permanent basis for per capita distributions of tribal income and property. Osage Indians born after the roll was closed did not acquire the usual rights of a person born into an Indian tribe to share in distribution of tribal property. Only those who were on the roll in 1906 were entitled to receive distributions. The right, now called the Osage Headright, passes to their heirs. The right to vote in Osage tribal elections depends on headright ownership. Today, most persons of Osage descent do not own headrights, receive any tribal income, and cannot vote in tribal elections. Some persons own more than one headright, others own fractional shares of headrights; and some headrights are owned by non-Osages. The parallels with ANCSA are plain.

ANCSA also has many parallels to the General Allotment Act. It places the land in fee title which makes land alienable and taxable. Although ANCSA has not divided the ancestral lands of Alaska Natives into individual parcels, it has made native land a corporate asset and divided its ownership into individual stock certificates. These shares are not tangible like land but, after 1991, these shares can be sold. Even if shares are not sold, corporations could lose their lands through bankruptcy, corporate takeovers, and tax sales. Christine Smith, a law student from Fairbanks, while studying in Seattle, said: "I disagree very much with the concept of corporations for American native groups, just like the time of the allotment era, when land was given away to individual Indians in the Lower 48 in an attempt to make them into farmers. I feel like the corporate structure is given to us, to make us businessmen and businesswomen. I don't know about you, but for me and for my family, it doesn't work very well."

We do not learn easily or remember well. During the 1950s, another attempt was made to break up the tribes and tribal landholdings. This was the termination policy. The best known victims of this policy were the members of the Menominee tribe. Under the Menominee Termination

32. Osage Tribal Roll Statute, ch. 3504, 34 Stat. 363, ch. 3572, 34 Stat. 539 (1906).

Act of 1954, the tribe's landholdings of 234,000 acres in Wisconsin were transferred to Menominee Enterprises, Inc., a state-chartered corporation.³³

According to a congressional report in 1973, the termination plan "brought the Menominee people to the brink of economic, social and cultural disaster."³⁴ Under corporate control, a thriving sawmill operation became only marginally successful. Menominee Enterprises, Inc. was burdened with corporate debt, a difficult management scheme, and high county and state taxes. It went to the verge of bankruptcy, and 9,500 acres of tribal land owned by the corporation had to be sold to pay interest on bonds and tax obligations. This transaction was bitterly opposed by the great majority of tribal members.

Under the termination policy, a number of tribes besides the Menominees were terminated.³⁵ Some of them, including the Menominees, have since had their tribal status and tribal lands restored. But for others it is too late now; their lands have been alienated and tribal members dispersed.

The structure of the Menominee Termination Act is strikingly similar to ANCSA. In both cases, state-chartered corporations rather than tribes hold the land; shares are issued; afterborn children are excluded as shareholders; the stock eventually becomes transferable, and the land becomes taxable.

Federal policy in Alaska has always perceived the native peoples to be poor, backward, and uncivilized, anachronisms in a modern world. Their backwardness is demonstrated by their inefficient use of land. Such cultures, such peoples, making idle use of valuable land, must give way to the far more profitable uses to which the white man will put the land.

The treatment of aboriginal title by the courts illustrates this point. The Supreme Court of the United States has consistently said that the Indians' right of occupancy is "as sacred as the fee simple of the whites."³⁶ But in 1955, in *Tee-Hit Ton v. United States*, a case arising in Alaska, the Supreme Court held that Fifth Amendment protection against taking land without compensation did not apply to Indian lands held under aboriginal title.³⁷ The title was recognized in law, but it could be extinguished without compensation. No land but native land in the United States would have been denied Fifth Amendment protection.

Attitudes are more important than constitutions, laws, and regulations. Analysis of the legal reasoning of the court's decision does not explain

33. Menominee Termination Act of 1954, ch. 303, 68 Stat. 250 (repealed 1973).

34. T. BERGER, *supra* note 4, at 86.

35. *Id.* at 86.

36. *Id.* at 89.

