

Is Alaskan Statehood a Fraud?

The reader may be tempted to guess that by asking this question is to answer it. Actually, a better premise might be to ask “Was it a *deliberate* fraud?” This can probably never be answered to the satisfaction of an historian, but there is no reason why speculations cannot be made, based upon evidence.

That Alaska is still a *de facto* colony is hard to dismiss, to list just a few of the frustrations: at least sixty percent of its landmass is controlled, if not owned, by the federal government¹; the citizens do not enjoy subsurface mineral rights on their own property, of which perhaps only one per cent is in actual private title²; there are no counties, and with it the concomitant existence of sheriffs, the highest authority within any county³; and road building often requires an act of Congress⁴.

Alaska is as much a state of mind as it is a place. To some, it represents the ability to exercise limitless freedom, where a person can retreat in order to live their life without being pestered by the accouterments of civilization and its relentless bureaucracy; to others, a wilderness to revel in, for its own sake; some look upon it as a sort of outdoorsman’s paradise, an adult Disneyland where hunting and fishing are at a level that could only have been experienced over two centuries ago; a place where the elemental forces of nature can be challenged as a way to strengthen the spirit; or, a place where daring and risk-taking can be rewarded with material abundance and profit.

¹ Alaska Department of Natural Resources: Division of Mining, Land, and Water. *Fact Sheet: Land Ownership in Alaska*. March, 2000.

² Ibid.

³ Mack, Richard *Constitutional Sheriffs and Peace Officers Association*. . <http://www.cspoa.org/> 112 Ridgewood Dr., Fredericksburg, Tex. 78624

⁴ William Yardley and Felicity Barringer. *Swapping Land for a Road to Somewhere Divides Alaskans*. *New York Times*, September 26, 2008.

Into this perception is, of course, the reality. Nothing is ever as good as the imagined fantasies in an imperfect world. But however Alaskans want to view their state, a troubling fact is by now inescapable: that the promise offered by the slogan “North to the Future” has been stalled, even forgotten.

To some, there is a sense that the cycles of boom and bust that have ever accompanied life in a frontier are not necessarily inevitable. Alaska is currently “stuck in neutral”, largely garnering a livelihood from a pipeline now in its dotage, and unable or unwilling to develop new resources that certainly lie quiescent in a vast and great land that, while now thoroughly mapped, is nevertheless still an unknown quantity of potential.

The premise of this paper will maintain that Alaska remains, in essence, a colony of the United States, where its citizens do not enjoy many of the basic rights that others possess in the contiguous 48 states. (And, as an aside, using the term “48 states” is not an oversight, for Hawaii dwells in much the same circumstances as Alaska.) The essence of this disparity was ensconced into the federal act admitting Alaska into the union, an act arguably written, and illegally, by Alaska’s “Man of the Century”, Ted Stevens ⁵; and in the state’s constitution, one that has been often vaunted as a model of efficiency and simplicity, yet which laid upon Alaska the condition of forever disowning sovereignty over federal lands, lands that are held in possession in an arguably unconstitutional manner ⁶.

⁵ David Whitney. *"Seeking Statehood: Stevens Bent Rules to Bring Alaska into the Union."* Anchorage Daily News. August 8, 1994.

⁶ *United States Constitution*. Article I, Section 8, Clause 17 and Amendment 10.

Nothing in history happens by accident. The agitation by Alaska's citizenry for statehood, and the burgeoning public sympathy that grew in its favor⁷, had to be taken into consideration by the corporate interests which have historically controlled Alaska's destiny. One can speculate that if these corporate interests desired to maintain their control over the land, its people and the resources, the crafting of the statehood act and its constitution had to be performed in such a way that, despite *appearances*, the *substance* or essence of colonial control would remain much the same.

This is an admitted speculation, but a fair one, and if there was such intent, it was a success. No historian of Alaska can deny that corporate interests have held Alaska in control⁸. From the Katalla-Pinchot-Ballinger Affair in the early 20th century⁹, the Kennecott Mine, the salmon industry, the warnings of pioneer leader James Wickersham, and many other examples¹⁰, Alaskans have understood that their cycles of boom and bust have not been within their control.

