

ANCSA as X-Mark: Surface and Subsurface Claims of the Alaska Native Claims Settlement Act

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Abstract

This article analyzes settler colonialism in the context of Alaska and the Alaska Native Claims Settlement Act (ANCSA), the largest land-claim settlement in United States history. The article presents a critical overview of the settlement act and theorizes what is meant by surface and subsurface rights to land. It discusses the entrusting of land to Alaska Native corporations instead of tribal governments and the recasting of Alaska Native peoples into shareholders as ideological invasions, and theorizes Alaska Native resistance to settlement in the form of x-marks.

Keywords

Alaska Native Claims Settlement Act (ANCSA), Alaska Native corporations, ideological invasion, Indigenous futurity, x-marks

When Willie [Hensley] and I and a few of us young rebels got together 15 years ago we weren't trying to form a corporation. They never even occurred to us until later. It was the land we were after. We were pretty young back then but you supported us anyway; at least some people in most of the villages did, because we all knew land was important to us. We filed a claim for 25 million acres because we knew it was the right thing to do. We ended up with a little less than 2½ million acres, a

corporation, and some money. But it was the land we were after because our people need that land to live, to survive.

—John Schaeffer, first executive director of NANA Corporation addressing NANA shareholders at a village meeting, 1981

The 1971 Alaska Native Claims Settlement Act (ANCSA) comprises the largest land settlement in United States history. Made clear in John Schaeffer's comments, there were important political and philosophical differences between the claims sought by Alaska Native leaders and the settlement that resulted. As I will argue, Alaska Native leaders and Elders acted on behalf of Indigenous futurity, whereas representatives of the US government worked to ensure a settler futurity. The settlement, prompted by the discovery of oil fields in northern Alaska, ceded 44 million acres of land to Alaska Native peoples via regional and village corporations in exchange for desisting further land claims. Village corporations secured titles for the surface of their respective lands, while regional corporations secured subsurface rights—an arrangement informed by neoliberalism, not Alaska Native conceptualizations of land.

This article critically engages ANCSA in order to theorize what is meant by surface and subsurface rights to land and the impacts of entrusting land (only) to Alaska Native corporations. First I will provide an overview of the context that prompted the settlement act. Then I will discuss some of the core preoccupations of settler colonialism, including the corporate makeover of Indigenous land and life, which is uniquely

enacted in Alaska. In the next section I will critically analyze several forms of ideological invasion represented in ANCSA. Finally, I will engage Scott Lyon's (2010) concept of the *x-mark* to render an alternative understanding of what ANCSA has yielded for future generations. Scott Lyon's conceptualization of the *x-mark*—the scrawls and signatures made by Indigenous peoples that resulted in uneven agreements with the US Government—provides a frame through which we can rethink treaties and other negotiations in which it seems that too much was given away. Though I use the space of this article to critique the settlement act, I acknowledge the work of Alaska Native leaders and elders to negotiate a settlement that would sustain Alaska Native life. Like the protectors of the seals on the Pribilof Islands, where my family is from. (i) Alaska Native elders have a different narrative about the settlement, one concerned with protecting land and people—one that unsettles the finality of the settlement act and its desired settler future. The last section of my article attends to that narrative and theorizes ANCSA within the context of Alaska Native futurity.

Wanting Alaska

Alaska Native peoples have oral histories of their lives in Alaska that stretch back more than 10,000 years, to time immemorial. Most communities disbelieve the land-bridge story that has been applied to them, and have their own origin stories of how they came to be in a particular place. The Aleutian Islands and Alaskan Peninsula were partially colonized by Russia just about 270 years ago, in the mid-1700s. Russia established its first permanent settlement in 1784, and several others scattered

throughout the Aleutians and mainland Alaska (Chaffee 2008).

In 1867 US Secretary of State William Seward convinced Congress to purchase the land from Russia, even though, as some legal experts have pointed out, Russia did not have “control” of the land to do so. Yet 586,400 square miles were sold to the United States for \$7.2 million. In the negotiations of the Treaty of Cession, Russia and the United States characterized Alaska Native people as “uncivilized tribes,” who under the treaty would be “subject to such laws and regulations as the United States may, from time to time, adopt in regard to the aboriginal tribes of that country” (Chaffee 2008). As many schoolchildren in the US have learned, the purchase of Alaska was ridiculed in the US press as “Seward’s Icebox” or “Seward’s Folly,” until the discovery of gold in the 1890s, which redeemed William Seward in the public eye, and the purchase of Alaska as prudent and profitable. Ultimately, this purchase allowed for the extraction of wealth for the United States from Native land, via gold and oil, and from Native labor, via the harvest of the northern fur seals in the Pribilof Islands.

