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NATIVE AMERICAN VOICES: A READER

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ALASKA NATIVES STRUGGLE FOR SUBSISTENCE RIGHTS

Steve Talbot

Everybody is subsistence here in the village.

Vincent Kvasnikoff, English Bay, Alaska

The 1968 oil discovery and development in Alaska and the passage of the 1971 Alaska Native Claims Settlement Act (ANCSA) brought into focus the immense give-away of Native lands and a corporate model of land ownership imposed on Alaska Native communities by the U.S. Congress. These developments had unforeseen implications for the Alaska Native subsistence rights.

Subsistence in the Indigenous world means more than the minimum necessity to support life. It means living close to nature, growing or gathering one's food, or hunting and fishing, with little reliance on a cash economy. Of course, a Native person must own or have legal access to the land and waters on which subsistence activities take place. But under ANCSA, Alaska Natives ceded title to most of Alaska's 365 million acres, receiving rights to only 44 million acres of land and a money settlement.

Extracting a living from the Arctic and subarctic environments in Alaska has always been difficult, but with the colonization of Alaska, and especially the recent penetration by mining, oil, lumber, and land development interests, the ecological balance has become threatened with dire consequences for the Native way of life. Alaska Natives rely on hunting, fishing, and gathering as essential means of subsistence. Since the oil discovery, the traditional land base needed for subsistence activities has been seriously curtailed, and subsistence has been regulated by the state of Alaska without distinction between Native, commercial, and non-Native interests.

Natives who follow a subsistence economy have a very different view of the natural world than do non-Native rural Alaskans:

Alaska Native peoples have traditionally tried to live in harmony with the world around them. This has required the construction of an intricate subsistence-based worldview, a complex way of life with specific cultural mandates regarding the ways in which the human being is to relate to other human relatives and the natural and spiritual worlds. . . . Native peoples developed many rituals and ceremonies with respect to motherhood and child rearing, care of animals, hunting and trapping practices, and related ceremonies for maintaining balance between the human, natural, and spiritual realms (Kawagley 1995: 8).

There are a number of biotic zones in Alaska in terms of its fauna and flora, landscape, and weather. The state has a rich and varied ecology, and the different economic adaptations and subsistence patterns found among its Native peoples correspond to these biotic zones.

THE INDIGENOUS PEOPLES OF ALASKA

The 2000 U.S. Census found 87,205 persons identifying as "Alaska Native only," with a total of 112,942 claiming Alaska Native "and one or more other races." The four "populations" enumerated by the Census were Eskimo, Aleut, Athabaskan, Tlingit, and Haida. Within these broad categories there are distinct Indigenous peoples, each living within its own ecological niche and facing serious subsistence issues.

Eskimos

The Eskimo group is the largest, with 45,919 "Eskimo only" and 54,761 claiming Eskimo and one or more other races. The "Eskimo" category actually includes four ethnically related peoples who are distinguished

by differences in homeland, language or dialect, traditions, and identity.

The Iñupiat Eskimos inhabit northern and north-west Alaska. The region consists of low-lying coastal tundra, with many streams, rivers, and lakes. Inland, the plain and foothills contain herds of migratory caribou, and the mountains beyond the foothills are home to bears and Dall sheep. The coastal waters are rich in marine life, especially the Bowhead and Beluga whales on which the people have depended for survival for the bulk of their subsistence diet for at least 2,000 years.

A second great Eskimo people are the Yup'ik of southwestern Alaska, whose land extends from Prince William Sound on the Pacific coast to both sides of the Bering Strait, and 6,000 miles east along Canada's Arctic coast into Labrador and Greenland. Nearly 20,000 Yup'ik live in western Alaska, among seventy small communities along the coast and three mighty river systems, the Yukon, Kuskokwim, and Nushagak. The sub-arctic tundra environment along the coast includes seals, walrus, beluga whales, oceangoing and freshwater fish, migratory birds, small animals, berries, and greens. Upriver, the Yup'ik hunt larger animals, including moose, caribou, and bear.

