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RECOGNIZING SOVEREIGNTY IN ALASKA NATIVE VILLAGES AFTER THE PASSAGE OF ANCSA

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Abstract: The federal law principles of tribal sovereignty and Indian country define the parameters of tribal self-governance. In Alaska, however, federal and state courts remain divided on the issues of Alaska Native Village sovereignty and Indian country. This Comment examines the state and federal court treatment of these issues, and concludes that Native Villages are sovereign tribes and the lands set aside under the Alaska Native Claims Settlement Act should define the boundaries of Indian country in Alaska.

Unlike most recognized Native American tribes,[1] the sovereign status of Alaska Native Villages is uncertain. Most recognized tribes occupy reservations or allotments and have well-defined sovereign status and territorial boundaries.[2] Alaska Native Villages, however, occupy land set aside under the Alaska Native Claims Settlement Act (ANCSA),[3] which settled aboriginal land claims in Alaska, but failed to resolve questions of Native Village sovereignty or territorial jurisdiction. Federal and Alaska state courts have reached conflicting resolutions of these issues, even though both court systems have applied the same federal law. The Alaska courts have consistently denied that Native Villages are sovereign. Federal courts, on the other hand, have concluded that Native Villages are tribes possessing certain aspects of sovereignty. This conflict between the state and federal courts leaves Native Villages uncertain about the extent of their sovereign powers and territorial control. For Native Villages, the desire for self-governing powers is not merely a nostalgic battle, a reminiscence of a tradition lost. The present-day needs of Alaska Native Villages as sociopolitical entities require self-government and territorial control.

This Comment examines the sovereign status and territorial control of Alaska Native Villages after the passage of ANCSA. Part I provides a historical background of the legislation and judicial decisions surrounding the state-federal conflict over Native Village sovereignty and Indian country.[4] Part II argues that under federal law Native

1. In this Comment, "Native American tribes" refers to tribes outside the State of Alaska, and "Indians" refers to both Native American tribes and Alaska Natives.

2. *See* FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 28 (Rennard Strickland et al. eds., 1982) [hereinafter COHEN].

3. 43 U.S.C.A. §§ 1601–1629(a) (West 1986 & Supp. 1991).

4. Indian country is the territory over which recognized tribes exercise governmental authority. COHEN, *supra* note 2, at 27.

Villages are sovereign tribes occupying Indian country. Part III examines Indian country in Alaska after ANCSA, and suggests that the territorial limits established under ANCSA should define the boundaries of Indian country in Alaska.

I. FEDERAL INDIAN LAW AND THE TREATMENT OF ALASKA NATIVES

Although the federal government was experienced in matters concerning the legal status of Native American tribes generally, it largely ignored the issue of Alaska Natives' legal status. In fact, until the Gold Rush began in 1896, the federal government paid little attention to the needs of all Alaskans, both Native and non-Native.[5] This failure to address the legal status of Alaska Natives led to a confused application of federal Indian law to Alaska Native issues. Under federal Indian law, recognized tribes possess limited sovereignty which affords them certain governmental powers. Recognized tribes also stand in a special fiduciary relationship to the federal government, which entitles them to certain benefits and protections. To ensure that only sovereign tribes benefit from this relationship, both federal and state courts traditionally use a "Tribe-Indian country test" to determine sovereign status. Despite the existence of a single governing law, Alaska Native Villages have received varying treatment by Congress, the Alaska state courts, and the federal courts.

A. Determining Tribal Sovereignty

The principle of tribal sovereignty recognizes Indian tribes as distinct political communities, exercising powers of self-government within territorial boundaries.[6] While tribes are sovereign entities existing within the United States, they are dependent sovereigns and their relationship to the federal government is that of a ward to a guardian.[7] This special fiduciary relationship confers on tribes certain benefits and protections. In order to determine who is entitled to benefit from this fiduciary relationship, the courts have developed the two-pronged Tribe-Indian country test to determine whether an Indian group is a sovereign tribe.[8]

5. CLAUS-M. NASKE, A HISTORY OF ALASKA STATEHOOD 69–71 (1985).

6. *See* COHEN, *supra* note 2, at 232.

7. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831).

8. *See generally* Paul A. Matteoni, Comment, *Alaskan Native Indian Villages: The Question of Sovereign Rights,* 28 SANTA CLARA L. REV. 875 (1988).

1. Federal Indian Law Principle of Tribal Sovereignty

Tribal sovereignty derives from the political existence of tribes before the United States existed, and their right of self-governance flows from this pre-existing sovereignty.[9] Thus, tribal sovereignty is an inherent power, not a power granted by the federal government.[10] Yet, because an independent sovereign cannot exist within the United States, courts have held that the inclusion of tribes within the United States limited, but did not abolish, tribal sovereignty.[11] Tribes, therefore, retain all sovereign powers that Congress has not explicitly extinguished or limited and which are not inconsistent with their dependent status.[12] Sovereign tribes may decide issues of tribal government and membership, legislate civil and criminal laws, levy taxes, and control social institutions such as marriage and adoption.[13]

The recognition of tribes as dependent sovereigns within the United States marked the ascendancy of federal power over Native tribes.[14] This subordination of Native sovereignty to federal power, and the resulting forced reliance on the federal government, gave rise to a unique fiduciary relationship between Native tribes and the United States.[15] Thus, Congress and federal officials must deal fairly with and protect the interests and rights of Indian tribes in their administration of Indian affairs.[16] This fiduciary relationship also creates a presumption in favor of preserving Indian rights.[17]

In order to ensure that the federal government fulfills its fiduciary responsibilities, federal courts have developed canons of construction for resolving issues concerning Indians. Utilizing a presumption of benevolent congressional intent, courts will construe treaties, statutes, agreements, and orders in favor of establishing or protecting Indian rights.[18] Courts also require that congressional action toward tribes must be tied rationally to the federal government's fiduciary responsi-

9. *See* COHEN, *supra* note 2, at 231.

10. *Id.*

11. *Id.*; United States v. Wheeler, 435 U.S. 313, 322–23 (1978).

12. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 210 (1978).

13. *See* Montana v. United States, 450 U.S. 544, 563–67 (1981). *But cf.* Brendale v. Confederated Tribes and Bands of Yakima Indian Nation, 492 U.S. 408 (1989) (distinguishing between power to zone on open and closed areas of reservation).

14. DAVID S. CASE, ALASKA NATIVES AND AMERICAN LAWS 4 (1984).

15. *See id.* at 4–5.

16. *Id.*

17. *See* COHEN, *supra* note 2, at 220–28.

