**TEACHING NOTES**

**Alaska Native and American Indian Policy: A Comparative Case**

**By**

**Linda Moon Stumpff**

**Learning Objectives**

1. Capacity to articulate a general understanding of the historical policy pathways of federal policy as it impacted Alaska Natives and American Indians
2. Ability to demonstrate verbally and in writing an understanding of the similarities and differences between the two policy streams
3. Skill in critical inquiry as demonstrated in a debate or a presentation challenging a hypothesis and/or presenting evidence in support of a position
4. Articulate an understanding of the forces that shaped federal policy
5. Develop the ability to generate strategic alternatives that suggest improvements in policy processes and outcomes.

**Audience**

This case can be adapted for college and graduate classes by choosing one of the teaching techniques described here. It is most appropriate for classes in policy, political science, history, law, public administration, geography, native studies, global indigenous studies, cultural anthropology, and tribal governance.

**Updates and Additional Information: (9-5-16)**

The Tribes of Alaska and the Lower 48 continue to make progress on all fronts from environmental management to economic development, from education to cultural preservation. They remain challenged by unemployment, the effects of climate change, drug addiction, and murky federal policies. The Indian Law and Order Committee released a report painting a dire picture of criminal justice in Indian Country including Alaska. (www.bia.gov/cs/groups/xraca/documents/test/idc1-028731.pdf)

ALASKA

Persistent work and advocacy by Alaska Natives, the Federation of Alaska Natives, and other organizations led to a sea change in federal policy in 2016 that opens the way for Alaska Native governments to gain territorial authority and improved civil and criminal jurisdiction. The change in the Department of Interior’s interpretation of its own rules on land into trust with regard to Alaska Natives opened funding valves for economic development and law enforcement and justice systems.

The pathway to the new approach reveals the checkered history of Department of the Interior (DOI) rule-making. After ANCSA was passed to settle native claims and set up corporations in Alaska, a single Assistant Interior Solicitor issued his opinion through a memo that the passage of ANCSA would make it a stretch of the Secretary of Interior’s discretion to put any more land into trust for Alaska Natives, despite the fact that the Indian Reorganization Act under Section 5 that gave the Secretary the power to put land into trust was nowhere negated in ANCSA and remained in force. Issued by Thomas W. Fredericks on September 15, 1978, later referred to as the “Fredericks Memorandum,” this memo was purely the opinion of a single Assistant Solicitor. However, it colored Interior’s policy for years to come.

In 2001, the departmental Solicitor for Indian Affairs initiated a rule-making process that officially stopped the process of land into trust in Alaska, with the exception of Melakatla in Southern Alaska where trust land was held under previous, under special conditions. He doubted that the IRA authority for land into trust still existed. The historical narrative of the “Alaska or Metlakatla exception” is an example of how bureaucratic rule-making led to embedding opinions rather than law in the Code of Federal Regulations removing the Alaska Natives’ right of applying to place land into trust for decades. The loss of this right reduced capacity for self-governance authority, and limited federal protections and funds. Finally, during the Salazar administration, Interior Secretary Salazar provided a partial softening of the position by allowing allotted native lands to be put into trust.

Three Tribes, plus the Chilkoot Indian Association, collectively known as Akiachak, took Interior to federal court in *Akiachak Community vs DOI* on the issue of 300 acres they wanted to place into trust for the protection of those lands for future generations. Finally in 2014, the Department of the Interior promulgated a new rule that removed the so-called “Metlakatla exception” rule that limited land into trust, and extinguished the portion of the previous rule by abolishing the language in the 2001 rule that stopped the land into trust process for Alaska. Alaska Native Tribes could now apply to put land into trust.