A third Eskimo people are the Siberian Yup'ik, whose traditional lands include Saint Lawrence Island (part of Alaska) and the Russian coast across the Bering Strait.

A fourth group are the Alutiiq, or Pacific, Eskimos. The Alutiiq include several culturally and linguistically related peoples who have inhabited the Alaska Peninsula, Prince William Sound, the lower Kenai Peninsula, and Kodiak Island for at least 7,000 years. The current population of about 5,000 live in scattered villages and towns and are also found in the larger cities of Alaska and other states. They retain a strong Russian influence as a result of Alaska's colonial history in language, religion, and culture. In 1964 a severe Alaska earthquake devastated several of their villages.

Aleuts

The Unangan, or Aleuts, of southwestern Alaska occupy a long and narrow land base, the Aleutian Shumagin and Pribilof Islands, reaching from the Alaskan mainland westward toward the International Date Line. Following the Japanese attack on the Aleutian Islands during World War II, the U.S. government relocated the Unangan islanders to "protect" them from invasion. They were interned in

southeast Alaska, most in abandoned canneries without heat, with little food and scant medical care. Disease brought on by unsanitary conditions took many lives, especially among elders and children. After the war, the Unangan were allowed to go home but found their villages destroyed and their churches and homes ransacked by the U.S. military. Today they strive to maintain their Native island communities, which are threatened by flooding due to global warming.

Indians

Indians is another broad category used to identify the Indigenous peoples of interior and southeastern Alaska, who are different in both physical appearance and culture from Eskimos and Aleuts. They include the many Athapaskan-speaking communities of interior Alaska, and the Tlingit, Haida, and other Indians who live in the "panhandle" of southeastern Alaska.

The territory of the Athabascans includes Cook Inlet, Kenai Peninsula, Prince William Sound, and the temperate Matanuska Valley. Their traditional homeland also incorporates the broad plateau of rolling hills and watery tundra located between the Alaska Range north of Anchorage and the Brooks Range above the Arctic Circle. In former times, winters were spent in semi-subterranean homes in small villages along the Yukon and the upper Kuskokwim rivers and their tributaries. During the summer, families moved to fish camps, principally taking varieties of salmon that were dried for preservation, with a sufficient amount stored for winter. Other foods included moose, caribou, black and brown bear, beaver, porcupine, many kinds of fowl, fish and sea mammals, and roots, berries, and other plants. Many contemporary Athabascans follow a modified traditional way of life and rely on these foods to supplement their modern diets, although the rapid growth of the non-Native population in the Greater Anchorage and Kenai Peninsula regions have decreased the plant, fish, and animal habitat. In 1989 the *Exxon Valdez* ran aground in Prince William Sound and spilled nearly 11 million gallons of crude oil, resulting in a tremendous loss of sea life, on which the village people depend for their maritime livelihood and subsistence economy.

Southeastern Alaska is a region of high, rugged mountains, a rainforest terrain, and many large glaciers. The major Indian populations here are the Tlingit and Haida.

Before contact, the Tlingit occupied nearly all of what is today southeastern Alaska, portions of northern British Columbia, and part of the Yukon Territory of Canada. During the summer they lived in temporary wooden houses, and in winter they lived in huge cedar structures, housing up to 50 people of a clan. The staple food was fish, especially salmon, and fishing remains an important subsistence and commercial enterprise today. Approximately 20,000 today consider themselves Tlingit, although at least half of this number reside in the states of Washington and Oregon. The Tlingit are among the most acculturated of Alaska Native peoples, yet they remain proud of their cultural heritage.

The Haida came to Alaska from the Queen Charlotte Islands in Canada. They were under the care of the Presbyterian Church and settled principally at Hydaburg, with the cooperation of the U.S. Bureau of Indian Affairs. Their aboriginal economy was based on fishing, hunting, clamming, and gathering wild berries and dulse. These food-gathering activities continue to reaffirm Haida cultural identity.