37. *Tee-Hit Ton v. United States*, 348 U.S. 272 (1955).

why it reached this conclusion, but the fact is the Supreme Court was unwilling to enforce the Fifth Amendment for Indians. If the judges in the *Tee-Hit Ton* case had perceived native society and values as authentic, they would have had no difficulty extending Fifth Amendment protection to Indian land in Alaska held under aboriginal title. Farmers living on the land are entitled to protection under the Fifth Amendment but Indians living off the land are not. The legal arguments are pure sophistry. The fact is, judges believe that one form of land use and occupation—ownership, if you will—is valid, whereas the other is not; one way of life is valid, the other is not.

Here, I suggest, is the reason why Congress decided on a corporate model of landholding for the native peoples living in two hundred remote villages in far-off Alaska. Congress was not altogether ignorant of conditions and life in rural Alaska but it did not wish to acknowledge the legitimacy of the native way of life. Alaska Natives were a problem to be solved and Congress thought it knew how to solve it. The solution has made the land the focus of cultural conflict in Alaska.

THE ALASKA NATIVE REVIEW COMMISSION

Under the ANCSA's terms, on December 18, 1991, the native corporations are required to call in all their shares. On January 1, 1992 (500 years after Columbus' landing in the New World), they are required to issue new shares that will not be subject to any restrictions as they are at present. After 1991, shareholders will be free to sell all or any portion of their shares, to pledge them as collateral, or to use or dispose of them in any other way. The native corporations can then become targets for takeover. Furthermore, the land, twenty years after its conveyance, whether developed or undeveloped, becomes taxable. If the state or local authority levies taxes and they cannot be paid, land can be taken. In every village I visited, Alaska Natives expressed fear that their ancestral lands will be lost after 1991.

ANCSA provided that "the settlement should be accomplished rapidly . . . without litigation" but now this exhortation echoes across a legal landscape littered with the debris of innumerable lawsuits. Tens of millions of dollars have been spent on the litigation of these disputes. Disputes have covered a whole range of matters that include the delineation of land-selection boundaries between regions; eligibility of villages for certification as village corporations; shares of revenue from the sale of timber and mineral resources; and, of course, proxy battles within the corporations themselves. The people of Kodiak complained of a debilitating lawsuit between the village corporation and the regional corporation. Superior Court Judge Roy Madsen, an Alaska Native from Kodiak, said:

"We've seen numerous lawsuits that have sprung up because of the technicalities in the proxies. This has placed a financial burden on the village corporations. In fact, [it] has broken some, and the people that are elected to serve the rest of the people in the villages are subjected to threats of lawsuits or actually have been sued, and it just compounds the financial burden all the way around." The complaint is reiterated in every region.

More than anything else, ANCSA has divided Alaska Natives. Mike Gaffney, Professor of Native Studies at the University of Alaska, Fairbanks, observed that conflict has become institutionalized among Alaska Natives. Villages and subsistence against region and profit, village shareholders against at-large shareholders, urban shareholders against village shareholders, urban corporations against village corporations. "The first result of the settlement act was to separate all the people that used to be together. Everybody became distinct different villages. Regions became different regions. Some regions even split in half just so that they would get their own control. That was the first indication of what was to come. Boundaries were fought over, whereas two groups of natives or two villages, who never had a problem before, started fighting over the boundaries. There were a lot of special ramifications of what happened and nobody stopped to think."³⁸

Conflicts have occurred between village and regional corporations over whether or not resources should be classified as surface or subsurface. Gravel is often the only resource of commercial value on village corporation land and the question of its being a surface or subsurface resource has been litigated for years.

Some communities were excluded from ANCSA. Ketchikan, Wrangell, Petersburg, Haines, and Seward received no land at all because their native populations were less than half of these towns' total populations. Yet Juneau, Sitka, Kenai, and Kodiak were permitted to form corporations, even though none of them had a fifty percent native population.

Some village shareholders live in distant cities. Some non-natives have acquired shares by inheritance. Shareholders who are not closely connected to the village may, in time, dominate the boards of village corporations, with the result that local concerns may be neglected or voted down. In a normal corporate context, such conflicts usually center on development activities or the payment of dividends. In the cultural context of village Alaska, however, they create divisions that may imperil the protection of village lands and subsistence activities.