Alaska intervened against the new rule that affirmed the Secretary’s authority to move land into trust for Alaska Natives: it represented a major challenge to Alaska’s ability to influence and implement its authority over Native lands in Alaska. The case also became known as *Atiachack vs Alaska*, revealing the true adversaries in this legal battle. On July 5, the Fifth Circuit Court handed down its decision. Alaska’s case was moot, because the Department of Interior already did away with the regulation that they wanted to keep in place. With strong words, Justice Janet Brown extinguished the State of Alaska’s position: “The court euthanizes a live dispute.” (<http://www.courthousenews.com/2016/07/05/Alaska-tribe2016/02/20160AFN-Fed-Priorities-03DEC15.pdfs-allowed-to-put-land-into-trust.htm>) Placing land into trust may create major changes in the relationship between the Native Corporations and the land.

The court decision opened new opportunities for self-governance over native territories, improved justice systems, and paved the way for new alternatives for economic development. This created a new landscape in Alaska, with challenging questions about the federal rule making process, new strategies for economic development, and relationships to the Native Corporations and improved justice systems for Alaska Natives.

In other areas, Alaska Native Tribes moved ahead with technology and online presence. One regional corporation created nationally popular online games. The All Native Tribal Health Consortium released a beta version of the Local Environmental Observer Reporter application for Apple. Through an iPhone app on OS platforms, photos, text and GPS information can be shared between network members in Alaska. The Denali Commission now coordinates measures to address climate change and develop resilience strategies. The Arctic Executive Steering Committee is currently strengthening cooperative relationships with Alaska Natives and the use of traditional knowledge is now incorporated in the Arctic Observing system.

All of these developments and changes provide good topics for additional student research assignments.

Additional resources:

Alaska Federation of Natives (AFN) AFN.org

<http://www.nativefederation.org.wp-content/uploads/> 2016/02-AFN-Fed-Priorities-03DEC15.pdf

[www.bia.gov/cs/groups/xraca/documents/text/idc1028B1.pdf](http://www.bia.gov/cs/groups/xraca/documents/text/idc1028B1.pdf)

Code of Federal Regulations 25USC465: 25USC473a 25CFR 151 and 151.1

Indian Law and Order Commission: a roadmap for making Native Americans safer: Report to the Congress of the United States 33-61 (Nov. 2013)

www.ncai.org

UPDATE ON THE LOWER 48

Several court cases are opening new doors for the Lower 48:

The Cobell settlement of 2012 resulted in the current land Buy Back program funded Tribes with 1.9 billion dollars to purchase fractionated interests and lost allotments from willing land owners. This major land acquisition program takes a big step for tribal land managers to create natural resource, cultural and economic strategies on restored land bases. As much as 400,000 acres may be restored to the Navajo Nation.

The Cobell settlement also funneled 60 million dollars into scholarships managed by the American Indian College Fund. How decisions will be made to distribute these funds creates new questions.

New laws took steps to improve shared information between tribal and other law enforcement agencies and supported coordinated enforcement for domestic violence cases.

The *Dollar General* case ended with a tie in the Supreme Court of the US, and left the 5th circuit standing. This increased tribal jurisdiction over non-tribal businesses on tribal lands, previously a sore point. In this case, the retail giant is now subject to tribal jurisdiction including tribal courts. Tribal courts are moving into government-to-government consultation with other court systems leading to more coordinated jurisprudence.

Resources

www.ncai.org

**Discussion Questions** (organized by level of complexity with tier one questions emphasizing the interpretation and application of factual material)

**Tier One**

1. What law had the greatest effect on Alaska Natives? Why?
2. What was the motivation for passing ANCSA?
3. What was the motivation for passing ANILCA? Did it fix any of the problems created by ANSCA?
4. Although Treaties in the Lower 48 were often “real estate settlements” what other kinds of benefits did they deliver?
5. Both Alaska Natives and American Indians suffered the impacts of long-term delays, underfunding and bureaucratic bungling. What do you think were the reasons for this continuous mismanagement of Native Affairs
6. What kinds of reactions did Native leaders have to these problems? What do you think would be most effective?

