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THE REINDEER-CARIBOU CONFLICT IN THE NANA REGION OF ALASKA:
A CASE STUDY FOR NATIVE MINORITY RIGHTS ISSUES

by Hugh Beach

Introduction

Reindeer herding is practiced widely in the circumpolar regions and in many areas continues to be a traditional form of livelihood for Native peoples. With the partitioning of the northern regions into various nation states, herding groups have come to be ruled by different legal frameworks with different policies regarding Native minorities. Some states, for example, have come to reserve reindeer herding rights for their Native minority alone, while others have shunned any racial criterion in favor of an eligibility system linked to land ownership. One finds many different criteria for herding eligibility, even distinctions made between reindeer herders and reindeer owners, and a variety of definitions specifying who qualifies as a Native under the law. The Native minority policies of the different countries have evolved, often over hundreds of years. With increasing population growth, discovery of oil in northern regions and increasing conflict over northern resources, herding law, so-called subsistence law and Native minority policies evolve rapidly along paths blazed by their fundamental, though often conflicting, premises. For this reason reindeer herding and caribou hunting along with their accompanying forms of legislation provide fertile ground for the comparative study of Native minority rights in the north and raise points of principle highly significant to the study of minority rights in general.

In Alaska, the contrasting rights of Natives with regard to reindeer and caribou are by no means purely of theoretical interest. Caribou and reindeer have come to frequent the same ranges, causing not only practical concerns over grazing competition (Hunter, 1981; Klein, 1980) but also deeply rooted conflicts between those oriented toward maximizing business profits and those espousing a subsistence life style (Melchoir, 1979). Nor should the issue be reduced to a simple conflict between the maintenance of old Inupiat (Alaskan Eskimo) cultural traditions as opposed to the demands of imported Western economic ideals. Although the practice of reindeer herding was a relatively late arrival to the Alaskan northwest, it has come to form a significant aspect of Inupiat culture. More recently, the development of successful, Western-oriented business enterprises has come to be seen by many Inupiat as essential for the maintenance of their traditions (Beach, 1984). The political ramifications in Alaska of the reindeer-caribou conflict are broad, both within the Native group and between this group as a whole and the larger White population (Smith and Jurs, 1980). The direct, practical conflict of reindeer and caribou on the Alaskan rangelands brings the legal paradigms attached to them also into sharp conflict.

For the past ten years I have been researching the cultural, economic, and legal determinants of reindeer herding as practiced in two representative countries. From 1971 to 1980 I devoted myself to a study of conditions in Sweden with its Native minority, the Saami (or Lapps), and their reindeer herding (Beach, 1981 and 1982). In 1981 I was funded by the Swedish Council for Research in the Humanities and Social Sciences (HSFR) for a study of my own design concerning Native minority rights and reindeer herding in Alaska. I have worked extensively in the field herding reindeer with the NANA Regional Corporation (a name derived from the former

Northwest Alaska Native Association), headquartered in Kotzebue, Alaska. During this period I have also had the opportunity to work with and visit a number of other herds in Alaska. In order to explain the focus of my work in Alaska, it will be helpful to note briefly elements of the Saami situation in Sweden, for this first inspired my Alaskan research.

Many of the dilemmas confronting the Swedes and the Saami stem directly from the premises upon which Saami rights have been founded. Actually, it would be more proper to speak of herders' rights rather than Saami rights in this case, for in Sweden only the Saami actually engaged in reindeer herding have any special privileges above those of the general Swedish citizenry. Moreover, these special rights were granted to preserve Saami culture (equated simply with reindeer herding), and to the extent a Saami strays from this livelihood, to that same extent must he give up his special rights. While in Sweden only Saami have the right to be eligible as herders (and this can be said to be their only true minority right), Paragraph 1 of the Swedish Reindeer Herding Act of 1971 limits eligibility to those Saami whose parent or grandparent had herding as a steady livelihood. Paragraph 9 of the same Act constrains the cooperative Saami herding entities, the Samebys, so that the Sameby can engage in no economic activity other than herding. As the number of herders supportable by the Sameby, with its pure herding economy, continues to diminish—largely because of Paragraph 9—the number of Saami eligible to become herders also diminishes according to the rule of Paragraph 1. In time, the number of people eligible for Saami "privileges" will be cut back to a vanishing point. Already there are only about 900 active herders in all of Sweden.

To the Saami leaders and to those who have studied the practical implications and ethical quandries of the Swedish government's legal policies toward the Saami minority, the position of the Natives in Alaska after the Alaskan Native Claims Settlement Act in 1971 at first seems ideal in contrast. In Alaska, the Natives have been granted resource rights simply because they are Natives, not because they are hunters or pastoralists. Furthermore, the Native Regional and Village Corporations established by ANCSA are not, like the Samebys in Sweden, constrained in their economic activities (Case, 1978). Instead, the Native corporations of Alaska run mines, oil rigs, construction firms and even have investments and engage in joint ventures with numerous businesses outside of the region. In addition to such external enterprises, the NANA Regional Corporation of the Kotzebue Sound area owns reindeer herds (as does the Sitnasuak Village Corporation in Nome) and also runs a hotel, a seafood plant, a hardware store and a jade factory in Kotzebue. Besides these corporation herds, there are about 12 other private herds operated by Native families, also in the northwest district of Alaska.

Obviously, given these parameters, reindeer herding carries neither the economic nor the cultural weight for the Alaskan Inupiat that it does for the Swedish Saami. There are many other reasons for this, notably that reindeer herding is not of long tradition in Alaska. Semi-domestic reindeer (as opposed to the indigenous wild caribou) were first imported from Siberia in 1891. Reindeer herding has never become for the Inupiat what it was for many hundreds of years and still is for the Saami, a standard form of livelihood and the cultural activity par excellence. Nonetheless, because of certain contradictions in the premises of the encounter between American majority and Native minority, reflected in ANCSA and the Reindeer Act of 1937, reindeer herding takes on a special importance. The juxtaposition of ANCSA with the pre-existing Reindeer Act raises important matters of principle with respect to minority rights. Not only is this issue of interest to scholars, it may also produce significant economic and social consequences after 1991, when certain important provisions of ANCSA are scheduled to take effect.

It is my purpose here to analyze some of the legal parameters of reindeer herding in Alaska, a livelihood and business steeped from its beginning in politics and

fraught with significance for the study of Native minority rights. In order to explain the critical issues, it is necessary first to sketch roughly the position of Alaskan herding today. For a more complete description of this life style and industry, I refer the reader to Olson (1969), Ray (1975) and Stern et. al. (1980). In the following pages I shall offer only a brief introduction to modern Alaskan herding, for the primary goal of this paper is to lay bare certain fundamental and yet unresolved issues in majority-Native minority policies in America.