Against this background of conflict and divisiveness the Alaska Native Review Commission stands out as a pioneering venture in the settlement

38. Interview with Jack Wick, village of Larsen, Alaska. See Interview, *supra* note 1.

of native claims. For the first time, an international native people's organization has established its own commission to consider the land claims issue.

In Their Own Hands

The Alaska Native Review Commission was established by the Inuit Circumpolar Conference and by the World Council of Indigenous Peoples.³⁹ The Commission is, however, independent; it is responsible for its own procedures and its report and recommendations are entirely the Commission's own work.

The Commission's mandate is formidable; to examine the social and economic status of Native Alaskans; the Alaska Native Claims Settlement Act; the policies that the United States has historically followed in settling claims by Native Americans; the functions of the native corporations established by ANCSA; the social, cultural, economic, political and environmental impact of ANCSA; and the significance of ANCSA to indigenous peoples around the world. The Commission's purpose was to prepare a report and to make recommendations to protect and promote native interests. The Commission, then, is an effort to clarify the conflict issues in Alaska and to make recommendations to resolve these conflicts.

The Commission is looking at the situation of native peoples in many countries. We have tried to bring an international focus to bear. This is appropriate, for it was the great American judge, Chief Justice John Marshall, who in the 1820s and 1830s developed the legal notions of aboriginal title and limited sovereignty that are the basis of the claims of native peoples, in every Western country, to land and self-government.⁴⁰

How does what is happening in Alaska affect the condition and the claims of aboriginal peoples around the world? What lessons can Alaska offer? And what lessons can be learned from the experience of other aboriginal peoples?

Alaska Natives are already taking the initiative in recognizing and acknowledging that fish and wildlife upon which subsistence activities are based are the continuing wealth of the native peoples. Native-management regimes for whaling, caribou, walrus, and migratory-birds are being established.

After the International Whaling Commission's ban in 1977 on subsistence whaling, the Inupiat and the St. Lawrence Island Yup'ik organized

39. Both agencies are international Native People's organizations. The Commission was supported by funding from many non-profit philanthropies and operated under the aegis of these two agencies, both affiliated with the United Nations. Part of the success of the Commission's work is attributable to the fact that I was not sent on my journey by the state or federal government.

40. *Johnson v. McIntosh*, 21 U.S. (8 Wheat) 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

the Alaska Eskimo Whaling Commission, which is composed of whaling captains from nine whaling villages. The Commission has become an integral part of the international management regime for the bowhead whale; it supervises native crews and quotas and makes native knowledge available to national and international researchers.

In 1982, Athabascan and Inupiat Indians in both Alaska and Canada established the International Porcupine Caribou Commission to resist oil and gas exploration and production in the Arctic National Wildlife Range, a development they believe would adversely affect the porcupine caribou herd on which natives of both nations depend. This Commission is now working toward an international treaty to protect the herd and, in cooperation with the United States and Canadian authorities, is preparing a caribou-management regime.

In 1983, Eskimos on the west coast of Alaska formed the Eskimo Walrus Commission to represent the villages that take walrus and to develop regulations for this hunt. At the present, the Commission is engaged in fending off the state's attempt to obtain a transfer of jurisdiction over walrus from the federal government because the state wants to end the exclusive native right to take these mammals. The Commission has also joined with seal hunters to develop a statewide regime for the management of marine mammals.

In 1984, at the initiative of Alaska Natives, the Yup'ik subsistence hunters of several western Alaska villages reached an agreement with the state of California, on behalf of sports hunters within that state; it restricted bird hunting for subsistence in Alaska and bird hunting for sport in California in order to protect the populations of certain species that had suddenly declined. The agreement avoided the usual federal and state regulatory procedures in favor of a conservation agreement made directly between the users.

Around the world native peoples of Greenland, Canada, Norway, and Australia are pressing or being pressed to establish land claims, sometimes under their own regimes, sometimes under laws resembling ANCSA.

