"What Rights to Land Have the Alaska Natives?:
The Primary Question" - May, 1966

by William L. Hensley
with May 2001 Introduction

I wrote the paper "What Rights to Land Have the Alaska Native: the Primary Issue" for a class in Constitutional Law that was taught by Judge Jay Rabinowitz at the University of Alaska. This was a graduate level course that just happened to be taught the spring semester in 1966. I had just graduated from George Washington University (GWU) and had no idea what to do with my life. I had started college in Fairbanks after high school, moved on to GWU, got a B.A. in Political Science and had no clear idea what career would be appropriate.

Growing up in Kotzebue, like many Inupiat children, I had been taught nothing about our history, language or culture through grade school and certainly nothing in the boarding school I attended in Tennessee. The system conspired to make sure we didn't retain anything from our heritage and pushed the reading, writing and history of the dominant culture.

It was this short paper that helped me to understand, that by 1966, the Alaska Native people were in grave danger of losing all of their traditional lands. The little research that I did, with the assistance and encouragement from Judge Rabinowitz, provided me the insight I needed to take action to save what we could. It was as if scales were lifted from my eyes at the conclusion of that spring semester. If the state land selections continued, it was clear that the hope of retrieving Native land, or getting compensation, would perhaps never come. I knew we had to act and to act quickly.

This paper helped me to speak to others and to make a visit to Kotzebue to begin the land claim in what is now the NANA region. It also propelled me to join others in the formation of what became the Alaska Federation of Natives, in October of 1966. If I'm not mistaken, I believe Charlie Edwardsen made copies of my paper to distribute to the first convention of AFN. In spite of it being a short paper, it outlined a small bit of American Indian history and their treatment by the United States; some of the resulting laws based on the treaties; some of the key points in Alaska Native history such as the Treaty of Cession, the Organic Act of 1884, the Indian Citizenship Act, the Indian Reorganization Act, the Indian Claims Commission Act and the Statehood Act. These were virtually unkown by Alaska Natives in 1966 except for the Tlingits who had been in court since the 1930's seeking compensation for the Tongass National Forest.

I strongly urge Alaskans to require the teaching of Alaska history in our public schools. This will help us to understand the nature of the issues that we face today and in the future.

Willie Hensley Iġġiaġruk , May 2001

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INTRODUCTION

A controversy of immense proportions is rapidly coming to a head in Alaska. It is a situation which has lain dormant (except for sporadic outbursts) since Alaska was purchased from Russia in 1867. This problem has been skirted by Congress, alternately grappled with by the Department of Interior then dropped to allow the furor to settle, kept Alaskan political leaders frustrated, and the courts have ruled time and again - but never with finality nor clarity. The problem is simply this: What are the rights of the Alaskan Natives to the property and resources upon which they have lived since time immemorial?

Two extreme positions may be taken on this issue by those unacquainted with the legal complexities of the problem. The two positions are held by both Natives and non-Natives. One hold that the Alaska aborigine is simply a citizen of the United States and of Alaska with no more rights than any other citizens – therefore has no more right to land than Alaskan settlers arriving later. The opposing view holds that the Alaskan Indians, Eskimos, and Aleuts – due to their habitation of and use of natural resources have an “aboriginal title” to land and its products which cannot be deprived them without their consent.

The problem is, of course, much more complex than is indicated above. It is politically volatile, an administrative tangle, and a judicial granny-knot which has been clouded by various opinions in courts at different levels.

This paper will trace the general development of the controversy since the acquisition of the Territory in 1867, attempt to clarify the issues through the presentation of court rulings, Interior Department decisions, and Congressional acts, and indicate more recent developments which appear to be leading up to a final solution of the problem.

The following statement reflects most cogently the mood in which the Alaskan Native seeks to resolve the land question - after a century of governmental indecision:

“They are beginning to speak, after the long silence. And they are beginning to grow angry and impatient. It is a situation the United States government must heed closely, not only for basic human reasons but for the international implications as well.