Threat to Subsistence

The history of subsistence rights in Alaska is complex. The state is unique for giving subsistence priority in its wildlife management to *rural citizens*, whether Native or non-Native, although the subsistence needs of the two populations are very different:

The Alaska Statehood Act [of 1959] required that as a condition of entering the federal union, Alaska must disclaim all right and title to any lands or other property (including fishing rights) of Alaska Natives. The State of Alaska ignored this provision . . . and began to enforce its fish and game management laws on all Alaskans, without recognizing any pre-existing rights of Alaska Natives" (Native American Rights Fund 1999: 1).

Then, in 1971, the Alaska Native Claims Settlement Act (ANCSA) officially abolished Indigenous hunting and fishing rights, even though the final House-Senate Conference Committee Report that accompanied ANCSA explained clearly that Congress expected that both the secretary of the interior and the secretary of state "take any action necessary to protect the subsistence needs of the Alaska Natives." In anticipation of federal legislation, the state passed a rural subsistence priority law in 1978, giving priority to "subsistence users," but failed to define *users*. Two years later, in part because the state of Alaska and the secretary of the interior had failed to protect Native subsistence after ANCSA, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA).

Its Title VIII became the federal counterpart to the Alaska subsistence law, as applied to federal lands in Alaska, primarily national parks and wildlife refuges.

Title VIII of ANILCA required that subsistence uses by "rural Alaska residents" be given priority over all other uses of fish and game on federal public lands in Alaska, including sport and commercial. As a compromise, Congress allowed the state to continue managing fish and game uses on federal public lands, but only on the condition that the state legislature adopt a statute making the new Title VIII "rural" subsistence priority applicable on state as well as federal lands. And if the state ever fell out of compliance with Title VIII, Congress required the secretary of the interior to reassume management of fish and game on the federal public lands in Alaska. Congress did not enact "a racial preference" specifying Alaska Native subsistence rights in part because of the state's opposition to doing so. It was assumed that "rural" would work and that Alaska Natives would have to compromise in order to get a preference that the state was willing to enforce.

In 1982 the Alaska Boards of Fisheries and Game adopted the rural residency standard by regulation. Two years later, Athabascan elder Katie John sued in federal court, claiming that the federal government had failed to protect her right to subsistence fishing, as guaranteed under ANILCA. In response, in 1986, the Alaska state legislature amended its subsistence statute to limit the definition of *subsistence uses* to residents of "rural areas," thereby complying with Title VIII. But this statute was reversed in 1989, when the Alaska supreme court struck down the legislature's definition of *subsistence users* because the rural preference clause conflicted with the state constitution. The court ruled that the definition of *rural* in the state subsistence law was out of compliance with ANILCA because the natural bounty of wildlife was for the "common use" of all Alaskans. In 1990, because the state was no longer in compliance with Title VIII, the federal government took over subsistence management of game and the gathering of plant resources on federal areas. Fisheries management remained with the state due to the pending Katie John lawsuit.

The complexity of Alaska's fish and game regulations at this time is illustrated by the fact that four different user groups competed for the salmon runs in south-central Alaska's Copper River: commercial, personal, sport, and subsistence. A reporter for the *New York Times* compared the subsistence debate to affirmative action, "creating similar racial tensions.

The Natives say the issue is their civil rights, while the sportsmen say the Natives are demanding 'special rights' and unfair quotas" (Verhovek 1999: A13). Tlingit leader Rosita Worl summarized the subsistence status of Alaska Natives in the 1990s as follows:

Native subsistence protection had been diminished to rural geographical regions, excluded Native communities engulfed by urban development, and included non-Native rural residents. . . . Subsistence is more than an issue of allocating fish and wildlife resources. Subsistence represents the economic wellbeing of communities which have a minimal cash economy, it embodies their cultural values which recognizes a special and spiritual relationship to their land and animals and unifies them as tribal groups through hunting, gathering, distributing, and sharing their harvests (Worl 1998: 77-78).