Physical and Social Factors

Most of the reindeer herding in Alaska is confined to the Seward Peninsula and its immediate vicinity: the northwest part of Alaska from Norton Sound to Kotzebue Sound. At its height around 1932, the reindeer population in Alaska was estimated at about 640,000 head. In the late 1970s, total reindeer in Alaska were thought to number only 24,100 head, 17,800 head of which were on the Seward Peninsula (Stern et. al., 1980:101). The inland contains high mountainous zones, and birch trees can be found there, especially along the rivers. The ground is free from snow four to five months of the year, but underneath even the most lush summer grasses is the ever-present permafrost. Reindeer herding is generally confined to the coastal regions where the tundra is often devoid of trees or spotted with scrub willow. This tundra land is frequently dotted with a tight matrix of tussocks, making travel slow and difficult by foot and almost impossible by any other means during the bare-ground period. Thus, for example, the NANA herding concern, Quingniq, has imported eight Icelandic horses to help with the herding during the period between the snows, but they too are slow on the tundra and no match for running reindeer. Sometimes motorized "three-wheelers" are used, but these must be supplied with gas and in any case cannot swim the countless streams as can the horses. Snowmobiles are used on snow cover, of course, but snow coverage generally is not deep along the coast, and wear on the machines is terrible and costly. Roads are commonly confined to the villages, and although the road network reaches farther and is more developed around Kotzebue and Nome, for herding purposes the roads offer little. Quingniq employs a pilot and his airplane full time, although even he is limited in his reach by the scarcity of landing strips. Usually he is able to land on the beach or on the ocean ice— one of many reasons why the herding cabins, tents and corrals are located almost always by the shore. Quingniq is the only herd enterprise large enough to own a helicopter, but with cost of operation at about \$800/hour, it is used only during the effort to bring the reindeer to corral for de-horning, when the time factor is especially critical.

As with most reindeer herding, summer pasturage is plentiful, but the dearth of winter forage puts a limit on herd expansion. The Soil Conservation Service (SCS), equipped with infrared aerial photography, is busily engaged in making vegetation maps to aid the herd owners in formulating five-year grazing plans. These grazing plans are based on a five-year rotation of prime winter lichen range. The SCS also suggests maximal reindeer carrying capacities for different range areas in an effort to keep them from becoming over-grazed. Most likely, grazing plans would come to be officially required and herd size limits strictly enforced should the need ever arise. For the past twenty year period, herd sizes have been well below carrying capacities estimated by the SCS, and these estimates may well rise as increasingly sophisticated range plans are developed. Under current conditions, the poor profitability in Alaskan reindeer herding does not derive from official herd size ceilings, but rather from problems with the management of what reindeer there are (Jack Luick: Institute of Arctic Biology, University of Alaska, Fairbanks; personal communication). Great gains stand to be made from the rationalization of the industry with the number of animals currently at hand. In Alaska today, however, it is one thing to

know where one wants the reindeer to graze, and quite another to make sure that they do so. If Saami herding methods can be called either "intensive" or "extensive," in Alaska they must be called "hyper-extensive." This means that the reindeer are hardly controlled at all, and for long periods subject only to sporadic observation (see Beach, 1981, for a detailed discussion of these herding terms). Reindeer of both sexes grow horns annually, and the young velvet antlers are often cut and sold to Asian buyers. To obtain the proper quality of antler for the Asian market, the reindeer are generally rounded up for de-horning in early summer. Usually the reindeer are then released and left unattended until early winter when they are again rounded up, this time for slaughter. Otherwise the reindeer roam quite freely (often despite efforts to the contrary), and it is common for a "herd" of reindeer to be scattered over hundreds of square miles. Indeed, estimates of herd size are often in error by as much as 30%. Only NANA has been able to afford the attempt at year-round herding in order to increase tameness and control of the herd. Success in this strategy has been marginal to date.

Unlike many of the Scandinavian Saami, NANA herders have no trained sled deer, pack deer or lead deer. They have no skis, cannot throw lassos and have almost no experience with the use of herding dogs. In the early part of this century, Native Alaskan herders could be ranked among the best in the world. They used trained deer and dogs and herded their deer very intensively. Epidemics of measles and influenza wiped out a large part of the early Native population of herders, and the Great Depression, falling meat prices and World War put an end to what might be termed the first phase of Alaskan herding (Cf. Lantis, 1950). Little of past expertise has survived.

Whereas in Lapland fifty reindeer owners will cooperate on the herding of their deer in a mixed herd on a collective range, in Alaska it is common for one man to hold the permit to an entire range for his deer alone. The private herd owner will often hire workers from his village seasonally as necessary and pay them in cash, meat or both. Corporation herding is different in that the animals are technically owned by the shareholders. The reindeer bear only one identification mark, the animals are controlled by a single central hierarchy, and their herders are employees of the corporation, working for wages. While they may own stock in the corporation, the herders possess no individual reindeer of their own, a situation that provides little incentive for good herding.

There are good reasons, however, for this state of affairs. The quality of herding must be evaluated in terms of the goals desired, and time spent achieving one goal is time diverted from the achievement of another. I know of no Alaskan herd owner today who would be destitute without his reindeer. While some families have herded for generations and it is an essential livelihood for them, yet even if they totally lost their herds, I doubt anyone would seriously have to consider relocation or face poverty. The private herding families in Alaska were frequently rich and influential even before adding herding to their repertoire. The simple fact is that the Alaskan bush provides a wealth of food to the Native subsistence user who knows how to utilize it. "Feast or famine" has long been an Alaskan way of life, but with the support of the Native corporations, and the state and federal governments, even the bad times will not be too lean. Most of the time the reindeer owners can do much better for themselves by hunting than by herding. Salmon are over-abundant in the summer; the tundra can be covered with berries; the air is full of birds both spring and fall; the sea provides walrus and seal, even whale (by limited quota). Putting money in the pocket may be a problem for some of the Natives in the region, but putting food on the table is not. Traditionally the Inupiat have always been hunters and gatherers. Their villages along the coast and up the rivers are located on the basis of hunting feasibility rather than reindeer herding. The limited market for reindeer meat and the poor price it brings (by Scandinavian standards) do not permit the

herd to be the major source of funds for the Alaskan Native herders that it is for the Saami herders. Instead, the private herd owner might appreciate the opportunity to assume the role of a generous "big man" and provide his kin and neighbors with cheap meat or gifts of meat (Burch, 1975; Paine, 1971).

