

Paternalism:

The Denial of Indian Country in Alaska

EGEO 502

Geographic Framework of Resource Analysis

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ABSTRACT

The right to own property and make land-use decisions is the foundation of American capitalist society. Natural resource development in Alaska, specifically oil and natural gas, drove the passage of the Alaska Native Claims Settlement Act. In exchange, Alaskan Indigenous people were granted federal trust land through Alaska Native village and regional corporations. Although this gives Alaska Natives the choice to determine how best manage resources, land-use remains subject to federal approval, a form of paternalism described through economic valuation.

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1. Introduction – the General Allotment Act and the Alaska Native Claims Settlement Act

Money is the root of power. Corporate wealth has been a driving force in the westward expansion of the United States (US). While corporate roots evolved from Rome and the patriarchy involving Manifest Destiny, a juvenile United States made significant efforts to establish oneself as a new country. Utilizing the same tools of of Christian monarchy, the young United States would exponentially develop the modern world of the United States by trademarking a world dominion equation. Manifest Destiny equates undermining the original and Indigenous People of their homeland and waters, and claiming all land and natural resources in the name of the newly established country.

The industrial revolution, fueled by newfound wealth and a penchant for westward expansion, would be supported by numerous Congressional delegations that voted to systematically remove Indigenous People from their homeland. Land, gold, timber, salmon, and other natural resources, backed by a young US Congress from the first Marshall trilogy case in 1823 involving the Cherokees, and through 148 years to the Alaska Native Claims Settlement Act (ANCSA), reflect the basis of the modern corporate wealth driven by harnessing the lands and water of Indigenous Peoples.

The modern power of a country is determined by its gross domestic product, the total production of a country. The foundation of American success and power lies within the natural resources derived from both land and water. The key to

earning success and power from natural resources is determined by property ownership. The owner of property is the decision-maker.

Within the United States you have four commonly recognized property owners and decision-makers: 1. private citizens, 2. state governments, 3. the federal government, and 4. Indian tribes. Each property owner has the right to determine how best to use the land, water, and natural resources. In this paper, I argue that the denial of Indian Country in Alaska is an example of paternalism, which denies Alaskan tribes the property right to make land-use decisions regarding their Indigenous homelands and water.

In Alaska, while the purpose of ANSCA was to settle land claims, the governmental purpose of all land claims and treaty signing is to 1) extinguish Indigenous title and 2) assimilate the Indian into United States society so his tribal identity eventually dissipates. This is evident by the passage of the General Allotment Act (GAA) of 1887, commonly is referred to the Dawes Act (*General Allotment Act*, 1887).

The driving force behind Dawes was to open Sioux land to newly discovered gold in the Black Hills, and to open land to build a railroad to the western territory where timber, coal and gold were bountiful resources.

The provisions of GAA delineate legal authority to revoke and alter United States treaty obligations to the Sioux tribes. In 1887, the ideal and most popular idea of a successful and contributory United States citizen is the farmer. The provisions of GAA as outline below, generally state that in exchange for a majority of treaty-bound Sioux territory, individual Sioux members would be granted Native

allotments. If after 25 years of improving the land through agricultural development, the Indian allottee would receive title to his land. The underlying foundation of GAA is to “graduate” the Indian savage to a contributory member of the United States. By working the land for 25 years an Indian could receive title to his land, whereby he is then a tax-paying member of American society.

Nearly 100 years would pass before another major Native land claims act of Congress would occur. ANCSA is modeled in large part after GAA, even referencing GAA in many areas. In both acts, it is the Department of the Interior who is responsible for handling or managing all Native land issues, including the approval or denial of trust land. Both GAA and ANCSA reference that fee simple title will be granted to said individual or Native corporation after a period of 25 years of proving that said individual or Native corporation could successfully manage, aka “economically develop,” the allotted tract of land. After 25 years and receiving title to the land, the land would become public land, therefore taxable land by the respective state in which said individual or Native corporation resides. The underlying foundation of both GAA and ANCSA is to assimilate the Natives into general American society where they are contributing citizens, and most importantly, the unspoken but mutually understood concept, that eventually, the Native loses his relationship to both land, thereby disassociating him from his culture and traditional history and origin.