18. *Id.* Abrogation or limitation of Indian rights requires a "clear and plain" statement of congressional intent. *See id.* at 221–23.

bility.[19] Thus, the tradition of tribal sovereignty serves as a backdrop against which courts will strictly review all federal Indian laws.[20]

2. *The Tribe-Indian Country Test*

An Indian group must satisfy the two-pronged Tribe-Indian country test before the courts will recognize its sovereignty.[21] Under this test, the group must be a tribe in the political sense and must inhabit an area defined as Indian country.[22] This test ensures that only a political entity benefits from the federal-tribal relationship.[23]

Under federal law, an Indian group can satisfy the first prong of this Tribe-Indian country test in several ways. First, an Indian community constitutes a tribe if the federal government recognizes it as a tribe.[24] Second, under *Montoya v. United States*[25] an Indian group is a tribe if its members are of the same or similar race, live in a community, have one leadership or government, and inhabit a particular territory.[26] Under either of the above, the community must also demonstrate that it is the modern day successor of a historical sovereign entity.[27] Third, the community may also establish its tribal status by reference to the nature and scope of its relationship with the federal government.[28] Under this third means of proving tribal status, the federal courts will generally recognize tribal existence unless the tribe has voluntarily assimilated into non-Indian culture.[29]

An Indian group satisfies the second prong of the Tribe-Indian country test by demonstrating that it occupies Indian country. Federal Indian law defines Indian country as including reservations, allotments held by Indians, and "dependent Indian communities."[30] Legislation or title documents generally define reservations and allot-

19. Morton v. Mancari, 417 U.S. 535, 555 (1974); *see also* COHEN, *supra* note 2, at 221.

20. McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 172–73 (1973); *see also* Bryan v. Itasca County, 426 U.S. 373 (1976).

21. Matteoni, *supra* note 8, at 877 n.10.

22. *Id.*

23. *Id.* at 878–80.

24. Native Village of Tyonek v. Puckett, 957 F.2d 631, 635 (9th Cir. 1992) (following United States v. Sandoval, 231 U.S. 28, 46–47 (1913)).

25. 180 U.S. 261 (1901).

26. *Id.* at 266.

27. *Tyonek*, 957 F.2d at 635.

28. Native Village of Noatak v. Hoffman, 896 F.2d 1157, 1160 (9th Cir. 1990), *rev'd on other grounds sub nom.* Blatchford v. Native Village of Noatak, 111 S. Ct. 2578 (1991); Alaska v. Native Village of Venetie, 856 F.2d 1384, 1387 (9th Cir. 1988).

29. Native Village of Venetie I.R.A. Council v. Alaska, 944 F.2d 548, 557 (9th Cir. 1991).

30. 18 U.S.C.A. § 1151 (West 1984); *see* United States v. Sandoval, 231 U.S. 28, 40–41 (1913) (originating concept of dependent Indian communities).

ments.[31] However, continued occupation by an Indian tribe[32] and the relationship between the tribe and the federal government[33] define dependent Indian communities.

An Indian group must satisfy three criteria to be a dependent Indian community. It must meet the tribe prong of the Tribe-Indian country test, occupy land validly set aside for it, and remain under the government's supervision.[34] Land set aside essentially refers to territory that did not originate in a federal grant or reservation, but where Indians are the primary occupants.[35] An Indian group satisfies the set aside requirement even if it occupies land that it holds in fee simple.[36] Notably, the boundaries of dependent Indian communities may be inexact because occupation, rather than title, defines their boundaries.[37] Finally, a dependent Indian community is under the government's supervision, or its power and control, when the government has authority to enact regulations and protective laws respecting the territory.[38] Such authority may be established when the government passes protective legislation,[39] or provides federal services and funds such as educational and housing grants.[40] This involvement recognizes the community's continuing dependence upon federal help and oversight.[41]

B. Alaska Native Villages and Tribal Sovereignty

Congress, the Alaska state courts, and the federal courts have reached disparate conclusions regarding Native Village sovereignty. Congressional treatment of the issues has ranged from nonexistent to indeterminate. Federal and state courts, while applying the same federal law, remain divided on the issues of Native Village sovereignty and Indian country.

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31. *See* COHEN, *supra* note 2, at 36–42.

32. *Sandoval,* 231 U.S. at 40–41.

33. *See* Alaska v. Native Village of Venetie, 856 F.2d 1384, 1391 (9th Cir. 1988).

34. *See* Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 111 S. Ct. 905, 910 (1991) (following United States v. John, 437 U.S. 634 (1978)).

35. *See* COHEN, *supra* note 2, at 38–39.

36. United States v. Chavez, 290 U.S. 357 (1933).

37. *See* COHEN, *supra* note 2, at 38–39.

38. *See* United States v. McGowan, 302 U.S. 535, 539 (1938).

39. *See, e.g.,* Alaska National Interest Lands Conservation Act, 16 U.S.C.A. § 3111(4) (West 1985); Indian Child Welfare Act, 25 U.S.C.A. § 1901(2)–(3) (West 1983).

40. Native Village of Tyonek v. Puckett, 953 F.2d 1179, 1183–84 (9th Cir.), *withdrawn,* 957 F.2d 631 (9th Cir. 1992).

41. *Id.*

1. Congressional Treatment of Native Villages

Until 1936, the federal government paid little attention to the legal status of Alaska Natives.[42] The 1867 Treaty of Cession,[43] which transferred the Alaska Territory from Russia to the United States, did little more than recognize the existence of Alaska Natives. The Alaska Organic Act of 1884[44] equated Native possession of land with non-Native possession, but limited Native possession to the land they actually occupied.[45] This effectively reduced land ownership among Alaska Natives because it did not recognize the expansive aboriginal land area over which they traditionally ranged.[46] The federal government did create a small number of executive order reservations for Alaska Natives.[47] Yet, none of these reservations were connected to any federal policy aimed at addressing Alaska Native land claims, and none of them carried permanent or compensable interest in the land.[48]

In 1936, Congress extended the Indian Reorganization Act[49] (IRA) to Alaska, thereby equating the status of Alaska Natives with Native American Indians.[50] The IRA encouraged self-governance and self-sufficiency by permitting tribes to organize tribal governments and tribal corporations for tribal business.[51] The Act ended the assimilationist policy of the General Allotment Act[52] which alloted parcels of reservation land to Indians and passed the "surplus" to non-Indians.[53] This policy had effectively divested Natives of their lands.[54] The IRA authorized the creation of reservations for Alaska Natives on lands already reserved for them or which they actually occupied.[55] Thus, from 1936 until the passage of ANCSA in 1971, Congress treated