It is important to note that reindeer meat may not be exported outside of Alaska unless it has undergone health inspection. The logistical problems this entails would be great, but herd owners rarely feel they require the presence of a state meat health inspector during slaughter, for today the reindeer meat market outside of Alaska is quite undeveloped. Only a very small fraction of reindeer meat finds its way to the "Lower 48." The reindeer-meat market was developed to a much greater extent in the 1920s and 1930s. Large quantities were exported to the Lower 48 where reindeer meat even competed successfully with beef (Lomen, 1954), but the market never recovered from the reindeer population crash shortly thereafter. A large part of the modern reindeer market, and indeed the chief financial support of the Alaskan herding industry today, is the sale of reindeer velvet antler. Antlers are cut from the living deer in the spring and early summer and shipped to the orient, where they enjoy a reputation as an aphrodisiac and general mineral supplement. In Scandinavia, by contrast, the meat market is well developed and provides the Saami herders with a good income from their reindeer. In these countries the cutting of antlers from living deer is illegal on humanitarian grounds. In Alaska, income from the sale of the herd's antlers often exceeds the income from the meat of its slaughtered stock.

The Legal Context

Reindeer Herding Law

In Alaska, the right to own reindeer and hold a permit to grazing lands rests solely with Natives of the state as prescribed by the Reindeer Act of 1937. This right extends not only to private, individual Natives, but also to the Native Village Corporations and the Native Regional Corporations established by ANCSA in 1971. The extension to corporations was not automatic. According to John Schaeffer, President of the NANA Regional Corporation and prime mover and enthusiast for its reindeer enterprise, the Bureau of Indian Affairs (BIA) "gave us a tough time about allowing Native corporation ownership." However, under strict legal interpretation a Native corporation is considered a person and therefore has the right of reindeer ownership. A comparison with the situation in Sweden is illuminating in this connection. The occupational definition of Saami rights creates a legal distinction between reindeer owner and reindeer herder, so that only Saami can be herders, although others might be owners within limits. In Alaska the exact opposite is the case: only Natives may own reindeer, although the Native owners in Alaska may employ non-Native herders as they wish. There is no special status or resource privilege coupled to this occupation. Of course, the Native corporations may impose their own rules for employment favoring their own shareholders.

Administratively, reindeer have been placed under various departments. The U. S. Reindeer Service was formed in 1908, and was to last for many years surviving several reorganizations. In 1929 reindeer management was assumed by the office of the governor of Alaska, but following the Reindeer Act of 1937 and the federal government purchase of all non-Native reindeer stock, administration was transferred to the Alaska Division of the BIA. In 1967 the Department of the Interior's Bureau of Land Management (BLM) took responsibility for range management, while Interior's BIA retained responsibility for herd management. Meanwhile, in the early 1960s the reindeer owners in northwest Alaska formed their own organization, the Reindeer

Herders Association (RHA), to voice the interests of the owners, consolidate their political position, recommend the use of funds and coordinate government and university research efforts with the herders (Reindeer Herders Association, 1979).

Once having obtained his initial range permit from the BLM, a herd owner in Alaska must renew his lease each year. The BLM facilitates such lease renewals for the herd owners by allowing them to file single applications, although there may be a number of land owners involved with each range lease. The BLM then deals with the formalities required by the inclusion of the other land owners in the lease. While there is currently talk by the state of imposing a range fee on state land depending upon the amount of state land issued under each grazing permit, there is to date no real charge levied for the grazing of reindeer on lands belonging to any of the land owners. The BLM charges each herd owner only \$10/year in permit fees for tracts of grazing land often as big as the State of New Hampshire. A reindeer range lease can be revoked (not re-issued) only upon repeated mismanagement of the land or when it is evident that the lease holder is not using it for serious reindeer herding (especially if another owner applies for use of the same land). The relative moderation of these policies is with good reason. Should the herd owners ever be forced to pay a range fee on all the land within their permits, even a very small fee per acre, most of the herding enterprises would have to fold. Few of them could afford the major expense necessary to keep their current range. The Alaskan herd owner, when devising his range management plan and seeking his range permit, must confront as many as four major land owners: the federal government, represented by the BLM and the National Park Service, the State of Alaska, the Native Regional Corporations and the Native Village Corporations. The range permit of the NANA Regional Corporation, for example, extends over tracts of the Corporation's own land as well as BLM land and village land such as that belonging to Kotzebue Village.

The Alaskan Native Claims Settlement Act

Next to the Alaskan Purchase in 1867 and the achievement of Statehood in 1959, the single most important piece of legislation for Alaska and Alaskan Natives in particular was the Alaska Native Claims Settlement Act of 1971. The scope of ANCSA is huge, its ramifications many, its enactment still in process and its true impact only beginning to be felt. Basically, ANCSA has been hailed as a tremendous victory for Native Alaskans. With the extinguishment of the aboriginal claims of Alaskan Natives (Arnold, 1978:147), 44 million acres of land are to be turned over to Native ownership under the Regional and Village Corporations, and one billion dollars (\$1,000,000,000) are to be distributed to these corporations. ANCSA contains numerous rules controlling the way in which corporation shares and dividends are to be apportioned among the individual shareholders. At present, however, unforeseen difficulties still plague conveyance of the land. Full and clear title must be established before government land can be conveyed to Native ownership, and every hunter's cabin, boat dock or well can cause delay. In many areas, mining and navigational issues need clarification. Applications of individual Natives for land according to an earlier allotment act must still be processed. Finally, vast tracts of land were "frozen" while being considered for withdrawal from Native land selection as National Parks or Monuments.

ANCSA recognizes the territorial claims of Alaskan Natives as a collective ownership. In this respect, it differs markedly from the policies of allotment made earlier on Indian lands in the Lower 48, where pieces of reservations were handed over to individual Indians who were then often tricked or bought out of their titles (Cohen, 1982 ed.). While the Regional and Village corporations own and manage their lands (for the collective good of their Native shareholders), however, it is important to note that ANCSA imposes a limit to the time they are protected from non-Native

ownership. For twenty years after the enactment of ANCSA (i.e. until 1991), undeveloped corporation land is not to be taxed, nor is corporation stock allowed to be transferred to non-Natives in any way, including bankruptcy. Beginning in 1991, Native corporation stock may be sold to anyone with the sole provision that the corporation has first right of refusal. Only a few years remain. Already multi-million dollar conglomerates are maneuvering for the opportunity to acquire stock in this valuable land.

