American Indian Law Review

Volume 9 | Number 1

1-1-1981

Legislation: The Alaska Native Claims Settlement Act: Legislation Appropriate to the Past and the Future

Sarah Arnott

Follow this and additional works at: <https://digitalcommons.law.ou.edu/ailr>

Part of the [Indigenous, Indian, and Aboriginal Law Commons](#)

Recommended Citation

Sarah Arnott, *Legislation: The Alaska Native Claims Settlement Act: Legislation Appropriate to the Past and the Future*, 9 AM. INDIAN L. REV. 135 (1981),
<https://digitalcommons.law.ou.edu/ailr/vol9/iss1/6>

This Note is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

LEGISLATION: THE ALASKA NATIVE CLAIMS SETTLEMENT ACT: LEGISLATION APPROPRIATE TO THE PAST AND THE FUTURE

Sarah Arnott

The decision we make on this issue will have a profound effect on the lives of Alaskan Natives for generations. But it will reflect on our national honor for centuries to come.¹

Historic accident and strong native leadership combined to create an unusual and innovative settlement of aboriginal claims in the Alaska Native Claims Settlement Act passed in 1971.² The Act provides for the payment of nearly one billion dollars for the partial settlement of native claims. The major provision of the Act places 40 million acres in fee simple in corporate native ownership. Management responsibilities are placed in the hands of local and regional native corporations. No trust relationship exists between the federal government and these corporations.³

Criticism of the Act has been general because of its complicated administrative structure.⁴ But because these provisions follow historic patterns of settlement and cooperative use, and because they codify preexisting voluntary native associations, they have a good chance for working.

Some congressional leaders viewed their task as an opportunity to make the final settlement of aboriginal claims in United States' history one of honor and generosity. However, spokesmen for less than generous determinations were surprisingly strong. The administration was not in a generous mood, especially after increasing amounts of oil were found under lands claimed by natives.

The Alaska natives were unconquered people whose land rights

1. S. REP. NO. 405, 92d Cong., 1st Sess. 223 (1971) (supplemental views of Senators Mike Gravel and George McGovern).

2. 43 U.S.C. §§ 1601-1628 (1980) [hereinafter referred to as Settlement Act].

3. Conference Rep. No. 746, 92d Cong., 1st Sess., reprinted in [1971] U.S. CODE CONG. & AD. NEWS 2253 reads, in part: "[T]he conference committee does not intend that lands granted to Natives under this Act be considered 'Indian reservation' lands for purposes other than those specified in this Act. The lands granted by this Act are not 'in trust' and the Native villages are not Indian 'reservations.' "

4. See Price, *A Moment in History: The Alaska Native Claims Settlement Act*, 8 U.C.L.A.-ALASKA L. REV. 89 (1979) [hereinafter cited as Price]. Cf. Branson, *Square Pegs in Round Holes: Alaska Native Claims Settlement Corporations Under Corporate Law*, 8 U.C.L.A.-ALASKA L. REV. 103 (1979) [hereinafter cited as Branson].

had never been established by treaty or congressional action. They were statistically the poorest group of American citizens. The Alaska native leaders would appear to have had no leverage whatsoever in their dealings with Congress, but they used accidents of the times to their advantage and steadily, politely, and tenaciously pursued their goals. The Act is a negotiated settlement between Congress and one of America's least powerful groups.⁵ And, generally, the natives got their way.

This paper will present the legal and historical background of Alaska aboriginal claims, the legislative history of the Settlement Act, and its general provisions. The allocation of resources through the village and regional corporate structure will be emphasized, and notions from the Act that American Indian tribes and other native groups might profitably import into their own structures will be discussed.

Alaska Natives at the Time of the Settlement

In 1968 when settlement was being considered, the native population numbered about 53,000 people.⁶ Thirty percent of the group lived in urban areas. The remaining 70% resided in 178 predominantly native villages.⁷ Some of these villages were small, half of them having populations of less than 150 persons.⁸ Few

5. The point goes to whether natives retained a sovereign status, an issue this paper will not address. Note the following exchange between Wayne Aspinall, Chairman of the House Committee on Interior and Insular Affairs, and Edward Weinberg, attorney for the Alaska Federation of Natives. "Mr. Aspinall. Congress has not authorized a negotiation and won't authorize a negotiation on any of these bills."

"Mr. Weinberg. What I was getting at, Mr. Chairman, was is it true that we are not here conducting a negotiation session. On the other hand, legislation enacting into law the results of negotiations on land sessions and payments with various Indian groups are not uncommon" *H.R. 3100 and Others to Provide for the Settlement of Certain Land Claims of Alaska Natives, and for Other Purposes: Hearings on H. R. 3100 Before the House Subcomm. on Indian Affairs of the Comm. on Interior & Insular Affairs*, 92d Cong., 1st Sess. 249 (1971) [hereinafter cited as *Hearings on H.R. 3100*]. The fact remains that congressional moves were made in response to native action and vice versa.

6. FEDERAL FIELD COMMITTEE FOR DEVELOPMENT PLANNING IN ALASKA, ALASKA NATIVES AND THE LAND, 5 (1968) [hereinafter cited as *ALASKA NATIVES AND THE LAND*]. This extensive study was commissioned by the Senate Committee on Interior and Insular Affairs for use in the preparation on settlement legislation and was heavily quoted in Senate and House Committee reports.

7. *Id.* at 6.

8. *Id.* At the time the study was completed, approximately four hundred historic native villages had been abandoned. *Id.* at 541.

had phone service⁹ and many of them were accessible only by plane or boat.¹⁰

The health status of Alaska natives was deplorable. Their death rate was twice that of white Alaskans,¹¹ with the average Alaska native dying before he or she was thirty-five.¹² The infant mortality rate also was twice that of white Alaskans,¹³ and 15% of the entire childhood population was hospitalized at some time during 1967.¹⁴ Thirty-eight percent of Alaska native children suffered significant hearing loss by the age of four caused by chronic inner ear infections,¹⁵ and the children had slightly higher rates of mental retardation, more than half of which was caused by the residual damage of acute infectious diseases.¹⁶

Bronchopneumonia and other respiratory diseases were the primary causes of hospitalization among Alaska natives.¹⁷ These health problems were closely linked to the extremely substandard housing conditions.¹⁸

9. *A Bill to Provide for the Settlement of Certain Land Claims of Alaska Natives and for Other Purposes: Hearing on S. 1830 Before the Senate Comm. on Interior & Insular Affairs*, pt. 2, 91st Cong. 1st Sess. 308 (1969) [hereinafter cited as *Hearing on S. 1830*, pt. 2] (statement submitted by Paul, Weiss, Goldberg, Reikind, Wharton & Garrison, Attorneys for the Alaska Federation of Natives).

10. *Id.*

11. ALASKA NATIVES AND THE LAND, *supra* note 6, at 19. The crude death rates of native Alaskans was about twice that of Alaska whites, 478 per thousand, contrasted with 810 deaths per thousand in 1966.

12. *Id.* at 19.

13. *Id.* at 21.

14. *Id.* at 24.

15. *Id.*

16. *Id.*

17. *Id.* at 22-24. Tuberculosis, once the major health problem of Alaska natives, had generally been brought under control. In 1950 the native population experienced 650 deaths per 100,000 from that cause. The population rate for all groups was about thirty. In 1977 the rates for the two groups were about the same. *Id.* at 19.