42. *See generally* COHEN, *supra* note 2, at 739.
43. Treaty of March 30, 1867, 15 Stat. 539.
44. Alaska Organic Act, ch. 53, 23 Stat. 24 (1884).
45. *See* COHEN, *supra* note 2, at 741–42.
46. *Id.*
47. 48 U.S.C.A. § 258 (West 1970) (originally enacted as Act of March 30, 1891, 25 Stat. 1101). Executive order reservations were reservations of land made by executive order rather than with the approval of Congress. *See* COHEN, *supra* note 2, at 127–28.
48. CASE, *supra* note 14, at 84–86.
49. 25 U.S.C.A. §§ 461–497 (West 1936). Congress expanded the 1934 IRA definition of "tribe" to include Native Village organization: a tribe is comprised of individuals sharing a "common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district . . . ." *Id.* § 473a (amending 1934 IRA).
50. CASE, *supra* note 14, at 7.
51. 25 U.S.C.A §§ 476, 477 (West 1983).
52. General Allotment Act, ch. 119, 24 Stat. 388 (codified as amended at 25 U.S.C.A. §§ 331–496) (West 1983) (repealed Oct. 21, 1976).
53. *Id.*; *see also* CASE, *supra* note 14, at 100 (rationale behind IRA).
54. *See* COHEN, *supra* note 2, at 613–14.
55. *See* CASE, *supra* note 14, at 100.

Alaska Natives largely the same as Native Americans generally, and included them in all federal actions relating to Indian affairs.

In 1959, Alaska became a state, engendering conflicting claims to the land between the new state and Native Villages. The federal government authorized the new state to choose 102.5 million acres from the public domain.[56] Although the state disclaimed any right to Native lands, the land it selected from the public domain directly conflicted with Native claims.[57] Reacting to Native protests against the state's early land selections, the Secretary of the Interior froze the state's selection process pending resolution of the Native land claims.[58] The discovery of oil in Alaska in the 1960s placed additional pressure on the federal government to resolve the conflict over who owned the land.[59]

In 1971, Congress passed the Alaska Native Claims Settlement Act[60] (ANCSA) to provide a fair and just settlement of all aboriginal land claims. ANCSA extinguished all reservations created prior to 1971, except the Annette Islands Reserve for the Metlakatla Indian Community.[61] Instead of reservations, the Act distributed land to Alaska Natives through a complex organization of regional and village corporations.[62] The Act created twelve regional corporations and approximately two hundred village corporations based on the geographical and cultural organization of Natives, who became shareholders.[63] Native corporations hold lands under ANCSA in fee simple with few restrictions on their sale or alienation.[64]

Incorporated under Alaska law, the village corporations are vehicles for holding lands distributed under the Act and for administering federal programs and benefits.[65] Yet, the village corporations are not cultural or governmental units.[66] ANCSA corporations exist alongside

56. Alaska Statehood Act, Pub. L. No. 85-508, § 6(b), 72 Stat. 339, 340 (1958).

57. COHEN, *supra* note 2, at 742.

58. Public Land Order 4582, 34 Fed. Reg. 1025 (1969).

59. *See generally* COHEN, *supra* note 2, at 742.

60. 43 U.S.C.A. §§ 1601–1629(a) (West 1986 & Supp. 1991).

61. *Id.* § 1618(a).

62. *Id.* §§ 1606, 1607.

63. *Id.* Regional corporations selected land, and then reallocated surface estates to the village corporations. *Id.* §§ 1611(b), 1613(h). Village corporations received land primarily in the vicinity of their Villages. *Id.* §§ 1610(a)(1), 1611(a)–(b). Village corporations must convey to municipal governments the title to the land in improved townships, though this area is limited. *Id.* § 1613(c)(3).

64. COHEN, *supra* note 2, at 747. For example, Native shareholders must consent to alienation of stock to non-Natives, who may hold only non-voting stock. 43 U.S.C.A. § 1606(h)(1) (West 1986 & Supp. 1991) (amended 1987).

65. COHEN, *supra* note 2, at 753.

66. *Id.*

traditional Native governments, IRA governments and corporations, and sometimes alongside state-created municipalities.[67]

2. *Alaska Courts and Native Village Sovereignty*

The Alaska state courts, contrary to the federal courts, have consistently refused to recognize the sovereignty of Native Villages. Early Alaska cases, decided in local federal district courts before separate courts were created for Alaska, established a precedent denying the existence of Indian country in Alaska.[68] Later, Alaska state courts concluded that Native Villages were not tribes. Thus, Native Villages could not meet the two-pronged test for tribal sovereignty in the Alaska state courts.

Early Alaska cases denied Native Villages sovereignty by concluding that there was no Indian country in Alaska. In *United States v. Seveloff*,[69] the court concluded that Alaska contained no Indian country because generally applicable federal Indian laws did not apply in Alaska.[70] The *Seveloff* court held that because Alaska was a customs district, only laws regulating customs, commerce, and navigation applied.[71] Thus, the Indian Trade and Intercourse Act,[72] which regulated trade with Indians in Indian country, did not apply in Alaska.[73] The court concluded that Congress must have decided there was no Indian country in Alaska to be regulated because it had not extended the Act to Alaska.[74] The court therefore ruled that Alaska contained no Indian country.[75]

In *Kie v. United States*,[76] the federal district court strengthened the *Seveloff* court's conclusion by holding that the Treaty of Cession extin-

67. *Id.* at 752.

68. While these early cases were in federal court, only the Alaska courts have followed them, and therefore they will be considered along with the state cases.

69. 27 F. Cas. 1021 (D. Or. 1872) (No. 16,252); *see* Sidney L. Harring, *The Incorporation of Alaska Natives Under American Law: United States and Tlingit Sovereignty, 1867-1900*, 31 ARIZ. L. REV. 279, 285 (citing *Seveloff*). Alaska did not have federal courts until the Alaska Organic Act, ch. 53, 23 Stat. 24 (1884), created them.

70. Harring, *supra* note 69, at 285 (citing *Seveloff*, 27 F. Cas. at 1024–25).

71. *Id.* As a customs district, Alaska was considered incapable of exercising self-government, while a territory was thought capable of exercising limited home rule. NASKE, *supra* note 5, at 8.

72. Indian Trade and Intercourse Act, ch. 161, 4 Stat. 729 (1934).

73. Harring, *supra* note 69, at 285 (*Seveloff* court relied on United States v. Tom, 1 Or. 27 (1853) (holding that Indian Trade and Intercourse Act was a local law extending to areas existing at its enactment or where specifically extended)).

74. *Id.* at 285–86.