1991 Termination of Exclusivity

Obviously, the more non-Native owners infiltrate the territory, the more Native culture and traditions will be jeopardized. The Native corporations are well aware of this danger and are arming themselves both economically and spiritually against it. An economically strong corporation will encourage its stock holders not to sell, and it will be able to purchase the stock of those that do sell. A Native people with a strong sense of solidarity and commitment to the idea of preserving the land for Native traditional use and self-directed development stands a chance of realizing this aim. Failure will mean erosion of ANCSA into simply a collectivized form of the old allotment act with all of its disastrous effects. One of the explicit goals of the newly evolved Spirit Movement begun by leaders in the NANA Region is, accordingly, to meet the challenge of 1991 (Christensen, 1982). The Spirit Movement, or "Ilit-qusiatic," is a campaign to maintain Inupiat traditions and revive basic human values in the face of ever increasing western acculturation. It is significant that the suicide, crime and alcoholism problems in the NANA Region are among the worst in the country (NANA Regional Strategy, 1982). The Spirit Movement seeks to foster pride in Inupiat heritage and language. It does not want people to shun modern, western technology, but rather to use any improvements for the good of the Inupiat people. Leaders of the movement fear that their children are being brought up to sell them out in 1991. The children are being trained for personal success, not for community solidarity. NANA leaders have founded a Spirit Committee, built a Spirit Camp and have helped institute Elders' Councils in the local villages. But the struggle is not only to convince shareholders not to sell. It may be difficult enough to restrain a poor Native without heirs who is offered a fat price by an oil-hungry company. A more subtle problem is to stop the alienation of stock belonging to a bankrupt Native who does not want to sell, but who is forced to do so to pay his debts. Potential buyers are already enticing Natives into debt, or assuming their payments so as to be in a position later to obtain their voting stock.

The unstated justification for allowing stock to be alienable is that with ownership comes responsibility and freedom of choice. The government could argue that not to allow alienation of stock would be analogous to refusing a house owner the right to sell his house. A government which refused its Natives the right to do what they would with lands owned by them might be called a Big Brother. Yet, the U. S. Government has been willing to play this role for twenty years, recognizing that it is imperative if the Native corporations are to have the least chance of permanency as Native corporations. In short, after maturing under the protective wing of the government, the corporations are to be given the chance to fly on their own. But, unlike most parent birds, the government will shove its fledglings from the nest whether they are ready or not. One might well contest the length of the twenty-year provision. Native leaders argue, for example, that they would have a better chance to withstand non-Native encroachment after twenty years' opportunity to develop their full 44 million acres of land; but only about half of it has as yet been conveyed to them. Currently many avenues are being investigated to prevent or postpone the end of the original twenty-year stock protection clause. One of the more promising is the proposal to place the Native land in some manner under IRA (Indian Reorganization

Act of 1934) Councils which would activate further types of protection (Cohen, 1982 ed.; Price & Clinton, 1983; Rosen, 1976).

Subsistence Rights

Despite ownership of the lands conveyed to them, Alaskan Natives do not have unreserved rights over the exploitation of the natural resources on these lands. The most inflamed issue throughout the state during the last gubernatorial election was that of subsistence resource utilization. As the state law (The Subsistence Law, 1978, with regulations adopted by the Joint Boards of Fisheries and Game, 1981) stands today, subsistence users are the last ones required to relinquish resource utilization (such as fishing or hunting of a specific species) in time of increasingly severe resource shortage. Powerful sportsman organizations in the urban centers sought to repeal this law (see for example Interior Wildlife Association of Alaska, 1982), but failed in a state-wide referendum on November 2, 1982. Naturally the fight to maintain their subsistence rights is considered by the Natives of "bush" Alaska to be a fight for their traditional Native rights and way of life. While they have had the rights of all U. S. citizens prior to the additional rights granted them by the state Subsistence Law, Natives tend to view these "additional rights" as simply a confirmation of their traditional rights as Natives of Alaska. Just what defines a subsistence user, however, remains vague. The state has implemented a hierarchical set of criteria for the difficult task of administering permits. The category of people to whom utilization of a particular resource is limited depends partly upon the severity of the depletion of the resource, and partly upon its biological needs to ensure survival. Important factors in claiming subsistence rights include: residence in a rural area, traditional use of the resource, and availability of alternative resources (Cook, 1979). Note, however, that while Native traditions of subsistence use have come to be upheld by state subsistence policy, the law is based on favoring those whose use is traditional and who are most dependent upon it. The law is not founded on Native minority rights per se. But what constitutes "traditional use"--use during one lifetime or over four generations, ten fish a year or one thousand?

For a general introduction to the voluminous literature on the Alaskan subsistence issue, see Brelsford (1982 and 1983). Hecht (1981), Iudicello (1981), and Kelso (1981) under a single cover provide useful overviews of legal, environmental and administrative aspects of Alaskan subsistence. Lonner (1979) defines the role of the Alaska Dept. of Fish and Games's new Subsistence Section, and Skoog (1979) seeks to clarify the complex interrelations of State and Federal responsibility and jurisdiction. Kruse et. al. (1981) and Kruse (1982) give quantitative indicators for the effects of energy development on the Inupiat subsistence life style, while Langdon (1982), Lonner (1980), Uhl and Uhl (1979), Wolfe (1979 and 1981) and Worl (1981) concern themselves with a detailed documentation of Inupiat subsistence practices, resource utilization as well as social distribution of subsistence goods. All of these sources demonstrate the incredible complexity involved in trying to design a system of legal priorities based on equitable principles whose goal it is essentially to legislate the continuance of the current subsistence reality. For, according to Thomas Lonner (1979:9), then Chief of the new Alaska Dept. of Fish and Game's Subsistence Section: "The purpose of the Subsistence Law was not to create a new subsistence reality in Alaska."

The Reindeer-Caribou Confrontation

NANA Herding Ideology

Caribou are a major factor determining reindeer management policies and actual herding methods. The variable increase and decline of a nearby caribou population can supply the very reason behind the origin, or more commonly the failure, of a herding operation. Although the influence of the caribou might not be immediately evident, it can have a great impact on the reindeer industry even when reindeer and caribou are not directly competing with each other on the same range. With a Western Arctic Caribou Herd nearby now numbering about 170,000 head and an unrestricted bag limit on caribou, the Native well situated to hunt caribou from his camp or home village would never need to buy reindeer meat. But the caribou have not always been so numerous. In 1975 it was estimated that the Western Arctic Caribou Herd contained only 60,000 head, and wildlife managers were afraid it might disappear. In fact, this was a prime reason for NANA's entrance into the reindeer herding business, to help provide the community with a cheap supply of red meat once caribou became scarce (NANA Regional Strategy, 1982).

After slaughter in early winter, reindeer meat appears briefly in the stores of the larger towns like Nome and Kotzebue. In keeping with its intent to provide the local population with inexpensive red meat, NANA sells it very cheaply (\$1.35/lb.). The stores in turn impose a moderate price rise, and the meat sells out quite rapidly. For many who live in town, the purchase of reindeer meat at this low price makes better economic sense than assuming the considerable costs of an effective caribou hunt. For others, the expenses involved in hunting caribou are easily assumed, and the number of caribou brought home would seem to make it quite worthwhile. Reliable comparisons of the total price of obtaining caribou meat versus the price of beef or reindeer bought in the store is not available. Regardless of the prices, the number of caribou shot is great, and the amount of caribou meat consumed decreases the consumption of other sorts of meat.