18. "Broadly told, the poor physical health of Alaska Natives is principally the result of environmental conditions in villages—housing that is overcrowded and insufficiently ventilated, water supplies that are impure, and inadequate waste disposal systems While medical efforts . . . have resulted in substantial gains, for many of the remaining problems there are no preventive medical measures to be taken Significant reduction in the incidence of many of Alaska's remaining health problems must be sought in improvement of the socio-economic conditions under which Alaska Natives live." Interview with Martha Wilson, M.D., Medical Director, Alaska Native Medical Center, Anchorage, Alaska, May 10, 1968, quoted in *id.* at 26. It was estimated that 95 percent of native village housing needed replacement. See, *Hearings on S. 1830*, pt. 2, *supra* note 9, at 320 (statement by Ramsey Clark on behalf of the Alaska Federation of Natives). See also, *A Bill to Authorize the Secretary of the Interior to Grant Certain Lands to Alaska Natives*,

Alaska native income and job levels were substantially lower than that of urban Alaskan whites. In 1960 the median per capita income for rural natives was \$1,204.¹⁹ The same figure for whites was \$4,768.²⁰ One-fourth of the native work force had continuing employment, and more than half of those who worked were jobless for most of the year.²¹ The latter group was generally made up of native villagers who were seasonally employed in subsistence occupations such as hunting, trapping, and fishing. Although they were available for employment during parts of the year, the possibility of additional employment in the villages was almost nonexistent.²²

Historical Background

Before the intrusion of the Russian and European civilizations the Alaska natives were among the western hemisphere's wealthiest groups.²³ Eskimos in the north and northwest on the Arctic Ocean and the Bering Sea, Aleuts in the Aleutian Islands, and Indians in the southeastern panhandle of Alaska and in the interior lived in the village patterns still in existence today.²⁴ Villages served as a permanent base, and additional campsites were used on a regular basis for berry picking, hunting, fishing, and trapping.²⁵ Living patterns depended upon the animal resources available in the given regions. Whaling and hunting of other sea mam-

*Settle Alaska Native Land Claims, and for Other Purposes: Hearings on S. 2906 Before the Senate Comm. on Interior & Insular Affairs, pt. 1, 90th Cong., 2d Sess. 31 [hereinafter cited as *Hearings on S. 2906, pt. 1*] (statement by Emil Notti, president, Alaska Federation of Natives): "The human needs, the suffering and deprivations that exist in the villages are beyond description and are as bad as the worst conditions anywhere in the world. The native people in many areas face a daily crisis just to exist." While the average American household had 3½ rooms with one person per room, the average Alaska village home had 1½ rooms with 3.8 persons per room. ALASKA NATIVES AND THE LAND, *supra* note 6, at 72.*

19. ALASKA NATIVES AND THE LAND, *supra* note 6, at 13.

20. U.S. Bureau of the Census, U.S. Census Population: 1960. General Social and Economic Characteristics, Alaska. Final report PC(1)-3C, U.S. Government Printing Office, Washington, D.C., 1961, p. 3-72. In addition, the economic plight of villagers increased in proportion to their remoteness. The cost of commodities in Anchorage was 23 percent higher than in Seattle, and up to 74 percent higher in villages in the North. ALASKA NATIVES AND THE LAND, *supra* note 6, at 13.

21. ALASKA NATIVES AND THE LAND, *supra* note 6, at 12.

22. *Id.* at 13.

23. *Hearings on H.R. 3100, supra* note 5, at 202.

24. ALASKA NATIVES AND THE LAND, *supra* note 6, at 5.

25. For a map of current and historic native places, *see id.* at 549, 550.

mals predominated in the north and fishing along the Pacific Coast in the southeast.²⁶

The historical use of territory was not haphazard. In the Bering Strait region, for example, there were no unused buffer areas between native groups. Aboriginal tribes claimed distinct areas, usually bounded by the edges of watersheds, which were well known to the natives, although they may have comprised thousands of acres. Hunters who wandered into another group's territory were killed, unless they could explain that their presence was unintentional.²⁷ Use of the group's prescribed territory was communal.²⁸

Increased political flexibility was achieved through the use of alliances. Groups combined to defend their territories against a common enemy (for instance the Russian Eskimo), or to increase subsistence levels.²⁹

The native population is estimated to have been 74,000 in 1740, before the occurrence of significant contact with outsiders.³⁰ Increasing Russian and American presence in the area had a profound effect upon Alaska natives, as sources of animal protein declined and imported diseases spread. When the United States purchased Alaska in 1867, the native population had declined to an estimated 34,000, but still accounted for 95% of the total population.³¹ The numbers of Russian and American whalers, fishermen, trappers, and miners continued to grow, and during World War II their numbers surpassed the number of Native Americans in the area.³² The number of permanent settlers increased sharply after the second world war. And at the time settlement acts were being considered, Alaska natives comprised only a fifth of the state's population.³³

Legal Background

Throughout the period dating from the first Russian settle-

26. See *id.* at 86-272 for an extensive examination of native subsistence patterns in the various regions.

27. *Id.* at 144-48, quoting from Ray, *Land Tenure and Polity of the Bering Strait Eskimos*, 6 J. OF THE WEST 371 (1967).

28. *Id.* at 148.

29. *Id.* at 149.

30. *Hearings on S. 2906, pt.1, supra* note 18, at 66.

31. *Id.* In 1880 the white population in Alaska numbered 300 persons, almost all of whom resided in Sitka. ALASKA NATIVES AND THE LAND, *supra* note 6, at 431.

32. ALASKA NATIVES AND THE LAND, *supra* note 6, at 429.

33. *Id.*

ment, no determinations were made about the right of Alaska natives to their land. This decision was specifically deferred in successive legislation affecting Alaska lands.

During the period of limited coastal commercial colonization, Alaska was large enough so that land conflicts were not critical to either side. Use and occupancy by Alaska natives was threatened, however, as early as the first decade of the twentieth century when the first of numerous federal withdrawals were effected.³⁴ The government failed to act until further postponement became detrimental to the dominant society. Legislation was finally passed when each day of inaction enormously increased the potential cost of the settlement of native claims.

The legal history dating from Russian colonization to the late 1960s is really nonlegal history—an accounting of successive legislative measures that either left native aboriginal claims as they were or provided inappropriate or highly inadequate relief. When final settlement proposals were being deliberated by Congress in the late 1960s, the native people who had controlled more than 350 million acres for at least ten thousand years owned less than 500 acres in fee and had a reserve status in 23 villages totaling less than 3 million acres.³⁵

Nonnative sovereignty was first asserted in the Alaskan area by the Russian American Company, chartered by the Russian throne in 1799.³⁶ The corporation's primary objective was commercial fishing and trapping, and the Russian government specifically dictated that native groups should not be conquered.³⁷ When the United States purchased Alaska from Russia in 1867, article III of the treaty affecting purchase referred to Alaska natives as follows:

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of

34. Reservations included the 16 million-acre Tongass National Forest and the 4,726,000-acre Chugach National Forest. *Id.* at 434.