On April 11, 1955, former Governor Ernest Gruening addressed the members of the Alaska Constitutional Convention at the University of Alaska in Fairbanks. It may have been the most important speech in Alaskan political history. Entitled *Let Us End American Colonialism*, it cited chapter-and-verse of the *Declaration of Independence*, making plausible comparisons between the mistreatment endured by the American colonies in 1776 at the hands of the British Empire, with the Alaskan experience of nearly ninety years with the federal government.¹¹

⁷ Lynne Snifka.. "No. 49 Turns 50." *Alaska Magazine*, May 2008, p. 32.

⁸ Stephen Haycox. *Alaska: An American Colony*. University of Washington Press, Seattle, 2002, p. 245.

⁹ *Coalfields of Katalla*. <http://katallaproject.tripod.com/id4.html>

¹⁰ Haycox, 245.

¹¹ Ernest Gruening. *Let Us End American Colonialism*.
<http://xroads.virginia.edu/~cap/bartlett/colonial.html>

Statehood, then, was touted as the great panacea from the frustration of federal control of Alaska's economic, political and cultural destiny. At the time, its achievement was seen as a great victory for self-determination. The development of the Trans-Alaska Pipeline seemed to bring about the realization of that dream.

Yet, evidence of corporate sleight-of-hand may be seen in the career of Ted Stevens. After earning a law degree at Harvard, Stevens worked with a private law firm that handled natural resource issues.¹² Unable to secure employment in the Department of the Interior, he moved to Alaska to work for a private law firm, which had connections with the Usibelli coal interests, for whom Stevens had already performed yeoman work. With advantageous connections that puzzled and enraged many local Alaskans, Stevens just six months later was appointed district attorney over longer-serving and more experienced Alaskans.¹³

Four years later, Stevens had obtained an Interior job back in Washington, DC. He was tapped to promote and write much of what eventually became the statehood act, under circumstances that he himself later admitted constituted an illegal conflict of interest.¹⁴

And what did this statehood act mandate? With sixty-five percent of the state under federal ownership, the critical question of the development of mineral resources could never be within Alaska's control. It requires an act of Congress to open most of the state's tremendous resources, and an act of Congress means persuading public opinion in

¹² Whitney, David. "[The Road North: Needing work, Stevens Answers Call to Alaska.](#)" *Anchorage Daily News* August 9, 1994.

¹³ Donald Craig Mitchell. (2001). *Take My Land, Take My Life: The Story of Congress's Historic Settlement of Alaska Native Land Claims, 1960–1971*. Fairbanks, AK: University of Alaska Press, p. 225.

¹⁴ Charles Homan. "State of Dependence: Ted Stevens' Alaska Problem --- And Ours". *Washington Monthly*. <http://www.washingtonmonthly.com/features/2007/0711.homans.html>

areas that can never properly comprehend Alaska's geography, demographics, economics, or climate. Furthermore, it is easily manipulated by the gatekeepers of public opinion, which in turn is communicated to the Congress.

The cliché “piling mistake upon error” rings true with regards to the operation of the federal government. Like two parallel lines which suddenly diverge, even if only slightly, the passage of time demonstrates that a mere jog of only a half-degree will, in time, create a yawning gap obvious to all. To begin our quest, let us investigate a fundamental constitutional error that affects Alaska, an error that has built up its own tradition and momentum lasting well over a century, to the point where few even bother to investigate the merits of the controversy: federal property.

Article I, Section 8, clause 17 of the U.S. Constitution gives license to the federal government's possession of real property:

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.¹⁵

In order to properly understand this clause, it is maintained by many constitutional scholars that the federal government can only own the District of Columbia, post offices, federal buildings, military docks, factories and storage warehouses. The debate over “loose” versus “strict” construction of the Constitution often comes into play here. However, a reading of the 9th and 10th amendments and the Federalist Papers can assist us: it is to be interpreted “loosely” in regards to individual

¹⁵ United States Constitution.

liberty [Ninth],¹⁶ and “strictly” in regards to federal power [Tenth]¹⁷. James Madison, known as “The Father of the Constitution,” confirmed this in Federalist #45 when he stated that federal powers were to be “few and defined”.¹⁸