When Alaska was purchased by the United States, few in the contiguous US imagined that it would ever become a state. It was considered too far away, too foreign, and too remote. However, increasing tensions with the Soviet Union, the discovery of oil on the Kenai Peninsula in 1957, and the growing number of white settlers and prospectors in the region prompted the designation of Alaska as the 49th state in 1959. Congress permitted the new state of Alaska to identify and allocate 102.5 million acres of land as federal land, which Alaska state government would develop and oversee. Alaska

Native people opposed the designation of their land as federal land under the control of the state, and filed formal protests as early as 1961. At the same time, oil fields were discovered in other regions of the state, yet oil companies could not proceed without clear lines of land holdings and ownership. From the perspective of the US federal government, Alaska Native land claims needed to be resolved before they could get down to the business of profit extraction. A “land freeze” was enacted in 1967 so that no more land titles would change hands before a system was arranged (Chaffee 2008, p. 115).

That system was the Alaska Native Claims Settlement Act of 1971—ANCSA. The act represented a departure from prior ways of managing Indigenous peoples and their land claims by the US federal government. Understanding ANCSA is important not only in understanding the particular nature of settler colonialism in this instance, but for other Indigenous communities who have members who have spoken publicly about their desire to achieve a similar arrangement with the US federal government.

ANCSA and Settler Colonialism

As Patrick Wolfe emphasizes, “Settler colonies were not primarily established to extract surplus value from indigenous labor, but from land, which required/requires displacing Indigenous peoples from their homelands” (Wolfe 1999, p. 1). As I will discuss, within the framework of ANCSA, Alaska Native peoples are not displaced from lands outright, yet the titles are negotiated by corporations that serve as intermediaries and possibly soft-pedals on Alaska Native sovereignty. Settler colonialism is concerned with remaking

land into property, remaking tribal membership into blood quantum, and—as demonstrated most powerfully in the case of ANCSA—the corporate makeover of tribal land and life. I discuss each of these in turn:

Remaking land into property

Settler colonialism can be differentiated from other forms of colonization because in this version the colonizers arrive at a place (“discovering” it) and attempt to make it a permanent home (claiming it). Settlers enforce their interpretations on everyone and everything in their new domain, and their new societies require corporeal and epistemic elimination of the Native (Wolfe 1999 & 2006; Veracini 2011). In settler colonial societies such as the United States,

Exclusive rights of property in the land belonged to the nation who discovered the lands. Discovery was demonstrated by the appropriation of the lands for agriculture, which in turn secured the rights of the discovering nation to claim full sovereignty within the lands and against all other claims. (Barker 2005, p. 8)

Thus, in settler colonialism, a key preoccupation is the remaking of Indigenous land into settler property. When land is remade into property, human relationships to land—as life, as curriculum, as ancestor—are reduced to the relationship of owner to his property. When land is recast as property, place becomes exchangeable, saleable, stealable. The most important aim of recasting land as property is to make it ahistorical in order to refute prior claims, thus reaffirming the myth of *terra nullius*.

It is important to observe that settler colonialism also requires the forced labor of chattel slaves, often stolen from their homelands, whose *bodies* become settlers' property, and who are kept landless. In the Alaska context, where US settler colonialism occurs immediately after the legal abolition of plantation slavery, chattel slavery has to be fabricated from parts of the Indigenous world. The process of making property out of land and *people* is inherent and crucial to settler colonialism.

Remaking tribal membership into blood quantum

Another key preoccupation of settler colonialism is blood quantum. As J. Kehaulani Kauanui explains, blood-quantum logic erroneously “presumes that one's 'blood amount' correlates to one's cultural orientation and identity” (2008, p. 2). Kauanui's work examines the role of US colonial imposition on Kanaka Maoli genealogical practices and understandings of kinship, and how the imposition of blood racialization “constructs [Indigenous] identity as measurable and dilutable” (2008, p. 3, insertion mine). Blood-quantum laws are primarily geared to diminish claims to land and Indigenous sovereignty (Kauanui 2008; see also Wolfe 2006 and Tallbear in Latour 2012). Blood-quantum logics portray contemporary Indigenous generations to be less authentic, less Indigenous than every prior generation in order to ultimately phase out Indigenous claims to land and usher in settler claims to property (see also Tuck & Yang 2012).

Though they have no scientific basis, logics of blood quantum have been forced on tribes and Indigenous communities in ways that have attempted to undermine prior ways of determining tribal membership, an affront to tribal

sovereignty. Blood-quantum laws (and one-drop rules that have been applied to black communities in the United States) have been imposed and required as part of the process of settler colonial making property, but also as part of another settler desire, which is to replace the Native. The aim of replacement is entwined in the acquisition of land, of course, but replacement taps a fantasy that plunges much deeper than land ownership. The settler fantasy of replacement is an attempt at resolution to a settler anxiety of unbelonging on Indigenous land—Indigenous peoples are not just in the way of settler expansion, but in the way of the settler desire to become/be Indigenous, a position of perceived moral right to the land (see also Tuck & Gaztambide-Fernández 2013).