“***Their future is perhaps the most critical problem the State of Alaska faces today.”[1]

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THE ALASKAN NATIVE AND THE TREATY OF CESSION, 1867

At the time of the Alaska purchase in 1867, there was an estimated total of 35,000 Alaska Natives living in the ceded territory[2] having been reduced from an approximated 74,000 in 1740 by disease, starvation, and hardship[3]. The Eskimos, Indians, and Aleuts composed from 95 to 100 per cent of the total population in the five geographic regions at the time of the change over and up until 1880[4], at which time came a great influx of non-Natives in search of resources such as whales, furs, and gold.

There was little mention in the Treaty of Cession in regard to the large Native population concerning the definite status of their citizenship and nothing at all about the property rights of the aborigines. The Treaty provided that:

The inhabitants of the ceded territory, ***if they should prefer to remain in the ceded territory, they, *with the exception of uncivilized native tribes* shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. *The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.*[5] (emphasis added)

Thus, from the beginning of American occupancy of Alaska, the status of the Natives in regard to land was left in limbo. Their citizenship, the opposite side of the coin in private land ownership, was also left in a highly confused state in that “uncivilized native tribes” were excepted from the enjoyment of privileges, rights, and protections granted the white citizens, Russians, and Creoles who chose to remain in Alaska and become citizens.

The area of greatest interaction between Natives and non-natives (the military government particularly) took place in Southeastern Alaska where the capitol of Sitka

was situated and most of the white population lived. It was from the experiences obtained in dealing with the southeastern Native – primarily – Tlingits and Haidas – that much of the information upon which official thinking and action in regard to Alaskan Natives was based. Indeed, it is doubtful that many Natives were aware that their citizenship outside of their own tribal groups was being launched into controversy and their label changed from "Russian" to "American".

It must be remembered that each aboriginal group had a past and a culture reaching hundreds and thousands of years beyond the point of contact with what the Discoverers of Alaska termed their "civilized" homelands. These Native cultures each had their patterns of civilization and their concepts of property both material and non-material. In regard to land, the use of it and concepts of ownership varied. The laws governing usage and occupancy of land among the major ethnic groups were unwritten, but were generally observed and accepted. A close relationship to the land and its resources is a distinguishing characteristic of Alaska Natives, who, in order to survive, had to know intimately the terrain, seasons, and moods of nature.

The Indians of Southeastern Alaska who had to make the first response to intrusions upon their fishing areas and rights-of-way by the new overlords were sorely disturbed, yet impotent to change the course of developments without the knowledge of the civilization that had overtaken them. Force alone was insufficient – for purpose of law and precedent, demands had to wait the ability to communicate in writing and recorded speech.

Very misleading to those in Washington who were responsible for the administration of affairs in Alaska (not mentioning the ignorance of the people and area) is the descriptions of the Southeastern Indians and use of the term "Native" in official reports. Not having the opportunity to observe the varying habits and customs of the different groups, the military and civil administrator's reports contained misleading statements to be held applicable to all of Alaska generally. For instance, in their zeal to "civilize" the Native of the Southeast region one administrator reported that:

"Their conditions are entirely different. Their habits of life are unlike the habits of the Indians of the plains. They are more intelligent, settled, and reliable. They live in fixed abodes and are accustomed to independent and self-sustaining ways. They have already made great strides toward the American civilization."[6]

The fact is that most of the Eskimos and the Interior Indians were migratory – moving with the seasons and not habituated to "fixed abodes" as were the more sedentary Tlingits and Haidas. Yet legislation and policy applied to all Alaska Natives was passed on the basis of these reports.