75. *Id.*

76. 27 F. 351 (C.C.D. Or. 1886) (hearing appeal from Alaska trial court); *see* Harring, *supra* note 69, at 290 (citing *Kie*).

guished Indian title to the land.[77] The *Kie* court convicted a Tlingit[78] man of murdering his wife, even though under Tlingit law the husband had the right to kill his wife for adultery.[79] Indians possess exclusive jurisdiction over crimes occurring in Indian country as an attribute of their inherent sovereignty, and Indian country includes all land with unextinguished Indian title.[80] Thus, if the Tlingit were sovereign, Tlingit law would apply to the murder. However, the *Kie* court concluded that the purchase of Alaska from Russia had extinguished any Native title to the land.[81] Since Native title was extinguished, Indian country did not exist, and thus the Tlingit were not sovereign.[82]

The Alaska state courts, following the tradition of *Seveloff* and *Kie*, also found that Alaska lacked Indian country. First, the Alaska Supreme Court held that a reservation was a prerequisite to finding Indian country and self-government.[83] As Alaska Native Villages generally lacked reservations, the courts concluded there was no Indian country in Alaska and therefore Native Villages were not sovereign.[84] Second, the Alaska courts concluded that Alaska lacked Indian country because the same civil and criminal laws applied to both Natives and non-Natives, while federal law governed Native Americans residing in Indian country.[85] Neither the extension of the IRA nor any other subsequent federal legislation, including ANCSA, had altered this situation or recognized the sovereign authority of Native Villages.[86]

The Alaska state courts also denied Native Villages sovereignty by concluding that Native Villages were not tribes. According to the Alaska courts, two prerequisites for a finding of tribal sovereignty are residence on a reservation or a reserve, and a tribal rather than a vil-

77. Harring, *supra* note 69, at 292 (citing *Kie,* 27 F. at 354–58).

78. The Tlingit are a Native Alaskan society. *See* CASE, *supra* note 14, at 335.

79. Harring, *supra* note 69, at 290 (citing United States v. Kie, 26 F. Cas. 776 (D. Alaska 1885) (No. 15528a) (trial court)).

80. *Ex parte* Crow Dog, 109 U.S. 556, 561–62 (1883).

81. Harring, *supra* note 69, at 291–92 (citing *Kie,* 27 F. 351). *Contra* Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 278–80 (1955) (holding that Alaska Natives retained aboriginal title after the Treaty of Cession).

82. Harring, *supra* note 69, at 291–92 (citing *Kie,* 27 F. at 354–58).

83. Metlakatla Indian Community v. Egan, 362 P.2d 901, 920 (Alaska 1961), *rev'd in part,* 369 U.S. 45 (1962) (reversed as to the Metlakatla Reserve because it was one of two statutorily created reserves in Alaska); *see also* Harrison v. State, 791 P.2d 359 (Alaska Ct. App. 1990) (affirming requirement of reservation). This court also indicated it was bound by the decisions of the Alaska Supreme Court, despite conflicting federal appellate case law. *Id.* at 363 n.7.

84. *Metlakatla,* 362 P.2d at 920; *see also Harrison,* 791 P.2d at 362–64.

85. Native Village of Stevens v. Alaska Management & Planning, 757 P.2d 32, 37–41 (Alaska 1988).

86. *Id.* at 39–42.

lage organization.[87] Congress, however, created few reservations for Native Villages.[88] In addition, Native Villages had not executed treaties or received tax exemptions like Native American tribes, and state, rather than federal, criminal laws applied to Native Villages.[89] Further, the social organization of Native Villages indicated that Alaska lacked ethnological tribes.[90] Thus, the Alaska state courts denied sovereign status to Native Villages.

3. *Federal Cases and Native Village Sovereignty*

The decisions of the federal courts in the twentieth century directly conflict with the Alaska state court decisions on issues involving Native Villages. Unlike the Alaska state courts, federal courts have consistently held that Alaska Natives have the same legal status as other Native Americans and are entitled to the same benefits and protections.[91]

First, according to the federal courts, Native Villages are in the same ward-guardian relationship to the federal government as other Native American tribes.[92] The Treaty of Cession with Russia did not extinguish Native title.[93] Instead, the Treaty placed Native Villages under the guardianship of the federal government, and thus they are entitled to the benefits of the federal-tribal relationship.[94]

Second, the federal courts have concluded that Native Villages constitute tribes. The federal government recognizes Native Villages as tribes when the Secretary of the Interior approves a traditional council governing board organized under the IRA.[95] Further, because ANCSA recognized Native Villages, they are entitled to the benefits of

87. Atkinson v. Haldane, 569 P.2d 151 (Alaska 1977) (concluding that Metlakatla Community was more like Native American tribes than other Native Alaska Villages); *see also* Ollestead v. Native Village of Tyonek, 560 P.2d 31 (Alaska) (concluding that reserve extinguished by ANSCA is sufficient to confer tribal recognition), *cert. denied,* 434 U.S. 938 (1977).

88. *Native Village of Stevens,* 757 P.2d at 35; *see also Metlakatla,* 362 P.2d at 917–18, 920.

89. *Metlakatla,* 362 P.2d at 919–20.

90. *Id.* at 917–20.

91. Alaska Chapter, Associated Gen. Contractors v. Pierce, 694 F.2d 1162, 1168 n.10 (9th Cir. 1982). Notably, the word "Indians" has been consistently interpreted to mean both Native Americans and Alaska Natives. *See, e.g.,* Pence v. Kleppe, 529 F.2d 135, 138 n.5 (9th Cir. 1976).

92. *Alaska Chapter,* 694 F.2d at 1169 n.10; *see also, e.g.,* Alaska Pac. Fisheries Co. v. United States, 248 U.S. 78 (1918).

93. Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 278–80 (1955) (concluding Native title existed after Treaty of Cession).

94. *Alaska Chapter,* 694 F.2d at 1169 n.10.