35. S. REP. No. 925, 91st Cong., 2d Sess. 77 (1970).

36. ALASKA NATIVES AND THE LAND, *supra* note 6, at 429.

37. *Id.* at 430. English and American traders were granted commercial rights by the Russian American Company.

their liberty, property and religion. 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 that country.³⁸

The Organic Act of 1884 was the first public land law to be extended to the area, then known as the District of Alaska.³⁹ Referring to Alaska natives, the Act read: "[T]he 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 but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress"⁴⁰

By the end of the nineteenth century, the impact of commercialism and settlement had intruded upon native groups to such an extent that protests were submitted to the Secretary of the Interior and reservation status was requested by some groups. The secretary replied, "I have to inform you that these matters all lie outside of the control of this Department and would be proper subjects for the consideration of Congress."⁴¹

The Alaska natives were in a baffling situation. They were prohibited by congressional act from entering into treaties with the federal government for the cession and retention of land.⁴² The Allotment Act⁴³ did not apply to them because they did not reside on reservations.⁴⁴ And because they were not citizens or aliens capable of attaining citizenship, they were precluded from making entries under the Homestead Act.⁴⁵ Their plight at that time

38. Act of May 30, 1867, 15 Stat. 539, art. III. The "inhabitants" admitted to the enjoyment of all rights were persons of Russian descent, natives who had become part of the colony by marriage or indenture and natives dependent on the colony. *ALASKA NATIVES AND THE LAND*, *supra* note 6, at 430.

39. Act of May 17, 1884, 23 Stat. 24.

40. *Id.* at § 8.

41. *ALASKA NATIVES AND THE LAND*, *supra* note 6, at 432.

42. Act of Mar. 3, 1871, 16 Stat. 544. The Act declares, in part: "no tribe or nation within the territory of the United States shall be acknowledged or recognized as an independent nation, or power with which the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified . . . prior to March 3, 1871, shall be therefore invalidated or impaired."

43. Act of Feb. 8, 1887, 24 Stat. 388.

44. There was one early reservation in Alaska. William Duncan, a missionary in controversy with the Church of England, brought a group of Canadian Indians to Alaska. They were granted a reservation in the Annette Islands, the Metlakatla Reserve. See *ALASKA NATIVES AND THE LAND*, *supra* note 6, at 432.

45. *Id.* at 434. Alaska Natives became United States citizens in 1924. Act of June 2, 1924, 43 Stat. 253.

was described thus: "Physically they comprised the major part of Alaska's population. Officially they were invisible. The mood of the land was to procrastinate about Alaska which was far away and would never be a state or have a white resident population to contest national decisions."⁴⁶

In an effort to correct this oversight, Congress passed the Alaska Native Allotment Act providing for the allotment of homesteads of a maximum of 160 acres of nonmineral land.⁴⁷ Congress, based in a mild and lush region, transferred its own parochial notions of appropriate land use to a predominantly arctic region, most of which was incredibly inhospitable most of the year. Alaska natives were not farmers of small plots of land. They were fishermen, whalers, and hunters, some requiring an estimated 150,000 acres of land to support one family.⁴⁸ Even if the Act had been appropriate, few Alaska natives knew of its existence and funds were never appropriated for necessary surveying, investigation of claims, or recording.⁴⁹ Fifty-four years after its passage, only eighty allotments, most of them in southeast Alaska, had been granted under the Act.⁵⁰

Alaska villages received some guarantees against encroachment through an amendment to the Townsite Act in 1926,⁵¹ various executive orders,⁵² and the extension of the Wheeler-Howard Act to Alaska in 1936.⁵³ Alaska natives received deeds to surveyed townsite lots in twenty-eight villages following amendment of the Townsite Act.⁵⁴ Executive withdrawals and reservations made for nine villages between 1910 and 1917 averaged 19,370 acres.⁵⁵ Res-

46. S. REP. NO. 925, 91st Cong., 2d Sess. 72 (1970).

47. Act of May 17, 1906, 34 Stat. 197. There had been at least some official recognition of the oversight. The annual report of the Commissioner of General Land Office in 1905 read, in part: "For more than twenty years the Indians of the United States have been accorded the privilege of acquiring title to lands for their individual use This experiment amply justifies the extending of equal rights to the natives of Alaska, who are certainly equal if not superior in every sense of the word to the American Indian. Although our Government has been charged with the guardianship of these people, it has done but little for their betterment since they came under its control, nearly thirty years ago" ALASKA NATIVES AND THE LAND, *supra* note 6, at 434.

48. *Hearings on S. 1830*, pt. 2, *supra* note 9, at 320.

49. *Hearings on S. 2906*, pt. 1, *supra* note 18, at 70.

50. *Id.* at 72. Other inappropriate legislation included the Reindeer Act, which attempted to make herders out of Eskimo hunters. Act of Sept. 1, 1937, 50 Stat. 900.

51. Act of May 4, 1926, 44 Stat. 629.

52. Act of May 1, 1936, 49 Stat. 1250.

53. *Id.*

54. S. REP. NO. 925, 91st Cong., 2d Sess. 72 (1970).

55. ALASKA NATIVES AND THE LAND, *supra* note 6, at 435.

ervations for Alaska natives were authorized by the Alaska Extension of the Wheeler-Howard Act. The secretary was authorized to reserve land for "use and occupancy" upon the approval of the majority of the residents within a proposed area. Six reserves for seven villages had been incorporated under the Act in 1946.⁵⁶ Eighty additional petitions for reserve status received no action by the secretary.⁵⁷ The policies of termination were becoming popular and the Alaska public was generally opposed to the creation of Alaska reserves.⁵⁸

The creation of the Indian Claims Commission⁵⁹ in 1946 proved to be of no benefit to Alaska natives. Relying upon the Act, the Tee-Hit-Tons brought an action for compensation after the federal government sold all merchantable timber in an area claimed by the tribe.⁶⁰ The Supreme Court found that Congress had granted the tribe no permanent rights either by treaty or legislation.⁶¹ The intent of Congress in passing the Organic Act of 1884 merely had been to maintain the status quo. The natives thus had no maintainable claim.⁶²

In 1958 only small amounts of land were reserved for native use and occupancy.⁶³ Because the land long used for subsistence—for fishing, hunting, and trapping—was almost entirely held by the federal government as public land, this use was not in jeopardy. No major entries on the public domain had occurred to create the conflicts that prevailed in colonial and early United

56. S. REP. No. 925, 91st Cong., 2d Sess. 73 (1970). Four villages voted against the establishment of reserves and one was found invalid.

57. *Id.*

58. *Id.* at 75.

59. Act of Aug. 13, 1946, 60 Stat. 1049.

60. Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 273 (1955). Indian groups had five years in which to bring claims and twelve were filed by Alaska native groups, not all for land takings. ALASKA NATIVES AND THE LAND, *supra* note 6, at 445.

61. *Id.* It should be noted that the decision negated native claims against the government only and not against third parties.

62. See *A Bill to Authorize the Secretary of the Interior to Grant Certain Lands to Alaska Natives, Settle Alaska Native Land Claims, and for Other Purposes: Hearings on S. 2906 Before the Senate Committee on Interior & Insular Affairs, pt. 2*, 90th Cong., 2d Sess. 530 [hereinafter cited as *Hearings on S. 2906, pt. 2*] (statement by Senator Henry Jackson): "As the author of the Indian Claims Commission Act we had to face this question at the time . . . The Alaska problem, as the Senator knows, is totally unique . . . The Indian Claims Commission Act . . . relates, of course, to the treaties that had been entered into with the Federal Government and land taken from the Indians with reference to their rights at that time. So this is a different legal situation."

