STRANGERS IN THEIR OWN LAND: A SURVEY OF THE STATUS OF THE ALASKA NATIVE PEOPLE FROM THE RUSSIAN OCCUPATION THROUGH THE TURN OF THE TWENTIETH CENTURY

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ABSTRACT

The federal government's scattershot treatment of Alaska Natives has long created confusion over the legal status and rights of Alaska Natives and Alaska Native entities. This confusion was center stage in the recent Supreme Court case, Yellen v. Confederated Tribes of the Chehalis Reservation*, involving "Indian Tribe" entitlement to CARES Act relief funds. To better understand the reason uncertainty remains after more than 150 years since the purchase of Alaska from Russia, and more than sixty years after Alaska's statehood, we must look to the unique history of Alaska Natives. Starting in the mid-1700s, this Article surveys the laws relating to the Native people of Alaska through the Russian colonial rule, the Alaska purchase, and the early territorial government, culminating with the jurisprudence of the late 19th century. This Article explains how Russian laws contributed to the framework for the unique development of Indian Law in Alaska.*

I. INTRODUCTION

On June 25, 2021, the United States Supreme Court announced its

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third landmark decision in five years involving the rights of Alaska Natives.[1] In these decisions, the Court repeated what is now a familiar refrain: "Alaska is different."[2] This difference matters when analyzing federal laws impacting Alaska Natives. "To see why, one must first understand the United States' unique historical relationship with Alaska Natives."[3]

The most recent high-profile controversy addressing the rights of Alaska Natives centered on whether Alaska Native Corporations (ANCs), created by Congress in the 1971 Alaska Native Claims Settlement Act (ANCSA),[4] were entitled to receive federal aid earmarked for "Indian tribes."[5] To address the havoc caused by the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)[6] directed the Department of the Treasury to disburse eight billion dollars of emergency assistance to "the recognized governing bod[ies]" of "Indian Tribe[s]."[7] The term "Indian Tribe" was defined in the Indian Self-Determination and Education Assistance Act (ISDEAA)[8] as:

1. *See* Yellen v. Confederated Tribes of the Chehalis Rsrv., 141 S. Ct. 2434 (2021); Sturgeon v. Frost (*Sturgeon II*), 139 S. Ct. 1066 (2019); Sturgeon v. Frost (*Sturgeon I*), 136 S. Ct. 1061 (2016). In this Article, the terms "Alaska Native" or "Native" refer to the Aleut, Chugach, Yup'ik, and Inupiat Eskimo; Tlingit, Haida, and Athabascan Indian; Koniag and other indigenous peoples who resided in Alaska at the time the territory was purchased by the United States, as well as to the descendants of those peoples.

2. *Sturgeon II*, 139 S. Ct. at 1087 (quoting *Sturgeon I*, 136 S. Ct. at 1070); *see Yellen*, 141 S. Ct. at 2438 ("This is not the first time the Court has addressed the unique circumstances of Alaska and its indigenous population."). Courts have long recognized that Alaska's unique history has shaped Indian policy. *See, e.g.*, Atkinson v. Haldane, 569 P.2d 151, 154 (Alaska 1977) ("The interactions of the United States government and the Alaska Native peoples as a whole have been much different from those between the government and the tribes in the other states."); Metlakatla Indian Cmty., Annette Islands Rsrv. v. Egan, 362 P.2d 901, 917–20 (1961) (identifying reasons why Indian law in Alaska is different), *vacated*, 369 U.S. 45 (1962).

3. *Yellen*, 141 S. Ct. at 2438; *see also* Op. Solic. of Interior, M-36975, 1993 WL 13801710, at *5 (Jan. 11, 1993) [hereinafter *Sansonetti Op.*] (citing C. WILKINSON, AMERICAN INDIANS, TIME, AND THE LAW 32–52 (1987)) ("In examining questions relating to the status and powers of Indians, it is useful, if not essential, to review the historical backdrop for the issues.").

4. *Yellen*, 141 S. Ct. at 2443 ("ANCs are *sui generis* entities created by federal statute and granted an enormous amount of special federal benefits as part of a legislative experiment tailored to the unique circumstances of Alaska and recreated nowhere else.").

5. *Id.* at 2438.

6. 42 U.S.C. § 801; *see also id.* § 801(a)(1) (appropriating $150 billion for "payments to States, Tribal governments, and units of local government").

7. *Id.* § 801(a)(2)(B), (g)(5).