Alaska Natives have given overwhelming support for an amendment to ANILCA that would clearly recognize a Native subsistence priority. In 1997, when the governor of Alaska appointed a seven-member Subsistence Task Force that excluded Alaska Natives, 900 Native representatives gathered in Anchorage in a Subsistence Summit. The summit adopted guiding principles and made a dozen policy recommendations. The Native representatives sent a delegation to Washington, D.C., with the summit's recommendations, but their voices were ignored.

The main thrust of ANILCA was to set aside national parks, including the Arctic National Wildlife Refuge (ANWR). The pressure by the energy monopolies and conservative politicians to open ANWR to drilling has become a recurrent issue that not only endangers the pristine tundra environment but also threatens the political unity of Alaska Natives. The Alaska Federation of Natives (AFN) has been at odds with many of the tribal governments with respect to drilling in ANWR, the "Sacred Place Where Life Begins," as the Gwich'in Indians call it. The AFN, with its 207 corporations, passed a resolution in support of drilling for gas and oil, while the Gwich'in and a growing number of Alaska tribal governments, including the Tanana Chiefs Conference, are opposed. Grassroots Natives charge that the Alaska Federation of Natives is run mostly by urban executives who are too reflective of corporate interests.

The Gwich'in are a hunting people, and the 130,000-head Porcupine River caribou herd travels hundreds of miles each year to calve in Gwich'in territory, on the Arctic Refuge coastal plain. Grizzly bears, musk oxen, wolves, golden eagles, and tundra swans all call this unique place home for at least part of the year. A Gwich'in Native from Fort Yukon told

an interviewer: "I don't think the word 'subsistence' exists out here. . . . In my language, the closest thing I can come to what you are talking about is—we would say *Tee terra 'in*. It means . . . people working together and sharing to accomplish something, to accomplish common goals" (Anderson 1998: 40-41).

Global Warming and Environmental Pollution

The survival agenda for Alaska Natives not only includes traditional subsistence rights but it also encompasses reversing "rapid global warming, stratospheric ozone depletion, and levels of chemical pollution so noxious that mothers have been warned to avoid breast-feeding their babies" (Johansen 2007: 269).

Climate change has been rapid in the Arctic, detectable within a single human lifetime. It has resulted in the widespread melting of glaciers and sea ice that can mean a serious loss of Native subsistence food. Erosion and flooding affect many Alaska Native villages to some degree. "Six hundred people living in the Alaska Eskimo village of Shishmaref . . . in the far western reaches of Alaska, have been watching their village erode into the sea. . . . In Kotzebue, Alaska, the town hospital was relocated because it was sinking into the ground" (Johansen 2007: 283-284).

Approximately 200 toxic pesticides and industrial chemicals have been found in the bodies of people and animals living in the Arctic. These include mercury, which is released by coal-burning power plants and chemical factories in the temperate zone, but which has migrated northward. The Environmental Programme's Governing Council of the United Nations has officially recognized the arctic as a barometer of the earth's environmental health. "To environmental toxicologists, the Arctic by the 1990s was becoming known as the final destination for a number of manufactured poisons, including, most notably, dioxins and polychlorinated biphenyls (PCBs), which accumulate in the body fat of large aquatic and land mammals (including human beings), sometimes reaching levels that imperil their survival" (Johansen 2007: 272). To compound the problem, the cold temperatures of the arctic slow the natural decomposition of these toxic chemicals. The fear of toxic contamination has led Inupiat hunters to closely inspect their game animals in the butchering process. Some Alaska Natives are avoiding traditional foods altogether, out of fear that fish and wild game contain pesticides, heavy metals, and other toxins. A study by the University of Alaska, Anchorage, found that pregnant women who eat traditional

foods may be exposing their fetuses to dangerous pollutants.

