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Summary

Alaska Native groups have adopted a strategy of seeking general welfare, including social security, through retribalization — a term of dual meaning discussed in this paper. The paper aims to describe the historical developments leading to the adoption of this strategy, explain its nature and the various forms which it takes, and assess its potential for the achievement of the general welfare of Alaska Natives.

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RETRIBALIZATION AS A STRATEGY FOR ACHIEVEMENT OF
GROUP AND INDIVIDUAL SOCIAL SECURITY IN ALASKA NATIVE VILLAGES
- WITH A SPECIAL FOCUS ON SUBSISTENCE

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General Welfare and Social Security

General welfare or well-being is the most all-encompassing concept to denote the wide range of human needs including economic (income and employment), health (physical and mental), security, education and dignity or self-determination that are most important to human populations for survival and quality of life. For Alaska Natives, two additional components which contribute to meeting the broader general welfare goals are of paramount importance: subsistence activities (hunting, fishing and gathering natural resources) and cultural continuity (Braund and Associates, 1985). Gaffney (1982:135) proposes the following set of general welfare objectives for Alaska Native populations: "stable and productive employment opportunities, health and nutrition services, equitable justice and security systems, access to education that enhances power and self-esteem, and ecologically sound resource use."

Social security is a mechanism developed in Western industrialized states for accomplishing a very limited number of the general welfare goals identified above. Generally, social security is thought of primarily as a mechanism for meeting some economic and health goals. It is not, however, usually thought to contribute to security, educational or self-determination goals.

Social security is thus a means to accomplishing some general welfare objectives, and therefore is encapsulated within our discussion of the general welfare objectives which retribalization seeks to address.

The 1980s mark a turning point in development of Alaska Native tribalism. After a honeymoon period typified by romantic adventures in the wonderful world of corporate capitalism, a period when tribal governments took a decided backseat to village corporations, state-chartered municipalities and regional corporations, village strategists are returning to tribal authority and tribal alliances as a means to reacquire control over traditional subsistence resources and other community concerns.

Federal Indian policy for Alaska has always been marked by confusion. The reasons are both legal and non-legal. Alaska was purchased in 1867, just four years before Congress determined that treaties would no longer be employed to extinguish aboriginal title to lands possessed by aboriginal people. Treaties offered in exchange for aboriginal lands demarcated reservations held in trust by the Secretary of Interior and governed conjointly by federal and tribal governments. Even if the ban on treaties had not occurred, protection would have been scant as Indian policy of the period shifted from removal to reservations to detribalization of Native Americans through a policy of allotting their trust lands to individuals and to the general public. Further, Alaska as a federal territory was ignored generally for 17 years with no civil law regime either for Natives or non-Natives. With marginal population growth until the gold rush at the turn of the century, there was little or no concern for clarifying the property rights of Native groups or even those of non-Native residents.

What Alaska finally became with the passage of the First and

Second Organic Acts was itself akin to a federal reservation governed from afar with handpicked officials. Backed by vigorous lobbying by resource exploiters, Washington afforded minimal legal authority to Natives or to non-Natives. The former fell under the orbit of the Bureau of Education, an off-shoot of earlier teacher-missionary control, and the latter fell under domination of other branches of the Interior Department. Although executive order reserves were established for special purposes, tribal government over tribal domains was no more facilitated than was non-Native resident government. With the exception of a Congressional act for a transplanted group of Canadian Indians, no Indian reservations by act of Congress or treaty were established in the territory.

When, in the mid-1930s, Bureau of Indian Affairs officials lobbied into existence the Indian Reorganization Act to strengthen tribal governments, Alaska was included. The expectation of policymakers was that Indian reservations would be defined for Alaska tribes. However, this did not happen. Instead the issue of the tribal land base and tribal jurisdiction thereon languished on the back burner of Congressional debates, leaving some modern courts to conclude that perhaps Alaska Natives were legally different than their southern brothers (See *Kake v. Egan*, 369 U.S. 60 1962).

There was a reason for this overt governmental indifference to Native and non-Native alike. Powerful resource exploiters perceived Alaska fish and wildlife to be a goose to be plucked at will with little or no regard for conservation or renewable

resources (Wheeler, 1977:209-224).

This persistent failure of the federal government to manage Alaska's resources with an eye toward conservation was one of the predominant themes of statehood advocates. The licensed fishtrap which swallowed up entire salmon runs became a symbol of federal connivance with outside interests in the rape of Alaska resources (Fischer, 1975).