Discontent arose among the Indians of the Southeast as the military governments degenerated into outposts of violence, drunkenness, and maladminstration. More and more, the Indians felt the disintegration of their people and the deprivation of their lands. Bancroft, in his renowned history of Alaska writes that:

"The discontent arose, not from any antagonism to the Americans, but from the fact that the territory had been sold without their consent; and that they had received none of the proceeds of the sale. The Russians, they agreed had been allowed to occupy the territory partly for mutual benefit, but their forefathers had dwelt in Alaska long before any white man had set foot in America. What had not the seven and a half million dollars been paid to them instead of the Russians?"[7]

A very significant aspect of Federal relations with the Alaska Natives is the fact that there were no treaties signed with them. The United States had signed approximately 370 treaties with various nations, tribes, and bands of Indians by 1871,[8] the year in which executive agreements became the methods of finalizing Indian-Government settlements on the mainland.

Furthermore, Alaska has never been declared "Indian country" and has therefore been excepted from Federal laws or executive actions applicable to such areas.[9] In this respect, serious problems were avoided since laws governing Indians on the mainland would have been inapplicable to conditions in Alaska.

The United States also did not recognize officially the tribal relations among Alaskans Natives, which ahs been the basis of official interaction between the Government and Indian people throughout America. In fact, the difficulties that Congress and the American society has had in assimilating the Indian people into the general life of the State has been their tribal organization and loyalty to it, and the treaties which were entered into and signed – to be changed, it was believed by the Indians – only with their consent.

The Treaty of Cession thus left the Alaskan Natives in an anomalous position. They could not be citizens until they were "civilized", yet no criteria for determination of their achievement was indicated. Their rights and responsibilities were to be "subject to such laws and regulations as the United States may from time to time, adopt in regard…to them." More important, to the property-minded, land rights were undelineate and were also left for future consideration. The position of the Natives, in short, was viewed by the government much in the light of one observer testifying before the Committee on Territories; "We bought them from the Russians and we assumed the obligation of taking care of them."[10]

THE ORGANIC ACT OF 1884 AND THE PROBLEM OF ABORIGINAL RIGHTS

Alaska remained under military rule until 1884 when Congress finally provided for a measure of civilian government – though the act did not grant the territory a legislature, a delegate to Congress, or general land laws.[11]

The Act of May 17, 1884 provided the basic protection of lands for the Alaskan Natives but in the same sentence, allowed for the development of the present title controversy by leaving this question open for "future legislation by Congress." The pertinent paragraph – section 8 – states that:

Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress."[12]

Much of the controversy over Native claimed lands now center on the interpretation of the words and phrases used in the above paragraph. The Native inhabitants of Alaska varied in their use of land, but the greater number (the Eskimos and Indians) were a migratory people, the seasons, the movement of game, and the necessity of game conservation required periodic habitation and use of extensive areas. In any claims put forward, the Natives would undoubtedly have to claim wide areas which were the traditional lands used by their forefathers.

The provisions for future legislation for acquiring title has never been wholly accomplished to this date. There is an argument stating that the Act of May 17, 1906[13] extending the Indian Allotment Act of 1887 to Alaska (of which more will be said later) was the promised legislation – however, even this piece of legislation was far from final since most Alaskan Natives were not citizens at this time, were unaware of the legislation enacted on their behalf, and did not provide for non contiguous selections.

During the years following the purchase of Alaska and more rapidly in the 1880's, Alaska's wealth in furs, fish, and gold drew a greater number of whites than ever before.[14] The mode of living began to change – with the arrival of missionaries, fur traders, and schools the more sedentary life was adopted by degrees and village life started a metamorphosis which is still in progress today.

A powerful argument against large Native claims based on aboriginal use and occupancy has developed with is derived from the changing conditions of the method of livelihood now prevalent. The hunting and fishing economy among many,

however, is still the basic source of life – it will continue into the indefinite future. The use of land for industry and economic pursuits is just now becoming a part of the Native thinking due to pressures of our industrial society which demands "productive" use of natural resources. In order to satisfy those who feel this way, the Native claims include projected developmental plans if and when the claims are awarded.