THE STRUGGLE CONTINUES

Alaska Natives do not have the legal protection of hunting and fishing rights that Indian nations of the contiguous states have held under the treaty relationship. When Alaska became a state in 1959, a new fish and game department began enforcing fishing and hunting regulations on White sportsmen and Natives alike on a "first come, first served" basis. The situation came to a head when the oil pipeline boom of the late 1970s created an urban, non-Native population explosion. During the construction of the pipeline, Native communities and their institutions made enormous right-of-way concessions in exchange for promises of Native employment and subsistence protections, neither of which came to fruition. When the Alaska Native Claims Settlement Act was passed by Congress in 1971, Section 4(b) specifically extinguished aboriginal hunting and fishing rights in Alaska:

Throughout the five-year process of enacting ANCSA, the primary focus was on land ownership, but the issue of subsistence also pervaded the process. Congressional findings in the final Senate bill emphasized protection of "Native subsistence hunting, fishing, trapping, and gathering rights." If enacted, it would have required the Secretary of the Interior to designate public lands around Native villages as "subsistence use areas" . . . and, under certain circumstances, to close them to non-subsistence uses. But both provisions were dropped by the conference committee because the Congress, the oil companies, and the State of Alaska didn't want to delay the land settlement (i.e., the pipeline) in order to deal with subsistence (Alaska Federation of Natives 1998: 1).

The state's fishing and hunting regulations created conditions of hardship for Native subsistence hunters, particularly for Natives living in interior areas of Alaska, where sources of animal protein other than caribou are not available. When a state study found a diminishing of the caribou herd in northern Alaska and attempted to curtail the number hunted, this led to a "caribou crisis" for the Iñupiat Eskimos of the North Slope Borough. The Borough then made its own study and found that the herd was near its normal size.

The North Slope Borough comprises eight small Iñupiat communities in a region of 89,000 square miles, stretching northward from the foothills of the Brooks Range to the Arctic Ocean. The people follow a traditional lifestyle that is heavily dependent on the

subsistence harvesting of marine and land mammals, fish, and migratory birds. Caribou are considered their single most important terrestrial subsistence resource. The annual cycle of subsistence activities is a core value of Iñupiat culture. Subsistence hunting puts food on the table in a region where the cost of living is extremely high. In 1998, bread cost up to \$6 per loaf, a gallon of milk up to \$14, and gasoline as much as \$4.50 a gallon. A crisis occurred in 1977 when the International Whaling Commission (IWC) proposed a moratorium on the hunting of bowhead whales. The whale ban deeply affected Iñupiat social and ceremonial life, and it deprived the people of an important food source. The borough swung into action. Supported by the Arctic Slope Regional Corporation, it organized a new Alaska Eskimo Whaling Commission, which questioned the IWC research:

At a special December meeting of the IWC in Tokyo, attended by a delegation of Iñupiat whalers and state officials, the U. S. succeeded in persuading the IWC to lift the moratorium in exchange for a subsistence quota of twelve whales taken (or eighteen whales struck) for Alaska Eskimos" (McBeath and Morehouse 1980: 90).

The Iñupiat look forward to spring, when the first migratory waterfowl arrive. This is the time when waterfowl are historically hunted in the Delta, but such hunting has been illegal since 1918, under the Migratory Bird Treaty, and swan hunting is illegal in any season in the Delta. In 1961 there was the incident of the "Barrow Duck-In":

When several Native men including a state legislator were arrested for spring bird hunting, 300 Iñupiat (138 of them holding dead eider ducks which they claimed to have taken illegally), gathered in the community hall. Faced with arresting much of the community, enforcement agents backed down" (Morrow and Hensel 1992: 44).

