

"ANCSA and Tribalism"

Presented to the General Assembly of the Central Council of the Tlingit and Haida Indians of Alaska on October 2, 1985.

Early in 1970, during a fiery and sometimes frustrating debate about the terms of proposed settlement legislation, an exasperated attorney threw up his hands in frustration when one of his proposals was rejected outright by the AFN Board of Directors. "I've been involved with these Native land claims for the past five or six years. I've got a lot at stake in time and effort. It's about time something happened," he grumbled.

I smiled as I responded. "I've been involved with the land claims all of my life, starting when I was born a Tlingit. And I will remain involved until I leave this piece of earth that is now in dispute between the Natives and the State of Alaska."

It is so for each of us who was born an Alaska Indian, Eskimo or Aleut. Whatever happens to our tribal land is our individual and collective lifetime concern. Our responsibility for our tribal lands, our tribal government, and our tribal sovereignty are not of recent origin. They became a part of our lifetime agenda upon our birth.

Daniel Webster, one of America's greatest statesmen and a renowned orator, was engaged in a monumental debate with Senator Hayne on the nature of the Union that bound our states together in one indivisible nation, just as we today debate the nature of tribal government and tribal sovereignty. Hayne's eloquent attack was so devastating that it necessitated a response in the U.S. Senate no later than the next day. The heavy-hearted pro-Union forces were discouraged and almost in disarray.

Could even Webster be ready to mount a counterattack strong enough to carry the day on such short notice? Could anyone?

Many hoped, but few believed that it could be done.

Daniel Webster reached new heights in the history of oratory in his now famous "Reply to Hayne." His jubilant Senate colleagues rejoiced. One Senator asked Webster the question that may have been on the minds of all. "How did you prepare such a masterpiece overnight? Daniel Webster replied, "I didn't. I have been preparing that speech for thirty years."

Indeed he had. He had drawn on his experiences, his vast readings, his formal studies and his years of public service, and tempered them with his flaming conviction that the Union must survive. He worked, he studied, and he believed.

I do not for one moment delude myself that my speech to you this evening will remotely approach the matchless eloquence of Daniel Webster. But maybe, like his famous "Reply to Hayne," it, too will draw on my readings and education, my time with the Central Council, the Alaska Federation of Natives, and Sealaska my two-year term as a Commissioner on the American Indian Policy Review Commission, and what I have learned from my many Indian, Eskimo and Aleut friends.

The Alaska Native Claims Settlement Act of 1971 is being subject to considerable criticism today. I sympathize with the Native corporations and shareholders whose great expectations have not been realized. The ANCSA corporations incurred heavy legal expenses in efforts to ensure that the Natives received all to which they were entitled to under the Act. The federal government's tardiness in conveying title to lands which the Natives are entitled has been costly to the intended beneficiaries of the Settlement legislation.

But I am not going to engage in the current Alaska pastime of downing ANCSA, because I think you deserve something better than a mere litany of valid

observations and excuses for poor administration and failures. This Act made history as the largest Aboriginal land settlement ever enacted by the United States Congress. It directed the payment of \$962.5 million as compensation for lands previously lost to which Indian title was being extinguished by the Act. It confirmed title to 44 million acres in Native ownership, and by its effect, it made the landless Tlingit and Haidas a tribe with a tribal land base. That corporations administer ANCSA land assets does not change the tribal nature of the land.

Our tribe's existence will continue indefinitely into the future. Our tribal rolls will change as new members are born and others die, but the tribe will go on and on and on. We owe a debt of gratitude to tribal members who preceded us, just as we have a clear obligation to those who will come after. The actions of those who used and occupied our lands before we were born provided the basis for the Native land rights that resulted in ANCSA. We who worked for passage of settlement legislation in 1971 were successful because the dominion our ancestors asserted over lands, theirs from time immemorial, was still being asserted in 1971 by the Native people in rural Alaska. The real battle for land claims legislation was not won in the urban centers of our state. It was fought and won in the villages by the people still using and occupying their ancestral lands. That is why the federal government could never say the Natives had abandoned their lands or that their Indian title had been extinguish-

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ed. This was shy, during a Senate Committee land claims hearing. I could tell Senator Henry Jackson, "As we look at Indian title, we can examine the technicalities in many different ways, but here in Alaska in over 150 villages we have people using, occupying, and claiming these very lands."

Upon our birth, we become members of the tribe. We tribal members who are here today are, with respect to the lands owned by the tribe, stewards or caretakers entrusted with the care of tribal assets for the benefit of tribal members who are alive today and for those not yet born. We who exist today are not more deserving or more important than those who went before or those who will come after. It follows, therefore, that the ANCSA lands do not belong solely to those of us who exist today.