Corporate makeover of tribal life and land

A third preoccupation of settler colonialism is epitomized by ANCSA. Under ANSCA, Alaska Native tribal communities were reimagined as corporations. It did not just remake land into property, it capitalized the land, forcing a corporate structure and profit-making mandate upon its people. ANCSA required Alaska Native communities to form regional and local corporations: 12 for-profit regional corporations were established based on geographical and tribal affiliations, and a 13th “region” corporation was established for Alaska Natives who did not reside in the state.

The settlement act also forced Alaska Native villages to become incorporated in order to secure funds, land, and other resources from the regional corporations. The settlement act requires that village corporations pass services and other benefits

to village residents (ii). Thus, in most arrangements, village corporations maintain rights to the literal surface of the land (sometimes described as the top several inches of land) while regional corporations hold subsurface rights to the same land.

ANCSA prompted a corporate makeover of land into capital, that is, an abstraction of value that is based upon the market's perceptions of its worth (problematized later in this article). Such a makeover reflects the historical ascendancy of a neoliberal ideology, which would become more prominent in the following decade and those thereafter (Harvey 2005). As several Indigenous scholars have noted (Bargh 2007; Tuck 2012; Grande 2004), though neoliberalism is often positioned as a more recent or modern paradigm, neoliberalism as an expansionist imperative is only the latest configuration of settler colonialism.

In this context, the settler nation-state attempts to remake the Indigenous collective into bits of seizeable capital (shares). It also attempts to replace Indigeneity with incorporation that can then be disincorporated or taken over. In exchange for 44 million acres of land, Alaska Native people agreed not to make claims to additional land in the future. As declared by Congress, “[a]ll claims against the United States, the State, and all other persons . . . based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska . . . [were] hereby extinguished” (43 U.S.C. §1601). Any reserves that were established prior to 1971, with the exception of Metlakatla Annette Island, were revoked.

Ideological Invasion

ANCSA represents several forms of ideological invasion on Alaska Native life and land. They are as follows:

- 1) The settler rationale for the settlement, which was to figure out how to allocate claims to land as natural resource from which capital would be extracted and distributed through shares.
- 2) The notion of surface and subsurface claims—tribal village corporations hold surface claims to land, and regional corporations hold subsurface claims, beginning literally a few inches below the surface of the earth.
- 3) The devolution of Alaska Native peoples as sovereign, original peoples of an occupied land into shareholders.
- 4) The requirement that Alaska Native peoples give up any future land claims, into eternity.

In this section, I will discuss each of these forms of ideological invasion in turn.

First form of ideological invasion: the rationale of the settlement
Alaska Natives' rights to use and occupy Alaska were recognized by the 1867 Treaty of Cession between the United States and Russia regarding the purchase of Alaska. Article III of that treaty recognized Alaska Native tribes as distinct peoples under principles of international and federal domestic law, while also describing Alaska Native tribes as subject to US Indian law and regulations (Case & Dorough 2006). The Bureau of Indian Affairs gained responsibility for programs for Alaska Natives in 1931, and in 1936 Congress expanded the Indian Reorganization Act to Alaska. As noted, the events that led to

the Alaska Native Claims Settlement Act of 1971 included the discovery of oil in multiple locations throughout Alaska. Prior treaty language described Alaska Natives' rights of use, but did not make clear land ownership, and with oil producers wanting only to drill where clear title to the discovery lands could be established, the pressure was on Congress to settle land claims and settle them fast (Jones 2010).

Case and Dorrough (2006) argue that Congress ignored international legal principles and the fuller recognition of Alaska Native peoples as distinct tribes in the design of ANCSA by transforming communal land claims into private corporate assets. They continue that, "The enactment of ANCSA did not allow for the collective right of Alaska Native peoples to consent to the terms of the act, an essential element of self-determination under international law" (2006 p. 13).

ANCSA opened Alaska Native land to corporate invasion by requiring Alaska Native people to reorganize their relationships to land—as property, as having monetary value, as investment. This is not to say that ANCSA introduced these dimensions to Alaska Native life but that learning the corporate structure was an urgent and consuming task, and people did not have time to collectively think together about how and if corporate conceptualizations could be integrated or reimaged in ways that were culturally appropriate. The introduction of legal fiduciary duties of corporate leaders in for-profit companies put immense pressure on Alaska Native peoples to learn corporate structures and adopt corporate conceptualizations of land and value (Chaffee, 2008).

