

Analysis ~

Native sovereignty movement gains momentum

by Jeff Richardson
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A number of recent developments have given strong impetus to the Alaska Native sovereignty movement, boosting the confidence of tribal leaders that ultimate political success and legitimacy is within reach.

"We've come a long way in the last couple of years," says Bert Adams, president of the Yakutat Tlingit Tribe. "We feel our credibility has grown considerably within the Native community, and we're generally encouraged by the supportive

positions of the Clinton and Knowles administrations."

The term sovereignty encompasses the powers of self-governance retained by Native Americans under the terms of a unique, historic relationship with the federal government. The sovereignty doctrine, which has survived many tests, recognizes that the tribes exploited, subdued, and finally taken under federal wardship, were indeed sovereign nations towards whom the United States agreed to extend a multi-faceted trust responsibility. In Alaska, application of the sovereignty concept has been confounded by a variety of factors which

led some policy makers to conclude that Natives here do not possess tribal status. However, despite the strong resistance of the State of Alaska under the Hickel Administration, the Clinton Administration and District Court Judge F. Russell Holland of Anchorage have finally determined otherwise, declaring that Natives villages do indeed constitute tribes.

Still at issue is the question of what authority tribes in Alaska may actually wield. In the Lower 48 states, tribes often closely resemble state and local government entities, with powers of taxation, zoning, law enforce-

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ment, civil dispute resolution, business regulation and management of natural resources. In many cases, these powers are restricted or modified by a small land base, Congressional action, federal agency policies, power-sharing agreements with states or counties, or the actions of tribes themselves. Generally, law enforcement is limited to tribal members.

In the eyes of many of Alaska's approximately 86,000 indigenous peoples, the sovereignty movement offers the hope of completing a process that only began with passage of the 1971 Alaska Native Claims Settlement Act (ANCSA). Ironically, the perceived failure of the Native people has provided the movement with much of its growing moral authority both within and outside the Native community. The movement can trace its beginnings to the same aspirations that first gave rise to ANCSA: a desire for political and economic self-determination, social justice and a halt to further erosion of Native culture.

The settlement was a Congressional act to resolve long-deferred land claims filed by Native tribes. It did not terminate Native tribes, nor address the question of tribal powers. The act allowed Natives to retain ownership of 44 million acres of land, and paid them for lands previously taken or given up forever under ANCSA's terms. The state and fed-

eral government each agreed to pay half of the billion-dollar buyout and the funds were used to capitalize Native regional and village corporations whose ventures were to be the basis for village economic prosperity.

The land claims act was a unique social experiment that has brought many benefits to Alaska Natives, and to the state as a whole. But ANCSA has not been a universal success, and its promise of self-determination has proved elusive at best. In many cases, the western corporate model has not been the most effective tool for Native communities to realize the *blend* of traditional and modern economic pursuits most valued by many Native shareholders. In fact, the profit-making corporate structure is sometimes directly at odds with Native value systems.

Furthermore, the sovereignty movement has emerged because, fundamentally, Native corporations were not created to *govern*. They were created to make money as part of the formula for compensating Natives for giving up valid title to most of Alaska. While villages have had the option of incorporating state-chartered municipal governments, and many have done so, the western municipal structure also conflicts with tribal structures, and there have been increasing concerns that these entities have in large measure become vehicles of the cultural erosion which is felt to be the root of

many social problems in Native communities.

Until recently, the sovereignty movement was held back by several factors. Native corporations, prodded by local constituents, often attempted to assume quasi-governmental functions, often with disastrous results. Nevertheless, considerable political power was bestowed on Native corporation leaders, many of whom resisted sharing it with tribal entities. This, coupled with outright hostility on the part of the State of Alaska towards the exercise of tribal prerogatives, and federal government inertia, combined for many years to stifle the sovereignty movement. However, the tide has recently been turning in light of several developments:

- The Clinton Administration issued long-sought declarations recognizing the existence of Alaskan tribes, and directing federal agencies to enter into government-to-government relationships with them;

- Sovereignty advocates now have a statewide forum of their own, similar to the Alaska Federation of Natives, which chiefly represents Native corporations. The Alaska Inter-Tribal Council is a consortium of about 125 federally-recognized tribes whose sole mission is the advancement of tribal sovereignty;