95. Native Village of Noatak v. Hoffman, 872 F.2d 1384, 1387 (9th Cir. 1989), *rev'd on other grounds sub nom.* Blatchford v. Native Village of Noatak, 111 S. Ct. 2578 (1991).

recognized tribes.[96] Native Villages also meet the basic definition of a tribe under *Montoya v. United States;*[97] they are groups of Indians of the same or similar race united in a community under a single government in a particular territory.[98] Additionally, while federal statutes may confer limited recognition for the purposes of each statute, the nature and scope of the government's relationship with the villages indicates a more substantial recognition.[99] Extensive legislation and federal programs treat Native Villages like other Native American tribes, and evidence a more expansive recognition of Native Villages.[100]

Third, although Native Villages historically did not organize onto reservations or into tribal units, and have never entered into treaties, the federal courts have not found these differences fatal.[101] Instead, the courts have approved Congress' accommodation of Alaska Natives' unique situation through the use of methods other than tribal membership rolls or proximity to reservations to determine Alaska Native eligibility for Indian programs.[102] Congress allowed formation of IRA-organized Native governments in Alaska to create federally recognizable entities.[103] ANCSA's settlement of land claims also accomodated the unique circumstances of Native Villages.[104] Thus, federal courts have construed these federal actions in favor of establishing Native rights.[105]

II. ALASKA NATIVE VILLAGES ARE SOVEREIGN UNDER THE TRIBE-INDIAN COUNTRY TEST

The current federal policy toward Native Americans promotes self-determination by encouraging Native Americans to govern themselves socially and politically. Yet, the apparent disagreement between the

96. *Id.* at 1388.

97. 180 U.S. 261 (1901); *see supra* notes 25–26 and accompanying text.

98. *Native Village of Noatak,* 872 F.2d at 1387.

99. *See id.* at 1388; *see also* Native Village of Tyonek v. Puckett, 953 F.2d 1179 (9th Cir.) *withdrawn,* 957 F.2d 631 (9th Cir. 1992) (on remand from the Supreme Court for reconsideration in light of decision in Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S. Ct. 905 (1991)). Notably, in the withdrawn opinion, the Ninth Circuit concluded that Alaska Natives are under the guardianship and superintendence of the federal government.

100. *See Native Village of Noatak,* 872 F.2d at 1388.

101. Alaska Chapter, Associated Gen. Contractors v. Pierce, 694 F.2d 1162, 1169 n.10 (9th Cir. 1982).

102. *Id.*; *see, e.g.,* Morton v. Ruiz, 415 U.S. 199, 212 (1974).

103. *Alaska Chapter,* 694 F.2d at 1169 n.10.

104. *Id.*

105. *Id.*

federal courts and Alaska courts over the questions of tribal status and Indian country has left Native Villages without defined powers or political identity. In light of the federal policy of self-determination and the government's fiduciary obligations toward Alaska Natives, courts should confirm Native Villages' sovereign powers. Confirming Native Village sovereignty will also satisfy the federal government's fiduciary obligations toward Native Villages by providing them the means to govern themselves effectively. Sections A and B, respectively, argue that Native Villages are tribes and that they occupy Indian country. Finally, section C argues that under the Supremacy Clause of the U.S. Constitution, state courts should follow federal court interpretations of Indian status.

A. Native Villages Constitute Tribes

As the federal courts have concluded, Native Villages constitute tribes under the first prong of the Tribe-Indian country test[106] for several reasons. First, the federal government has recognized Native Villages as tribes. Second, Native Villages satisfy the *Montoya* definition of a tribe. Native Villages are also the modern-day successors of historical sovereign entities, a requirement of both of the above. Third, the nature and scope of the federal-village relationship indicates that Native Villages constitute tribes. Fourth, while Native Villages received different treatment from the federal government than other Native American tribes, this should not undermine their tribal status.

Congress has recognized Native Villages as tribes generally under ANCSA, and for limited purposes under other federal statutes. ANCSA's compensation of Native Villages, rather than individual Natives, effectively recognized Native Villages as socio-political units.[107] Further, ANCSA recognized only traditional Native Villages, rather than modern, urban villages where the majority of residents were not Natives.[108] Thus, by recognizing only those villages that remained primarily Native and traditional, Congress recognized the modern-day successors of historical village entities.

The federal government has also recognized Native Villages as tribes for other limited purposes. For example, the Secretary of the Interior made Native Villages eligible for benefits of Indian programs

106. *See supra* notes 95–100 and accompanying text.

107. 43 U.S.C.A. § 1603 (West 1986 & Supp. 1991); *see* COHEN, *supra* note 2, at 742.

108. 43 U.S.C.A. § 1610(b)(2), (3) (West 1986 & Supp. 1991); *see* Native Village of Noatak v. Hoffman, 896 F.2d 1157, 1160 (9th Cir. 1990) (holding that Native Villages listed in ANCSA are recognized tribes), *rev'd on other grounds sub nom.* Blatchford v. Native Village of Noatak, 111 S. Ct. 2578 (1991).

administered throughout the United States.[109] Congress has also included Native Villages in all major Indian legislation since the extension of the IRA to Alaska in 1936.[110] Repeated recognition of Native Villages for limited purposes is a de facto recognition of Native Villages as tribes.

Even if the federal government did not recognize Native Villages, they constitute tribes under the *Montoya* test.[111] The *Montoya* definition of a tribe requires that the community be ethnically and culturally distinct, but does not dictate a tribal form.[112] *Montoya* recognized that tribal organizations vary in form.[113] Formal tribal organizations generally existed only among tribes in the eastern United States, the plains and the prairies.[114] Native organizations were smaller and more attenuated west of the Rockies, in the Great Basin, and the Arctic.[115] Further, many present-day tribes are actually confederations of smaller Indian groups that the United States consolidated for the purposes of treaty making.[116]

Native Villages have a socio-political structure similar to many recognized Native American tribes, though primarily tribes in the western United States. Alaska Natives traditionally organized along family and clan lines.[117] They formed regional and local bands, or loosely structured units, rather than formal kinship and descent groups.[118] These bands united in communities that occupied and shared a common subsistence area or territory.[119] Although nearly all Native Villages have maintained traditional structures for self-government, most villages adopted non-Native governing structures after contact with Europeans.[120] Most villages established village councils for community decision making, dispute resolution, and dealing with Europeans.[121] Eventually, many Native Villages formed IRA govern-

109. *See, e.g.*, 51 Fed. Reg. 25115, 25118 (1986) (listing tribal entities which have a special relationship with the United States entitling them to Indian programs).

110. *See* COHEN, *supra* note 2, at 769 n.264.

111. *See supra* notes 25–26 and accompanying text.

112. *See* Montoya v. United States, 180 U.S. 261 (1901).

113. *Id.* at 262–63.

114. COHEN, *supra* note 2, at 229.

115. *Id.*

116. *Id.* at 231 n.17.

117. 6 HANDBOOK OF NORTH AMERICAN INDIANS 26 (William C. Sturtevant gen. ed., 1981) [hereinafter Sturtevant]. *See generally* CASE, *supra* note 14, at 333.