At the outset of the settlement, the sale of Alaska Native Corporation stock was prohibited until 1991. Then, alienability restrictions would be lifted, and Alaska Native stockholders might have sold stock to non-Alaska Native persons. This provision, since modified, put the real intentions of the settler state on full display: to incorporate in order to disincorporate, to make claims in order to unmake claims. Apparent from the perspective of the settler nation-state is the hope that the land/corporations might be unprofitable in the short term, or in the long term, and be privatized away from the tribal collective. Ultimately, the provision was modified before 1991, and alienability restrictions were not lifted. Under the Act as it is now written, a Native corporation can choose to suspend the sale of their stock indefinitely (Chaffee, 2008, p. 188).

Second form of ideological invasion: claiming inches of earth

The land-selection provisions of ANCSA gave village corporations title to the surface estates of 22 million acres of land and gave regional corporations title to the surface estates of any of the 22 million acres left unselected by the villages and title to the subsurface estates of land selected by villages (iii) (Chaffee 2008, p. 122). Clearly, the need to differentiate between surface estates and subsurface estates draws from the potential for profits from oil drilling and mining, and the pressure from fossil fuel companies to gain access. Though the reasons for the differentiation are obvious, the fact remains that this distribution logic is absurd. In this particular feature of the settlement act, Alaska Native peoples are required to adhere to an understanding of land as vertical at the same time that other

sections of the act extinguish hunting and fishing rights that traverse across land (iv):

Section 1603 of the Act expressly extinguished Alaska Native hunting and fishing rights in exchange for money and definite tracts of land. Definite tracts of land, however, do not appeal to Alaska Natives leading a subsistence lifestyle because migratory animals do not choose their path based on land ownership. The Settlement Act, therefore, encases Alaska Natives within a system of governance and ownership that is in direct opposition to many of their traditional practices. (Chaffee 2008, p. 134).

I point to the arbitrary (except to fossil fuel companies) absurdity of surface and subsurface estates because it is one of the specific false logics of settler colonialism in Alaska, bending understandings of land to meet the needs of prospectors and settlers and refusing understandings that afford Alaska Native subsistence and land-based ways of life. The invention of subsurface estates is a remaking of *terra nullis*, as if somehow land a few inches below ground is uninhabited; it is a re-creation of the doctrine of discovery where there were/are already people.

In the daily lives of Alaska Native peoples, the designation of surface and subsurface estates has been a nuisance. Despite the requirement (v) that the 12 land-owning regional corporations share 70 percent of the revenues from subsurface estates and timber, disputes between corporations have resulted in substantial litigation, disputes entirely brought on by the settlement act (Chaffee 2008, p. 141). Alaska Native

corporations already endure a heavy burden of complying with the legal requirements of ANCSA; indeed “Lawyers and corporate consultants have been the major beneficiaries of an Act that was supposed to help Alaska Natives . . . Alaska Native corporations have paid nearly half a billion dollars to maintain and defend the corporations established by the Act,” (p. 152).

Further, though the settlement act did not dissolve tribal governments or tribal governments’ existing assets, ANCSA did turn over control of land and now resources to corporations, which can undermine the sovereignty of tribal governments. Corporations

often frustrate and interfere with the role of Native governments . . . For example, if one wanted to mine silver on Alaska Native corporate land, one would approach the corporation owning the land, rather than the Native government. Thus, the Settlement Act ultimately undercuts the role of Native governments in determining the use of land and resources because it vests power to make certain determinations in the boards of the corporations created as a result of the Act. (Chaffee 2008, p. 120)

Just after ANCSA was enacted, shareholders in Arctic Village and Venetie (village) Corporations voted to transfer all lands to the federated tribal government of the villages, prompting more than 25 years of litigation regarding the reach of tribal jurisdiction in the state of Alaska. When the tribal government taxed the state on a school construction project (citing Venetie as part of Indian Country as defined by

federal law) the state sued to enjoin the tax, refusing both the recognition of Venetie as a tribe and its authority to impose taxes on lands that were part of the settlement act. Venetie was ultimately listed as a federally recognized tribe on a list ratified by Congress in 1994, but the Supreme Court ruled against Venetie as part of Indian Country (thus a dependent Indian community) because ANCSA lands had not been “set aside” for tribes but for corporations. Further, the lands were freely alienable as described in the design of the settlement act (see Case & Dorrough 2006, p. 14).

Alaska Native tribes have persisted to gain recognition and sovereignty outside of the legal and discursive confines of ANCSA, especially in a government-to-government negotiation citing the UN Declaration on the Rights of Indigenous Peoples that resulted in the 2001 Administrative Order No. 186, which acknowledges tribes and their distinct legal and political authority in Alaska (Case & Dorrough 2006). Also, several Alaska Native Corporation CEOs are both shareholders and tribal members, putting them in unique and possibly conflicting positions. Alaska Native communities are politically powerful in the state, both inside and outside the scope of the corporations, yet this power is staked upon the maintenance of alienability restrictions and other measures to keep subsurface and surface claims in right relationship.