How, then, did the federal government come to own the millions of acres in national parks, forests, wildlife refuges, monuments, battlefields, wild and scenic rivers, and the like? For this, we must look into the timing of the creation of the world’s first national park, Yellowstone, in 1872¹⁹, done in the midst of the era known as Reconstruction, just seven years after the War Between the States subjugated not only states’ rights, but also much of the Constitution. And while it must be admitted that the glories of western scenery and wilderness were not very accessible prior to the construction of the transcontinental railroad, or until the relocation and “pacification” of native tribes, thus making tourism possible, it would have been unthinkable that such an obvious violation of Article I, Sec. 8, Cl. 17 would have been attempted *prior* to the war.

The fact that national parks became and remain *popular* is different than finding them *constitutional*. The Progressive Era commenced to build upon this beachhead, with the creation not only of new parks, but also the National Forest system²⁰, and then wildlife refuges²¹ and monuments²². Western states were delivered increasingly into federal control, making the development of resources a matter of corporate influence in

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ James Madison. “Alleged Danger from the Powers of the Union to the State Governments Considered.” *Independent Journal*, New York, January 26, 1788.

¹⁹ Bruce Gourley. *Yellowstone Net: The Early Years*. <http://www.yellowstone.net/history/earlyyears.htm>. 2005.

²⁰ Gerald W. Williams. *The USDA Forest Service: The First Century*.

http://www.foresthistory.org/ASPNET/Publications/first_century/sec2.htm

²¹ United States Fish and Wildlife Service. <http://www.fws.gov/refuges/history/>

²² National Monuments Proclamations Under the Antiquities Act. <http://www.cr.nps.gov/history/hisnps/NPSHistory/monuments.htm>

Congress, an influence that could never be matched by individual citizens. Yet, it was forestalled because of many factors, such as the existence of the gold and silver standard, the Homestead Act²³, ranching and the industrialization of America. This made it possible for prospectors, merchants, settlers and entrepreneurs to gain property in the west in a meaningful way, thus obscuring temporarily the long-term effects of the policy.

However, written into the Alaska state constitution is a remarkable segment found in Article 12, Section 12, where the state and its people, as a condition of joining the union, acquiesce in relinquishing to the federal government the usurpation of Article I, Section 8, clause 17, thus:

The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.²⁴

And further, in Section 13 of the same article:

All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people.²⁵

²³ National Archives. *The Homestead Act of 1862*. <http://www.archives.gov/education/lessons/homestead-act/>

²⁴ State of Alaska. *The Constitution of the State of Alaska: Fiftieth Anniversary Edition*. 2009.

²⁵ Ibid.

Just what properties and rights would be reserved to the federal government, outside of the “forts, magazines, arsenals, dockyards and other needful buildings” would not be determined for over two decades until the passage of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980.

The ANILCA controversy of 1978-80 was often referred to as “D-2” at the time, in reference to the Alaska Native Claims Settlement Act (ANCSA) Section 17 (d) 2, authorizing the federal government to select its lands.²⁶ After President Jimmy Carter failed to obtain legislation at the end of the Congressional session in 1978, he utilized the Antiquities Act of 1906,²⁷ and withdrew 56 million acres of Alaska on executive authority. This ignited raging controversy within the state and, from some, cries for Alaska’s secession.

In this, U.S. Senators Mike Gravel and Ted Stevens were at opposite purposes, and created a puzzling situation of which only the passage of time can provide a clearer view. Gravel, the liberal Democrat, was actually fighting *against* ANILCA, while Stevens, the purported conservative Republican, took a pass. Gravel, ever the unpredictable maverick, annoyed many senators with his quorum calls and amendments in an attempt to delay or prevent the bill. He assessed the impact of ANILCA in this way:

“While we in Congress may be reading the provisions one way now, the language ambiguities and regulatory tools are all laid out in the bill ... frankly, I am expecting the worst ... the use of the massive conservation system designations to block any further exploration or development [including recreational] of these lands, and on non-federal adjacent lands. I see our state throttled down economically over the next decade ... this legislation goes far beyond what is appropriate and proper for protection. It is a question of balance. This bill does not achieve that balance ... I feel we are doing the State of Alaska a great injustice, and ultimately we are