The courts have held varying positions on the extent to which Native claims may be considered valid based on customary use of the resources. An Alaska decision in 1904 held that the:

"Act of Congress, May 17, 1884, for the protection of the property rights of the Indians of Alaska *held* to extend the lands claimed and occupied by them collectively in their villages and such other places as were occupied by them for fishing, hunting, and other like purposes."[15]

A Court of Claims decision in 1963 relating to Indians of mainland America further held that:

"Indian title includes not only area in which the tribe has permanent villages or habitations, but also seasonal or hunting areas over which they have control even though those area are used intermittently or seasonally."[16]

Although the courts have ruled time and again in relation to aboriginal lands in Alaska, it is recognized that congress ultimately reserved to itself the responsibility of deciding the issue. The courts nor the Secretary of the Interior can dispossess Alaska Natives of lands.[17] Because of the distinction placed between civilized and uncivilized Alaskan Natives, there has developed antagonism in certain areas of the state where it appears that the "uncivilized" Native was being overprotected by the Federal government in land use to the disadvantage of white businessmen.[18] Nevertheless, it is recognized that:

"The aboriginal tribes of Alaska have a right to occupy the public lands of the United States therein subject to the control of both lands and the tribes by the United States."[19]

The Organic Act of 1884, however, is the foundation upon which Alaskan Native claims to land are based. It is the basic law which promises a final settlement – the question of whether the provision that they "not be disturbed" in their possession of lands need not be discussed here.

THE ACT OF MAY 17, 1906: THE NATIVE ALLOTMENT ACT

Congress, in 1887, in one of its periodic bursts of activity in the Indian field, passed an act designed to allow Indians in the mainland to become private, agricultural landowners. They sought to break up the traditional tribal ownership of lands, to civilize them by imbuing them with the respect for private ownership, and thereby to assimilate and integrate them into the American melting pot. This act was known as the General Allotment Act.

In 1906, Senator Nelson introduced a bill in Congress which was passed without debate extending the provisions f the General Allotment Act to Alaskan Natives.[20] Up to this time, there was no way in which title to land could be obtained unless a Native had been somehow recognized as being "civilized" and therefore a citizen capable of holding property.

The Native Allotment Act provides authority for the Secretary of the Interior: "***to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska…to any Indian, Aleut, or Eskimo of full or mixed blood who resides in and is the head of a family, or is twenty-one years of age."[21]

This land was to belong to the allottee and his heirs in perpetuity, inalienable, and nontaxable, "except as otherwise provided by the Congress." Furthermore, the cultivation aspect and other requirements of the homestead laws applied to whites did not apply to Natives.

The act has been amended several times, but the most significant recent change occurred in 1965 when there was an attempt to allow Natives to obtain title to their wide-ranging use of land – instead of the usual 160 section, the amendment provided that:

"A Native may be granted a single allotment of not to exceed 160 acres of land. All the lands in an allotment need not be contiguous but each separate tract of the allotment should be in reasonably compact form."[22]

This change still did not eliminate the inevitable – the Government still was dealing with the Native on an individual basis and was not allowing for the tribal nature of various groups, their common conceptions of land use, and had made a significant retreat from earlier proposals designed to allow the Natives sufficient large areas for the continuance of their hunting, trapping, and fishing economies.

The use of the word "tribe" in the Treaty of Cession, the Organic Act of 1884, and other laws recognized the tribal nature of Alaskan Natives although it was, in some cases, indistinct and not as easily recognizable as most tribal structures the Federal Government has to deal with.

The following excerpts from various court opinions at different levels reflect judicial usage of the term "tribe", indicating that the protection given by the government was not limited to individuals but to whole groups of Natives.