Third form of ideological invasion: devolution of Alaska Native peoples into shareholders

The most immediate change introduced by ANCSA was the transformation of tribal members into shareholders. The

settlement act employed a logic of blood quantum to describe and determine who could be a shareholder in Settlement Common Stock. Every Alaska Native person with the sufficient “degree” of Alaska Native blood alive on December 18, 1971, was entitled to 100 shares of the regional corporation where they resided. Those born after that date, called “after-borns” in common parlance, are eligible to be tribal members (rights to determine eligibility for tribal membership have been retained by tribal/village governments) but in most cases are not eligible to be shareholders unless by gift or inheritance. Because under ANCSA it is regional corporations and village corporations that own the land, the vast majority of those born after 1971 have no recognized or legal claims to the lands of their ancestors.

Opening shareholding registers/stock applications to include those born after 1971 is a subject of much debate, with those who want to ensure the active participation of younger generations (those now aged about 40 and younger) on one side, and those who do not want to “dilute” the value of the issued stock by creating more shares for younger generations on the other side. Most important for this discussion is how the question of stock applications pits shareholders and non-shareholding tribal members against each other (vi). Some shareholders depend on dividends to pay for basic needs, while others who do not hold stock could just as readily use dividend money (vii). The new tribal membership category of shareholder diminishes the significance and legal claim rights of tribal membership, as evidenced by the differences in the entitlements and decision-making opportunities between shareholders

and non-shareholders. The result is that shareholder status overshadows tribal membership status.

Becoming a shareholder of one's land may also entice a person to push for short-term gains that cause long-term problems or environmental devastation. ANCSA, by design, may threaten subsistence living and other land-based life and cultural practices by titling land to corporations tasked by law to pursue profits. Indeed, "By focusing on financial performance, Alaska Native corporations act in direct opposition to the goals of many of the people that they are supposed to represent" (Chaffee 2008, p. 134). That is, being a shareholder of land puts tribal members into the precarious position of potentially financially benefiting from the extraction of the land-turned-natural resource even as it may devastate tribal homelands. By design, ANCSA inserts corporate measures of success that are contradictory to cultural aims of well-being, often characterized by attitudes of land stewardship (Chaffee 2008, p. 133). Corporate structures are inherently at odds with structures of Indigeneity. As for-profit entities, corporations are accountable to increasing the dividends of shareholders, not ensuring the vitality and viability of subsistence living and the thriving of land, flora, and fauna, even though those are the needs of the people that comprise the shareholders.

For Congress, a major impetus for managing land claims via the establishment of regional and local corporations was the desire to distribute the settlement, "without establishing any permanent racially defined institutions, rights, privileges, or obligations, [and] without creating a reservation system or lengthy wardship or trusteeship." At first this may read as

a contradiction, because shares were in most cases distributed using criteria pertaining to blood quantum. It is important to see how this component of the settlement act—the deliberate deracination of Indigeneity—is a feature of settler colonial elimination of the Native through a policy of subtractive racism, or framing of Alaska Native peoples as an impermanent race.

As indicated, one of the core ways that ANCSA modified standard corporate law was by establishing alienability restrictions (prohibiting the sale of stock ownerships to others) until December 18, 1991. In accounts written by those who represented the interests of the United States, inserting alienability restrictions were important in order to prevent "establishing any permanent racially defined institutions, rights, privileges, or obligations" (43 U.S.C. §1601). Douglas Jones, former policy maker working on behalf of the federal government in Alaska, writing in 2010 in an essay called "What We Thought We Were Doing in Alaska, 1965–1972," writes that settlement "while inherently racially based," was designed to,

point toward minimizing "racialness" over time. This is to say that features of normalization, such as establishing corporations requiring administrative and managerial skills in their running, making Natives financial shareholders with the ability (after twenty years) to alienate one's title (the opposite of traditional perpetual wardship status), and ending various protections, were a conscious part of the design of the settlement. (2010, p. 232, quotation marks original)

Indeed the act was designed to phase out a federally recognized status of Alaska Native that was based on tribal membership (designated as “race”) in favor of a status based upon owning shares, potentially even if purchased on the open market (again this option has not been enacted, but it is built into the design of the act).

Alienability restrictions aside, the summative effect of bestowing rights or claims to land not to tribes or to tribal members but to those who have been recast as shareholders to their own land represents an important settler reconceptualization, one that displaces and re-stories land as capital and Indigeneity as a capitalist endeavor. It makes us all Alaska Native capitalists and reinterprets relationships to land as confined within the temporality of the rise (and falls) of capitalism, thereby diminishing prior and future stories of “how we/they came to be in a particular place—indeed we/they came to *be a place*” (Tuck & Yang 2012, p. 5).