118. CASE, *supra* note 14, at 333; Sturtevant, *supra* note 117, at 26.

119. CASE, *supra* note 14, at 333; Sturtevant, *supra* note 117, at 26.

120. COHEN, *supra* note 2, at 750–51.

121. *Id.*

ments and corporations.[122] Native Villages' social and cultural units thus satisfy the *Montoya* definition despite the lack of a strict tribal form.

The nature and scope of the federal-village relationship also establish the tribal status of Native Villages. The federal government has treated Native Villages as though they were tribes in various contexts, creating a relationship sufficient to establish tribal status without an explicit act of recognition.[123] The failure to legislate regarding Alaska Natives during Alaska's infancy did not imply nonrecognition of Native Villages' tribal status. During this time, the federal government neglected Alaska entirely, not merely Alaska Natives.[124] Once the federal government recognized its fiduciary responsibility toward Alaska Natives, however, Congress began to legislate for their benefit and protection.[125] For example, the federal government established reservations in Alaska for the benefit of certain Native Villages.[126] Congress extended the IRA to Alaska in 1936, manifesting a congressional intent to treat Native Villages like other Native American tribes.[127] Similarly, the inclusion of Native Villages in federal programs for Indians, and in Indian legislation generally, substantiates a significant federal-Native Village relationship.[128] The breadth and depth of this federal-Native Village relationship demonstrate that Native Villages are tribes.

Although Native Villages and other Native American tribes share the same relationship with the federal government, Native Villages have received different treatment. This unique treatment, however, should not defeat their claim of sovereign tribal status for several reasons. First, this different treatment is an accomodation of Native Villages' unique social and geographic circumstances, rather than a nonrecognition of their tribal status.[129] This accomodation ensures that Native Villages receive the same benefits and protections from the federal government as other Native American tribes.[130] Denying these protections merely because Native Villages possess a different social

122. *Id.*

123. Native Village of Noatak v. Hoffman, 872 F.2d 1384, 1387 (9th Cir. 1989), *rev'd on other grounds sub nom.* Blatchford v. Native Village of Noatak, 111 S. Ct. 2578 (1991).

124. NASKE, *supra* note 5, at 1–11.

125. *See supra* notes 49–67 and accompanying text.

126. *See supra* note 47.

127. *See supra* notes 49–55 and accompanying text.

128. *See supra* note 100 and accompanying text.

129. *See* Morton v. Ruiz, 415 U.S. 199, 212 (1974).

130. *See supra* notes 6–20 and accompanying text.

organization or lack reservations would be contrary to the federal government's fiduciary obligations and the canons of construction.[131]

Second, the absence of treaties with Alaska Natives does not affect their tribal status. Formal treaty making between the federal government and all Indian tribes ended in 1871, only four years after the purchase of Alaska,[132] thus precluding the creation of any treaties with Alaska Natives. The decision to end treaty making reflected a political struggle in Congress rather than an Indian policy,[133] and courts should not use that political compromise as an excuse to deny Native Villages sovereignty. Moreover, Congress continued to legislate on behalf of Indians even after treaty making ceased.[134]

Third, although Native Villages generally lack reservations, a reservation or reserve is not a precondition to recognition as a tribe.[135] Not all recognized tribes have reservations; some tribes occupy allotments or dependent Indian communities, without undermining their tribal status.[136] Moreover, ANCSA revoked reserves in Alaska without affecting Native Village sovereignty.[137] Further, reservations historically have represented congressional intentions other than tribal recognition. Reservations have been vehicles for assimilating Native Americans into non-Native culture, and for removing Native Americans from lands desired by an expanding non-Native population.[138] Native Villages may have escaped the breadth of this policy because Alaska had a limited non-Native population and a large land area. Thus, despite their unique situation, Native Villages are tribes under all of the above tests.

B. Native Villages Occupy Indian Country in Alaska

Native Villages also satisfy the second prong of the Tribe-Indian country test[139] because they occupy Indian country. Following the

131. Alaska Chapter, Associated Gen. Contractors v. Pierce, 694 F.2d 1162, 1169 n.10 (9th Cir. 1982); *see supra* notes 15–20 and accompanying text.

132. Appropriations Act of March 3, 1871, ch. 120, § 1, 16 Stat. 544, 566 (codified at 25 U.S.C.A. § 71 (West 1983)).

133. COHEN, *supra* note 2, at 107 (noting that only the Senate ratified treaties, and the House of Representatives wanted some of the power wielded over Indian affairs).

134. *Id.*

135. *Alaska Chapter,* 694 F.2d at 1169 n.10; *see also* Atkinson v. Haldane, 569 P.2d 151 (Alaska 1977).

136. *See supra* notes 30–33 and accompanying text.

137. Alaska Native Claims Settlement Act Amendments of 1987, Pub. L. No. 100-241, § 2, 101 Stat. 1788, 1789 (1988) (Revocation of reserves did not "confer on, or deny . . . sovereign governmental authority.").

138. *See generally* COHEN, *supra* note 2, at 121–27.

139. *See supra* notes 30–41 and accompanying text.

passage of ANCSA, the majority of Indian lands in Alaska qualify as dependent Indian communities because they meet the three criteria of the dependent Indian community analysis.[140] Native Villages are tribes meeting the first prong of the Tribe-Indian country test, as shown above.[141] Native Villages also occupy land validly set aside for them, and they remain under the federal government's supervision through programs, benefits, and legislation.

Native Villages satisfy the second criterion of the dependent Indian community analysis[142] because they occupy land validly set aside for them. First, Native Villages occupy land with unextinguished title. If Alaska Natives were sovereign before the purchase of Alaska, they could only lose their sovereignty by an express act of Congress or by voluntarily assimilating into non-Native culture.[143] Yet, neither the Treaty of Cession nor the Alaska Organic Act of 1884 extinguished Native title or possession to the land Native Villages occupied.[144]

Second, Native Villages are the traditional occupants of their land, which they have continued to occupy up to and after the passage of ANCSA. That few reservations were created before ANCSA, and subsequently were revoked by ANCSA, does not alter the fact of continued Native occupation. As with the determination of tribal status, under federal law the existence of a reservation is not a prerequisite for Indian country.[145] Nor does ownership in fee simple diminish the tribe's sovereign status or the protection afforded the tribal land base.[146]

Third, the federal government's actions also demonstrate its belief that Indian country, and thus land validly set aside, exists in Alaska. As early as 1869, the federal government treated Alaska as Indian country by applying the Indian Trade and Intercourse Act to regulate the liquor and firearms trades.[147] The enactment of Public Law 280,[148] which extended limited state jurisdiction over "all Indian country in the Territory,"[149] also demonstrates congressional recogni-

140. *See supra* notes 34–41 and accompanying text.