Approximately 15,000 Yup'ik live in some 50 villages in the Yukon-Kuskokwim Delta of Southwest Alaska. Subsistence hunting, fishing, and gathering is an essential part of local diet and identity. "Subsistence harvests in the Delta are among the highest in the state, in some villages reaching an annual per capita of up to 1100 pounds . . . the generic word for food and for fish is the same" (Morrow and Hensel 1992: 39). Seals, walrus, and beluga whales are also hunted avidly, and sea mammal products are widely shared and traded. Large and small land animals are hunted; berries and both edible and medicinal herbs are gathered. Preserved food stocks see the population through the winter,

but by spring they begin to run low, and people hunger for the plentiful waterfowl that come to nest in the watery delta.

There have been other conflicts between Alaska Natives and the state of Alaska involving subsistence practices and Alaska's fish and game regulations. An underlying factor in some of these controversies is the shrinking Native land base. The land allocated to the Native corporations under ANCSA, especially for the villages, is inadequate to sustain subsistence activities on which most village Alaska Natives continue to depend. "Although, as property owners, Natives have the exclusive right to wildlife on their own land, they have no rights as Natives for hunting, trapping, or fishing reserved for them over the ninety percent of Alaska in which their rights were extinguished" (Berger 1985: 92).

In 1984, Katie John and Doris Charles, two Athabascan elders, asked the Alaska State Board of Fisheries to open Batzulnetas, a historic upper Ahtna village and fish camp, to subsistence fishing. Their request was denied, despite the fact that downstream, users were permitted to take hundreds of thousands of salmon for sport and commercial uses. Attorneys for the petitioners from the Native American Rights Fund "filed suit against the State in late 1985 pursuant to Title VIII of ANILCA to compel the State to re-open the historic Batzulnetas fishery" (NARF 2001a: 6). A year later, the state added rural preference to its fish and game statute. However, in 1989, the Alaska supreme court ruled against the state law that limits subsistence uses to Alaska's "rural residents" as violating the "equal access" provisions of the state constitution. Consequently, in 1990, the federal government assumed responsibility for subsistence management of fish and wildlife on federal public lands in Alaska. "A dual management structure commenced with the federal government regulating subsistence on federal lands (60 percent of the state) and the state retaining authority over state (30 percent) and private (10 percent) lands" (Thornton 1998: 30).

Federal authority was later extended to certain navigable waters in Alaska, following the 1995 federal court ruling in *Katie John et al. v. United States of America*. Public lands in Alaska include navigable waters on or adjacent to federal conservation units. The 1995 decision found that Katie John and the other plaintiffs had been illegally denied their right to subsistence fishing by the state of Alaska and the federal government. In 2001 the Ninth U.S. Circuit

Court of Appeals upheld the lower court's decision, ruling that "the federal government has the obligation to provide subsistence fishing priority on all navigable waters in Alaska in which the United States has a federally reserved water right" (NARF 2001b: 2). Following the court's ruling, "with strong pressure from Alaska tribes, the governor of Alaska decided not to seek review of the decision in the U.S. Supreme Court and ended the state's opposition to Native subsistence fishing in navigable waters (NARF 2001a: 5).

On August 27, 2001, Alaska Governor Tony Knowles informed Katie John, the subsistence plaintiff, of the good news. Katie John was an 86-year-old Athabascan Indian. She is the mother of 14 children and adopted children, and she has 150 grandchildren, great-grandchildren, and great-great grandchildren. A few weeks before making his decision, the governor met personally with Katie John at her village home of Mentasta, located at the headwaters of the Copper River in south-central Alaska. He said "I learned more that day than is written in all the boxes of legal briefs in this long lasting court battle. I understand the strength, care and values that subsistence gives to Katie John's family, and to the thousands of similar families from Metlakatla to Bethel, to Norvik to Ft. Yukon to Barrow" (NARF 2001b: 1).