²⁶ Cindy Allred, et al. *ANCSA at 40*. <http://ancsaat40.org/>

²⁷ Cornell University Law School, Legal Information Institute. Subchapter LXI, par. 433. *American Antiquities*. http://www.law.cornell.edu/uscode/16/uscode/16_00000433----000-.html

doing the nation a great injustice, by not permitting the resource contributions which Alaska lands could make in meeting the full spectrum of desire and demands of human existence.”²⁸

Stevens, meanwhile, maintained that the votes in Alaska’s interests just were not possible, and settled for playing a losing hand in order to mitigate its effects. As years passed, however, it became obvious that even Stevens’ hopes regarding the “mitigation” of ANILCA had, as Gravel predicted, come to naught, and Stevens himself admitted it. In the preface of a book edited by J.P. Tangen, entitled *A Report to the People of Alaska on the Land Promises Made in ANILCA – Twenty Years Later*, Stevens wrote:

“Alaskans have continued to fight for what was agreed to in the act. From ANWR to Kantishna to Glacier Bay, wave after wave of assaults on the act’s protections [for development] have challenged the agreement.”²⁹

At this point, a thoughtful observer must sit back and look at the situation that only time can provide, as if it were a painting that cannot be properly viewed until one steps back a certain distance: Ted Stevens, author (or likely co-author) of much of the statehood act ... who refused to battle ANILCA ... and then came to “rescue” Alaska with titanic influxes of federal monies in order to prop up the economy ... bringing Alaska under the dependency and control of the federal government ... which is precisely what Gruening wanted to free the new state from in his historic *American Colonialism* speech ... and Stevens touted as Alaska’s “Man of the Century.”

Gravel’s antics, however, were able to delay the legislation, which forced the hand of Carter, thus unilaterally invoking the Antiquities Act in a way it was never intended, expanding executive power, and locking up Alaska’s resources for the sake of

²⁸ J.P. Tangen. *A Report to the People of Alaska on the Land Promises Made in ANILCA – Twenty Years Later*. <http://www.nwma.org/pdf/march2001bulletin.pdf>. March 2001.

²⁹ Ibid.

the environmental lobby. In the subsequent Congress, ANILCA confirmed Carter's withdrawals and added to them, while Gravel was defeated in the Alaska open primary.

It is fair enough to accept Stevens' purported reasons for approving ANILCA, but then it is also fair to speculate that Stevens would not try to undo grandiose federal ownership, which he himself had created when writing the statehood bill when employed in the Interior Department. Thus we can now come to understand why Stevens, in order to prop up Alaska's economy that could now not sustain itself, turned to federal largesse, and with it, federal dependency and control.

This reached a new level of aggravation with the subsistence controversy. Ostensibly to protect subsistence native hunting and fishing rights, Stevens had inserted into ANILCA a mandate that the state legislature grant priority to rural subsistence hunting and fishing in times of natural scarcity. The *rural* designation was critical, for in the new era of civil rights, race could never be permitted as a determining factor in preferential treatment. However, rural was not defined, either in the mandate or in the state statute. Furthermore, Alaska's constitution had its own mandate: that fish and game resources must be managed according to the principle of "common use".³⁰ Thus, in the *McDowell* Case of 1989, the rural priority was struck down by the state supreme court.³¹

ANILCA had already mandated what would occur if the state refused rural subsistence priority: that the federal government would take over the management of fish and game on federal lands, something that no other state was subject to.³² But first, to avoid this, an effort to amend the constitution was made in a special session in the

³⁰ State of Alaska. *Constitution*. Article VIII, par. 3.

³¹ University of Alaska Anchorage, Institute of Social and Economic Research. *McDowell v. State*. <http://www.alaskool.org/projects/subsistence/timeline/McDowell.htm>. 2004.