In Greenland, where the Inuit are a majority, they obtained Home Rule in 1979 within the community of the Danish Realm. Thus, in phases, vital government functions are being transferred from Denmark to Greenland (although Denmark retains control over defense, foreign relations, the courts, and the police). All issues have not, however, been resolved. Although the Greenland Home Rule government has a veto over exploitation of natural resources, still outstanding is the question of ownership of Greenland's subsurface rights.

In Canada in 1975, an agreement was reached between the government of Canada, the Cree and the Inuit of James Bay and Northern Quebec. Regional governments were established. In the Inuit area, where the Inuit

are the overwhelming majority, the regional government is a public government. In the Cree area, where the Cree are a minority, they have a tribal government of their own. In both areas, Inuit and Cree, elaborate measures have been taken to secure native access to subsistence (namely fish and wildlife) resources.

The rights of the native people have been recognized in Canada's new Constitution and Charter of Rights adopted in 1982. In 1983, an all-party committee of Canada's House of Commons recommended that Canada's native people should be recognized as a "third order of government" along with the federal government and the provinces, and be given full powers of self-government in native communities and other native lands.

In June 1984, settlement was reached between the government of Canada and COPE (Committee of Original People's Entitlement) representing the Inuvialuit (Eskimos) of the Mackenzie River delta in Canada's Northwest Territories.⁴¹ Under this settlement the Eskimos are to receive fee simple lands as Alaska Natives did under ANCSA. There is a large money payment. But, as in the James Bay and Northern Quebec agreement, there are as well specific guarantees for access to fish and game—guarantees that are not present in ANCSA. There is a corporation but it is a membership corporation. Membership in the corporation includes all Inuit and it is non-transferable. Furthermore, the government of Canada has agreed that undeveloped lands will never be taxed. The settlement is entrenched in the Constitution.

A worldwide indigenous people's movement is underway. The settlement of disputes over land and subsistence are a part of this movement to self-determination. In the United States some persons fear that a recommendation within the Alaska Native Review Commission's report to acknowledge native sovereignty in Alaska may give rise to false hopes among Alaska Natives. To speak of false hopes with respect to the realization of native sovereignty within American constitutional arrangements is like speaking of false hopes with respect to the realization of individual freedoms within the same constitutional arrangements. Some Americans react negatively to the very idea of native governments, considering them to be an aberration in the American political system. But, as Justice John Marshall said, the native nations are not foreign; they have been part of American political arrangements for more than two hundred years.

The Village Hearings, the Public Roundtables, and the Commission's Report

The majority of Alaska Natives live in 200 villages scattered along the

41. The COPE agreement does not deal with self-government although in 1985 an agreement was reached among the Dene, the Inuit, and the government of Canada to divide the Northwest Territories, with new governments and institutions in place by 1987.

coastline of the state, and along the Yukon and Kuskokwim Rivers. The backbone of the Alaska Native Review Commission's work was a series of sixty village hearings. These hearings began on February 20, 1984, at Emmonak on the Bering Sea and concluded at Bethel, on the Kuskokwim River, on March 5, 1985. The hearings provided an opportunity for Alaska Natives to express their views on ANCSA, on 1991, on subsistence, and on sovereignty. The most important contribution of the village hearings was, I think, the insight it gave into the true nature of native claims as seen by the native people, and the impact of ANCSA in the context of the modernization process of the 1970s. No academic treatise or discussion, nor formal presentation by native organizations and their leaders could offer as compelling and vivid a picture of the goals and aspirations of native people as their own testimony.

The Commission heard from people who live day-to-day with ANCSA, indeed, from anyone who wished to be heard, for however long they wished to speak. At these village meetings more than 1450 native people had the opportunity to speak for themselves, in their own language, and in their own way. At every hearing witnesses talked of the corporations, shares, profits, and sometimes even of proxies, but then, emerging from this thicket of corporate vocabulary, they talked of what they consider of most importance to them—land, subsistence, and the future of the villages.