Rural Alaskans, who comprise about 20 percent of the state's residents and 49 percent of the Native population, annually harvest an estimated 43.7 million pounds of usable wild foods, or about 375 pounds per capita. In comparison, urban Alaskans consume only about 22 pounds of wild food per capita. "Although subsistence hunting and fishing accounts for only about 2 percent of the total harvest of fish and wildlife in Alaska (compared to 97 percent for commercial fisheries and 1 percent for recreational hunters and fishers), this harvest provides a significant proportion of the protein consumed in many rural communities" (quoted in Haynes 2003: 280-281).

On April 17, 2002, Rosita Worl (Tlingit) of the Sealaska Heritage Institute testified at a U.S. congressional hearing in support of Alaska Native subsistence hunting and fishing rights. The federal protections under the Alaska National Interest Lands Conservation Act of 1980 must be maintained, she said. "ANILCA has offered the only measure of protection for subsistence against the State of Alaska, which has refused to recognize a rural subsistence hunting and fishing priority" (Worl 2002: 10).

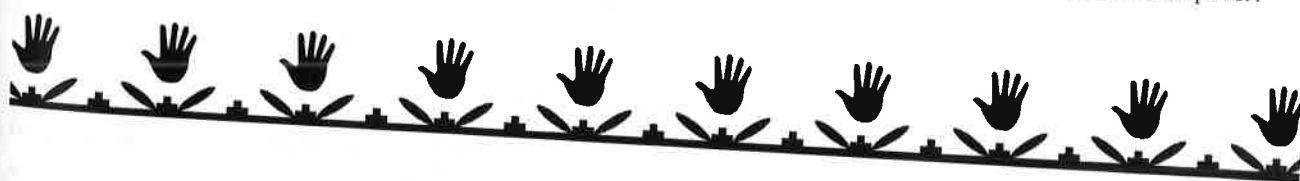
She explained that sharing is a key value of subsistence and the survival of Alaska Native communities. Not only does sharing ensure the survival of the entire community, but it also acknowledges the status of elders by giving them "special shares and parts of an animal." "... Sharing with elders functions in many ways like the social security system in which individuals receive retirement benefits. Single women who act as head of households, also receive special shares" (Worl 2002: 4).

In 2006 the AFN set forth its federal priorities. Regarding subsistence rights for Alaska Natives, the AFN candidly stated:

Today, the only significant protection for our way of life is Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), which provides a priority for "subsistence" over sport and commercial uses of fish and game to residents of rural Alaska" [but that] "powerful anti-subsistence forces at work in Alaska seek to weaken or even repeal this law" (AFN 2006: 1).

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THE COBELL LAWSUIT

The U.S. government owes Indians billions of dollars for mismanagement of individual money accounts and tribal trust funds.

In 1996, Elouise Cobell, a Blackfeet Indian and a banker by profession, initiated a class action suit regarding the U.S. government's management of the Individual Indian Monies (IIM) trust account. Cobell became the lead plaintiff for more than 500,000 individual Indian landowners. Since then, Cobell, et al. v. Kempthorne, et al. (formerly Cobell v. Norton) has grown to become the largest class action lawsuit ever filed against the U.S. federal government. The Indian plaintiffs contend that for more than a century the government sold land held in trust without the Indian owners' consent, without appraisal, and without informing the trust

beneficiaries. It is estimated that the government's liability might reach \$40 billion.

The lack of accurate government accounting began with the passage of the 1887 Allotment Act, the absence of an adequate banking system, and sloppy bookkeeping by the Department of the Interior. Unlike banks, the Department of the Interior has no standards or outside oversight; from 1887 on, it has made a hash of Indian fund accounting. "In an average year, \$500 million or more was deposited into the Individual Indian Trust accounts from companies leasing Native American land for grazing, oil drilling, timber, coal, and other natural resources" (Johansen 2004: 31). The money collected by the Department of the Interior was supposed to have been sent to the Treasury and placed into the individual

Indian trust accounts. Over the years, however, financial records became garbled, incomplete, or lost. When the extent of mismanagement became obvious, Congress passed the 1994 Trust Reform Act, but the problems did not go away. As recently as 1999, during the course of the litigation, it was discovered that the Departments of the Interior and the Treasury had "inadvertently" destroyed 162 boxes of vital trust records during the course of the trial. "In 2002, the Department had lost track of 22 percent of the IIM account holders" (FCNL 2005: 2).