³² Alaska Humanities Forum. History and Cultural Studies. *Alaska: Yesterday, Today and Tomorrow: ANILCA*. <http://www.akhistorycourse.org/articles/article.php?artID=431>. 2004.

summer of 1990, but failed to acquire the necessary 2/3 majority of the legislature before sending it to the people as a referendum. Thus, federal subsistence boards were created in subsequent years, and Alaska became unable to hold final authority of its own fish and game upon the vast majority of its lands.

More examples of “colonialism” can be found in the landmark 1994 lawsuit filed by the state under then-governor Walter J. Hickel. As such, the statehood act promised that there would be a 90/10 split between the state and federal government on all royalties from oil, gas and coal resources developed on federal lands. Hickel filed a landmark and eventually futile lawsuit, which was dropped by his successor Tony Knowles, demanding \$29 billion in damages due to the ANILCA legislation that had removed any potential for development on the federal lands.

This leads us, regretfully, to Prof. Stephen Haycox, whom some consider the “court historian” of the Anchorage Daily News. Haycox’s presumption is manifested in his disdainful analysis of Hickel’s lawsuit of 1994. Haycox claims that Hickel had an elementary understanding of federal sovereignty, with antebellum concepts akin to John C. Calhoun. Yet Hickel himself surrendered perhaps the most vital constitutional point in the suit, stating that he did not dispute that the federal government had the right to lock up Alaska’s federal lands ... but if they did, they would have to pay for it.³³

Haycox pontificates: “Hickel apparently did not realize that Congress must be free to change its legislation to conform to changing public opinion, to changes in society’s will.”³⁴

³³ Mac Metcalf, and Kathy Dye. *Broken Promises*. [Video]. Alaska Department of Law and Alaska Department of Revenue. 1994. 4:00 minutes.

³⁴ Haycox, p. 315.

This author does not dispute that Haycox's analysis is indeed held by most constitutional scholars who adhere to "loose" construction, but it begs the question, as it has so many times in American political history: what good is a constitution, or a law, that is interpreted upon the shifting winds of public opinion?

Historians John Whitehead and Claus-M. Naske, however, pointed out that one of the primary objections to Alaskan statehood in the decade leading to it, was that the state would not have the revenue base to govern itself. Time and again, statehood bills were shot down on this contention, as constitutional convention secretary Katie Hurley pointed out as well.³⁵

In addition, overwhelming testimony has been given that the statehood act was indeed a contract that could not be unilaterally broken by either party. Senator Hugh Butler of Nebraska, a staunch opponent to Alaska statehood until the final months before the vote, made this clear in a speech on the Senate floor, according to Hickel.³⁶ Cheri Jacobus, Attorney for Federal Relations in the Alaska Department of Law, said that the act was published in newspapers as such,³⁷ as did former Lt. Governor Jack Coghill.³⁸

Jacobus emphasized that the revenue split between the federal government and Alaska would be granted on a 90% basis in Alaska's favor, unlike other federal lands in the Lower 48, where it is granted on a 50/50 basis. President Eisenhower's Interior Secretary Fred Seaton, criss-crossing Alaska before the referendum, explained the bill in

³⁵ Metcalf and Dye, 3:00 and 10:30 min.

³⁶ Ibid., 20:00 min.

³⁷ Ibid., 18:00 min.

³⁸ Ibid., 21:00 min.

public forums, and promised "... the additional costs of statehood will be more than offset by additional revenues made available."³⁹

This term paper could continue endlessly in citing examples of the fraud of Alaska's purported statehood, but must be concluded. The reader can determine for themselves if the fraud was deliberate or not. Evidence is not proof, and as such the question will never be resolved to everyone's satisfaction. However, the purpose of history is not for the telling of a good story, but for instruction, and it is well that the debate should continue.

And, many Alaskans rejoice in federal control, seeing its hand as a beneficent if clumsy instrument to preserve wilderness, wildlife and, certainly native property, a topic that cannot be addressed here. The changing demography of Alaska certainly has much to do with this, and it will be left for future generations to decide how to manage the labyrinthine complexities of federal, state, native, corporate and entrepreneurial interests, making a new sort of life in the Great Land.

³⁹ Ibid., 20:15 min.

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