"The uncivilized native tribes of Alaska are wards of the government; but United States has the right, and it is its duty, to protect the property right of its Indian wards."[23]

"Indians of aboriginal tribes in Alaska will not be disturbed in possession of land held since May 17, 1884 and June 6, 1900."[24]

"…the general laws passed by Congress in relation to the Indian tribes of the United States extended to Alaska, and the uncivilized tribes there are entitled to the same rights, privileges and immunities under such laws as are the aboriginal tribes within the United States." [25]

The benevolence of Congress and the Interior Department in their attempts to secure satisfaction for individual claimants of aboriginal lands merely postponed decisions which had to be made on claims put forth by tribal, village, or regional groups of Natives.

The Native Allotment Act of 1906 and the subsequent amendments, though designed to bestow ownership of land to Natives, failed miserably. Failure to appropriate funds after the passage of the original act for the necessary surveys, investigating the claims, and recording the allotments [26] practically etherialized what hopes there might have been for the 26,000 Natives existent at the time to obtain land after the passage of the legislation.

It was left completely up to the Natives to take the initiative in securing an allotment. Without knowledge of the English language nor a government representative to explain the law, it is no surprise that there are only 360-400 allotments[27] recorded at the Bureau of Land Management out of a Native population today of nearly 50,000. There is still grossly inadequate advice, indeed in any, for the large majority of Eskimos, Indians, and Aleuts on the procedures and regulations of the Allotment Act.

NATIVE TOWNSITES

Besides the Native allotment, another method by which Alaska Natives may obtain title to land upon which they live is the particular provision relating to townsites on public lands. The President, through the Secretary of the Interior has the

authority to reserve public lands for townsite purposes, either on his own motion or by petitions requesting the reservations.[28]

An act passed in 1926 provided for Alaskan Indian and Eskimo occupants of land in townsites to obtain a restricted deed to the land they occupy.[29] There was to be no payment for purchase or fees for the publication and proof as is commonly required with ordinary trustee townsites. The lots were to be nontaxable, inalienable (if held by restricted deed), and

The Bureau of Indian Affairs through the Area director must first determine the "competency" of the applicant for an unrestricted deed before the property can be sold to a third party. This restriction is applied both to the Native allotments and to townsites for the protection of those who are unable to protect themselves from unscrupulous buyers who might take advantage of the Native's property and ignorance of the law to obtain the property. There have been very few applications for unrestricted deeds [30] – which is either a reflection of the lack of knowledge about the status of their lots or a desire to maintain inalienable tax-free property.

One author feels the Bureau of Indian Affairs is responsible for the perpetuation of restricted deeds,[31] but it appears that the knowledge of deeds, townsites, surveying, and business in general is limited among most Alaskan Natives and private property *per se* is not a commanding aspect of their cultures – which suggests that restricted deeds may be held due to disinterest or illiteracy.

The procedures for determining competency are apparently informal – a few leading Natives are asked by a B.I.A. official if a particular person is "capable of running his own affairs" – if so, he is ruled "competent", thus able to sell his land.

The restricted deeds held by Alaskan Natives have been ruled constitutional by an Alaskan court.[32] Furthermore, the power of the State over land held by such deeds is practically nil, as presently, "the restricted property of Indians is subject to the plenary control of the Federal Government."[33]

The provisions of the Native Allotment Act and the Native Townsite Act allow Natives to secure property upon which they live as individuals. Of course, a whole community of Native people could secure a Native townsite, as in the case of Stevens Village and Grayling but the lands are still held by individuals. The following section will discuss the power of the Interior Department to set up areas for the use and occupancy of Indians and Eskimos as groups.

RESERVATIONS

In 1934, Congress after a lengthy study of Indian conditions throughout the States passed a monumental bill known as the Indian Reorganization Act,[34](Wheeler Howard Act). One of the most significant provisions of this legislation repealed the Allotment Acts which had severely cut down the amount of land held by Indians. Millions of acres of their lands have been obtained by non-Indians just as quickly as the Indians were able to obtain title to their property after the twenty-year protection provided by the Federal Government. In a simple transaction for a very low price, the Indian would part with his land and be left landless. It was in response to this situation that Congress gave to the Secretary of the Interior the power to create new reservations and to enlarge existing ones. It also provided that no land on Indian reservations would be allotted in severalty.