63. See text at note 35, *supra*.

States history when prospective landowners moved progressively westward through Indian territory.

A crisis occurred in 1958. With the passage of the Alaska Statehood Act⁶⁴ Congress created an immediate land conflict affecting the entire Alaska area. The state was granted the right to select 102.5 million acres from the public domain.⁶⁵ At the same time, the Act made no determination about native claims, stating only that public lands that might belong to natives should remain under the jurisdiction of the United States until disposal was made.⁶⁶ As the state proceeded in the selection process, the natives protected themselves by protesting the land selections. By mid-1968 newly formed native regional groups had filed forty protests concerning nearly 297 million acres.⁶⁷

The conflict eventually created a "land freeze" instituted by the United States Department of the Interior. When the Bureau of Land Management announced in 1966 that large parcels of the north slope of the Brooks Range would be open for gas leasing, native protests caused then Secretary of the Interior Udall to announce a suspension of further lease issuances until protests could be examined.⁶⁸ Action was suspended on almost all cases until protests were resolved.⁶⁹ Policy was formalized by the issuance of Public Land Order 4582 which provided in part:

[A]ll public lands in Alaska which are unreserved . . . are

64. Act of July 7, 1958, 72 Stat. 339.

65. *Id.* In addition, the state was given a grant of 90 percent of all revenues from mineral leases on federal lands.

66. *Id.* Section 4 reads, in part: "Said State and its people do agree and declare that they forever disclaim all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions or alienation."

67. S. REP. No. 925, 91st Cong., 2d Sess. 77 (1970). About 6 million additional acres selected by the state and federal government were protested before 1970.

68. *Id.* It was the Department's policy to proceed only with those transfers needed for the construction of public facilities.

69. Letter from Secretary Udall to Governor Hickel of Alaska, summarized in S. REP. No. 925, 91st Cong., 2d Sess. 78 (1970). In *State of Alaska v. Udall*, 420 F.2d 938 (9th Cir. 1969), *cert. denied*, 397 U.S. 1076 (1970), whether native occupancy and use removed lands from those available for state selection was found to be a factual matter needing judicial determination and the state could not be granted summary judgment on that issue.

hereby withdrawn from all forms of appropriation and disposition under the public land laws . . . including selection by the State of Alaska pursuant to the Alaska Statehood Act . . . for the determination and protection of the rights of the Native Aleuts, Eskimos, and Indians of Alaska.⁷⁰

No longer could Congress put off a determination of native land claims. Economic and moral considerations impelled the making of a prompt settlement. Concerns were voiced that the state would suffer from the "freeze." Oil had been discovered in vast amounts in 1967 and in 1968 there was a push to realize the benefits of those discoveries as soon as possible. The prevailing view was represented by the following statement:

The welfare of all Alaskans and the economic stability of the state itself is dependent upon accelerated rather than delayed development of the resources [The] recent freeze on issuing oil and gas leases on land covered by native claims, has proven costly financially to the Federal and state governments. It promises to be far more costly in delayed resource development. . . . Although the Federal government can tolerate delays resulting from decisions, cumbersome legal proceedings or from lack of appropriations, Alaska cannot permit such delays which often mean lost opportunity for securing commitments of development capital.⁷¹

Native claims clouded the title to most of Alaska's 365 million acres.⁷² It was presumed this would impede the acquisition and development of Alaska lands in general.⁷³ Specifically, "clouded title" could delay an Alaska pipeline or other landed means of transporting oil.⁷⁴

The needs of Alaska natives were not overlooked. They had also suffered economic hardships because of the extreme delay in

70. Public Land Order No. 4582, 34 Fed. Reg. 1025 (1969). Some Alaskans viewed the freeze as a setting aside of the Statehood Act to force congressional action on settlement. *Hearings on S. 2906, pt. 1, supra* note 18, at 336.

71. ALASKA NATIVES AND THE LAND, *supra* note 6, at 526. Roscoe E. Bell, consultant to the Alaska Land Law Study team of the Public Land Law Review Commission, in Letter to Senator Henry Jackson on S. 2906.

72. ALASKA NATIVES AND THE LAND, *supra* note 6, at 525.

73. S. REP. No. 925, 91st Cong., 2d Sess. 56 (1970). Until Congress resolves the native land claims, each state land selection, mineral lease offer, homestead entry, mining claim, application for a right of way, for a use permit, and for purchase or lease of land and other property may be challenged.

74. Branson, *supra* note 4, at 104.

settlement. The Committee on Interior and Insular Affairs found these delays to have caused, to some extent, the social, health, and economic disadvantages suffered by the Alaska natives. Without title to the lands they used and occupied, they were defenseless against commercial development that threatened subsistence activities. They also lacked real property assets that could have provided security for home and commercial loans.⁷⁵

The need for settlement was recognized. What that settlement would entail was the next determination.

Legislative History

Alaska natives joined forces in regional groups to defend themselves against conflicting land selections.⁷⁶ A statewide association of these groups formed in 1966, the Alaska Federation of Nations⁷⁷ represented native interests in the following five years of legislative negotiations leading to settlement. The quality of native leadership, described as "brilliant, dedicated and informed"⁷⁸ was fortunate for their cause.

This group introduced a bill that would have given the United States Court of Claims jurisdiction to adjudicate Alaska native land claims.⁷⁹ As was discussed above, Alaska natives, because they had no treaties with the United States government, were found to have no claims adjudicable by the Indian Claims Commission.⁸⁰ Special jurisdictional legislation, however, had been found to be adjudicable. In 1935 such legislation was passed in favor of the Tlingit and Haida Alaska native groups. The Court of Claims held they were entitled to recover compensation for the taking of their lands by the United States government.⁸¹ Incredibly, the final determination of value to be received had not as yet been made. In 1968 the Court of Claims was to hold, favorably for Alaska natives, that land value was to be calculated at the time of federal taking rather than at the time of purchase from Russia.⁸²

75. S. REP. No. 925, 91st Cong., 2d Sess. 55 (1970).

76. *Id.* at 77.

77. *Hearings on S. 2906, pt. 1, supra* note 18, at 26.

78. *Id.* (statement of Senator Pollock). Alaska natives had some powerful allies on their side, as is shown by the statements of Ramsey Clark and Arthur Goldberg in this paper. Representation by Goldberg's firm, however, began in 1969. The formulation of native goals predates this by three years.

79. *Id.* H.R. 11164 and S. 2690 were written by this group.

80. 348 U.S. 272 (1955) *reh. denied*, 348 U.S. 965 (1955).

81. *Tlingit-Haida Indians v. United States*, 389 F.2d 778 (Ct. Cl. 1968).