Caribou and Legal Reindeer

The caribou present the herder with numerous problems. They are, of course, competitors for grazing. More serious is a problem occasioned by the affinity of reindeer to the caribou: If, during their massive migrations, the caribou should mix with reindeer, the reindeer will usually be swept along and lost to the herder (Cf. Klein, 1980). Once mixed with caribou, reindeer can only rarely be recovered. Sometimes, by chasing a mixed caribou-reindeer herd with a snowmobile a natural separation can be induced, for the heartier caribou soon leave the reindeer behind. However, such opportunities are not common and do not always lead to successful results. Quingniq claims to have lost about half its herd to caribou in the winter of 1982-83, and in the past entire herds have been eliminated in the same way. The reindeer and the caribou are first cousins biologically; yet they are far apart in terms of political significance. Reindeer are private property, while caribou belong to the people of the state, being subject thereby to all manner of protection and wildlife management by the state Department of Fish and Game. The caribou are also prime game for hunters. The current unlimited bag ruling (contrast this with earlier conditions in the NANA Region described by Moore, 1979 and 1980) was made because the Western Arctic Caribou Herd has increased dramatically to a size which wildlife managers consider maximal in this zone for good ecological balance and the herd's long-term maintenance (Derek Craighead: Alaska Dept. of Fish and Game, Kotzebue; personal communication). Considering the rapid reproduction rate of the caribou, especially after the

relatively mild winters of late, the state Fish and Game Board recently relaxed its caribou hunting regulations, so that there is a virtually unlimited take for anyone over a season which has been extended to ten months of the year. It is unlawful, however, to sell caribou meat. The hunt is confined to personal use. It is a fundamental American ethic well backed by law that big game animals, owned collectively by the people of the state, may be hunted by all (under permit), but used commercially by none.

Now that the caribou are back, much of the justification has disappeared for continuing the reindeer business, at least in the eyes of the local population. For what are four to eight thousand NANA reindeer as compared to 170,000 caribou? Some villagers fear that reindeer interests will be detrimental to the caribou, their major source of red meat. One hears claims in town that reindeer introduce much disease into the caribou population (see, for example, Hunter, 1981:74). However, Klein (1980) reports that the transmission of disease between reindeer and caribou is probably equal, that most of their diseases and parasites are endemic to them both and that their acquisition of disease is mainly a factor of their general health and herd density (Cf. Neiland, 1978). Nor does Klein give much weight to the argument that inbreeding between reindeer and caribou is detrimental to the caribou stock. Reindeer which have joined caribou herds have low breeding success and little genetic influence on the caribou herds (Klein, 1980:9). It is therefore probably safe to dismiss worries over the biological impact of reindeer on caribou. More to the point, however, is the concern of both hunters and game managers about the possibility that caribou might somehow be effectively diverted in their migrations from reindeer permit lands (Hunter, 1980:74), lands maybe close to the village and therefore convenient for hunting.

On the other hand, herders have occasionally become desperate. I have even heard rumors that on one occasion herders gunned down about 400 caribou and left their bodies to rot on the tundra in an effort to stop their advance into the nearby reindeer herd. These are exaggerations, but certainly caribou have been shot to protect or control a reindeer herd. A few wild caribou in a herd of reindeer can make it totally unmanageable. Usually one uses the caribou as camp food, although sometimes when on the move with the herd this is impossible. Furthermore, legal complexities demand that one be careful of terms. According to law, a biological caribou on reindeer grazing permit land is a reindeer, and similarly, a reindeer off reindeer range is a caribou. The Act of 1937 states:

Sec. 11. "Reindeer" as used in this Act shall be understood to include reindeer and such caribou as have been introduced into animal husbandry or have actually joined reindeer herds, and the increase thereof. (Sept. 1, 1937, c 897, paragraph 11, 50 Stat. 902)

The law seems to imply that there must be some attempt to domesticate a caribou before it can be defined as a reindeer, but just what this might mean is not clear, since the reindeer themselves are so frequently left to roam unattended. When the Reindeer Act was written, herding was far more "intensive" (tight), not so "extensive" (loose), as it is today. It is one thing for caribou to join a reindeer herd under intensive management and quite another for caribou to join a herd under very extensive management. While it might be within the rights of herders to de-horn, slaughter for sale, or justgun down any number of biological caribou that happened to cross a river onto reindeer range (thus becoming legally "reindeer"), it would not be politically astute in the face of wildlife managers and subsistence hunters. No one would question, on the other hand, the right of herders to enter caribou territory in the effort to retrieve their tagged and easily identified lost reindeer.

The reindeer owners, however, have a good deal to fear from the subsistence hunters. Many caribou hunters will not hesitate to shoot reindeer should these be available. Being less wild, the reindeer are easier to hunt than caribou, and their availability is not so seasonally determined. Hunters have told me in a straightforward manner that they have shot hundreds of reindeer "because it is so easy," or "because reindeer taste better than caribou." When I was guarding the reindeer herd in the winter, among the main predators I had to watch for were subsistence hunters, especially if we were close to a village. In effect, Natives might sometimes steal from their own corporation herd.

Given these conditions, Native corporations like NANA can be placed in the rather uncomfortable position of being staunch supporters of traditional subsistence resource utilization on the one hand, while trying to maintain threatened reindeer businesses on the other (see Arnold, 1978:286). Because of the reindeer-caribou relationship, the two positions are often not very compatible. For example, NANA has had to give up the use of a large part of its range to the caribou who have expanded their wintering grounds further westward—quite the opposite situation to the displacement of caribou by reindeer which so many have feared. I have heard it suggested that the westward thrust of the caribou is at least in part due to subsistence hunting pressure on the Selawik Flats to the east and increased snowmobile traffic. One can hear many explanations, but, while certain factors are known, no one has ever been able to predict or explain convincingly shifts in caribou migratory patterns over long periods (Doer, 1979; Lent, 1966; Skoog, 1968). Many people speak of cyclic caribou penetrations of the Seward Peninsula (Cf. Hemming, 1971). Davis et. al. (1980) see human influence, excessive subsistence hunting, as a major reason for the decline of the Western Arctic Caribou Herd in the 1970s. Whatever the reasons for such dramatic population fluctuations and migratory shifts, Alaskan Natives have always lived by and struggled with the ebb and flow of caribou (Stratton, 1982). The caribou may continue to come their way for ten years or more, and then suddenly be gone. Now they are there, and the BLM has therefore temporarily reserved part of the NANA reindeer range for the caribou's exclusive winter use.