Supplementary legislation two years later extended the provisions of the Indian Reorganization Act to Alaska. It gave the Secretary of the Interior power:

"***to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of the Indians and Eskimos by section 8 of the act of May 17, 1884…or which has been heretofore reserved under any executive order and placed under the jurisdiction of the Department of the Interior or any bureau thereof, together with additional public lands adjacent thereto or any other public lands which were actually occupied by Indians or Eskimos***"

Thirty percent of the Indian or Eskimo residents must have ratified the reservation at a special election before it could be instituted.[35] The bill, supported by Alaskan delegate to Congress, Anthony Dimond, became law on May 1, 1936.

The idea of setting apart reservations for the use and protection of aboriginal Americans in Alaska seems to have been derived from the experiences of Congress in dealing with Indians historically. Many treaties were signed giving to tribes ownership and control of lands and its resources with limitations placed in the hands of the Secretary of the Interior.

In 1903, the Senate Subcommittee on Territories visited Alaska and held hearings in thirteen towns investigating conditions which would enable Congress to pass appropriate legislation.[36] With the influx of whites in the pursuit of gold came diseases and whiskey which proceeded to wipe out Native villages at a rapid rate, and, several witnesses before the four Senators who made up the subcommittee gave testimony recommending reservations as a measure to protect the Indians and Eskimos. The following conversations indicate early thinking on the subject:

"Senator Nelson. What is their (Indians) conditions now?

"John C. Barb of Nome. … I think that if they were set apart in a sufficiently large portion of Alaska, and I think it is large enough for some of it to be set off for the Indians and allow them to pursue their own life in their own way that they would be self-sustaining and prosperous. I think that it is possible and feasible to set apart a portion of this Territory for the Indians which will never be gold-bearing country.

"Senator Nelson. They would have to have a reservation where they could get fish and game?

"John C. Barr. Yes sir.[37]

* * * * * * * * * *

"Senator Nelson. Do you think that if the Government gave them a good big reservation they would get along all right?

"Peter Kokrine, an Indian. I think the Government would have to take care of the reservation."[38]

One of the resolutions adopted by the city of Nome contained a statement recommending that "immediate action be taken by Congress to the end that suitable reservations be set aside for the Native Eskimos of Northwestern Alaska, and suitable buildings erected in which they may be housed and maintained under the supervision of established agencies."[39]

Thus, with the implementation of the provisions of the Indian Reorganization act to Alaska, the Secretary of the Interior was empowered to select certain areas as Native reservations. He still maintains that power, but the experience of the 1940's and the furor caused by Secretary Ickes proposal for setting up a hundred new reservations caused one writer to comment that "it seems doubtful that the executive branch would again attempt to affirm aboriginal … claims in Alaska via the reservation route."[40] There are, however, such reservations in existence.

There are certain characteristics about Alaskan reservations which differentiate them distinctly from reservations held by Indians based on treaties or those based on acts of Congress. Alaskan reservations created by executive order are "subject to the unfettered will of congress,"[41] and are not permanent or nonremovable as are tribe controlled lands held by treaty. Tribal consent must be obtained before the legal status of the lands is disturbed. Alaskan reservations created by the Secretary of Interior do not grant title to Natives either as groups or individuals, nor does it grant permanent rights.[42]

Relevant to the oil-ladened lands of the Tyonek Reservation and to the possible settlement in the future of other Native land claims is that lands "withdrawn by executive order for Indian purposes or for the use and occupancy of any Indians or tribe, may be leased for oil and gas development..."[43] It is with monies paid to the Tyonek Indians from oil activity that the tribe is able to rebuild their community and invest in enterprises in Alaska which produce local income and employment.