The implied hope of the settler/speculators who negotiated ANCSA was that someday there would be Alaska corporations with no Alaska Natives in them. The evolution of [original inhabitant—savage—degree of Indian blood—shareholder] is an evolution that is accountable to settler futurity, or the “permanent virtuality” (Baldwin 2012, p. 173) of the settler on stolen land. It is a teleological assumption that the Native can be modernized away (2012, p. 174) and that the settler can finally, after all this time, replace the Native (viii).

Fourth ideological invasion: Relinquishing future claims

The most profound ideological invasion ushered in by ANCSA is the Alaska Native concession to give up all future claims. Extinguishment of future claims, and extinguishment of Alaska Native hunting and fishing rights to most of the land was a nonnegotiable set forth by the federal government,

which wanted to settle the claims and settle them permanently. In recent decades, extinguishment has been explicitly denounced by United Nations human-rights review boards (Case & Dorough 2006, p. 14). This component of the settlement act undercuts tribal sovereignty by relinquishing the right to accumulate land and expand territory—a significant right of a sovereign state. It installed permanent borders on land and access for future generations who may have a different vision of how land should be appropriately shared and distributed. Most of all, this concession legitimized the occupation of Alaska by the US settler colonial nation-state and confirmed its permanence and the permanence of this particular configuration of relations between Alaska Native tribes and the federal government—except for, of course, that the “racialized” or tribal components of shareholding were designed to dissolve, so that Alaska Native corporations become simply corporations over time.

At least, this is what ANSCA and the relinquishing of future land claims has done if the only temporality we consider is one of settler futurity. ANSCA is invested in settler futurity. To say that something is invested in something else’s futurity is not the same as saying it is invested in something’s future; futurity also refers to the ways in which “the future is rendered knowable

through specific [contemporary] practices,” and specific anticipatory interventions, including precaution, preemption, and preparedness (Baldwin 2012, p. 173). ANCSA takes precautions against Alaska Native sovereignty by preempting the land and preempting future Native claims to the land, and prepares the way for settler takeover of Alaska Native corporations. ANCSA attempts to diminish Alaska Native sovereignty by preempting Alaska Native self-determinations of governance structures, land use, and abidance of corporate law. ANCSA is invested in settler futurity, but we know from the written and oral accounts of those Alaska Natives who negotiated the settlement and its later amendments that they were and are invested in what we might call an Indigenous futurity, a tribal futurity, a land futurity. Indigenous futurity is a (for now) parallel temporality that is also concerned with (the repatriation of) land. As I will discuss in the final section of this article, these other futurities persist precisely because of Indigenous sovereignty and because of Indigenous cosmologies and epistemological relationships to land. The relinquishing of future land claims invokes a short vision of the future; by contrast, an Indigenous futurity disbelieves the permanence of the United States settler colonial nation-state as it now exists—parallel paths headed toward careening futures.

Alaska Native Resistance to Ideological Invasion of ANCSA

At this point, a reader might surmise that ANCSA has caused much damage to Alaska Native sovereignty and personhood, or that settlement was handled improperly so that too much was given away. This would indeed be the message if the

conversation stopped here; but this is why it is so important to engage and theorize the settlement act from the perspectives of Alaska Native elders and leaders. In this final section of the article, I provide a different read of the settlement via Scott Lyons’ conceptualization of the *x-mark*, a “sign of consent in a context of coercion” (2010, p. 1).

Alaska Native elders and leaders have had to resist ANSCA from its inception, even as they had to bring it into existence. For example, with regard to the alienability restrictions, in 1987, Alaska Native leaders were able to get Congress to agree to what are called the 1991 Amendments (H.R. 278) (ix), which allowed corporations to make the decision to lift restrictions; at this time, zero regional or village corporations have decided to make the stocks saleable. A related modification from standard corporate law is Alaska Native corporation exemption from various securities acts (1933, 1934, and 1940) at least until the unforeseen time in which stock can be owned by peoples or entities who are not Alaska Native and/or alienability restrictions are withdrawn (Chaffee 2008, p. 119). This is one place in which it is possible to see Alaska Native assent to ANCSA as a form of resistance, not acquiescence. By stopping the desired traffic in shares, Alaska Native corporations have resisted the wholesale capitalization of land into seizeable property and effectively the incorporation of settlers into the Indigenous collective via the buying/selling of shares.

