
BOOK REVIEW

ALASKA NATIVES AND AMERICAN LAWS

Second Edition

By David S. Case & David Avraham Voluck

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Alaska Natives and American Laws, Second Edition. By David S. Case & David Avraham Voluck. Fairbanks, AK: University of Alaska Press.¹ Expected date of publication: Spring 2002. Available in hardback and paper; price not indicated. Approximately 560 pp., with bibliography, index, and illustrations.

Alaska is home to 226 federally recognized Native tribes. In addition, approximately 200 village-based Native corporations and twelve Native regional corporations own over forty million acres of land and have assets valued in the billions of dollars as a result of the Alaska Native Claims Settlement Act ("ANCSA").² The political and economic force of Alaska Natives is large. Yet, from the Treaty of Cession with Russia in 1867 to the most recent Alaska

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2. Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified as amended at 43 U.S.C. §§ 1601-29 (1994)).

Supreme Court ruling relating to Alaska Natives,³ federal and state policies affecting Alaska's Native people have vacillated wildly. The second edition of *Alaska Natives and American Laws* does a magnificent job of tracing the history of federal and state treatment of Alaska's indigenous people. Authors David Case and David Voluck have performed a valuable service to Alaska Natives, the legal community, and the general public by detailing the complex law that defines the legal status of Alaska Natives, their governments, and other institutions.

The treatise provides a much-needed objective view of the legal and political history of federal relations with Alaska Natives. In so doing it debunks revisionist "melting pot theories" that would deny the right of Native self-governance and Native subsistence rights under federal law. Such views are alive and well in Alaska today among liberals and conservatives alike. They advocate assimilation policies prevalent in the nineteenth century and again during the era of Indian termination when Congress eliminated the political and governmental status of roughly one hundred Indian tribes in the 1950s. Some features of ANCSA are rooted in those policies, which have greatly hindered Native rights to govern land and to hunt and fish consistent with custom and tradition. At the same time, this treatise reveals a modern trend that relies in part on the federal trust responsibility in providing services to Natives and on treaty substitutes to protect Native land and rights to hunt and fish. One of the finest attributes of Case and Voluck's work is the objective manner in which a tremendous amount of material is presented.

An introductory chapter of some thirty-five pages provides a nice overview of the material covered later in the book and acquaints the reader with the complex and inconsistent treatment Alaska Natives have received from the federal government. The following nine chapters consume over 500 pages and are structured in accord with four major themes: 1) Native claims to land; 2) human services; 3) subsistence; and 4) self-government. The thematic organization works well, and the detailed table of contents provides easy access to readers seeking information on issues ranging from the establishment of reindeer reserves to IRS provisions related to "net operating losses." A significant formatting improvement from the 1984 edition is the use of footnotes rather than end-of-chapter notes, which eliminates the need to constantly flip back and forth.

David Case authored the first edition of this book when the

3. In re C.R.H., 29 P.3d 849 (Alaska 2001).

settlement of Native aboriginal land claims had been in effect for only thirteen years. The settlement was remarkable for its use of State-chartered corporations as the vehicle for disbursements of land and money to extinguish tribal land claims. ANCSA was touted as a grand experiment and break with federal policy that had traditionally emphasized set-asides of tribal lands for use and occupation by tribes.⁴ To that end, Congress provided in section 2(b) of ANCSA that

the settlement should be accomplished rapidly, with certainty, and conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions or privileges, or obligations . . . without adding to the categories of property and institutions enjoying special tax privileges⁵

As the first edition made plain, despite this sweeping policy statement, ANCSA left open more questions than it answered. What are the rights of tribal governments? Did tribal governments exist in Alaska? What about Alaska Native hunting and fishing rights? Would social services continue to be delivered to Alaska Natives based on their status as Natives after passage of ANCSA? What would happen with Native townsite lands and the Native allotment program? In addition to providing a rich and detailed legal history of Alaska Natives and American laws, the updated version brings readers and researchers up to date on all these issues and more.

For example, Case and Voluck carefully outline litigation over the “Indian country” dispute that had simmered long before ANCSA became law and which heated up in the 1980s. While the Act revoked all but one reservation in Alaska, it said nothing about whether Native tribes lost governmental control over land owned by the tribes themselves or by Native corporations surrounding villages. The policy statement in section 2(b) of ANCSA was relied on by the Supreme Court in the landmark case of *Alaska v. Native Village of Venetie Tribal Government*⁶ to hold that 1.8 million acres owned by the Venetie tribal government did not constitute “Indian country” within the meaning of 18 U.S.C. § 1151. The Court asserted that ANCSA’s primary purpose was “to effect Native self-determination and to end paternalism in federal Indian relations.”⁷ Yet, as *Alaska Natives and American Laws* makes

4. See generally Monroe E. Price, *A Moment in History: The Alaska Native Claims Settlement Act*, 8 UCLA-Alaska L. Rev. 89 (1979).