82. *Id.*

The extraordinary time necessary to settle the claims,⁸³ and favorable initial proposals from the Department of Interior, turned native attention from a judicially oriented course. After the favorable Tlingit-Haida determination, however, the natives continued to use, subtly but as a continual point of pressure, the specter of a Court of Claims adjudication based upon value at the time of taking (settlement).⁸⁴ If the settlement was not acceptable, they could always request special legislation to judicially determine their claims.⁸⁵ The longer it took for Congress to reach a settlement, the greater would be the value of the taking as increasing amounts of Alaska gas and oil were discovered in the late 1960s. Little wonder that congressional documents always stated the necessity that settlements be fair and that settlement be speedy.

Because of the possibility of the continuation of land freezes until settlement, the state of Alaska was opposed to a judicial determination. In an effort to reach an agreement acceptable to all Alaskans, Governor Hickel in 1967 appointed a Task Force on Native Land Claims to draft legislation acceptable to both natives and the state.⁸⁶ Natives and representatives of the state were primarily responsible for the bill and the Department of Interior participated in deliberation.

The result, S. 2609,⁸⁷ would have granted 40 million acres in fee to Alaska natives. Then Secretary of Interior Udall had suggested an additional cash settlement of 10% of future revenue

83. This may have been alleviated somewhat by Senator Pollock's suggestion for the creation of a special Alaska Native Land Claims Commission. *Hearings on S. 2906, pt. 1, supra* note 18, at 27.

84. *A Bill to Provide for the Settlement of Certain Land Claims of Alaska Natives and for Other Purposes: Hearings on S. 1830 Before the Senate Comm. on Interior & Insular Affairs, pt. 1*, 91st Cong., 1st Sess. 117 (1969) [hereinafter cited as *Hearings on S. 1830, pt. 1*] (statement by Emil Notti).

85. *Hearings on S. 1830, pt. 2, supra* note 9, at 291 (statement of Arthur Goldberg, attorney for the Alaska Federation of Natives):

"I noticed in particular the question, Mr. Chairman, that you asked whether this would be a final settlement of the claims or whether at some future occasion the Native groups would come in and again request of some other Congress further consideration of their claims

"Whether this will be a final settlement will not only depend upon whether enough cash is paid right now and whether enough land is allocated, it will also depend on whether the Native population has a sense that they are permanently going to participate in the economic revenues which providence has given to the State, which is the land in which they have lived for thousands of years, and to which they claim almost all of the land."

86. *Hearings on S. 2906, pt. 1 supra* note 18, at 326-38.

87. *Id.* at 3 *et seq.*

garnered from drilling operations on the outer continental shelf.⁸⁸

The task force proposal embodied concepts thought to be basic and necessary by the natives throughout negotiations. A substantial land grant was seen as most important because of the opportunity it gave them for future participation in resource development.⁸⁹ A trust relationship with the federal government was rejected, not only because the natives saw it as demoralizing, but because it would be commercially inhibiting.⁹⁰ And it was natives who suggested a corporate form of administration, hoping to avoid "freezing the villages into history."⁹¹ It was thought that natives who participated in the settlement as members of the corporate structure could maintain corporate ties and at the same time be free to become mobile in American society.⁹² If natives participated in settlement as tribal members, it was feared they would remain dependent upon a reservation status.

S. 2609 was the most favorable proposal made for the natives, probably because it represented a balancing between the needs of the natives and the state.⁹³ Alaskans, close to the problem and "disenthralled" by the acreages involved, were generous with the state's resources. Native settlements offered by the administration through the Department of Interior and congressmen from crowded southern states ranged from less generous to manifestly unfair. In the balancing game between natives and the public at large, the battle for a fair settlement was more difficult.⁹⁴

Administration reaction was formulated by the Department of Interior⁹⁵ and was generally negative toward both the native bill, S. 2690, proposing the creation of an Alaska Native Claims Commission and the Alaska-Native bill, S. 2906, granting 40 million acres in fee.

The officially proffered reason for rejecting a Claims Commission settlement was the possibility that final settlement might not

88. *Id.* at 27.

89. *Id.* at 28.

90. *Id.*

91. *Id.* at 27.

92. *Hearings on S. 2906, pt. 2, supra* note 62, at 575. See also *Hearings on S. 2906, pt. 1, supra* note 18, at 90.

93. *Hearings on S. 2906, pt. 2, supra* note 62, at 26.

94. S. REP. NO. 925, 91st Cong., 2d Sess. 60 (1970).

95. One wonders at the appropriateness of policy formulation by an administrative agency rather than by Congress. Ideally, administrations should function by carrying out policies dictated by Congress. As the Department functioned in these determinations, it was in a position to create policy contrary to the needs of the then-beneficiaries to whom they acted as trustee.

be made for twenty to thirty years, to the detriment of all the parties concerned. This was, of course, an important consideration. It may have been ingenuous of the department not to state openly another consideration it had in mind—that under such a judicial determination the natives could easily claim all of Alaska. Secretary of Interior Udall said, “[I]n fact, I think it would be wise not to litigate that issue, probably.”⁹⁶

In fairness, there were good reasons for favoring a legislative rather than a judicial determination. The judicial process could sort out the facts and come to a monetary conclusion, but only the legislative process could develop a program for future development and provide the mechanism to manage settlement funds.⁹⁷

The Department of Interior found the native proposal, S. 2906, objectionable on several grounds. Forty million acres was greater than that thought necessary by the department for native expansion. The receipt by natives of 10% of the resources of the continental shelf was believed not in the best interests of the natives or the nation. If such receipts did not live up to expectations, natives could receive less than adequate compensation. On the other hand, revenues could far exceed any reasonable relationship to native claims. A cash settlement, based on the value of lands taken, was preferred.⁹⁸ The Bureau of the Budget was credited with strenuous objections to open-ended payment.⁹⁹

The Department of Interior offered instead S. 3586, which had the following provisions. Each village was to receive a maximum of 50 thousand acres within its vicinity, making a maximum of 10 million acres available to natives. A cash payment of \$180 million, or \$3,000 per native person, was suggested.¹⁰⁰

96. *Hearings on S. 2906, pt. 2, supra* note 62, at 539.

97. *Id.* at 511, 512 (statement of Joseph H. Fitzgerald, Chairman of the Federal Field Committee for Development).

98. *Hearings on S. 1830, pt. 1, supra* note 84, at 77 (statement of Senator Henry Jackson): “The last thing that I think we want is tremendous land grants, resulting in large, idle enclaves of land. I do not think this would be in keeping with the traditions of our country.”

99. *Hearings on S. 1830, pt. 2, supra* note 9, at 293. One wonders why a 10% royalty to natives for continental shelf revenues was objectionable when a 90% royalty to the state of Alaska of revenues from federal lands had been granted under the Alaska Statehood Act.

100. *Hearings on S. 2906, pt. 2, supra* note 62, at 523, 526-28. The Department, when calculating the value of land taken, intended to use 43 cents per acre, that found owing the Tlingit-Haidas for federal takings in the late nineteenth and early twentieth centuries. See *Tlingit-Haida Indians v. United States*, 389 F.2d 778 (Ct. Cl. 1968).

The proposal makes the natives' disinclination to have the department as their trustee more understandable. Dependence upon those lacking generosity would be sorry indeed. The department's proposal, if passed, would certainly have ensured the continuance of a guardian-ward relationship between the federal government and the Alaska natives.