If Alaska Natives were different, their difference was not marked by law but by a commitment to subsistence as the cornerstone of their lives, both economic and cultural. Fish, land and sea mammals remained the primary sources of Native livelihood and of social organization. This critical relationship between Native groups and natural resources, hunted and fished from traditional lands and waters, sustained itself throughout the territorial period and into the statehood era (post-1959). It was little affected by federal law and conventions, whether positive or negative, in their recognition of Native lifestyles. Efforts to turn Native hunters into herders of domesticated reindeer came and went as federal policy. Limited protections for Natives were grafted into international treaties and conventions. Even during the early decade of statehood the limited non-Native population in rural areas and lack of law enforcement in their domain left Alaska Natives with the aggregate impression that the subsistence way of life would continue in ways and in places defined by them.

The Alaska Native Claims Settlement Act of 1971 marked a change in the legal regime affecting Alaska Natives. Not only

was aboriginal title to lands extinguished but in explicit terms aboriginal hunting and fishing rights were also abolished. For this reason and also because of heightened interest by a national public in Alaska public lands, Alaska Natives began to experience fish and game regulation articulated by sports, conservation and commercial interests who had little in common with subsistence gatherers. Conflicts sharpened as little-known federal and state laws were enforced upon Alaska Natives and as non-Native hunters and fishermen began to directly compete for the same resources. Alaska Native lobbyists returned to Congress to seek explicit preferences in management of the vast federal land base withdrawn by the Alaska National Interest Land and Conservation Act (ANILCA). The result was a statutory preference for rural subsistence. The state of Alaska which sought a rural, rather than a Native, preference was informed by the executive branch that this preference would be grafted into state law and regulation as a condition of continued state management of fish and wildlife on federal lands. A bitter struggle in the legislature, a struggle marked by lawsuits and an initiative which attempted to repeal the state subsistence preference has momentarily achieved this state preference for rural residents. This priority can only be viewed as tentative given the continuing urban, non-Native hostility to subsistence in Alaska.

In this environment of competing interests, tribal strategies to protect Native interests have been as non-traditional as the legal base from which Alaska Native tribes have operated. Some strategies have been motivated by threats implicit or explicit in

initiatives taken in international negotiation, others in transfer of jurisdiction from federal to state government, still others in patterns of enforcement. Others have been directed internally to management concerns between tribal units, conflicts poorly addressed or ignored entirely by external rule setting and enforcement agencies. Still other strategies are entirely localized to guide younger tribal members to traditional management techniques.

These initiatives - political, legislative, legal and popular represent manifestations of Native group efforts that are distinctly different from governmental opportunities proffered Natives to exercise either delegated or validated inherent authority over other matters critical to the social welfare of tribal groups. Where lawyers or Native specialists are involved, their roles are ancillary to those of their clients.

Alaska Natives perceive themselves and are perceived as historically and culturally identified with the subsistence activities sought to be strengthened and maintained. They are the experts among experts in this domain. Their organization as hunters and gatherers validates their group identity to external constituencies and internally among members of every level of age, income or acculturation.

Although other core fixtures of tribal authority, most notably the secured tribal land base under tribal (and federal) control have been placed in question by acts of Congress, the courts have confirmed that Congress has recognized and is respec-

tive of Native subsistence rights as a component of the ever-illusory federal trust responsibility (See *People of Togiak v. U.S.*, 470 F.Supp. 423 [D.D.C. 1979]). Shared or exclusive governance of subsistence activities by Alaska Natives is for them the appropriate starting point for reassertion of tribal authority over social welfare concerns and for reemergence of tribal coherence. It is the most neglected of realms protected by state social security.

These strategies do not conflict with other strong tribal initiatives that have as their focal points secure control over land or over village life. Rather, they complement and enhance them.

Justice Thomas Berger recommended in Village Journey (1985) that

Alaska tribal units (e.g., Native villages) be returned exclusive jurisdiction over subsistence activities on land granted to village corporations under ANCSA. Two packages of ANCSA amendments address this issue in Congress. The middle of the road Alaska Federation of Natives package suggests that ANCSA corporations be allowed to transfer their land in fee to "qualified transferee entities." The word "tribe" is intentionally not used (AFN 1991 legislation). A competing package of amendments offered by a coalition of Alaska tribal units would explicitly confirm tribal jurisdiction over hunting, fishing and trapping.¹

The latter amendment drafted by the Native American Rights Fund (NARF) attorneys is given small chance of success. More

fundamental questions of Congressional intent plague legal advocates of Alaska Native tribal governance. They are:

1. Whether the domain on which villages operate can be cast as "Indian Country" because Native villages are "dependent Indian communities" on non-reservation land;

2. Whether and to what extent villages retain criminal and civil authority over community members;

3. Whether and to what extent villages retain civil regulatory authority over non-members, on non-reservation lands.

These issues taken together put into question the jurisdiction, both personal and territorial, as well as the scope of authority of Alaska Native tribes and are the subject of constant scholarly, governmental and legal speculation (Case, 1984 and Price, 1985).