The officially sanctioned incursion of caribou into reindeer territory places the Native herd owners in a difficult dilemma. It is highly unlikely that they will be permitted to interfere with the new caribou migration routes. On the one hand, should the Native reindeer owners respond to the situation by proportionately increasing their slaughter of caribou/legal reindeer and then selling the meat, this would risk the wrath (and possibly instigate new legislative initiatives) by wildlife managers who are dedicated to the idea that game animals must only be killed for subsistence use. On the other hand, should the herders begin large-scale slaughter of caribou/legal reindeer without selling the meat or making use of the resource, this would also infuriate the wildlife managers and the public in general. Fish and Game managers speak of terrible abuses in the past when large-scale "subsistence hunts" resulted in caribou carcasses piled high only to be used as dog food. They claim that much of the meat went unused altogether. While it is a cardinal sin to sell the meat of big game animals, it is even worse to kill an animal and make no use of it at all. Ecologically minded officials often consider it hypocritical for Natives to justify their exploitation of subsistence rights on the basis of their traditional respect for nature's fruits. Yet, while the concern of the authorities for wildlife is legitimate and praiseworthy, the implication that Natives should adhere to old traditions and maintain the ecological balance at their own expense when they are personally threatened by economic ruin is hardly realistic. With ANCSA, the survival of traditional Inupiat culture is intimately related to the economic viability of the Native corporations. Obviously, the maintenance of culture demands trade offs, and with the ax of 1991 poised overhead, the preservation of the economy of the Native corporations demands some adjustment

of old ways. There are still plenty of caribou, but NANA is losing the struggle for the survival of its reindeer enterprise.

Plagued by a poorly developed reindeer meat market, what appears to be a stagnation of the oriental antler market, limited transportation facilities, problems with the caribou and high expenses (transportation, equipment maintenance, food and herders' salaries), the NANA herding operation faces a bleak future. With so much of the herd lost to caribou, and with no sign that the caribou will soon be shifting their migration route, the projected yield from the reindeer is a steadily accumulating financial loss. Since its beginning in 1975 with high ideals and high hopes, the business has been beset with financial problems and overall has lost money. Such loss in the beginning was considered a matter of course, but it was meant to be a gradually decreasing loss, soon to rise into profit. As it is, things have simply gotten worse. Deficits to the corporation from its reindeer enterprise have been covered by profits in other business branches, but as the situation deteriorates and 1991 looms closer, the NANA Board presses John Schaeffer ever more urgently.

In a recent newspaper interview with Stan Jones (May, 1983), John Schaeffer expressed the need for NANA "to be in a good financial position when 1991 rolls around." The article continues by noting that while most corporation investments outside of the region have made profits, most of those within the region have not. These local enterprises have been carried by the success of other investments. The faltering local investments have been considered worthy of support because they have provided employment for shareholders. It is important that NANA demonstrate to its shareholders that it is not just another business-oriented organization without concern for the socio-cultural traditions and problems of the people whose interests it was formed to represent. A certain amount of financial loss suffered for the sake of benefitting the local community can be considered money well spent, for it is in the solidarity of these people that the continued Native character of the corporations will rest after 1991. At the same time it has been hoped that the economy of the corporation's local enterprises might improve with time to become profitable, or at least not unprofitable. Given the unresolved issues over ownership, conveyance and use of land, where even the slightest claim or proof of utilization can prove decisive, it is politically astute for a Native corporation to seek as many legal entanglements with the land as possible. The holding of a permit which grants reindeer pasturage over a wide range is one more way in which a Native corporation can mark an official connection to specific tracts of land. However, faced with bad times and the prospect of 1991, NANA has deemed it wise to sell off its hardware supply operation, Tupik, and to scale down its jade factory and its reindeer herding. Employment opportunities must be sacrificed in the effort to improve the corporation's budget. There is much speculation that NANA will abandon the herding business altogether. NANA is already dissolving, for various reasons, its part ownership of the Kakaruk herd on the Seward Peninsula, farther west. Although nothing concrete has been said, a number of interested buyers (even non-Native slaughter speculators) have been asking about the price of NANA reindeer.

ANCSA was designed to buy out Native claims once and for all; it in no way intended that the Natives should be allowed to operate permanently under special legal status. Quite to the contrary, Congress stated that the settlement should be made, "without establishing any permanent racially defined institutions, rights, privileges, or obligations," (Arnold, 1978:146). Apparently, the basic idea with ANCSA was to settle with the Natives as to what initial handicap they should get and then place them on the starting line with everyone else to run the same race with the same rules. The initially defined racial rights—that corporation shareholders could only be Alaskan Natives of at least one quarter blood who had enrolled for membership prior to the enactment of ANCSA—applied only once and would be protected for only

twenty years after enactment. As noted, phase-out of this racial character was to be allowed after 1991.

Once again, a comparison with the situation in Sweden is instructive. Both Sweden and the U.S. (with ANCSA) have phase-out clauses in their special Native minority rights legislation. The Swedish government, in its Reindeer Herding Act (Paragraph 1), bases these rights (to a major degree) on an occupational, rather than a racial, foundation, without provision for recovery once given up. The U. S. federal government puts a simple time limit in ANCSA, and makes no reference to the beneficiaries' mode of occupation. Whereas the Swedish method has the effect of phasing out the number of people eligible to exercise certain rights (reindeer herding rights entailing limited extra hunting and fishing provisions as well), the American method aims to terminate directly, in 1991, any distinction between those who are and those who are not eligible. In terms of who can do what, the Swedish system gradually reduces the "who" but maintains special privileges as to what they can do. The American system instead will broaden the "who" so that all are eligible, while the "what" they are eligible for will ultimately be no different from what any other U. S. citizen or corporation in a similar position could do—i.e. it will involve no special rights (such as certain tax exemptions currently enjoyed by the Native corporations). The end results are quite similar, but the means differ greatly along the way.

In this connection, it is important to bear in mind that Alaskan state subsistence policies concerning rights to resource utilization carefully avoid making any distinction between Natives and non-Natives, even in cases of game traditionally hunted by Natives since prehistoric times. Given this deliberate vagueness, it strikes one as odd that reindeer ownership was granted a Native monopoly. Native ownership of reindeer has probably the shallowest traditional roots of all. To what do Alaskan Natives owe this seemingly enlightened piece of legislation, whereby they are granted true minority rights without any kind of phase-out clause? Explanations of the often confusing and contradictory ideals of legislation concerning the resource rights of Native Americans can be gleaned from the historical record. Not only are there differences in the implicit judgments of federal and state authorities, but the federal and state legislations within themselves contain numerous inconsistencies based on differences in administration and issues current when each law was enacted.