- Many prominent Native leaders now publicly embrace the concept of tribal institutions as partners rather than antagonists, unwilling to challenge the growing political strength of constituents who see themselves as both Native shareholders and tribal members. "There is a growing consensus that sovereignty poses little or no direct threat to Native corporation initiatives," says Joe Llanos, executive director of the Alaska Inter-Tribal Council;

Five state-chartered municipalities in southwest Alaska – Atmautluak, Kasigluk, Newtok, Tuluksak and Tununak – have nearly completed a month-long process of dissolving their city governments to pave the way for a fuller exercise of tribal authority under federal auspices. The significance of this development lies not only in the initiative the communities have taken to clarify local jurisdictional issues, but that the state, despite official opposition to tribal authority, has worked closely with the villages and developed a systematic procedure to verify local governmental preferences, establishing a precedent for other Native communities who feel their needs would be better met by tribal government.

- The Alaska Natives Commission, a state-federal body convened by Congress to examine a broad range of issues, last year published a comprehensive, and at times scathing, analysis of state and federal policies which have devastated Native communities. As important as its stark findings are its detailed recommendations calling on state and federal legislators and agencies to abolish the barriers to Native self-governance;

- Finally, there are at least preliminary indications that some of those barriers may already be crumbling, thanks to recent preliminary federal district court decisions in two precedent-setting cases which affirmed that tribes do indeed exist in Alaska, *Alaska v. Native Village of Venetie* and *Alaska v. Native Village of Kluti Kaah*. While decisions on tribal powers in these cases are still pending and will no doubt be appealed in whole or in part, sovereignty advocates who have watched the courtroom proceedings closely have found reason to be encouraged that their cause is considerably strengthened.

With the issue of tribal existence effectively decided, a two-part question regarding tribal jurisdiction is still outstanding:

- what lands, if any, will constitute "Indian Country," lands over which tribes may exercise some authority?; and

- exactly what authorities may tribes exercise?

The prospect of tribal law officers enforcing tribal ordinances against non-Natives is just one of many popular notions that fuel suspicion about sovereignty from certain quarters. In some cases, these concerns are based on the misconception that sovereignty is a racially-based concept. The Hickel Administration, for example, was "very hostile" to tribal sovereignty, says former Attorney General Bruce Botelho, because the governor felt sovereignty violated the principle

of "one people."

But tribal leaders cite both history and law their assertion that tribes are political units with a unique relationship to the federal government; the skin color of tribal members is not the issue. Furthermore, sovereignty does not pose a threat to the social and economic fabric of the state as a whole, they say.

Botelho agrees, as do Native legal advocates. For example, "Tribal sovereignty does not authorize the tribes to enforce criminal laws against non-tribal members," says Lawrence Aschenbrenner, an attorney with the Native American Rights Fund in Anchorage. "Assuming that there is Indian Country in Alaska, the same body of case law that has proscribed the full exercise of sovereignty by tribes in the Lower 48 would apply here."

Furthermore, may analysts agree that the greater degree of self-governance that would come with sovereignty could make a big difference in effectively addressing chronic social and economic problems in Native communities.

"Sovereignty will not be a panacea. But when a community reaches a point of consensus and commitment to assume responsibility for its own future, it should have available the tools of self-governance to maximize local authority," says Mike Irwin, who served as executive director of the Alaska Natives Commission during its 18-month tenure. "After all these years, (people) just do not trust, for very good reason, the current state-chartered municipal structure and the existing economic and political power-sharing arrangement with the state. Experience has shown that the most effective model for achieving community responsibility (in Native villages is tribal authority."

While tribal sovereignty has not been fully realized on a policy or community level, the momentum of history and the resurgent spirit of many Native communities appear to be pushing this dream of self-determination closer to reality. With a new administration in Juneau, at least two years remaining of a friendly administration in Washington, and critical court decisions pending, this year may indeed be an active one for sovereignty advocates, many of who share the persistent conviction of Willie Kasayulie of Akiakchak. Kasayulie, chair of the Alaska Inter-Tribal Council, told the Alaska Natives Commission:

"Tribal governments are not going to go away. We'll still be here, despite efforts to establish state-chartered governments."