

OOPS – THE FEDERAL GOVERNMENT DID IT AGAIN!

Legal Issues Faced by the Native American Community

This presentation is an overview of some of the historical and more recent issues facing Native Americans in the legal arena.

Facts and Figures

Helpful Link

Problems – Where do they come from

Complex relationship –

- Dealing with a separate legal system (to a certain extent),
- Of another nation (but not quite a sovereign nation),
- Within the borders of another nation (the United States).

U.S. Government has dealt in different ways with Native populations

- Lower 48 states,
- Alaska
- Hawaii

Differences among the tribes

Differences in World View

Competing goals and values

Native Population - independence and preservation of their way of life.

European Settlers – Assimilation

Diametrically opposed value systems and ways of life

Native Population – consider themselves to be a part of the surrounding natural ecosystem; stewardship of natural environment; spirituality connected to nature; hunter-gatherer society, communal/socialist

European Settlers – Judeo-Christian belief system, man is separate from nature; nature to be subjugated; spirituality and nature were not related; agrarian society, based on capitalism, required more resources

History

1400s were a very intense period of exploration by multiple European countries

Doctrine of Discovery

Did not apply to aboriginal people

Native population viewed as sovereigns in their own right.

Only they could convey title (or have it taken away from them).

Power of the purse vs. power of the sword.

Small conquering population – purse
Indian Country
Increased settlement – sword
Domestic dependent nations

Facts and Figures

- 562 Federally recognized Tribal governments in the United States.
- U.S. Bureau of the Census, the estimated population of American Indians and Alaska Natives, including those of more than one race, as of July 1, 2007, was 4.5 million, or 1.5 per cent of the total U.S. population.

- BIA's 2005 American Indian Population and Labor Force Report, the latest available, the total number of enrolled members of the (then) 561 federally recognized tribes was shown to be less than half the Census number, or 1,978,099.

2.3 billion acres of land in the U.S.

55.7 million acres of land held in trust by the United States for American Indians, Indian Tribes, and Alaska Natives.

Approximately 326 Indian land areas in the U.S. administered as federal Indian reservations

- Largest is the 16 million-acre Navajo Nation Reservation located in Arizona, New Mexico, and Utah.

- Smallest is a 1.32-acre parcel in California where the Pit River Tribe's cemetery

Over 300 American Indian and Alaska Native languages were spoken at the end of the 15th century.

- Today, fewer than 200

- English has become the predominant language in the home, school, and workplace.

Helpful link: <http://www.bia.gov/FAQs/>

Jurisdiction and the Trust Responsibility

Helpful link: <http://www.nebraskastudies.org/>

Alaska - "Now for Something Completely Different (Which, Predictably, Also Did Not Work)"

ANCSA/ANILCA

A. ANCSA

The acronym ANCSA stands for the Alaska Native Claims Settlement Act (1971), was very deliberately "something different." Instead of creating a reservation with separate jurisdiction and a trust relationship between the U.S., as trustee, and another sovereign nation of Native Americans as beneficiaries, ANCSA did what modern capitalism likes to do. It created corporations. It created 12 "Regional Corporations" (one for each region of Alaska) and 220 "Village Corporations" (one for each recognized native village). Collectively, the Village Corporations received 22 million acres of surface estate. The Regional Corporations received 16 million acres of land in fee, and the subsurface and timber rights for the 22 million acres of surface estate given to the Village Corporations.

In return, the native people of Alaska gave up all other claims against the government and to the land of Alaska. Individual native people are the corporation's shareholders. ANCSA very purposefully did not create either a trust or a contract between the U.S. and Alaskan Natives. See, generally, Bay View, Inc. v. U.S., 278 F.3d 1259 (Fed. Cir. 2001).

The thought, obviously, was to capitalize corporations that would manage the land and make money for their shareholders to live on. But like previous models of settlement, both cultural and environmental factors interfered with real success: Who had the skills and desire to run these corporations for the benefit of the corporations' shareholders? Shareholders were used to using the land for subsistence as part of a subsistence hunting and gathering culture, and were not used to exploiting the land for cash to buy snowmobiles, groceries, tvs, etc. And, the salmon and caribou upon which subsistence is based stubbornly refuse to respect Village or Regional Corporation boundaries, so how much of them there is depends on factors outside of the corporations' control.

B. ANILCA

The acronym ANILCA stands for the Alaska National Interest Conservation Act. It creates a "priority preference" for "subsistence uses" of fish and game within Alaska. If interpreted to give priority to native people, only, ANILCA could help some of the subsistence culture related problems with ANCSA. But, it has not been interpreted that way. See *Subsistence Hunting and Fishing In Alaska: Does ANILCA's Rural Subsistence Priority Really Conflict with the Alaska Constitution*, 27 Alaska L. Rev. 221 (McGee, 2010).

In any event, the priority preference ignores environmental issues. Salmon are overfished at sea, so the abundance otherwise available (see below) to land and shore based native people does not exist. Priority to a scarce resource is better than nothing, but not as good as priority to an abundant resource. Likewise, what happens to caribou when their range is bisected by pipelines, roads, etc.?

Bureau of Indian Affairs
Slide Presentation

Gaming – Cure or Curse **History Highlights: Gambling in Oregon**

Currently, Oregon is one of the top states in gambling revenue, and among the leaders in types of legal gambling available.

Recent History of Legal Gambling in Oregon

1984 Oregon voters authorize a state-run Lottery. The Lottery begins with scratch tickets in 1985.

1989 Oregon becomes the only state that offers state-operated sports betting with the Sports Action lottery.

1991 Oregon becomes the first state lottery to offer Keno games every 5 minutes.

1992 Video Lottery is legalized. As of October 2004, 10,238 Lottery-operated video poker machines in over 2,000 bars and taverns across the state.

1994 First Native American casino in Oregon opens (nine open as of 2005). Tribal casinos made possible by passage of the federal Indian Gaming Regulatory Act of 1988 (see following page for a list of Oregon casinos).

2003 Monday Night Football scratch-it tickets begin. Lottery Commission approves 3-Way Action Poker. Expansion of video lottery from five to six terminals per retailer. Introduction of 10 video lottery terminals in pari-mutuel establishments.

2004 Keno offered every four minutes. Lottery Click&Play computerized game implemented.

2005 Lottery implements video slot machines.

2006 Lottery exceeds \$1 billion in biennial revenues.