Legal Complications and Conflicts

The Reindeer Act's Contested Ideology

The importation of reindeer from Siberia in the late 1800s was, according to Sheldon Jackson, pioneer missionary and Alaska's General Agent for Education at the time, a means to save the Inupiat from the threat of starvation. Because the white men's huge whaling fleets had decimated the whales and were next turning attention to the walrus population, it appeared likely that the Natives would soon suffer severe depletion of their subsistence resources (Jackson, 1890). Moreover, the caribou were at an "ebb" phase of their cycle of availability for the northwestern Inupiat. The reindeer, however, could save the day for the Natives. It was through this argument that Jackson was able eventually to obtain funding from Congress for his reindeer import project.

Ray (1975), however, points out that Jackson, the zealous missionary and educator, also saw reindeer as a means to bind Inupiat students and herdsman to the missionary schools. The Inupiat were not suffering from a depletion of food to the terrible extent described by Jackson (whale and walrus were not mainstays in any case). In fact, the Inupiat population was increasing (Ray, 1975:226). But Native students had often left the schools to hunt when game was not immediately at hand. By plac-

ing the reindeer in the hands of the missions and Saami instructors (brought over from Scandinavia for the job), and by devising a long apprenticeship program for Natives before they could accumulate a herd of any size, Jackson assured that these Native herders would stay at school and become Christians. The reindeer would meanwhile supply the mission's faculty and students with a food resource apart from hunting. Jackson and his supporters in the U. S. Congress were convinced that, with reindeer herding, the Inupiat would "take a great step out of barbarism toward civilization, a step from the grade of wild hunters to the grade of herdsmen" (Jackson, 1890:3).

Jackson soon modified his arguments for developing the reindeer business. In addition to benefitting Natives, he now claimed the reindeer would further the settlement of Alaska by providing transportation, stimulate commerce in meat products along the coast, and supply meat to gold miners streaming north. Under the supervision of Jackson and his team of missionaries, herding station superintendents, Saami instructors and Inupiat apprentices the usefulness of the reindeer was demonstrated in many ways. New mail routes were established using sled deer and a number of expeditions were undertaken to rescue snow-bound whaling crews and miners by driving food to them over great distances "on the hoof."

In 1905 and 1906 an investigation by Indian Agent Frank Churchill revealed Native ownership of reindeer to be disappointingly low considering the numbers owned by the missions and the Saami. Jackson was asked to resign, and Native ownership was increased under new rules (Stern et.al., 1980:34). Yet, despite the tightening of the regulations, white ownership of reindeer was not fully barred. The Lomen family, originally from Minnesota, came to dominate the era of private, ownership of reindeer. The Lomen reindeer holdings began in 1914, when they bought the herd (in the Kotzebue area) of Alfred Nilima, who had been one of the instructors imported from Scandinavia. The Lomens were able to borrow large sums of money with which they acquired a number of herds and in time became the largest reindeer owners in Alaska. Their ownership rights were hotly contested, their business ethics questioned and their herding operations frequently under investigation (Moze, 1933). With the Lomens, however, the reindeer business and the marketing of reindeer products for a time made great strides. What also developed was a basic opposition between supporters of a reindeer business for the benefit of indigenous peoples—the Native camp—and supporters of the industry as purely a commercial enterprise—the Lomen camp (Stern et.al., 1980:43).

The Reindeer Act of 1937 grew out of this debate. Herd ownership was reserved for Natives; Saami and other whites were thereby barred. But while there was definitely a real concern to aid the Native cause through an industry which had supposedly been created for their benefit, it was not difficult to suspect ulterior motives. It was observed that the Lomen business had started to fail financially and was in serious debt. Opponents to the proposed Reindeer Act claimed that it was devised to help "bail out" the Lomens. In order to secure a Native monopoly on reindeer, the federal government would have to buy out non-Native interests. The Lomens campaigned actively in Washington, D.C., for the passage of the Act excluding them from reindeer ownership, and they were in fact bought out, but at a price they considered insultingly low. In a book about his life with the reindeer, Carl Lomen (1954) denies vehemently that the Reindeer Act was favorable to his family at all. The Lomens claim that while they were certainly in a poor financial position and forced to accept and even to advocate passage of the Act, this condition was largely the result of previous government policy and BIA meat marketing practices.

Still other motivations can be found which cast aspersions the origins of the Reindeer Act of 1937 and its pro-Native ideology. Much of the lobbying for passage of the Act was the work of cattle ranchers in the Lower 48 who were opposed to the competition of Alaskan reindeer meat during a period of economic depression. These

ranchers reasoned, and rightly so, that once removed from the care of the missions and the Saami herders, the reindeer herds would decline and the industry would be crippled (Friend, 1982).

Resulting Dilemmas

The Reindeer Act of 1937 constitutes the underlying foundation of Alaskan herding policy. Its stipulations presently supplement, but may ultimately collide head-on, with the provisions of ANCSA. Two issues are immediately apparent: How does the Reindeer Act, which grants a Native monopoly on reindeer according to an ethnic criterion, square with ANCSA, which was to settle and end (after 1991) any such special rights?; What would be the ownership status of reindeer owned by a Native Corporation (NANA for example) under the Reindeer Act should non-Natives gain control of the corporation after the implementation of ANCSA's 1991 termination of exclusivity clause?

There is reason to believe that the Reindeer Act of 1937 may not survive until 1991. Although no one has yet (December, 1984) contested the issue in court, some observers believe that the Act should be dissolved because it is racially grounded. A number of whites might welcome the chance to elbow the Natives from exclusive rights in order to obtain valuable resources for themselves. Moreover, even some Native herders feel that an opening of ownership eligibility to non-Natives would be beneficial to the industry and to themselves. Non-Native capital investments might be just what is needed to develop the market, it is argued. They point out that under the existing regulations reindeer, unlike most other livestock in the U. S., cannot be used as collateral for securing bank loans. According to the Act of 1937, a non-Native bank could not assume ownership of reindeer should a herder fail to repay his loan. Other Natives agree that white capital might be desirable for the industry's development, but question for whom such a development would be beneficial in the long run.

Even minor adjustments in the regulations for the implementation of the Act could cause unforeseen difficulties. Researchers with the state land grant University of Alaska are technically hampered by this Act, for it does not permit them to conduct long-term experimentation with reindeer. Currently the University operates an Agricultural Experiment Station in Cantwell, Alaska. The work of the research teams has been most meaningful for the industry, but the scientists complain that they are asked to conduct reindeer research and then not allowed to use the animals they need for the job. While the researchers would welcome a simple formulation in the implementation regulations, or some sort of special clause allowing ownership of reindeer for research purposes without jeopardizing the Native monopoly on reindeer ownership or the Reindeer Act of 1937 as a whole, it seems that any proposed changes or clarifications run the risk of throwing the entire Act open to review. According to sympathetic authorities and herders, despite the flaws in the Reindeer Act of 1937, it might be best to let sleeping dogs lie.