Deficient as the Interior-administration proposal appeared, the full extent of its deficiency was not revealed until later hearings, when testimony from then Secretary of Interior Hickel revealed that the natives should receive only locatable minerals found within granted land and not rights to oil and gas.¹⁰¹ Reaction to this ranged from factual—that such a policy would be unique within the history of United States' dealings with American Indians,¹⁰² through rational—that there was no justifiable reason to withhold from natives the total rights to land ownership,¹⁰³ to the highly indignant—that if settlement had been made in 1868, the locatables rather than rights to gas and oil probably would have been withheld.¹⁰⁴

Following the February, 1968, hearings held in Alaska, the Committee on Interior and Insular Affairs, chaired by Senator Henry Jackson, commissioned the Federal Field Committee to do a comprehensive study of Alaska natives and their claims for use by the committee.¹⁰⁵ The result, "Alaska Natives and the Land," published in 1968, was an eminently scholarly and objective study documenting native life in Alaska, the present and historic living patterns of Alaska natives, and projecting an even greater social and economic dichotomy between Alaska whites and natives if a fair settlement was not reached. The study emphasized that land claims legislation should be, in addition to a settlement of legal claims, a means of providing a foundation for future native social and economic advancement.¹⁰⁶

S. 1830, introduced in 1969 by Senator Jackson, was supposedly based upon the findings of the study. Alaska natives were to receive surface rights to a maximum of 4½ million acres and a percentage of the revenues from the granted lands for a maximum of ten years. Funds were to be distributed by an appointed

101. *Hearings on S. 1830, pt. 1, supra* note 84, at 69.

102. *Hearings on S. 1830, pt. 2, supra* note 9, at 294 (statement of Arthur Goldberg, attorney for the Alaska Federation of Natives).

103. *Id.* at 319 (statement of Ramsey Clark).

104. *Id.*

105. *Hearings on S. 1830, pt. 1, supra* note 84, at 1.

106. *Id.* at 1, 2.

development corporation, not by the natives themselves.¹⁰⁷ Natives would receive half the land they would under the Interior bill and there was a possibility of their receiving twice the amount of cash. Neither Act was generous.

At a time when the American consciousness supposedly had been exposed to myriad examples of unfair treatment of Native Americans by the federal government, it appeared that once again native claims would be dealt with in a most restrictive manner. The last negotiations between the United States and indigenous native groups within its borders could have had the most shameful result in the nation's history.¹⁰⁸

The natives advanced their cause in a manner worthy of emulation by diplomats at any level of government. What they wanted was clearly and unambiguously stated. Why they should have it was factually demonstrated and the fairness of their claims was enunciated. And throughout their presentation they alternately praised their opposition for any changes made in their favor¹⁰⁹ and suggested that if the legislative determination was not adequate, further legislation for a Court of Claims adjudication could be sought, and the price at the time of taking would reflect recent North Slope oil activities.¹¹⁰

107. *Id.* at 3 *et seq.*

108. *Id.* at 64. (statement of Secretary of Interior Hickel): "[T]he United States acquired certain moral responsibilities, along with legal responsibilities—regarding the native citizens of what was to later become the 49th state.

"The Federal Government recognized this responsibility in the original Treaty of Purchase in 1867; in the Organic Acts of 1894 and 1900, and again in the Statehood Act of 1959 But recognition is one thing—action and positive results are another." Perhaps there was a genuine feeling that S. 3586 was fair and generous. Hickel did think the proposals of S. 1830 were inadequate.

109. *Hearings on S. 1830, pt. 1, supra* note 84, at 116 (statement of Emil Notti, president, Alaska Federation of Natives): "Generally I was very pleased by his [the Secretary of Interior's] statement. It indicates that we have moved a long way from the position 2 years ago and a year ago."

110. *Id.* at 117 (statement of John Borridge, first vice president, Alaska Federation of Natives): "Relative to the question itself perhaps it would be germane, Mr. Chairman, and Senators, at this point to touch on some of the unique factors which make the Alaskan native land claims perhaps a little bit different. It strikes me that this is important to our understanding and appreciation of the context of these claims, because generally we have before us the examples of other land claims which have been pursued either within the Indian Claims Commission or under previous jurisdictional acts before the Court of Claims.

"Generally within the south 48 [states] we have found that most of the cases have dealt with lands which were taken at an earlier period. And in accordance with the general procedures of the judicial system within these cases, the evaluations have been fixed as of the times of the taking . . . [W]e need to stress the unique fact that in Alaska we have had

The legislative conflicts were, simply stated, the amount of land that should be available to the natives, the rights that should accompany that land, and who should control the revenues of settlement. The native goal was to continue the traditional way of life or to be given the opportunity to join the mainstream of American life with opportunities equal to other Americans.¹¹¹ Their specific requests were confirmation of title to land in the amount of 40 million acres, a \$500 million payment, and a 2% royalty from all lands claimed as compensation for all claims to title.¹¹² Funds and lands were to be managed by one native state-wide corporation and twelve regional corporations.¹¹³

Regarding the amount of land the settlement should provide, natives argued that the amount proposed in S. 1830 was unfair. Alaska lands were not middle-America farmlands. Village areas were generally rugged and remote, and as much as 1,000 acres per person was necessary for survival in some areas.¹¹⁴ Ramsey Clark, an attorney for the natives, spoke of the necessity for legislators to "disenthrall" themselves about the amounts of land involved.¹¹⁵ Alaska was not subject to urban sprawl. Alaska's governor had just testified that the state would probably never select all of the land to which it was entitled.¹¹⁶ Alaska natives were asking for 10% of the state's land area, but they comprised 20% of the state's population.¹¹⁷ If natives could not retain adequate lands, their social and economic problems would become aggravated.¹¹⁸ And no one else was going to use this land. "[I]t would be a shame not to give them what they seek, what has been recognized by disinterested sources, as not excessive."¹¹⁹

Natives argued that land settlements should be made in fee. There was no legal or moral reason for withholding from them all

as a general premise no takings to any great extent. Thus if we follow this premise a little further, then it would appear that the takings would be more of a 1969 date, which would include within it of course, the valuation, some of which can be reflected in the recent activities of oil exploration on the North Slope."

111. *Id.* at 115 (statement of Emil Notti).

112. It is of note that this was not couched in terms of a grant from the federal government.

113. *Hearings on S. 1830, pt. 2, supra* note 9, at 285.

114. *Id.* at 319.

115. *Id.*

116. *Id.*

117. *Id.* at 293.

118. *Id.* at 308.

119. *Id.* at 320.

of the rights of ownership.¹²⁰ Natives should be in a position to manage resource development, for example, oil exploration, in such a way that would not be detrimental to their interests in the surface.¹²¹ The question was put thus: should the people who have "always lived on, occupied and used and held dominion over the land, the Native peoples of Alaska" be bypassed in the development of valuable resources found within the land?¹²²

S. 1830, the "Field Study" bill, provided that a majority of managers be nonnative for at least three years, while the Department of Interior proposed nonnative control for at least twenty years.¹²³ Natives argued strenuously for total and immediate control. One native leader had this to say:

[I]f there is to be a commission or corporation or a board or any other organization to handle and spend our resources and to plan our fate, we, the natives, should control such organizations. We have been treated as "wards" for many years. We have not profited by the "wardship"; we are humiliated by the very concept which assumes that we are something less than other citizens—and I assure you that we are not.