Even advocates of tribal jurisdiction (without further Congressional guidance) find tribal jurisdiction circumscribed to the village core (Anderson and Aschenbrenner, 1985). Public Law 280 gave Alaska jurisdiction over criminal law activities and civil causes of action, although arguably not over civil regulation (Deloria and Lytle, 1983:175). However, if the village core is the domain of tribal governance or if it is limited to ANCSA land grants, a substantial part of the hunting and fishing domains of Alaska Natives are excluded.

Tribal strategies described here focus on subsistence activities wherever they occur whether within the above boundaries or

beyond. The village is the staging area for subsistence activities, but not the single locus of such activities.

Are then tribal strategies an exercise in futility? Are they arrangements which will strengthen the position of opponents of tribal sovereignty, especially as they have resulted in arrangements which are posited on delegated and not inherent (or historical) tribal authority? We suggest that the strategies employed are sound whether measured by classic federal Indian law formulations in federal court cases or whether employed as substitutes for classic protections in the political arena.

When the U.S. Supreme Court considered tribal control of fish and game activity by non-members on non-Indian land within reservation boundaries it looked to tribal dependence on the resources and the threat posed by non-members to the political integrity, economic security and health and welfare of tribal members (See *Montana v. United States* 101 S.Ct. 1245 [1981]). It also has examined the comprehensiveness of tribal activity in this domain in upholding a reservation scheme of control over non-members against state challenge (See *Mescalero Apache Tribe v. New Mexico* 630 F.2d 724 [10th Cir. 1980]).

Thus, the linchpin of judicial support for tribal regulation has been potential threats to the tribe's political and economic security. Further, the court looks to governmental activity and not merely assertions of theoretical rights as evidence of tribal authority.

Even if Alaska Natives cannot surmount the doctrinal hurdles

of federal Indian law in the Congress or in the courts, strong and detailed assertions of regulatory control, based on their fundamental interests, provide them with political capital in development of cooperative arrangements with other legal sectors.

Thus, subsistence initiatives are the best form of tribalization strategy available to Alaska Natives as they stake out a domain that most affects their general welfare. Unlike so many attributes of that same general welfare, e.g., schools and education, religion, law and order, etc., here is a realm that is not predefined but is now only being defined by Western governments, a domain in which Alaska Native groups have functioned as experts since time immemorial.

For them it is the most logical starting point to assure control over their lives and to protect their social and economic well-being.

Retribalization: Alaska Meanings

The term retribalization has two meanings in Alaska. The most frequent and self-evident meaning used by lawyers and Native leaders is the establishment of clear, unambiguous federal recognition of the tribal status of those Alaska Natives organized into Indian Reorganization Act (IRA) governments or traditional village councils. A case can be made that the federal government has never explicitly not treated Alaska Natives as tribes nor withdrawn recognized IRA status from those Alaska Native groups organized under that law (Case, 1984). An alternative case has been made, however, that Congress has consistently treated Alaska

Natives as distinct from other Indians and that its intent in ANCSA was to foreclose tribal status for Alaska Natives (Mitchell, 1985). Others have suggested that due to the revocation of reserves and the failure of Alaska Native groups to meet the legal requirements for qualification as "dependent Indian communities" that by judicial standards as well, Alaska Natives presently are not tribes (Marston, 1984). The State of Alaska is generally of the opinion that Alaska Natives do not have tribal standing. The first meaning of retribalization, then, is to clear the ambiguity of the status of Alaska Natives and limit the litigation required to establish what precisely their status is by obtaining a declaration from Congress, either through an amendment to ANCSA or through separate legislation that Alaska Natives do have tribal status and those tribes have the same rights and limitations as other Indian tribes.

The second meaning of retribalization is the reconstitution of an organic, integrated, communal village society, the members of which are linked through bonds of kinship and a shared sociocultural system of meanings, beliefs, values and activities including ceremonies and rituals. It can be contended for some villages that this has never been lost; altered, yes, but not eliminated. For most villages, however, the contention can be made that communal integrity has been eroded by a combination of factors including wage economy, ANCSA's emphasis on individual shareholders and economic profits, education aimed at assimilation, desire for material goods and comforts and therefore retribalization is necessary. Unlike the first type of retriba-

lization, the second cannot simply be created by an act of Congress. Retribalization of the second kind requires leadership, vision and the control of the educational system among other things, but it is unlikely to develop without the self-determination over traditional lands which can only come from retribalization of the first kind or from pursuance of original retribalization strategies aimed at effective control over those traditional lands.