Furthermore, when there is a "taking" by the Federal Government of Indian lands for national monuments, forest preserves, and other like purposes, compensation must be made. The Tlingit and Haida Indians of Southeastern Alaska were awarded several million dollars, it seems, without Government (Congressional) "recognition" of ownership – which a recent Supreme Court opinion stated was needed before compensation can be made for appropriated lands. The Tee-Hit-Ton opinion stated that:

"The right of Indians to occupy lands in the United States over which they had sovereignty prior to conquest by the white man is not a property right but amounts to a right of occupancy which the sovereign grants and, although protecting against intrusion by third parties, may terminate; such lands may be fully disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians."[44]

THE STATE CONSTITUTION, THE STATEHOOD ACT, AND RECENT DEVELOPMENTS

Alaska has just celebrated the tenth anniversary of the meeting of the Constitutional Convention which drafted what is considered a model State Constitution.

Section 12 of Article 12 provides that:

"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 ... shall remain *subject to the* absolute disposition of the United States."[45] (Emphasis added)

The above paragraph is undoubtedly subject to legal controversy – the significant fact is that the right of the Native population to lands was recognized. The "absolute" control over such lands by congress was admitted – including the provision

for tax exemption of lands in Native hands held by restricted title. It was evidently left up to the milieu of men and women working for statehood to help settle the land issue.

The Alaska Statehood Act[46] passed by Congress in 1958 also left open the final settlement of Native lands. The right of title to land held by Natives or claimed by them was not defined as was expected by the framers of the State Constitution:

"As a compact with the United States said State and its people do agree and declare that they forever disclaim all right title to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts *** or is held by the United States in trust for said Natives: that all such lands or other property, belonging to the United States or which may belong to said Natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority***"[47]

Here again is recognized the ultimate jurisdiction and control by Congress. Yet, the section allowing for State land selections from the public domain appears in Section 6. This section grants the State authority to select the following lands within 25 years after the date of admission into the Union:

(1) 400,000 acres from lands within national forests in Alaska.

(2) 400,000 acres from other public lands which are vacant, unappropriated, and unreserved at the time of their selection and which would be adjacent to established communities, or such prospective areas, or near possible recreation areas.

(3) 102,550,000 acres from the public lands which are also vacant, unappropriated, and unreserved.

It is principally the State's land selection program which is bringing about the consciousness of a threat to the Native people's homelands and hunting grounds, and is responsible for the increased interest in making land claims based on aboriginal rights, past Congressional acts, and judicial decisions.

The Interior Alaska Indians have made most of the claims up to the present time totaling more than 20,000,000 acres. Their activity is attributable to several causes – organization, interest, leadership, and government agency assistance. However, the vast majority of Alaskan Natives living in the Northwest section and the Southwest area of Alaska have but barely begun to understand what is at stake and what their rights to land are. It will take an extended land education program led by Native leaders and assisted by "experts" to enlighten the people, to attempt to correct decades of administrative inactivity. We need time to consider the issues, to determine

what the people desire, and to make rights assertions over those lands which we have wrung a living out of for thousands of years. The magnanimity of the United States will be tested in this small but vital issue: Will America treat a small, uneducated, and culturally different people with more than equal justice, when these people offer no threat, but hope that they will be allowed their living lands to live and hunt upon as freely as may be possible in a rapidly changing and ever-evolving society?

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FOOTNOTES - Click number of footnote to return to "What Rights To Land Have the Alaska Natives?: The Primary Issue"

1 "The Village People", the Anchorage Daily News, 1966, p.III

2 *Alaska's Population & Economy Statistical Handbook*, Vol. II. P. 7. (University of Alaska) 1903.

3 George W. Rogers, *The Future of Alaska*, John Hopkins Press, Baltimore, Maryland, 1962. pg. 63.

4 *Alaska's Population & Economy Analysis*, Vol. I, pg. 52. University of Alaska, 1963.