ANCSA is the perfected model of GAA, because unlike GAA who dealt with tribes, ANCSA was successfully enacted with the exclusion of the 229 federally recognized tribes in Alaska. Tribes were disregarded and instead, currently living

Alaska Natives were invited to create non-tribal entities, the village and regional Native corporations that continue to hold Alaska Native trust land today. By excluding tribes from participation in ANCSA, the tribes are left as federally recognized entities without a land base. They are tribes with no land, homeless in a sense.

2. Economic Valuation

Valuing our environment is a topic posed by economist David A. Starrett in his paper, *"Valuing Ecosystem Services"* (Starrett, 1998). In order to value an environment, resources must be allocated with the goal of earning the "greatest possible 'social benefit' from those resources" (Starrett, 1998). Social benefit is determined by individual choice. Collective choice by a group of like-minded individuals is likely to determine demand and price, both of which contribute to the economical value of a resource or service.

In order to make a choice about whether to purchase an environmental resource or service, two principles must exist: "1. Consumer sovereignty, and 2. Revealed preference" (Starrett, 1998). When consumer sovereignty or freedom of choice occurs, it results in revealed preference or the result of the choice (Starrett, 1998). If one does not have the freedom to choose a result, then another decides for us; this is known as paternalism (Starrett, 1998).

3. Capitalism

Capitalism is “an economic system characterized by private or corporate ownership of capital goods, by investments that are determined by private decision, and by prices, production, and the distribution of goods that are determined mainly by competition in a free market” (Merriam Webster, 2013). Society of the United States of America is an ultimate example of a capitalist society. It is the property owner who determines whether or not goods can be produced from a property. Most produced goods are derived from natural resources.

4. Natural Resources

Natural resource development comprises a majority of our United States capitalist economy. The most common natural resources originate from land or water. Land resources include animals such as cows for beef, milk, and leather. Other land resources include trees for food (apples and oranges), paper, and timber. Potentially the most valuable resources include oil, natural gas, and minerals. These resources are used to create energy that propels our cars and heats our homes. Oil, natural gas, and minerals are also necessary to create the plastic and nanotechnology that remain a part of our daily lives through energy grid systems, vehicles, computers, phones, satellites, and fiber-optic wire communications.

The most common resource is water itself, the compound necessary for human survival. Water supports essential food, natural, and cultural systems including seafood, ecosystems, rivers, oceans, and numerous climates that affect every person and culture on our planet.

In 1971, a major shift occurred between the Indigenous Peoples' of Alaska and their homeland, waters, and management authority. Congress enacted the Alaska Native Claims Settlement Act (*Alaska Native Claims Settlement Act*, 1971). Through ANILCA, Congress opened hunting and fishing to both tribal and non-Tribal residents of Alaska.

While over forty amendments have been made to ANCSA, and the passage of ANILCA constituted "rural subsistence priority," the state continues to impose its strict harness over all tribal hunting and fishing. In terms of dual state and federal management as ANILCA and *McDowell v. State* (1989) suggest, the Court mentions that multiple governances over an area creates complexity, restrictive ability, and the "insurmountable task of ensuring that the patchwork application of State and Tribal regulations remains consistent with sound management" (*New Mexico v. Mescalero Apache Tribe*, 1983). Patchwork management exists with dual state and federal management in Alaska.

In exchange for title and property rights, the Indigenous communities selected "Native corporation" land that was placed in federal trust (*Alaska Native Claims Settlement Act*, 1971). Alaska Native corporations would be designated as private companies, established under the state of Alaska, with the same corporate rights as conglomerates like Exxon.

Federal trust means that the federal government owns the land, although it sets aside "Indian Country" from which Indians may reside and use the land for their benefit (Pevar, 2003). Indians with a capital "I" is a legal term in the United States Constitution, and has been applied to numerous cases involving with Native

Americans and Alaska Natives (each an individual nationality of the United Census Bureau).

The *Alaska Native Claims Settlement Act* is a clear example of the United States Congress acknowledging property rights to the Indigenous People of Alaska, including the use of their land and its natural resources for the benefit of their communities. ANCSA would result in regional and village corporations, with regional ownership of natural resources divided among twelve regional corporations who own subsurface natural resource rights, and 174 village corporations who own surface leasing rights (*ANCSA*, 1971).