Although one can analytically distinguish the two meanings of retribalization, at a deeper level each implies and requires the other for success. By this we mean that, on the one hand, in order for a tribal government to be an effective instrumentality in expressing the will of the people and acting to improve the general welfare of its membership, an integrated community bound by interlocking networks of kin relationships displaying substantial agreement on the purpose of life as well as appropriate forms of behavior and beliefs is required. On the other hand, the integrated village society requires a strong legal instrumentality - the tribal government - in order to accomplish its purposes. Without such a legal instrument, the distinctive purposes of the local village society in Alaska would be virtually unaccomplishable in the contemporary world with its plethora of tempting and potentially destructive alternatives. The tribal government needs an integrated coherent community to work best and the kin-based village society requires a defensible legal institution to fully express and accomplish its will. It must bolster its credibility among members and outsiders.

Manifestations of Retribalization in Alaska

There are many examples of these different forms of retribalization in Alaska. Two examples will be used to explore the range of Alaska Native uses of retribalization; the Sitka Community Association in southeast Alaska and the Yupiit Nation in southwest Alaska display substantially different approaches to retribalization yet their leaders cooperate actively in the Alaska Native Coalition to accomplish the limited shared objective of obtaining federal and state recognition of Alaska Native tribes.

Sitka Community Association. Sitka is a heterogeneous community of 8,000 located on the west coast of Baranof Island in southeast Alaska. It is the traditional home of a powerful Tlingit Indian population who presently number approximately 2,000. As such, they are a significant minority in the community dominated by a non-Native majority. The Tlingit people of Sitka have been in contact with EuroAmerican culture for over 200 years and have lived continuously in contact with EuroAmericans (Russians from 1804 to 1867, Americans since that time) for nearly 200 years. The adult Tlingit population is highly educated with an average of more than 10 years of schooling and numerous college graduates. Cultural matters are handled through a relatively minor component in Native studies including dancing and history taught in the community schools. English is the primary language with Tlingit being spoken only by the more elderly members of the community. The Tlingit population is relatively integrated into the wage economy of the community with wage

employment being the primary means of obtaining a livelihood. Subsistence use of fish, game and vegetal resources are more important to the elders and as an expression of cultural continuity than it is a necessary component of survival. Most Tlingits have links either to the Presbyterian or Russian Orthodox Christian faiths although numerous fundamentalist Christian sects have also made a substantial number of converts in the past 15 years.

The Sitka Community Association is organized under the terms of the Indian Reorganization Act amendments of 1936 which extended its provisions for the formation of Indian governments to Alaska. It is, thus, the tribal government of the Native people of Sitka. There are other operative Native organizations within the community including the Alaska Native Brotherhood and Sisterhood, a local chapter of the Tlingit-Haida Central Council (the regional Native tribal organization), and Shee-Atika, Inc. (an urban Native corporation formed under the Alaska Native Claims Settlement Act). In addition, virtually all Tlingit residents born prior to December, 1971 are shareholders in Sealaska, the regional Native corporation.

The leaders of the Sitka Community Association have been major actors in the development of tribal institutions and in the formation of the Alaska Native tribal movement. They have created a tribal court and established jurisdiction over a number of areas of Native life. In addition, they were among the founders of the United Tribes of Alaska in 1983 and the Alaska Native Coalition in 1986. The interest of the Sitka Community is in

obtaining federal recognition of their tribal status to insure that they can continue to operate the programs they are involved in and accomplish a limited set of objectives for their membership. Those objectives, nevertheless are exceedingly important. One objective is to provide employment opportunities for their membership which has a higher rate of unemployment than the non-Native component of Sitka. This is done through various mechanisms including tribal programs, governance and Native-preference contracting and technical support for Tlingits attempting to start their own businesses. A second objective is to provide quality housing for tribal members who desire it. A third objective is to provide opportunities for subsistence activities for tribal members. A fourth objective is to provide food, clothing and shelter for the indigent members of the tribe.

The Sitka Community Association sees itself as part of an integrated set of Native organizations which have relatively specialized roles in meeting the general welfare objectives of the Tlingit population of Sitka. The ANB and ANS play an important social and expressive role through bingos, meetings, funerals, and celebrations; they also play an important political role in establishing regional positions on state and federal governmental issues which affect the Tlingit as Indian or Native people. The local chapter of the Tlingit and Haida Central Council plays a role in overseeing the tribal trust funds which came as a result of the separate Tlingit and Haida land claims suit and in monitoring educational programs (such as Headstart and job training) which they operate with Bureau of Indian, state or other federal

agency funds. Shee Atika, Inc. holds title to fee simple lands and monies through the Alaska Native Claims Settlement Act with which it is to establish successful businesses that will provide economic benefits to the Sitka Tlingit shareholders through dividends on profits and job opportunities. Sealaska as the regional corporation is also seen primarily as a provider of economic benefits through shareholder dividends, although it also plays an important political role in influencing legislation and in providing certain cultural and educational benefits through its subsidiary, the Sealaska Heritage Foundation. Health objectives for Sitka Tlingits are the responsibility of a regional Native board entitled the Southeast Regional Health Committee which sub-contracts with the U.S. Public Health Service to operate the Indian Health Service hospital located in Sitka.