**Tier Two.** More advanced questions**.**

1. Although separate in time and geography, do you think the two policy processes stem from similar root causes? What do you think are the roots of these policy problems leading to poor outcomes?
2. If the U.S. re-opened the treaty-making process for the treaties it failed to sign after ending the treaty making period in 1972, as has been done in Canada, what would that look like today?
3. Most of the laws discussed here required amendments or new laws to fix the problems they created. How could the policy process be improved to create better laws?
4. If you could “fix” one of these laws or treaties, which one would you select and what would you fix to create better outcomes for Native peoples?
5. Economic, political, legal and cultural challenges have been discussed as reasons for these policy failures. What kind of explanation works best? Why?
6. Some would argue that these are not policy failures, but a slow and sometimes difficult evolution towards better policies. What do you think?

**IMPLEMENTATION**

Three difference approaches to teaching this case are suggested below.

**Teaching Approach #1: Discussion in Small Groups**A class discussion based on pre-reading of the case and a selection of the Tier 1 and Tier 2 questions can be accomplished in one period. The instructor may chose to adapt the questions to direct the discussion towards a particular emphasis on the various disciplines. Additional resources like maps would be effective for a geography course, or copies of treaties for a law course, or agency documents for political science or public administration. The references include direct access to some of these documents. The Native American Rights Association at [www.narf.org](http://www.narf.org) is also a good source.  
  
**Teaching Approach #2: Debate**

**Step One**. Students should read the case before class. After a general discussion of some of the tier one or tier two questions, the class should divide into two types of small groups of 4-8 people for an initial discussion of the case. The groups should be divided as equally as possible to discuss one side of the proposition. The A groups will take the position that there are great differences between the federal policies that developed around Alaska Natives. They will generate ideas about where those differences occurred and why they are important. They may want to create a chart or visual to identify specific points and examples of differences. The B groups will work on generating ideas and evidence for the opposition proposition---that the policy processes in Alaska and the Lower 48 had similar flaws that generated the same results. This activity will take a full 50 minute class period. Students are encouraged to work outside of class to do further research for the debate and prepare visuals like matrix diagrams or charts to illustrate their points.

**Step Two**. The students will hold a debate in the class room on the two propositions. This can fit into a fifty minute class, but it does need to be carefully timed. A faculty member or student assistant should moderate the debate and assure each presentation receives equal time. Each of the small A and B groups should identify one spokesperson to present the evidence supporting the proposition for their side.   
  
**Step Three**. After both sides have presented, the rest of the class may ask questions. The moderator will then ask one person from each side to make summary statements.  
  
**Step Four**. After the presentations, all students should write a 2 page paper on their own conclusions from the debate and why they agree with one side or the other. They should make their arguments based on the evidence that was presented rather than opinions. They may want to include how their opinions changed as a result of the debate.

**Teaching Approach #3: Exploring the way forward: a strategic discussion for an advanced class**  
  
**Step One:** Given the policy history for both Alaska Natives and American Indians, this exercise focuses on a discussion of different kinds of strategies to move forward and achieve better outcomes for Alaska Natives and American Indians in the Lower 48. Students would work in small groups of 4-8. Each group would discuss one of the following propositions and give examples:

1. Alaska Natives and American Indian Tribes should focus their efforts on an active policy agenda to get new laws and amendments.
2. Alaska Natives and American Indian Tribes should work together on the international scene with other indigenous groups to gain international pressure to improve policy.
3. Alaska Natives and American Indian Tribes should work on their own health, education and economic initiatives to build capacity as governments and find other partners, regardless of the weakness of federal efforts.
4. The differences between Alaska Natives and American Indian Tribes from environment to policy to culture are too different to pursue a shared pathway to the future. This group will recommend two separate courses, one for each group.

**Step Two** In a second class period student groups will present their proposition with examples and evidence to support it. After short presentations from each group, the instructor will lead a discussion of the different propositions with the full class.  
  
**Added step:** This exercise could lead to a research assignment. Students could pick one of the propositions and develop a 6-8 page research paper based on additional research and possibly interviews with experts, legislators, or agency managers for that area.