Unsettling the rationale of ANCSA

It is imperative to highlight the contradictory desires that resulted in ANCSA, including the Alaska Native leaders’/

elders' desires to preserve Alaska Native life as land, and the settler desire to remove Indigenous life on oil producing. For the Alaska Natives that were part of the negotiations, ANCSA comprised what Scott Lyons calls an *x-mark*,

a sign of consent in a context of coercion; it is the agreement that one makes when there seems to be little choice in the matter. To the extent that little choice isn't quite the same thing as no choice, it signifies Indian agency. To the extent that little choice isn't exactly what is meant by the word liberty, it signifies the political realities of the treaty era (and perhaps the realities of our own complicated age as well). (2010, p. 1, *parenthesis original*)

As x-mark, ANCSA represents both a) settler desires to alienate Native peoples from land, and b) Alaska Native desires for the proliferation of land and people. The settlement process required Alaska Native leaders to negotiate in terms of land as property and people as land owners. These represent significant departures from the ways in which Alaska Native peoples have described their relationships to land and place. Yup'ik elder Oscar Kawagley wrote,

The cold defines my place. *Mamterilleg* (now known as Bethel, Alaska) made me who I am. The cold made my language, my worldview, my culture, and my technology ... I grew up as an inseparable part of Nature. It was not my place to "own" land, nor to domesticate plants or animals that often have more power than I as a human being. (Kawagley 2010, p. xviii)

Íñupiaq scholar Edna Ahgeak MacLean speaks to how language reveals relationships to land and water:

People use their language to organize their reality. (x) Íñupiaq and Yup'ik cultures are based on dependence on the land and sea. Hunting, and therefore a nomadic way of life has persisted. The sea and land that people depend on for their sustenance are almost totally devoid of landmarks. These languages have therefore developed an elaborate set of demonstrative pronouns and adverbs that are used to direct the listener's attention quickly to the nature and location of an object. In place of landmarks, words serve as indicators about proximity, visibility, or vertical position and implies whether the object is inside or outside, moving or not moving, long or short. For example, Inupiaq has at least 22 stems that are used to form demonstrative pronouns in eight different cases and demonstrative adverbs in four cases. American English has two demonstrative pronouns [this and that] (plural forms these and those), with their respective adverbs here and there. (MacLean 2010, p. 49)

These descriptions by Kawagley and MacLean illustrate exponentially more complex relationships to land and place—particularly land and place that outsiders would dismiss as barren except for oil—than corporate ownership. When Kawagley acknowledges a nature that is more powerful than him, it is not a romantic gesture, not a noble framing, but recognition of a cold that can kill, a landscape that can make itself unknown in a matter of moments. When MacLean

writes about the need for 22 roots for demonstrative pronouns, she is referring to a profound nexus of nature and language and thought that yields deeply nuanced and coconstituted relationships with place. These ontological renderings of land and place show how incompatible settler colonial notions of place are for Alaska Native life, and it was these understandings that prompted the settlement on the Alaska Native side.

The region described by MacLean is owned by NANA Corporation. In a 1981 account of a series of village meetings held by NANA Corporation's first executive director, John Schaeffer (who held the position from 1971–1984), Schaeffer discussed the progress of the then-ten-year-old corporation:

We've been doing pretty good . . . with the business anyway. So good in fact it was getting boring. I was thinking of leaving. Why not? NANA seemed to be doing okay and I was offered a lot more money to go and run a company for someone else . . . But when I started to think some more about it, I decided it wasn't enough to take another job just to get rich. Why make more money? Compared with a lot of you I make pretty good money already. I can take care of my family, so what would I do with more money? (Schaeffer & Christensen 2010, p. 61)

Later in his presentation, he told shareholders, “We've got things too important to us to sell. In our corporation, land is not for sale.” He continued,

For a long time we resisted the white man's land ownership system but finally when it looked like we

were going to lose our land, we used the land ownership system because we had to . . . [Our children] are being taught that land is worth money. . . . Our land is worth billions. The big corporations aren't going to mind paying a few million for it. . . . Some oil company or mining company will offer our kids \$100,000, maybe more, for their shares . . . [If we let making money guide our decisions and we sell our stock and land] you won't have Inupiaq anymore, just a bunch of poor, hungry people living in their shacks on somebody else's land. (Schaeffer & Christensen 2010, p. 65)

Conclusion: ANCSA as x-mark

Locating ANCSA within an Indigenous futurity and a settler futurity complicates what is meant by relinquishing all future claims. Scott Lyons, writing about the x-marks that indicate agreement on old treaties observes,

The x-mark is a contaminated and coerced sign of consent made under conditions that are not of one's making. It signifies power and a lack of power, agency and a lack of agency. It is a decision one makes when something has already been decided for you, but it is still a decision. Damned if you do, damned if you don't. And yet there is always the prospect of slippage, indeterminacy, unforeseen consequences, or unintended results; it is always possible, that is, that an x-mark could result in something good. Why else, we must ask, would someone bother to make it? (2010, p. 3)

Seen from this view, the ability to make an x-mark, like ANCSA itself, presumes Indigenous sovereignty and presumes that sovereignty supersedes the x-mark. ANCSA is constructed in a way that hopes to preempt any future x-marks; however, it cannot, and this is where settler logic unravels itself. The provisions of ANCSA are already undermined by settler impermanence, just like most corporations are undermined by their own ecological devastation and excess profiteering. ANCSA will no doubt be reorganized and legislated. This means there are future x-marks to be made, potential x-marks to defragmentize land, place corporations under tribal governance, allow for the expansion of Alaska Native corporations to acquire more land.