Coordination among these institutions is accomplished through overlapping membership, that is, Tlingit people serve on boards of the various institutions thereby coming to understand their specialized functioning, and by direct consultation between leaders of each organization. Cooperation and coordination have not always characterized the relationship among the institutions, but appear to have developed in the past five years. Obtaining federal recognition would insure that the Sitka Community Association could with assurance continue to fulfill its tribal role in the institutional matrix which serves the general welfare objectives of the Sitka Tlingit community.

Yupit Nation. In the southwestern part of Alaska known as the delta area of the Yukon and Kuskokwim Rivers are found 56

Yup'ik Eskimo communities ranging in size from 100 to 700. The regional center for the area is Bethel which is an ethnically mixed community of 4,000 approximately half of whom are Yup'ik and half are non-Native, primarily EuroAmericans. Culturally and linguistically it is the most conservative and least affected region in Alaska with schools not being established until after the 1940s in many villages. The population is predominantly Yup'ik speaking although English is rapidly advancing among the younger generations as a result of the state and federal educational systems. Villagers are relatively uneducated with average number of years of schooling completed around six and very few college graduates. The economies of these communities are composed of a combination of subsistence production, small-scale commercial fishing, seasonal employment typically in government construction and transfer payments. Subsistence production is critical to the survival of these communities.

In the lower Kuskokwim area of this region are three smaller predominantly Yup'ik villages (Akiachak, Tuluksak and Akiak) which have recently formed the Yupiit Nation. The communities are in relatively close proximity to each other, have significant social linkages through intermarriage and kinship relationship and have come to have a shared vision of their position in modern Alaska and the steps they would like to take to establish a local society more compatible with their needs. For these villagers, retribalization is more than merely gaining federal recognition for their tribal existence, it is the reaffirmation and practice of a way of life linked to Yup'ik cultural traditions and values.

The leaders of these three communities have determined that they wish to survive as Yup'ik people through local control of their ancestral lands. They are concerned about a wide range of socially disruptive behaviors which threaten their communities such as drug and alcohol abuse, youthful sexual behavior, wife and child abuse, and loss of the Yup'ik language and values. A group of leaders in their 30s have articulated a vision of an alternative cultural system which will unify the community under the wisdom and authority of the elders. Elders are looked to for direction and guidance on all matters of major significance and are seen as the repositories of traditional Yup'ik culture. The young leaders see themselves as the implementors of the elders' vision of the right way to live. That vision includes subsistence activities on ancestral lands as a fundamental component in both an economic and cultural sense. Economically, fish and game are seen as necessary for survival while the harvesting, processing and use of those resources are seen as embodying important principles of relationship of the Yup'ik to each other and to the land and resources. The leaders have dissolved their state municipalities and assumed jurisdiction solely through the traditional village council. They have established a school board to control the curriculum and the hiring and firing of teachers. They have banned alcohol and modern dances in the village, causing some resentment.

The Yupiit Nation seeks retribalization of the second variety. There is a strong leadership which wishes to unify the community and provide a new direction based on the elders' Yup'ik

wisdom. A single institution, the traditional village council, controlled by the vision of the leaders is seen as the way in which meeting all of the range of general welfare objectives can be accomplished in a Yup'ik framework.

Other Tribal Strategies

What follows are explicit tribal strategies to control or participate directly in legal-regulatory regimes which affect subsistence and thereby core attributes of many Alaska Native societies. For reasons of brevity, these strategies are described without detailed analysis of the chain of events which lead to the use. This detailed byplay is contained in Langdon's 1984 analysis of current regulatory regimes and issues for the Alaska Native Review Commission. Citations throughout are to that work.

Strategies may be categorized as externally directed, internally directed and as mixed experiments in external and internal definition.

Unalakleet Initiative - Externally Directed

The Native village of Unalakleet announced that because the land and waters surrounding its village were Indian Country under federal Indian law, it and not the state would regulate commercial fishing within this domain. Unalakleet seeks thereby to challenge state authority on a disputed position of federal Indian law which holds that civil regulatory authority was not granted to Alaska by the Congress within Indian country. Questions of existence and boundaries of Indian country will also

concern future litigants.