5 Treaty of Cession, Article 3.

6 *The Executive Documents of the House of Representatives*, 1st Sess., 52nd Congress, 1891-92. Vol. 16, Report of the Governor of Alaska, pp. 496-97.

7 *The Works of Hubert Howe Bancroft*, Vol. XXXIII, 1730-1887, San Francisco, A.C. Bancroft & Co., 1886, p 609.

8 William L. Hensley, *The Administration of Indian Affairs*, p. 2 (Unpublished manuscript).

9 Melvin Crain, Governance for Alaska, Some Aspects of Representation (1957) (Doctoral Thesis), p. 265.

10 Conditions in Alaska, *Hearings Before the Subcommittee of The Committee on Territories*, Report number 28, Part 2, 58th Congress 2nd Session, pg 144.

11 Ernest Gruening, The State of Alaska, (Ransom House, Inc., New York), 1954, pg. 51.

12 Act of May 17, 1884, Sec. 8, 23 Stat. 26.

13 34 Stat. 197, (Native Allotments).

14 *Alaska's Population & Economy Statistical Handbook*, Vol. II, pg. 7, The total white population of Alaska grew from 430 in 1880 to 4298 in 1890, while that of the Native population declined from 32,996 to 25,354 in the same period.

15 Johnson v. Pacific Coast Steamship Co., 2 Alaska 224.

16 Delaware Tribe of Indians v. United States, US 130 ct. cl. 782 (1963).

17 *United States v. Lynch*, 7 Alaska 568, (1927).

18 *Op. Cit.* Gruening, pg. 376.

19 *United States v. Cadzow*, 5 Alaska 125, (1914)

20 *Op. Cit*., Gruening, pg. 362, The Act of May 17, 1906 (41 Stat. 1059).

21 "Occupancy on The Public Lands", Native Allotments, 43 CFR 2212, Circular #2185, Department of Interior, pg. 6.

22 *Ibid.*

23 *United States v. Cadzow*, 5 Alaska 125 (1914).

24 *United States v. Lynch*, 7 Alaska 568 (1927).

25 In renaturalization of John Minook, 2 Alaska 200 (1904)

26 Op. Cit. Crain, P. 293.

27 The Bureau of Land Management and The Realty Office of the Bureau of Indian Affairs had no compiled statistics readily available on Native land holdings.

28 "Townsites on The Public Lands," Circular #2162, Department of the Interior, pg. 2.

29 *Ibid*, pg. 13

30 Interview with Bowman Hinckley, Information Officer of the Bureau of Land Management, Fairbanks. May 11, 1966.

31 *Op. Cit*., Crain.

32 *United States v. City of Kodiak*, 15 Alaska 566, 132 F. Supp, 574

33 *Digest of Decisions* of The Department of Interior in Cases relating to the public lands. Vol. 59, inclusive edited by Elsie Kimball, G.P.O. Washington, D.C. 1962, pg. 474.

34 48 Stat. 984

35 *Op. Cit*., Gruening, pg. 304.

36 The Subcommittee was composed of Senators Dillingham, Nelson, Burnham, and Patterson. Their report is listed as Report #282, part 2, 58th Congress, *Conditions in Alaska.*

37 *Ibid*., pg. 193.

38 *Ibid*., pg. 202-203.

39 *Ibid*., pg. 164.

40 *Op Cit*., Crain, pg. 304.

41 *Hynes v Grimes Packing Co*., 12 Alaska 348, 69 S.C.T. 968.

42 *Ibid*., Hynes v. Grimes Packing Co.

43 *Decisions of the United States Department of the Interior*, January to December, 1968, Vol 70, 6 PO, 1964.

44 *Tee-Hit-Ton Indians v. United States*, 348 US 272, 75 S. CT. 813 99 L. Ed. 314.

45 Constitution of Alaska, Art. 12, Sec. 12

46 72 Stat. 339.

47 Alaska Statehood Act, Sec. 4