The public roundtable sessions were held in Anchorage. These sessions were held for a week at a time and took about seven weeks in all over a period of two years. Each roundtable lasted three or four days and drew as many as thirty participants, both native and non-native, from Alaska and many other countries who blended their experience relating to a number of issues, such as native government, subsistence, the origins of ANCSA, the idea of the native corporations, and the question of native claims in other countries. At these roundtable discussions there was an opportunity to bring together Alaska Natives, who were connected with tribal governments, and native corporations to discover a common ground.

The Commission's approach was to bring forth as much of the native thought as possible. By the sixty village hearings and the public roundtables everyone who wished to speak was given an opportunity. The testimony and these words present a consensus of Alaska Native thought. These views are the basis of the Commission's Report.

The Commission's work was not always smooth; there were words of anger at the hearings, charges of divisiveness that was being created by the hearing process itself. The Commission, independently funded by philanthropies, was not secure financially and ran on a shoestring. In contrast, the Mackenzie Valley Pipeline Inquiry, created by the Canadian government in 1974, was a government commission that had a somewhat

similar charge.⁴² The Pipeline Inquiry Commission traveled for eighteen months to 35 Inuit and Dene villages in Canada's Northwest Territories and held formal hearings at Yellowknife, convening experts in a courtroom trial atmosphere. Its recommendations were instrumental in persuading the government not to construct the pipeline and to set aside nine million acres of the Northern Yukon for a wilderness park.⁴³ And the Commission's conclusions were critical in the process that established the clause in Canada's new constitution guaranteeing aboriginal rights. While the Alaska Native Review Commission, established by two native people's organizations affiliated with the United Nations, has a very different mandate, the process by which they have brought forth the native perspective is the same.

The Commission's Report is not a report in the usual sense. It is a book that is deliberately readable and contains a great deal of the Alaska Native testimony. It is the village hearing testimony that provides a sense of the depth of feeling about the land that exists among the native peoples of rural Alaska. Throughout the state they know that under ANCSA their aboriginal rights were extinguished and that many uncontrolled and perhaps uncontrollable forces now threaten their way of life.

The book, *Village Journey*,⁴⁴ is a bestseller in Alaska. A special edition has been printed in paperback for distribution by the Inuit Circumpolar Conference. This book will be discussed and used as a tool for decisionmaking in itself. It contains an analysis of ANCSA but it also contains the other findings of the Commission. The Commission was asked to report on the socio-economic status of Alaska Natives; the history and intent of ANCSA; the historic politics and practices of the United States in settling the claims of Native Americans; the functions of the various native corporations; and the social, cultural, economic, political, and environmental significance of ANCSA to indigenous people around the world. In addition to using village hearing testimony to gather information on these issues, the public roundtables sought to accomplish several things. First, identify the expectations that Alaska Natives had prior to ANCSA for a settlement of their claims and/or the values they sought to protect. Second, to examine the moral and ethical principles on which their claims were founded. Third, to evaluate the effects of changes in land tenure and of traditional land use on the lives of Alaska Natives, to

42. As Commissioner of the Inquiry, I was to recommend the terms and conditions that should be imposed if the pipeline were to be built. The Arctic Gas Pipeline project would have been the greatest project, in terms of capital expenditure, ever undertaken by private enterprise. The pipeline, although it would be a vast project, was not to be considered in isolation. The government of Canada made it clear that the Inquiry was to consider what the impact would be if the gas pipeline were built and then were to be followed by an oil pipeline along the same route.

43. The Park was established on July 25, 1984, as part of the Inuvialuit Claims Settlement Act.

44. See T. BERGER, *supra* note 4.

evaluate the relations between the native peoples and the state, and on their present expectations with regard to ANCSA. Fourth, to review the history of the United States federal policies and practices toward Native Americans and to ANCSA and to review implications for the future. To evaluate the applicability of ANCSA to indigenous people in other states and other nations who are struggling to secure a settlement, land, and self-determination, and lastly, to bring the experience of these people to bear on the situation in Alaska. A second series of roundtables looked specifically at subsistence, ANCSA, 1991, alternative approaches to native land and governance, and the place of native peoples in the western world. The Commission's report, then, presents an accumulation of Alaska Native perspective on all these issues.