I do not believe that we have the right to sell any of our tribal lands. I do not believe that we have the right to take any actions that will endanger our ownership of our tribal lands. I do not believe that we have the right to divide up our tribal lands among tribal members simply because they want to own it like white people. I do not believe that we have the right to take any of these actions, not if we truly respect our tribe's well-being and are honestly committed to its continued existence. We may have the legal right to undertake these actions, but we do not have the moral right. It is time for us to give as much credence to the moral imperative that goes to the very heart of our tribal existence as we presumably do to 'the bottom line' and regulations of the Securities and Exchange Commission.

ANCSA short-changed Alaska Native tribes by continuing to ignore the pending questions relative to the nature of our tribal governments and our tribal sovereignty and by discouraging the placement of ANCSA lands in trust status. The federal government ignored these complex questions before ANCSA became law on December 18, 1971, and it ignored it in the provisions of the

Act itself. Only Indian tribes may assert Indian title to lands Aboriginally occupied by them. In ANCSA, the Congress recognized the validity of our tribal claims by conveying title to a portion of our tribal lands to us and by compensating us for other lands on which our Indian title was extinguished. But don't forget that while ANCSA variously affected our exercise of our tribal governmental power, it was not intended to be and is not Termination legislation.

ANCSA is an imperfect law that is pockmarked with mistakes and ambiguities. It was never intended to cure all of our tribal ills or to serve as a panacea in addressing questions about the extent of our powers of tribal government or the nature of our tribal sovereignty — all of which were left unresolved by the Federal Government. But ANCSA bought us time. We are no longer a landless tribe. We can improve the law. We can improve our situation. Our people, our fellow shareholders, are becoming discouraged that ANCSA benefits are not coming to them. They have received little assistance in their efforts to understand how corporations function. 1991 is looming on the horizon.

I strongly favor and urge you to support the transfer of title to Sealaska Corporation lands, our tribal lands, to the appropriate Southeast tribal government. Southeast ANCSA village corporations should consider a similar course of action. The Berger Report itself also recommends the transfer of ANCSA corporation lands to revitalized tribal governments. This option is receiving strong support from numerous Native shareholders across the state who are concerned that when ANCSA stock can be sold in 1991, the ANCSA corporations may lose their lands.

1991. The year strikes a chord of grave apprehension in the hearts of Alaska Natives. Why do we fear the decisions that will be made when the Native shareholders acquire the right to sell their ANCSA stock? Why are so many ANCSA amendments

necessary to, in effect, protect us from the decisions of fellow shareholders? Why is the usual analysis of 1991 presented in terms of stockholder conduct instead of corporation leadership conduct?

Let me share my perception of 1991. It is the year in which Native shareholders of the ANCSA corporations will deliver a momentous vote of *confidence* or *no confidence* in the corporate leadership's administration of their assets. If that leadership has fully informed us, educated us, and fired us with the vision of a future that will strengthen our tribes, and if they have shown us good business sense and that *they care more for us as shareholders* than they do for self-enrichment, self-seeking, and status seeking, then 1991 will present no problems and no uncertainty. How we approach 1991 reflects the confidence or lack of confidence that we feel about our leadership.

One of the most fundamental functions of leadership is to goalize, to set goals in such a way that we are inspired to make them our own. It was this ability that set Winston Churchill of England and Charles de Gaulle of France apart as leaders. They inspired confidence in the people who eagerly make the goals of the

leaders their own national agendas. The flame that wielded a statewide Native unity in 1966 and produced ANCSA in 1971 is needed once again. I support the Berger Report process for the following reasons. It gave expression to the grassroots movement that is urging the revitalization of tribal governments. It dignified and legitimized serious debate on land claims options that would not have been considered seriously by the corporate leadership had they been presented by unorganized shareholders. It moved concerns about the delicate relationship existing among the ANCSA corporations, the ANCSA-tribal lands and the tribal governments to the front.

The Central Council, as the tribal governing body for the Tlingit and Haida Indians, is now a party to the great debate that is shaping up. The Berger Report recommendations involve you directly. You cannot escape it. You cannot stay on the sidelines. I recommend that the Central Council establish a permanent or standing committee to be called the ANCSA Committee. Its first charge should be a thorough analysis of the Berger Report. It should then focus on the entire spectrum of land claims administration from here on out.

This committee should be established before your Craig General Assembly adjourns. Such action would constitute a statesmanlike acknowledgement of your further responsibilities to the tribe. Do it. Consider the practical matter of committee memberships for policy level employees and Directors of Sealaska who could be subject to pressures that could unfairly influence their decisions. I never said that it would be easy.

Proposed amendments to ANCSA must be posed in terms of their proposed affect on shareholders and their lands and in light of how ANCSA was intended to work, how it actually worked, and where it fell short. It is discouraging to note that much of the Native leadership involved in the tribalism issue seems to know very little about the how and why of ANCSA. I don't approve of 'winging it' on such a serious subject, anymore than I approve of people who try to build a reputation by taking cheap shots at ANCSA without understanding Indian law or the workings of ANCSA. The Settlement Act should be subjected to intelligent and legitimate criticism.

Fellow tribal members, I thank you for the opportunity to share my thoughts with you on matters that concern all of us.