To put it bluntly, we want to manage our money and our lives, and we must question the fairness of any settlement which does not enable us to do so.¹²⁴

The ability of native leaders to manage their own affairs was stressed. The use of development corporations to make capital investments with settlement funds had been a native idea.¹²⁵ Native leaders were successfully managing oil lease revenues received by the Tyonek group. With the funds they received they had built modest housing for each Tyonek family, invested in a construction company employing native people, purchased real estate and built two large commercial developments in Anchorage, and pur-

120. *Id.* at 294.

121. *Id.*

122. *Id.* at 318.

123. *Id.* at 310.

124. *Hearings on S. 1830, pt. 1, supra* note 84, at 115 (statement of Emil Notti).

125. *Id. See also, Hearings on H.R. 3100, supra* note 5, at 106 (statement of Roger Morton, Secretary of Interior): "[O]ur discussion with Native people would indicate that they do not believe that a per capita distribution of these funds on an individual basis would be in their best interest. They believe that some sort of utilization of these funds for the whole through the development of public facilities and economic entities which this kind of capital could attract and develop is more to their benefit than a per capita distribution. I think I share this view."

chased the Anchorage water and sewer company, a local title company, a charter airline, and a local electrical generating facility.

The natives also questioned the efficiency of one statewide corporation, and proposed instead twelve regional corporations. They were, at that time, informally associated in twelve regions each having an established native leadership.¹²⁶

The next two sessions of Congress saw a flurry of amendments and bills, most of which offered far more favorable settlement packages. The Department of Interior amended S. 1830 to contain the basic provisions recommended by Alaska natives, placing 40 million acres in fee in native hands, and giving them one billion dollars, half of which was to come from the federal government and half from the state of Alaska in a percentage of royalties. Management of resources was not given to the natives, however,¹²⁷ H. R. 7039 reserved 60 million acres, management to be carried out by natives.¹²⁸

The legislation and comments of Wayne Aspinall, then chairman of the House Committee on Interior and Insular Affairs, warrants some recognition. His proposal, H. R. 3100, made between 40 thousand and one million acres available to natives in fee.¹²⁹ He thought other bills to be excessive and "born in conspiracy and secret negotiations on behalf of special interests without regard to the public interest."¹³⁰ Some of Aspinall's comments were so extreme as to be embarrassing and may have actually helped the natives' cause. Few legislators probably wanted to be identified with statements such as this:

[O]n what basis can the American people be asked to provide such a largess for the benefit of 55,000 Alaskan Natives who enjoy the dual benefits of being Alaska and American citizens on the one hand, and being at the same time a privileged and select group who have received as beneficiaries untold millions in special benefits over the years for health, education, housing

126. *Id.* at 311. The twelve regions had been found to have about equal resource potential. *Id.* at 258. Estimates were also made that a single corporation would be among one of the twenty largest in the United States and might be the subject of antitrust actions. *See id.* at 254.

127. S. REP. NO. 925, 91st Cong., 2d Sess. 1 *et seq.* (1970).

128. *Hearings on H.R. 3100, supra* note 5, at 182.

129. *Id.*

130. H.R. REP. NO. 523, 92d Cong., 1st Sess. 53 (1971).

and welfare appropriated by the Federal and State Governments since 1867?¹³¹

But Congress had been told often that settlement would have a profound effect on Alaska natives for generations. The Alaska native claims settlement could be an unprecedented opportunity to deal with Indian rights on a just and generous basis.¹³² That was generally the manner in which Congress dealt with the problem.

The Act

The major provisions of the Act were these: 40 million acres in fee were retained by Alaska natives and the remainder of their aboriginal claims were extinguished.¹³³ Natives also received a cash settlement of close to one billion dollars from oil and gas revenues, about half of which was to be contributed by the state of Alaska and half by the federal government.¹³⁴ Village corporations hold the surface rights to villages and selected adjacent lands.¹³⁵ Each village is within one of twelve regional native corporations, which hold title to some surface lands and all subsurface rights within the region.¹³⁶ An extended trust relationship with the federal government was specifically abrogated,¹³⁷ and no

131. *Id.* at 54. Other statements by Aspinall include the following: "Nor have the Alaskan Natives sought redress of their claims through the Indian Claims Commission, which was established by Congress in 1946 for the purpose of hearing and determining all legal, equitable, and moral Indian claims against the United States accruing before the effective date of that Act.

"The failure of the Alaskan Natives to document in detail their claims is indicative of the insufficiency of such claims. If a strict test were applied in the consideration of this legislation, it is questionable whether the Natives could support an appreciable fraction of their claims." *Id.* at 53.

132. *Hearings on H.R. 3100, supra* note 5, at 181 (statement of Donald Wright, president, Alaska Federation of Natives).

133. 43 U.S.C. § 1603 (1980).

134. 43 U.S.C. § 1605 (1980).

135. 43 U.S.C. § 1613 (1980). Each village was directed to transfer surface title to individuals for primary places of residence, business, and subsistence campsites. 43 U.S.C. § 1613(c)(1). Conflicts have arisen over whether village corporations may select lands previously acquired pursuant to townsite provisions, and litigation about this is likely. Telephone conversation between author and Robert Mullendore of Roberts, Shefelman, Lawrence, Gay & Mock, of Anchorage, Alaska, Feb. 20, 1981.

136. 43 U.S.C. § 1613(f) (1980). Regional corporations were authorized to issue 100 shares of stock to each native enrolled pursuant to statutory requirements within the region. 43 U.S.C. § 1606(g).

137. 43 U.S.C. § 1601(b) (1980).

provisions placed regional and village corporate management in the hands of outsiders. The regional corporation distributes settlement funds and manages subsurface resources and cash. Village corporations manage village enterprises, possibly including other than local ventures.

The most complicated part of the Act is that requiring revenue sharing between the regions.¹³⁸ Seventy percent of all revenues received by a regional corporation from timber and subsurface resources are to be shared among all regional corporations.¹³⁹ This provision has been the basis for a great deal of litigation since the passage of the Act, some regions claiming that revenue sharing should not be in effect until actual title has been transferred to the regions by the Secretary of Interior.¹⁴⁰

This section did not receive a great deal of discussion in House and Senate reports or in the hearings. On the other hand, there were no objections to its inclusion. Natives had suggested a 50% revenue sharing plan between regions, based upon a desire to protect them from the economic slumps that could follow the depletion of resources.¹⁴¹ A 100% revenue sharing plan had been suggested by some congressmen.¹⁴² The need for some such plan was seen during congressional deliberations on settlement, because some resource-rich native groups, such as the Tyoneks, were pulling far ahead of other native Alaskans economically. The 70% figure was used as a compromise.

Evaluation of the Act

The Act has been highly criticized as another of those pieces of legislation inflicting the utopian ideal of the period upon Native

138. 43 U.S.C. § 1606(i) (1980).

139. Natives not living in Alaska at the time of settlement could choose to be part of a thirteenth corporation that received settlement funds, 43 U.S.C. § 1606(c), but were excluded from distribution resulting from regional revenue sharing, 43 U.S.C. § 1606(i). Some persons who chose to be part of the thirteenth corporation now wish they were shareholders in one of the twelve regional corporations. It is likely that the Act will be amended to allow them to change their affiliation. Telephone conversation between author and Robert Mullendore, *supra* note 135.