Eschscholtz Bay - Management Among Native Groups

Competition for beluga at Eschscholtz Bay among Inupiat populations from Kotzebue, Buckland and Deering has led to declining harvests. Buckland and Deering, the smaller villages promulgated rules governing the harvest and distributed them to Kotzebue hunters in 1980-81. In 1984 IRA government representatives from the three communities met in Buckland. The rules were not passed by the IRA governments into law, but were distributed among hunters to reeducate them regarding boating and noise problems, define camping locations and allow for continuance of traditional Eskimo property rights (See Langdon, 1984:63-64).

Venetie's Approach - Internal and Then External

The people of Arctic Village and Venetia, Kutchin Athabascans, opted to take their former reserve in fee simple under ANCSA and later transferred title to the land back to their tribal government. The villages have distributed among their populations traditional rules governing the caribous hunt. Arctic Village codified the rules as tribal laws. Rules governing waste were intended to educate the younger Kutchin population, but have also been distributed to air taxi operators in order to alert non-resident hunters. Both the land transfer and the rules codified assert both internally and externally tribal authority to regulate civil matters within their jurisdiction, a position not unlike that of Unalakleet, although significantly strengthened by the fact that the land governed is tribal land (See Langdon, 1984:68-69).

Tribal regulatory authority has been delegated to tribal agents in two other important instances.

Complex Interaction by Yupiit Villages

In January, 1984 a convention of Southwestern Alaska Yupiit village representatives refined and ratified the Hooper Bay Water Fowl Plan (later termed the Yukon-Kuskoquim Migratory Water Fowl Plan) (Langdon, 1984:52-58). The plan evolved from a history of conflict among foreign, out-of-state, federal and state authorities over hunting and egg collecting of Canadian cackler, black brant and whitefronted geese during the spring nesting season, a traditional subsistence activity. Declines in the water fowl population was one catalytic factor as were confusing patterns of Fish and Wildlife enforcement, especially its mixture of liberal issuance of subsistence permits based on need with heavy-handed enforcement. California hunters and state governments blamed lax enforcement on species declines; Alaska Natives blamed decreasing habitat in northern California and in other countries and found game officials too ready to blame subsistence hunters and gatherers. State officials were unsatisfied with federal enforcement practices.

The end result was an accord among the Fish and Wildlife Service, the Alaska Department of Fish and Game, California Department of Fish and Game, the Association of Village Council Presidents and California sportsmen's associations. AVCP acted as a coalition of tribal units, seeking approval from each representative for the plan and delegating education and enforcement powers back to individual villages. Native governments were

referred to as "tribal councils" in the accord signed by the regional director of the Fish and Wildlife Service, AVCP President and game commissioners of Alaska and California.

The accord called for reductions in hunting and egg collection, ranging from prohibitions for Cacklers, and subsistence hunts for black brants and whitefronts only prior to nesting and in the fall after the birds are on the wing. No hunting was allowed during nesting, rearing and molting periods (Langdon, 1984:56). When certain population goals are met, subsistence hunting and egging would resume. Allowance is made for year-end subsistence taking "in dire emergency."

After an education program in the villages, Native subsistence harvest monitors were to be hired. Peer pressure was the first line of compliance in the villages. To replace a pattern of law enforcement universally deemed ineffective, reports of violations were to be made to Fish and Wildlife Service who in turn would inform AVCP. AVCP and FWS would inform local village councils to reeducate violators in community meetings. Unresolved cases were to be referred to a special council of the AVCP president, FWS regional director and the Commissioner of the Alaska Department of Fish and Game for "discussion and resolution." Arrest and prosecution were retained as measures of last resort.

The agreement was tested in federal court by non-Native sports associations (Alaska Fish and Wildlife Federation and Outdoor Council, Inc. and Alaska Fish and Wildlife Conservation

Fund, Inc. V. Robert Jantzen, Director, USFWS and Dan Collinsworth, Commissioner, ADFG Op. 684-013, (D.Ct. Alaska, 1986). The court upheld the agreement in a January, 1986 decision, holding that the plan was within the reasonable discretion of the federal agency, based as it was upon protections afforded Native subsistence hunting by the Alaska Game Law of 1925. Said the court:

Initial reports indicate that the cooperative plan has been successful. Apparently, this has led to a major decline in the subsistence harvest of each of the species in question. The plan has also reduced egg-gathering activities. Of equal importance, because of the involvement of the Native community in the plan, increasing enforcement, including the issuance of citations has occurred. (Quoted in Medred, 1986:A-12).

Alaska Eskimo Whaling Commission (AEWC): External First and Then Internal

Three events prompted the formation of the AEWC (Langdon, 1984:42-52) in 1977. The first was a ban on subsistence bowhead whaling imposed by the International Whaling Commission (IWC). The second was the refusal of the United States to object and thereby nullify the domestic impact of the ban. The third was the failure of a federal court to find that the United States had breached its trust responsibilities to Alaska Inupiat and Siberian Yupiit peoples by refusing to file an objection to the ban (See Langdon, 1984:43).