Resolving Conflict

In making recommendations, there is a danger of entanglement in the web of issues that ANCSA presents: shares, dissenters' rights, the land bank, children born after 1971—the list could go on—but the main concerns of Alaska Natives are land, self-government, and subsistence. These concerns are linked. Taken together, they are the means by which the native people seek to regain control over their land, their communities, and their lives. Dealing with them offered an opportunity to make recommendations regarding the future of the native corporations.

I did not recommend the transfer of any additional lands from the public domain to native ownership. What concerns me in Alaska is the fate of the 44 million acres conveyed to native ownership by ANCSA.

Since native ancestral land in Alaska is now an asset of the 200 native village corporations and twelve native regional corporations, the scope of possible recommendations is limited. It is not possible simply to urge that a law be passed transferring the land from native corporations to tribal government. The land is, under the law, private property belonging to the corporations. My recommendations are, therefore, addressed to the native shareholders in the corporations. Given congressional action, it will be possible for the native people to unscramble the omelette.

The following recommendations are summaries of the actual recommendations made. I recommend that the shareholders of village corporations who are concerned that their land may be lost should transfer their land to tribal governments to keep the land in native ownership. There are tribal governments in every village. The matter is one of urgency in the villages and it should be done at once. The tribal governments may wish to place their land in trust with the federal government. In either case, the tribal government would be able to claim sovereign immunity with respect to the land. Congress should pass legislation to facilitate the

transfer of land by the village corporations to tribal governments without regard for dissenters' rights (any dissenters should, of course, enjoy the same rights of tribal membership as others).

Land should be turned over to tribal governments on condition that they admit to membership all of the original shareholders in the village corporation. Tribal governments have the power to determine their own membership. This arrangement accommodates the children born after 1971 who have no right to shares in the native corporations. They are included in the tribe by virtue of their being born into it.

Because my recommendations relate only to the land, they would leave the village corporations with all their other business assets. If a village corporation has a thriving business or investments (very few of them do), nothing I have said would impair the corporation's right to continue to carry on its business, to make a profit, and to pay dividends to shareholders. In most cases, however, it seems likely that, without their land, the village corporations would be dissolved.

If a village corporation is already engaged in profitable activities based on land development, the land, after it is transferred to the tribal government, can be leased back to the corporation for business purposes. The tribal government would also have the option of chartering a tribal corporation to take over the operations of the village corporations.

I concerned myself principally with the future of the villages, a concern that entails specific recommendations regarding the land that belongs to the village corporations. The regional corporations own the subsurface of the village lands and sixteen million acres of other land, much of which is checker-boarded with village lands. The shareholders of the regional corporations may wish to convey their land to the village tribal councils or to regional tribal organizations.

I urged that the state should recognize tribal governments as appropriate local governments for all purposes under state law. These measures, important for native self-rule, may entail the dissolution of some, but not all of the state-chartered local governments in native villages.

I do not recommend the general establishment of native reservations in Alaska. Instead, tribal governments would hold the land in fee simple. But if there are villages that want their land taken in federal trust, this should be done.

I urged that all land subject to the jurisdiction of native governments should be described as Indian Country, or as the case may be, Eskimo Country or Aleut Country. This phrase would accurately describe the situation and it would release everyone from a vocabulary that now confines the discussion of alternatives.

I recommended that tribal governments should have exclusive juris-

diction over fish and wildlife on native lands, whether owned by native corporations or by tribal governments. On federal and state lands (90 percent of Alaska's land area), native governments in partnership with state and federal governments should exercise jurisdiction on all hunting, trapping, and gathering lands used by tribal members. On all native lands, the native peoples would have the exclusive right, as tribal members, to subsistence, subject to exclusive tribal jurisdiction.

I think these recommendations are practical. They are based on what native people told me. They are, I believe, the only means by which Alaska Native villagers will retain in native ownership the land they received under ANCSA and the only means by which, through the restoration of their subsistence rights of hunting and fishing, they will be able to regain a measure of self-sufficiency.