For example, an April 2013 DC district court decision made room for the US Secretary of the Interior to take additional land into trust for Alaska tribes. This was seen as a foreclosed possibility after ANCSA, but the case *Akiachak Native Community vs. Salazar* argued on behalf of Alaska Native tribes by Heather Kendall Miller of the Native American Rights Fund, reconfirmed the possibility of adding to the land bases of Alaska Native tribes.

Any treaty with a settler colonial state is impermanent—both because the colonizing state will violate or amend it at its pleasure and because the settler futurity is a myth that tries to make itself real. An Indigenous futurity acknowledges the strategic necessity of engaging a settler nation in its own terms but also in resisting its own terms. An Indigenous futurity also remembers the land/people/life inseparability that resists the logic of fragmentation. The literality of ANCSA need not

supplant the Indigenous objectives of protecting land and life. If we consider ANCSA as an x-mark, then the literality of ANCSA is settler coercion, but the decision to sign, to petition, to negotiate—that is Indigenous.

Endnotes

- i. I should note that even though I use the words *they*, *them*, and *their* to discuss Alaska Native people throughout this article, I am an Alaska Native person. In many cases it would also be appropriate for me to use the words *we*, *us*, and *our*, but I did not want for this differentiation to be distracting. Thus, I used the former for sake of consistency.
- ii. There are important provisions of ANCSA that give Alaska Native corporations a different shape than other corporations, including provisions regarding profit sharing and selling of net operating losses.
- iii. Regional corporations collectively hold title to another 16 million acres of land, and two million more acres were kept out of selections but kept under Alaska Native control as burial sites and other places of cultural significance (Chaffee 2008, p. 122).
- iv. Case and Dorrough (2006) observe that Section 1603 is in violation of International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted by the United Nations (UN) in 1966 and both of which affirmatively state in Article 1(2), “In no case may a people be deprived of its own means of subsistence.”
- v. 43 U.S.C. § 1606(i)(1)(A)

- vi. Various factors including natural “resources” and investment decisions have contributed to the value of each stock, and to the dividends paid to each stockholder—some regional corporations pay out dividends at more than \$40.00 per share, while others pay out \$0.00, with most regional corporations paying out between \$3.00 to \$5.00 a share (2005 payouts, as quoted in Edwards & Natarjan 2002, p. 85).
- vii. Sometimes those unfamiliar with Alaska Native corporations are surprised to learn that jobs in the corporation are not usually held by shareholders. Some corporations are deliberate about hiring shareholders, other corporations are less intentional, which accounts for the wide disparities: 29.8 percent jobs held by shareholders, maximum; 1.6 percent jobs held by shareholders, minimum (2005 reports as quoted in Edwards & Natarjan 2008, p. 85).
- viii. The telos of [tribe—tribal individuals—shareholders—nothing] corresponds to [land/people—land/persons—shares /shareholders—settler property/settler replacements]. Ironically, just as the Alaskan Native is wished away by settler logic of a diminishing bloodline turned diluted shareholder, the Alaskan settler is positioned as increasingly Native. That is, settlers in Alaska engage a simultaneous undertaking to Indigenize themselves (at least on television) as “wild men” and homesreading women, gold diggers, and adventurists on the northern frontier, often in front of television cameras. This is possible only by imagining the settler’s property as expansive (settlers can own more and more) and the Indigenous as subtractive (shares get diluted over time until they vanish in value—easily seized by the settler). The racialization of Alaska Natives as an impermanent race, to be washed away, follows the logic of other settler technologies, like blood quantum. However, the conversion of Indigeneity into shares, like blood, which can be eventually possessed by settler shareholders, is part of a different formulation of settler colonialism.
- ix. The only way Alaska Congressperson Don Young was able to get the “1991 Amendments” bill passed was to assure Congress that it had nothing to do with tribal sovereignty. “The bill does not affect government powers, it does not grant new lands or funds and it does not have any significant fiscal impact on the federal government,” Young told Congress (as quoted in the *Alaska Federation of Natives Newsletter*, 1987).
- x. MacLean notes later in the manuscript that the Inupiaq and Yup’ik word *kangut*, which meant “a herd of animals or large assemblage of people” was extended to include the concept of corporation—the suffix *unraq*, meaning “small,” was added to the word, making *kannunraq*, or subsidiary.

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PART V
DECOLONIZING
HISTORY: LEGAL AND
INDIGENOUS VIEWS
OF JUSTICE AND
LEGISLATION