141. *See supra* notes 106–38 and accompanying text.

142. *See supra* notes 34–37 and accompanying text.

143. Native Village of Venetie I.R.A. Council v. Alaska, 944 F.2d 548, 558 (9th Cir. 1991).

144. *See supra* notes 68–82 and accompanying text.

145. 18 U.S.C.A. § 1151 (West 1984).

146. United States v. Chavez, 290 U.S. 357, 364 (1933); Indian Country, U.S.A., Inc. v. Oklahoma, 829 F.2d 967 (10th Cir. 1987); *see also* 18 U.S.C.A. § 1151 (West 1984).

147. Harring, *supra* note 69, at 284 (Indian country included the lands actually occupied by the Alaska Natives).

148. Act of Aug. 8, 1958, Pub. L. No. 85-615, 72 Stat. 545 (codified at 18 U.S.C.A. § 1162 (West 1984)).

149. *Id.*; COHEN, *supra* note 2, at 765.

tion of Indian country in Alaska as of 1958.[150] Further, while ANCSA disclaims any effect on the existence of Indian country in Alaska,[151] by recognizing Native claims to the land it effectively recognized Indian country in Alaska.

Native Villages also satisfy the supervision criterion[152] of the dependent Indian community analysis. First, Alaska Natives continue to receive federal programs and benefits, even after the passage of ANCSA.[153] These programs ensure that Native Villages receive basic services of food, education, and health care.[154] While Alaska Natives are currently entitled to these benefits, prosperity could render them unnecessary, either in fact or politically. Without continued dependence upon the federal government, Native Villages might no longer fulfill the supervision criterion of the dependent Indian community analysis. Encouraging Villages to become financially viable, however, and then denying them sovereignty on that basis would be inconsistent with the federal government's fiduciary obligations. Even if Congress withdrew assistance programs from Alaska Natives, it would still retain plenary power to enact protective legislation,[155] and thus, the government would retain supervision over Native Villages.

Second, Congress has retained supervision of Native Villages by including Alaska Natives in all major Indian legislation since ANCSA.[156] Thus, Congress has recognized its continuing fiduciary responsibility toward Alaska Natives and its power to legislate on their behalf.[157] So long as Native Villages remain dependent upon the federal government for assistance and protection, the lands which they occupy constitute Indian country.

As a final note to both the preceding sections, recognizing Native Villages as tribes will also satisfy the federal government's fiduciary obligation to promote and protect Native interests.[158] Tribal recognition will provide Native Villages with the means of self-governance to which they are entitled. The Treaty of Cession placed Alaska Natives

150. *See* COHEN, *supra* note 2, at 765.

151. Alaska Native Claims Settlement Act Amendments of 1987, Pub. L. No. 100-241, § 17, 101 Stat. 1788, 1814 (1988).

152. *See supra* notes 38–41 and accompanying text.

153. 43 U.S.C.A. § 1626 (West 1986 & Supp. 1991).

154. *See* COHEN, *supra* note 2, at 769–70.

155. *See supra* notes 14–16 and accompanying text; *see also* Menominee Tribe of Indians v. United States, 391 U.S. 404 (1968) (holding that statutory termination of tribes did not terminate government's fiduciary obligations).

156. *See* COHEN, *supra* note 2, at 769 n.264.

157. Alaska Chapter, Associated Gen. Contractors v. Pierce, 694 F.2d 1162, 1169 n.10 (9th Cir. 1982) (holding that Alaska Natives have same ward status as other Native Americans).

158. *See supra* notes 15–20 and accompanying text.

under the guardianship of the United States, subjecting them to the same Indian laws applied to other Native Americans.[159] Therefore, Alaska Natives stand in the same relation to the federal government as other Native Americans, and are entitled to the benefit and protection of that special relationship. Protecting Native interests requires courts to construe federal actions and legislation in favor of establishing Indian rights.[160] Where, as here, Congress has not explicitly denied sovereign status to Native Villages, courts should find that Native Villages are sovereign.

C. *Supremacy Clause Should Require Alaska State Courts to Follow Federal Precedent*

Under the Supremacy Clause of the U.S. Constitution,[161] states must observe federal laws and treaties.[162] As federal law historically governs Indian affairs, the issue is within the unique qualifications of the federal courts.[163] Where federal courts have settled particular questions of federal law, the Supremacy Clause should require state courts to follow federal precedent. Indeed, the Supreme Court has reached this result with respect to the interpretation of Indian treaties.[164] Thus, the conclusions of the federal courts regarding Native Villages should carry greater weight than state court decisions. Therefore, Alaska state courts should follow the federal courts' application of the Tribe-Indian country test and conclude that Native Villages are sovereign. A problem, however, remains. Because dependent Indian communities are defined by Native occupation rather than by title, their boundaries and hence their jurisdictional authority are uncertain.[165]

III. THE BOUNDS OF INDIAN COUNTRY IN ALASKA

Unlike reservations and allotments, the boundaries of dependent Indian communities are not exact. Without well-defined jurisdictional boundaries, Native Villages lack certainty and predictability when exercising their governmental authority. This uncertainty inhibits

159. Alaska Pac. Fisheries Co. v. United States, 248 U.S. 78 (1918); Alaska v. Annette Island Packing Co., 289 F. 671 (9th Cir.), *cert. denied*, 263 U.S. 708 (1923).

160. *See supra* notes 18–20 and accompanying text.

161. U.S. CONST. art. VI, § 2.

162. COHEN, *supra* note 2, at 658.

163. *See id.* at 273.

164. *See* Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658 (1979); United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976).

165. *See* COHEN, *supra* note 2, at 38–39.

their ability to adequately protect and promote their interests. Congress, unfortunately, has not explicitly defined the jurisdictional boundaries of Native Villages despite its fiduciary obligation to protect and promote Native interests. Although ANCSA did not alter Native Village sovereignty, it also did not define these boundaries. Native Villages may organize into muncipal corporations and may exercise governmental authority over the limited area within improved townships.[166] These municipal corporations, however, have no authority over Village territory outside the townships. Yet, the lack of precise boundaries should not diminish the sovereign powers of Native Villages.

Congress expressly avoided the question of Native Village sovereignty when it settled aboriginal land claims in Alaska with ANCSA.[167] Yet, the revocation of almost all reservations in Alaska and the settlement of Native land claims raised the very issues which Congress purported to avoid. Thus, ANCSA created an ambiguity with respect to Indian country and Native sovereignty. The canons of construction require courts to construe ambiguities in statutes in favor of Indian rights.[168] Construction of ANCSA in favor of Native Village rights permits defining the boundaries of Indian country in Alaska as the territory conveyed to Native Village corporations under the Act. This construction is permissible for several reasons. First, promoting self-sufficiency is one of the purposes of ANCSA. Second, the 1987 amendments to ANCSA clarify earlier ambiguities by recognizing the importance of Native control over Village holdings. Finally, the manner in which Native lands are held does not alter the existence of Indian country.