The whaling commission of 70 Eskimo whalers began as a lobbying, self-regulatory and data gathering organization.

Its initially stated threefold purpose was:

- "1. To insure that bowhead whale hunting was conducted in a traditional, non-wasteful manner;
 2. To communicate to the outside world the facts concerning bowhead whale hunting, the way it was done, the centrality of the hunt to the cultural and nutritional needs of the Eskimo, the Eskimo's knowledge of the whale, and the reasons why any moratorium on such hunting would have disastrous impact upon the Eskimo community; and
 3. To promote extensive scientific research on the bowhead whale so as to insure its continued existence without unnecessary disruption of Eskimo Society."
- (Langdon, 1984:44)

As time progressed the commission, composed of captains elected from captains associations in nine traditional whaling villages (Gambell, Savoonga, Wales, Kivalina, Point Hope, Wainwright, Barrow, Nuiqsut and Kaktovik), obtained tribal authority to regulate from IRA councils of Gambell, Savoonga, Wales and Kivaline as well as the Inupiaq Community of the Arctic Slope (representing five North Slope Communities). Thus consensual regulation was upgraded to tribal law and the Commission was empowered to deal with enforcement and levy fines.

Externally, the AEWEC moved from lobbyist to participant in IWC proceedings that set quotas, gathered scientific data and promulgated regulations. Initially it filled a regulatory void with its own rules of the hunt.

- a) whaling captains must register with the AEWEC and agree that they and their crews will abide by AEWEC regulations.

(Registration requirements include submission of evidence of qualifications to serve as captain.)

- b) records of whales sighted, struck, and harvested must be kept.
- c) the shoulder gun may be used only
 - (i) when accompanied by harpoon with or without a darting gun.

- (ii) after a line has been secured to the bowhead whale, or
 - (iii) when pursuing a wounded bowhead whale with a float attached to it.
- d) the level of harvest shall not exceed subsistence needs.

Langdon elaborates:

In addition, captains are required to report sightings, attempted strikings, actual strikings, and landings to their local commissioner who compiles the information and submits it to the Executive Director. The organization also restricts harvesting methods to "traditional means" (harpoon, darting gun, shoulder gun) and institutionalizes traditional proprietary claims of the captain and crew which strikes the whale first, in the designated area with the appropriate methods. The initial AEWEC management plan included provisions for adjudication of violations and punitive actions for those who were determined to have violated the regulations. Punishment includes denial of harvesting rights and monetary fine of not more than \$1,000 to be assessed by the AEWEC. (Langdon, 1984:45-46)

These regulations were adopted by the National Marine Fisheries Service with provision for the transfer of strikes or landings among the communities. Conflict between the AEWEC and the IVC continued, however, over quotas. Eskimo defiance of these quotas resulted in violations and initiation of criminal prosecutions against several captains (prosecutions later dropped).

Although whaling captains vowed to go to jail, federal officials broke the deadlock by initiating what became a management and quota-setting agreement between the federal NOAA and AEWEC. The agreement's real meaning can be disputed. From the federal side it appears to delegate provisional authority to the AEWEC with the condition that it abide by a quota established by the parties. From the Eskimo side it appears to recognize the Eskimo's right to self-regulation.

In either case the agreement imposed and delegated to the AEWG the task of allocating permitted strikes among the villages. More positively it postured the AEWG to negotiate changes in the accord including its criminal sanctions, changes in quota and, finally, to itself be represented on the American delegation to the IWC.

Left explicitly aside were continuing legal conflicts between the Natives and federal government regarding the authority of the IWC to regulate subsistence or the federal government's duty to protect Native whaling (a position strengthened on the Eskimo side by a 1980 9th Circuit Court decision, *Hopson v. Kreps*, 462 F.Supp. 1374 [D.Alaska 1979]).

Retribalization as Revitalization Movement

Both forms of retribalization have certain characteristics of the revitalization-type movements as conceptualized by Wallace (1956). Wallace (1956:265) defined a revitalization movement as "a deliberate, organized, conscious effort by members of a society to construct a more satisfying culture." In his formulation Wallace (1956:265) proposed that the process of revitalization required that those involved "must perceive their culture, or some major areas of it, as a system (whether accurately or not); they must innovate not merely discrete items, but a new cultural system, specifying new relationships as well as, in some cases, new traits." Alaska Natives look to retribalization as a way to solve certain problems and felt needs in their communities. Those who are primarily interested in firmly establishing federal recognition of Alaska Native tribes usually are motivated

by a desire to protect ancestral lands potentially lost by the Native corporations who now hold them and by a desire for Native self-determination and greater control over village political and social matters. This is a limited type of revitalization which lacks several additional characteristics of Wallace's formulation such as a charismatic leader with an ideology and a vision of a new culture for his people who are experiencing widespread social problems (alcoholism, for example). Retribalization of the first kind among Alaska Natives lacks such a visionary and also is not driven by the perception of a decaying sociocultural system whose members are under severe stress and in danger of disappearance as a result of that stress.