5. 43 U.S.C. § 1601(b)(1994).

6. 522 U.S. 520 (1998).

7. See, eg., *id.* at 534.

clear, every Congress has amended ANCSA, and Congress has confirmed continued Native eligibility for social programs designed to benefit members of Indian tribes⁸. In fact, the general statement of policy is belied by the subsequent treatment of ANCSA corporations, corporate lands and Native individuals. Nevertheless, tribal governments are now considered “sovereigns without territorial reach.”⁹ The chapter on sovereignty also provides a detailed explanation of recent landmark Alaska Supreme Court decisions affirming the existence of federally recognized tribes and their jurisdiction over members,¹⁰ notwithstanding the *Venetie* decision.

Case and Voluck also detail ANCSA’s complex formula for distribution of land and money to regional and village corporations and the daunting task of organizing the corporations faced by Native leaders. The authors document the most significant litigation growing out of ANCSA—covering topics from the determination of surface and subsurface estates to shareholder insurance policies. Especially interesting and useful is the review of the significant structural changes to ANCSA, such as the continuation of the provisions barring the sale of Native corporation stock and the extensive revisions to the “land bank” provisions, which make many of the protections that reservation trust lands enjoy applicable to undeveloped Native corporation lands. The huge benefits to Native corporations created by changes to the federal income tax code in 1986 are detailed, along with the many other changes—technical and otherwise—made to ANCSA nearly every year. The authors certainly make a valid point when they state: “These federal enactments indicate that the Alaska Native Claims Settlement Act is an experiment that is still evolving.”

The first edition of the book devoted nineteen pages to subsistence hunting and fishing rights after ANCSA. The new edition continues the practice of repeating verbatim some of the history in its thirty-five-page treatment of the topic. There is a concise explanation of how aboriginal hunting and fishing rights were replaced by the rural priority for subsistence uses in Title VIII of the Alaska National Interest Lands Conservation Act¹¹ (“ANILCA”) in 1980. The authors then accurately untangle the tortured course of Alaska’s attempt to maintain its end of the bargain to provide a rural priority on state lands and waters. The Alaska Supreme

8. 43 U.S.C. § 1626(d).

9. *Alaska v. Native Village of Venetie Tribal Gov’t*, 522 U.S. 520, 526 (1998).

10. *See, e.g., John v. Baker*, 982 P.2d 738 (1999), *cert. denied*, 528 U.S. 1182 (2000).

11. Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified as amended at 16 U.S.C. §§ 3101-3233 (1994)).

Court's rejection of the rural priority¹² and the legislature's subsequent open hostility to the rural preference provided by ANILCA are succinctly laid out. The recently concluded "Katie John" litigation¹³ is covered with respect to the federal government's application of the subsistence priority for fish and game to federal reserved waters. However, a discussion of the litigation and controversy over whether the federal government actually possessed authority to engage in on-the-ground management of subsistence activities on the public lands is not included. That litigation over the federal government's authority to administer a subsistence program reveals not so much a difficult legal issue as the political tension and dynamic at play within State government with respect to subsistence.¹⁴

Anyone interested in individual rights to Native allotments, Native townsite lands, or health and social services will find a detailed legal history and current exposition of statutes and case law. Federal laws regarding public lands, Native education statutes, the Marine Mammal Protection Act, the Endangered Species Act, and international treaties are among the many other topics covered in this truly comprehensive treatise. A fascinating chapter details the development of modern Alaska Native non-profit organizations and advocacy groups.

Alaska Natives are likely subject to more federal statutes, regulations, administrative rulings and court decisions than any other indigenous group in the United States. Case and Voluck have provided a wonderful resource for all Alaskans and a treatise that should be on the shelf of every lawyer who practices in Alaska.

12. *McDowell v. State*, 785 P.2d 1 (Alaska 1989)(holding that preference to rural residents for taking subsistence fish and game violated Alaska Constitution); *Madison v. Alaska Dep't. of Fish & Game*, 696 P.2d 168 (Alaska 1985)(holding a regulation establishing rural eligibility criterion unauthorized by statute).

13. *John v. United States*, 247 F.3d 1032 (9th Cir. 2001).

14. *See, e.g., Alaska Legislative Council v. Babbitt*, 181 F.3d 1333 (D.C. Cir. 1999); *John v. United States*, 1994 WL 487830 (D. Alaska Mar. 30, 1994).