Encouraging Native corporations to become profitable and self-sufficient is one of the purposes of ANCSA.[169] Construing ANCSA as defining jurisdictional boundaries promotes Native self-sufficiency by permitting Village governmental control over Village territory. At present, the duty of Native corporations to their corporate shareholders limits their actions.[170] A sovereign Village government, on the other hand, may deal with its property in a governmental capacity, and may regulate the right to use property, including imposing land

166. *See supra* note 63.

167. *See supra* note 137.

168. *See supra* notes 18–20 and accompanying text.

169. *See* Alaska Native Claims Settlement Act Amendments of 1987, Pub. L. No. 100-241, § 2, 101 Stat. 1788, 1788–89 (1988) (congressional findings and declaration of policy).

170. *See* COHEN, *supra* note 2, at 754–56.

use and zoning controls.[171] Additionally, sovereign Villages may exercise legislative powers delegated by Congress as would any other sovereign government.[172] Defining the boundaries of Village territory as the land conveyed under ANCSA[173] will provide Native Villages with a certain and predictable boundary within which to exercise their governmental authority and promote their self-sufficiency.

The 1987 amendments to ANCSA clarify the initial ambiguities concerning congressional intent and recognize the importance of Native control over their lands. Although ANCSA does not expressly limit or abrogate Native sovereignty, on its face it resembles earlier statutes that advocated termination and assimilation, such as the General Allotment Act.[174] However, Congress did not intend ANCSA to confer or deny a Native organization's sovereign powers.[175] In fact, the 1987 amendments to ANCSA provide more Native control over corporate holdings.[176] Viewed in the light most favorable to Native Villages,[177] these amendments overcome any lingering argument that ANCSA was intended to divest Native Villages of their sovereignty.[178]

The manner in which lands are held should not affect the exercise of Native Village governmental powers.[179] While ANCSA passed lands to Village corporations,[180] it did not alter the sovereignty of Native governments.[181] Village corporations function similarly to IRA corporations that existed alongside sovereign tribal governments.[182] IRA corporations conducted the tribe's business while the tribal government retained authority over the tribe's political affairs.[183] After ANCSA, the Native corporation similarly exists alongside the IRA

171. *Id.* at 248–57. *But cf.* Brendale v. Confederated Tribes and Bands of Yakima Indian Nation, 492 U.S. 408 (1989) (distinguishing between power to zone on open and closed areas of reservation).

172. United States v. Mazurie, 419 U.S. 544 (1975).

173. Native Village jurisdiction should also include any remaining reserves and allotments, which are also Indian country under 18 U.S.C.A. § 1151 (West 1984).

174. Monroe E. Price, *A Moment in History: The Alaska Native Claims Settlement Act*, 8 UCLA-ALASKA L. REV. 89 (1979). As the Allotment Act attempted to assimilate Native Americans into mainstream society by turning them into farmers, ANCSA attempts to assimilate Alaska Natives by turning them into corporate shareholders. *Id.* at 95.

175. *See supra* note 137.

176. Alaska Native Claims Settlement Act Amendments of 1987, Pub. L. No. 100-241, § 2, 101 Stat. 1788, 1788–89 (1988).

177. *See supra* notes 18–20 and accompanying text.

178. *See supra* note 137 and accompanying text.

179. *See generally* Native Village of Noatak v. Hoffman, 896 F.2d 1157, 1160 (9th Cir. 1990), *rev'd on other grounds sub nom.* Blatchford v. Native Village of Noatak, 111 S. Ct. 2578 (1991).

180. *See supra* notes 62–67 and accompanying text.

181. *See supra* note 137.

182. *See supra* note 51 and accompanying text.

183. *See supra* note 51 and accompanying text.

Village government, the traditional Village government, or the state-law Native municipality.[184] The comparison is complicated because Native corporations are organized under state law[185] rather than under the authorizing federal legislation like IRA corporations.[186] However, in light of the settled principle that courts should liberally construe ambiguities in favor of the Indians,[187] state incorporation of Native corporations should not diminish the sovereign authority of the Village. Tribal sovereignty is not inconsistent with land ownership by a corporate entity.

The possibility of non-Native ownership or control of Native lands also should not alter this conclusion. Although ANCSA restricts alienation of stock and permits only Natives to hold voting stock in Native corporations, non-Natives may still own substantial non-voting stock.[188] Non-Natives, however, own lands on Indian reservations throughout the United States, yet the tribal government still retains jurisdiction over these lands.[189] Moreover, states, counties, and other governmental units also maintain jurisdiction over lands held by individual and corporate entities. As a sovereign governmental entity, Native Villages should similarly control the lands within their territory regardless of who or what owns the title. Recognizing the sovereign jurisdiction of Native Villages will enable them to pursue economic self-sufficiency without sacrificing their cultural identity.

IV. CONCLUSION

Despite the conclusions of the Alaska state courts, Alaska Native Villages are sovereign tribes with the power to exercise governmental authority over their tribal territory. As sovereign entities, Native Villages would have the means to govern themselves effectively and with dignity. Confirming Native Village sovereignty is also consistent with the federal government's fiduciary obligations toward Alaska Natives. Defining Village jurisdiction as the land conveyed under ANCSA gives the Village a concrete territory over which to exercise authority,

184. *See supra* notes 65–67 and accompanying text.

185. 43 U.S.C.A. §§ 1606(d), 1607(a) (West 1986 & Supp. 1991).

186. 25 U.S.C.A. §§ 476–477 (West 1983 & Supp. 1991).

187. Three Affiliated Tribes v. Wold Eng'g, P.C., 467 U.S. 138, 149 (1984); *see supra* notes 18–20 and accompanying text.

188. *See supra* note 64. Additionally, non-Native stockholders could force a merger or buy-out of a Native corporation, thus divesting the corporation of Native control. Further, since corporations have a duty to act for the benefit of their shareholders, a significant non-Native ownership could result in actions taken that are adverse to Native interests but in the best interests of the corporation.

189. *See* COHEN, *supra* note 2, at 252–57.

and provides the Village with a political base to protect its interests. The current reliance on village and regional corporations does not sufficiently protect Native Village interests. By settling the issue of jurisdictional boundaries, Native Villages will have greater power to establish viable economies within their traditional social framework.