Retribalization of the second variety shares the view of the problems facing Alaska Natives posited by supporters of the first type of retribalization but has additional features which make it more closely approximate Wallace's complete formulation. It has spokesmen who qualify as visionaries in their articulation of an alternative cultural system which will eliminate socially unacceptable behaviors by using the wisdom of the elders to rejuvenate Yup'ik beliefs and behaviors. This type of movement is widely termed a "nativistic movement" in the anthropological literature. Wallace (1956:278) notes that a major component of the vision of nativistic movements is expulsion of foreign persons and customs in order to achieve the aims of the movement.

The Yupiit Nation has not to date displayed extreme expulsive elements in its approach. The dissolution of the state municipal government, the establishment of a new school (extralegal) school

board and the assertion of independent Nationhood have been phrased positively as actions designed to accomplish self-determination of the local will rather than negatively as the exorcising of evil, destructive elements. It is interesting to note that Wallace (1956:278) suggests that nativistic movements in their initial stages normally emphasize love, cooperation, understanding and that the leaders expect the external powers to be reasonable and accepting. However, "when these powers interfere with the movement, the response is apt to take the form of an increased nativistic component in the doctrine" (Wallace 1956:278). In Alaska, we are presently in that transition moment of external (federal and state) response to revitalization efforts and that response has been generally hostile. If Wallace's model is accurate, increasing polarization, hostility and rejection seem to be just around the corner. A more accommodating stance by state and federal governments might forestall the emergence of radically Nativistic actions.

In the meantime, Native villages are taking the initiative in the face of federal neglect and state hostility to address what they regard as critical attributes of the general welfare, elements which state-determined social security has not protected or allowed them to control.

FOOTNOTE

¹ Notwithstanding any provision of this Act or any other law, Alaska Native Tribes shall retain exclusive jurisdiction to regulate hunting, fishing and trapping in Indian Country. Provided: that the State or the Federal Government may assume jurisdiction over such hunting, fishing, and trapping if necessary to conserve, in a given geographic area, a species of fish or wildlife which is endangered. Rules and regulations promulgated pursuant to this authority shall be limited to those necessary to ensure that the species does not become extinct or endangered.

BIBLIOGRAPHY

- Anderson, Robert T. and Larry A. Aschenbrenner
1985 "Native Governmental Jurisdiction," Unpublished paper prepared for Second Annual Congress of the United Tribes of Alaska, on file at School of Justice, University of Alaska, Anchorage.
- Berger, Thomas
1985 Village Journey: Report of the Alaska Native Review Commission. New York: Farrar, Straus and Giroux, Inc.
- Braund, S. and Associates
1985 A Social Indicators System for OCS Impact Monitoring. Social and Economic Studies Program Technical Report No. 116. Anchorage: U.S. Department of Interior, Minerals Management Service.
- Case, David S.
1984 Alaska Natives and American Laws. Fairbanks: University of Alaska Press.
- Deloria, Vine Jr. and Lytle, Clifford M.
1983 American Indians, American Justice. Austin: University of Texas Press.
- Fischer, Victor
1975 Alaska's Constitutional Convention. Fairbanks: University of Alaska.
- Gaffney, Michael
1982 "The Human Resources Approach to Native Rural Development: A Special Case." In Alaska's Rural Development P. Cornwall and G. McBeath, Eds. Boulder, CO: Westview Press.
- Langdon, Steve J.
1984 "Alaska Native Subsistence: Current Regulatory Regimes and Issues." Volume XIX, Alaska Native Review Commission. Anchorage: Inuit Circumpolar Conference.
- Marston, Blythe
1984 "Alaska Native Sovereignty: Testing the Limits of the 'Tribe' and 'Indian country' Analysis." Cornell International Law Journal 17(2):375-405.
- Medred, Craig
1986 "Natives Granted Hunting Rights to Ducks, Geese," Anchorage Daily News, January 31, 1986, Vol XLI, No. 31; A-1, A-12.

Mitchell, Donald

1985 Report of the Governor's Task Force on Federal, State and Tribal Relations (Draft). Juneau: Office of the Governor.

Price, Monroe E.

1985 "Book Review, Alaska Natives and American Laws" Alaska Law Review Vol. 2 No. 2:435-440. Durham: Duke University School of Law.

Wallace, A.F.C.

1956 "Revitalization Movements." American Anthropologist 58:264-281.