In this case the government has not only set the gold standard for mismanagement, it is on the verge of setting the gold standard for arrogance in litigation strategy and tactics.

Judge Royce C. Lamberth, U.S. District Court for the District of Columbia, February 23, 2005

The U.S. government has been stonewalling a settlement of the lawsuit for a decade. Finally, in March 2007, not wanting the issue to go to court, the government offered to pay \$7 billion partly to settle the Cobell lawsuit. That offer was rejected by the plaintiffs, who estimate that the government's liability could exceed \$100 billion. A possible breakthrough was reached on January 30, 2008, however, when a federal judge ruled that the Department of the Interior had "unreasonably delayed" its accounting for billions of dollars owed to the individual Indian landholders and that the Department had failed in its accounting responsibilities. Cobell issued a statement, saying "This is a great day for Indian country. . . . We've argued for over 10 years that the government is unable to fulfill its duty to render an adequate historical accounting,

much less redress the historical wrongs heaped upon the individual Indian trust beneficiaries" (Indian Country Today, Feb. 2, 2008).

The Cobell lawsuit involving Indian individuals is only the tip of the iceberg. The mismanagement by the federal government of tribal trust fund accounts exceeds that of individual Indian trust funds. U.S. Attorney General Alberto Gonzales has estimated the amount of money involved at \$200 billion. "The trusteeship is deeply rooted in treaties, laws and agreements. . . . Tribal trust funds are solely monies of tribes; they are not taxpayer dollars and they are not federal program funding. . . . As a result, the federal government today purports to hold about \$3 billion in approximately 1,450 trust fund accounts for over 250 tribes" (NARF 2007: 2). On December 28, 2006, attorneys from the Native American Rights Fund filed a class action lawsuit, *Nez Perce Tribe, et al. v. Kempthorne, et al.*, on behalf of potentially more than 225 tribes, "seeking full and complete accountings from the federal government for hundreds of tribal trust fund accounts worth billions of dollars" (NARF 2007: 1).

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PART REVIEW

DISCUSSION QUESTIONS

Simon J. Ortiz, *It Was That Indian*

1. The poet is speaking satirically in this poem. What is the underlying message?

Stephen Cornell, *Remaking the Tools of Governance: Colonial Legacies, Indigenous Solutions*

1. What does Cornell refer to when he speaks of the "colonial legacy"? Discuss in what ways this legacy has curtailed traditional Native economic practices. Give examples.
2. Give examples of three contemporary Native strategies for creating and strengthening governance and tribal economy.

First Nations Development Institute

1. How are Indian people reasserting control of their assets, and how is the nonprofit sector assisting in this?

The Chickasaw Nation: An Example Of Nation Building

1. Locate the Chickasaw Nation on a map, review the website www.chickasaw.net/, and then discuss the

Chickasaw strategy for economic development as a part of nation building.

Sia Davis and Jane Feustel, *Indian Gaming in the States*

1. What is the link between gaming and broader economic development for Native nations?
2. What are some of the common myths and misunderstandings regarding Indian gaming?
3. What are the benefits of gaming to the Indian community? Give examples. What are some of the problems that have been generated as a result of gaming? Give examples.

Victoria Bomberry, *¡Evo Presidente!*

1. What makes the presidency of Evo Morales in Bolivia so extraordinary, and what message does it send to Native peoples throughout the Western Hemisphere?

Haunani-Kay Trask, *Lovely Hula Hands: Corporate Tourism and the Prostitution of Hawaiian Culture*

1. Discuss the impact of tourism on Native Hawaiian employment opportunities, housing, cost of living, and the environment.