There are further complications. The federal government owns 96% of all the land in Alaska, a much higher percentage than in any other state. With the passage of the federal Land Policy and Management Act of 1976, the government has changed its course from that of land disposer to land retainer. The old premise that government land should be distributed to those who intend to put it to good use (clearly evident in legislation such as the Homestead Act of 1862) has been superseded. Not surprisingly, many Alaskan residents object vehemently to this policy. In response to this and other complaints, a number of western states have begun what has become known as "the Sagebrush Rebellion," an attempt to challenge federal ownership of public lands. Hence, not only is ANCSA still not fully implemented, but also state-federal land regulations are highly volatile. Moreover, federal range policy in Alaska

is currently in embryonic form. From today's vantage point, it seems probable that government policies implemented for range management in the Lower 48 will also be applied increasingly to Alaska, especially as its population grows and resource use intensifies.

Yet policies devised to satisfy conditions elsewhere cannot simply be transplanted to Alaska equitably. In Alaska the desires of stockmen, environmentalists, state and federal governments must also be balanced with the unique Native minority rights of this state. For those who would help the Natives, it is arguable that more is gained by preserving the general Native monopoly than by increasing the capital investments or research for an industry which would then be designed to benefit majority as well as Native minority herd owners. As the corporate manifestations of herding in Alaska demonstrate, the industry is beset with grave problems which will not be solved merely by larger expenditures. The concept that public land should be developed in the best way for the most people is overly simplistic and has been duly modified by growing environmental awareness. In like manner, Natives demand the introduction of cultural awareness into the range policy equation.

Interesting legal issues surface when one considers the possibility that non-Natives could become NANA shareholders after 1991, for in so doing they would automatically become part owners of the NANA reindeer business, which is reserved for Native ownership according the Reindeer Act. Legally, because the corporation is regarded as one person, it is considered a Native person so long as the controlling interest of NANA remains in Native hands. In effect, a non-Native shareholder (allowed after 1991 by ANCSA), through his association with the Native corporation, would achieve a kind of quasi-Native status with respect to the Reindeer Act of 1937. However, should non-Native shareholders ever gain control over a majority of NANA shares (in principle a distinct possibility), then a real legal conflict would result under the Reindeer Act of 1937. One might well wonder if conflict with the Reindeer Act could be cited as a means to ensure against occurrence of non-Native controlling interest in the corporation. But if the herd of a corporation newly controlled by non-Natives were declared illegal, one can imagine the hypothetical situation where the shareholders, Native as well as non-Native, sought repeal of the Native herding monopoly in order to keep their herd.

The various legal definitions of "Native" confuse the issue considerably. While the Corporation might lose Native status if a simple majority of its voting stock fell into non-Native hands, an initial criterion for membership in the Native corporations according to ANCSA specified a one-quarter Native blood minimum. Moreover, the definition of "Native" given in the Reindeer Act of 1937 speaks only of "whole or part blood."

Meanwhile, on the NANA reindeer range these complicated and abstract issues find concrete expression. Every autumn the caribou reappear to plague the herders throughout the winter. Caribou penetration of the Seward Peninsula is increasing, and those herds west of the NANA herd are also endangered. Each year the NANA herd loses thousands of animals to the caribou. Recently, the net losses have been larger than the spring fawn crop. The NANA Corporation must invest in expensive aerial scouting missions to try to keep abreast of caribou movements, and the more its reindeer enterprise suffers from the caribou, the worse its economy and the less it can afford to protect its herd.

Whether Natives should have special rights or not, whether such rights should be permanent or not, are important and distinct questions not debated here. However, these issues are being determined daily in the constant interplay of laws and policies whose principles are frequently in conflict with each other. Both the State Subsistence Law and ANCSA with its twenty-year exclusivity clause provide Natives with special rights de facto, but not explicitly, or if so, without stipulating such rights permanently de jure. Many questions remain concerning the interpretation and intent

of these laws. It is little wonder, then, that Inupiat herders in the NANA Region regard the position of their 4,000-8,000 head of domestic reindeer facing the threat of invasion by 170,000 caribou as an apt metaphor for the position of the Native minority in Alaska today.

Conclusion

From an anthropological perspective, the situation described above is remarkable whether the conflict surfaces in fact or remains dormant. Two ideologies concerning minority rights come into opposition: one in which ultimate freedom requires the option to phase out Native interests (ANCSA), the other in which a resource is reserved for Natives indefinitely (the Reindeer Act of 1937). Whatever the reasons for its origin, the Reindeer Act of 1937 stands as an example of a Native-based resource right without any phase-out clause. For those who believe in the right of Natives to have such a right, the Act itself may be worth more than all the reindeer in Alaska.

It is noteworthy that the principle of permanent special minority rights applies in Alaska to a piece of legislation (the Reindeer Act of 1937) considered so insignificant by both Natives and non-Natives alike that many in the former category are willing to consider a repeal of the Act, and no one in the latter category has prosecuted its legality in court. To date (December, 1984), only one suit involving the Reindeer Act of 1937 has been introduced: Vogler and Wright, represented by Kennelly and Azar vs. Cecil D. Andrus and the United States Department of the Interior, and that case, filed Nov. 1978 in Nome, Alaska, was dropped. In discussing his old suit, Mr. Kennelly, with an interesting twist (to which I have already alluded), also suggested to me that the Act of 1937 discriminates against Natives in that—because of the positive discrimination for Natives in the Act, whereby reindeer ownership is granted to Natives alone—Native herders cannot use their reindeer property as collateral. However, if the Reindeer Act of 1937 and the Native reindeer monopoly were seriously to be challenged, then this would almost certainly be initiated by non-Natives with major economic speculations, not by Natives or reindeer researchers.

Were the Saami in Sweden to achieve herding rights similar to those granted Alaskan Natives in the Reindeer Act of 1937, it would be considered a major victory of enormous implications for the Saami culture. In the case of the Alaskan Natives, the fight for Native rights is currently being fought on other battlefields. The Reindeer Act receives scant attention. Instead, the parties concerned are concentrating almost exclusively on modification of ANCSA's unfolding provisions, recognition of IRA Councils and subsistence rights. Given the different contexts of reindeer herding in Alaska and Sweden, this state of affairs is quite understandable. In Alaska, it is subsistence legislation over hunting and fishing, with its emphasis on traditional resource utilization, which most closely parallels in ideology and cultural impact the Swedish Reindeer Act of 1971.

Nevertheless, the American Reindeer Act of 1937 deserves careful appraisal by Alaskan Natives for the principles it embodies. Might these principles be used as precedents for other legislation? And might not Native corporations or tribal councils also be entitled to certain permanent special rights? Whatever the fate of reindeer herding in Alaska, the importance of such fundamental questions will continue long after 1991, for they are laden with legal as well as ethical implications extending far beyond the borders of Alaska.

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