Re-distributing income was important to the original Indigenous proponents of *ANCSA*, whose values reflect taking care of those who do not have resources or mobility to care for themselves or their family. This reflected by a gross income sharing requirement of each regional corporation to the 174 village corporations.

While *ANCSA* would be a major step forward for the Alaska Native People of Alaska in terms of 44 million acres of Indigenous land claims, the state of Alaska would forge ahead, with Congress awarding Alaska over 157 million acres of natural resource management through the Alaska National Interest Land Claims Act (*Alaska National Interest Land Conservation Act*, 1980).

5. Indian Country Outside of Alaska

Indian Country, in all other places of the United States, means that the federal government has set aside land for use and benefit by Indians (Pevar, 2003). The government technically owns the land that is held in federal trust, but Indians and

Alaska Natives may live on the land, and derive economy from developing the land and its natural resources.

For example, the Warm Springs Tribe in Oregon sits on a federally designated Indian reservation. The tribal citizens live on the land and derive taxes and economy from the land and its resources. Warm Springs owns and operates a casino, a timber mill, biofuel plant, and a dam. All of these businesses provide economy for the tribal citizens of Warm Springs.

ANCSA and *ANILCA* both prevent the Indigenous People of Alaska from deriving benefit and economy from their lands and natural resources.

6. Indian Country in Alaska

The United States Supreme Court denied Indian Country in Alaska by its rulings in *Tee-Hit-Ton Indians v. United States* (1955), in addition to the 1971 Alaska Native Claims Settlement Act (ANCSA), and especially through *Alaska v. Native Village of Venetie Tribal Government* (1998). Of the 574 federally recognized tribes in the United States, 229 tribes originate from Alaska.

In 1998 the Supreme Court handed down the pinnacle decision, ruling against Alaska Natives citizens, stating that Indian Country does not exist in Alaska (*Alaska v. Native Village of Venetie Tribal Government* 1998). In the *Venetie* case, an Alaska Native corporation claimed to transfer their corporation land to their federally recognized tribal government, the Native Village of Venetie. By doing so, they claimed a right to tax a private construction company for doing business on tribal land (*Alaska v. Native Village of Venetie Tribal Government*, 1998). Other

Indian tribes had recently won the right to tax non-tribal members operating businesses on tribal land (*Merrion v. Jicarilla Apache Tribe* 1982).

7. Conclusion: Paternalism in Alaska

In a capitalist market, property owners can make decisions regarding land-use. In Alaska, the economic potential is so rich in terms of oil, natural gas, minerals, timber, water, animals, and seafood that Alaska Natives are generally excluded from the market.

While Alaska Natives still benefit from developing Native corporation land (held in federal trust and therefore federally owned), the land is also considered private corporation land and not Indian Country (*Alaska Native Claims Settlement Act*, 1971).

In addition, tribal members must have been born by (the enactment of the Alaska Native Claims Settlement Act) 1971, to qualify as a shareholder who can reap the benefits of a Native corporation who develops lands and natural resources (*Alaska Native Claims Settlement Act*, 1971).

The federal government, by holding all Native corporation land in federal trust, and the United States Supreme Court, by denying the existence of Indian Country in Alaska, both exert paternalism by deciding “what is best for,” Alaska Natives and the way they use the land. Congressional approval of traditional hunting and fishing on ancestral homelands by tribal members is a prime example of this paternalism (*Alaska National Interest Land Conservation Act*, 1980).

The fact that land-use laws must be approved by the federal government is another example of paternalism (*Alaska Native Claims Settlement Act*, 1971).

Alaskan tribal members exert little to no consumer sovereignty or revealed preference, the power of choice, two traits common to American freedom. Until Indian Country is acknowledged in Alaska, or until Indigenous title is returned to Alaska Natives, the ability to make decisions regarding land-use is limited in Alaska. I suggest that regional and village corporations work with their tribal governments to unite as governing entities over the decision-making authority of their traditional homelands and waters. We must propose amendments to ANCSA and ANILCA, at minimum, two laws of Congress that maintain reign over our cultural and regional economies.

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