140. Aleut Corp. v. Artic Slope Regional Corp., 410 F. Supp. 1196 (D. Alas. 1976). See also Aleut Corp. v. Artic Slope Regional Corp., 484 F. Supp. 482 (D. Alas. 1980), holding that contested revenues were part of subsurface estates and subject to revenue sharing.

141. *Hearing on H.R. 3100, supra* note 5, at 257.

142. *Id.* at 70 (statement of Rogers C. B. Morton, Secretary of the Committee on Interior and Insular Affairs): "We feel it is very important for the cash contribution as well

Americans. As the Dawes Act "improved" American Indians by making them farmers, the Settlement Act "improves" Alaska natives by making them corporate businessmen.¹⁴³ The corporate structure created by the Act is seen by some as complicated and difficult to manage.¹⁴⁴ However, the Act is actually a sensible codification of cultural and historic native patterns that will allow Alaska natives to continue a subsistence existence and at the same time use their resources to participate in economic advances being made by the rest of society.

The first reason the Act will work is that its major provisions were suggested by the natives themselves. They fought diligently to end a trust relationship with the federal government. The creation of local and regional corporations, separated from tribal entities, was suggested by them so that natives would feel free to leave the villages and participate in twentieth-century society, in another part of the world if they wished, and still remain part of the native corporation. They also suggested that settlement funds should be used for capital investments that will have long-term returns to the native population.

The second reason that the Act will work is that it fits patterns of native life that have been in existence for centuries, and fits leadership structures that were already operating. Corporate ownership of surface and subsurface estates fit native patterns of communal use of the land. Village and regional corporations also had historic precedence. Local problems had been handled by small groups, but in times of stress natives had banded together to meet a common enemy.¹⁴⁵ The Act will also work because it codifies informal leadership groups actually operating at the time of passage.

as the patented mineral deposits to be used for the benefit of all the Natives of Alaska. As a method of accomplishing this objective we recommend the establishment of a single Alaskan State corporation."

143. Price, *supra* note 4. Provisions in the Act allowing the alienability of stock after 1991 concerned Price as well. A recent amendment empowers regional corporations to amend their articles of incorporation to permit first rights of purchase by the corporation or the stockholder's immediate family. Amendments to the Alaska Native Claims Settlement Act, Pub. L. No. 487 (to be codified in 43 U.S.C. § 1606(h)(3)).

144. Branson, *supra* note 4. Most evaluations of the Act raise issues relating to the corporate structure created. See also Lazarus & West, *The Alaska Native Claims Settlement Act: A Flawed Victory*, 40 L. & CONTEMP. PROB. 132 (1976); Price, *Region-Village Relations Under the Alaska Native Claims Settlement Act*, 5 U.C.L.A. ALASKA L. REV. 58 (1975).

145. This response was most recently seen when natives were forced to respond to the land conflict caused by the passage of the Alaska Statehood Act.

That portion of the Act having no cultural or historic precedent is the 70% revenue sharing provision provided for in section 1606(i), and this is the portion of the Act that has been litigated since passage. But an Act that provided for no sharing and allowed some lucky groups to advance considerably beyond others because oil and gas happened to be within their borders appeared unfair. If the shared figure had been 50% as suggested by the natives, this provision may have been more acceptable to the "haves." However, this, too, could have created great disparities in wealth.

Significance of the Act to Other Nations and Tribes

One portion of the Act that might be worthy of consideration by American Indian tribes is the revenue-sharing provision. Those tribes which are "lucky" and have abundant natural resources within their boundaries appear to be the ones that will be able to raise economic and social levels for their people. The "haves" are not likely to share resources, however, unless they receive some benefit in return. One such benefit might be that suggested by Alaska natives, that those groups whose resources have been depleted will then receive revenues from other groups.

A congressionally negotiated benefit may be available, also. Some members of energy resource-rich tribes feel that their trust relationship with the United States government imposes great impediments to development in their favor.¹⁴⁶ Although this was not articulated in House and Senate reports or within the hearings, Alaska natives may have been able to negotiate the management of their own resources because of this revenue-sharing provision. Lucky groups, in effect, became the trustee of the unlucky groups.¹⁴⁷ American Indian tribes could negotiate the same arrangements. The trust relationship could be ended, the price being capital to develop resources and an obligation to share revenues from that development. That proportion shared should not be so high that tribes are discouraged from development, and tribes should be free to reject development if they do not feel it is

146. Israel, *The Reemergence of Tribal Nationalism, paper 10, Institute on Indian Land Development—Oil, Gas, Coal and Other Minerals*, Rocky Mountain Mineral Law Foundation (1976). Federal statutes and regulations now generally preempt the area of mineral development on Indian lands and provide only for the leasing of mineral resources.

147. Price has pointed out the trust relationship which exists between the regional and village corporations. Price, *Region-Village Relations Under the Alaska Native Claims Settlement Act*, *supra* note 144.

in their best interest. If the trust relationship with the federal government is dissolved, Congress should also clearly articulate an intention that tribal sovereignty should not be judicially weakened.

Governments in other northern regions such as Greenland and Finland are interested in the Act because it might serve as a model for them in extinguishing aboriginal claims of Eskimos within their boundaries.¹⁴⁸ Rather than assuming its provisions in toto, these nations should develop legislation that codifies native patterns still in existence, yet that will at the same time allow these people to join in the economic advancements of the twentieth century. If the Alaska Natives Claims Settlement Act works, it will work for those reasons.¹⁴⁹

Conclusion

The accidents of the times probably enabled Alaska natives to negotiate a settlement close to the one they originally proposed. Native leadership was excellent, and two events occurred during negotiations that were favorable to their cause. In 1968 the Court of Claims, having gained jurisdiction by special legislation, found that the Tlingit-Haida Alaska native groups should be compensated for federal takings of their lands at the value at the time of taking, when federal reserves were created, not when Alaska was purchased. The discovery of Alaska gas and oil in large quantities was also made during negotiations. These events made it wise for Congress to pass settlement legislation that natives would find beneficial for a long period of time.

Although the Act includes unusual corporate provisions and breaks with the traditional federal trust relationship, a close look at the legislative history shows that these were introduced by native Alaskans for specific reasons and tenaciously advanced throughout the five years of negotiation. Perhaps the doctrines thought sacrosanct to American Indian survival no longer have

148. Branson, *supra* note 5, at 105-106.

149. Persons familiar with the workings of regional and village corporations say the Act is proving to be a success, although more time is needed to make a final assessment. Few villages have received all of their allotted land and some received no land until 1980. If village economic potential lies in surface resources such as timber, resource development hasn't begun.

One reported trend is the merger of the more marginal village corporations with larger villages or with regional corporations. Telephone conversation with Robert Mullendore, *supra* note 135.

abiding validity. If American Indian groups were allowed to re-negotiate their status with the federal government, what shibboleths would be discarded today? It is difficult, however, to change well-established patterns. Alaska natives may have been uniquely fortunate to negotiate unhampered by strong institutional patterns of wardship with the federal government. Moreover, they negotiated at a time when they understood that settlement had to do more than guarantee subsistence patterns of the past—it had to make it possible for them to advance economically in the future.