8. *Id.* § 801(g)(1) (citing 25 U.S.C. § 5304(e)). In 1975, Congress passed the ISDEAA, 25 U.S.C. §§ 5301–5423, to further a "new national policy," first announced in the ANCSA, "of 'autonomy' and 'control' for Native Americans and

> any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601–1629h], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.[9]

Because Congress selected a definition of "Indian tribe" that expressly includes ANCs established pursuant to the ANCSA, the Treasury Secretary issued guidance on April 23, 2020, confirming ANCs' eligibility to receive funds under Title V of the CARES Act.[10] This guidance was consistent with longstanding federal case law.[11] Since 1976, federal agencies have never wavered from their view that ANCs—despite being corporations formed by Congress—qualify as "Indian tribes" under the ISDEAA.[12] But before the Secretary could disburse any funds to ANCs, federally recognized tribes from across the country sued to enjoin any payments, alleging that ANCs were ineligible to receive a portion of the eight billion dollars.[13] The plaintiff tribes' arguments were predicated on a syllogism: only federally recognized tribes qualify as "Indian tribes" under the ISDEAA; ANCs are not federally recognized tribes; therefore,

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Alaska Natives." *Yellen*, 141 S. Ct. at 2439 (quoting RICHARD NIXON, RECOMMENDATIONS FOR INDIAN POLICY, H. R. Doc. No. 91-363, at 3 (1970)). The ISDEAA is designed to "help Indian tribes assume responsibility for aid programs that benefit their members." Menominee Indian Tribe of Wis. v. United States, 577 U.S. 250, 252 (2016). The ISDEAA authorizes the federal government to contract with Indian tribes to provide various services to tribal members. Salazar v. Ramah Navajo Chapter, 567 U.S. 182, 185 (2012).

9. 25 U.S.C. § 5304(e).

10. U.S. DEP'T TREAS., GUIDANCE ON TREATMENT OF ALASKA NATIVE CORPORATIONS (2020), https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Payments-to-Tribal-Governments.pdf.

11. *See* Cook Inlet Native Ass'n v. Bowen, 810 F.2d 1471, 1476 (9th Cir. 1987) ("The language and legislative history of the Self-Determination Act indicate that [the Cook Inlet Region, Inc.] . . . is a regional corporation under the Settlement Act, and, therefore, a tribe under the Self-Determination Act.").

12. *See id.* at 1474 (describing the "consistent" administrative interpretation and agreeing with it); DAVID S. CASE & DAVID A. VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 339 (3d ed. 2012).

13. Confederated Tribes of the Chehalis Rsrv. v. Mnuchin (*Confederated Tribes I*), 471 F. Supp. 3d 1, 4 (D.C. Cir. 2020), *rev'd*, 976 F.3d 15 (D.C. Cir. 2020), *cert. granted sub nom.* Alaska Native Vill. Corp. Ass'n v. Confederated Tribes of the Chehalis Rsrv., 141 S. Ct. 976 (2021), *cert. granted sub nom.* Mnuchin v. Confederated Tribes of the Chehalis Rsrv., 141 S. Ct. 976 (2021), *rev'd and remanded sub nom.* Yellen v. Confederated Tribes of the Chehalis Rsrv., 141 S. Ct. 2434 (2021), *aff'd and remanded sub nom.* Confederated Tribes of the Chehalis Rsrv. v. Yellen, 857 F. App'x 1 (D.C. Cir. 2021).

ANCs are not eligible to receive CARES Act funds.[14]

After consolidating the cases, the District Court for the District of Columbia entered a preliminary injunction barring the government from distributing any funds to ANCs pending further proceedings.[15] After additional briefing and argument, the district court dissolved the preliminary injunction and granted summary judgment for the federal government, ruling that ANCs qualify as tribes under the ISDEAA and, therefore, are eligible to receive funds.[16]

On appeal, the Court of Appeals for the District of Columbia Circuit reversed.[17] The court began its opinion by noting that "[s]ince the Alaska Purchase in 1867, the United States has taken shifting positions on the political status of Alaska's indigenous populations."[18] The court added: "For over a century, the federal government had no settled policy on recognition of Alaska Native groups as Indian tribes."[19] After briefly walking through disputes over the status of Alaska Natives from the 1970s to the 1990s—and, in particular, the confusion related to the status of ANCs and Alaska Native villages[20]—the court explained that Congress included ANCs in the ISDEAA's definition of "Indian tribe" because nobody knew in 1975 which groups in Alaska qualified, or would qualify, as federally recognized tribes.[21] The court's statutory construction rested on the atextual and ahistorical proposition that, in 1975, Congress inserted the Alaska clause into ISDEAA as a placeholder to give the federal government or courts more time to determine whether ANCs are in fact sovereign tribes.[22] The court then concluded that ANCs are ineligible to receive funds under the CARES Act because they have never been recognized as sovereign tribes.[23]

14. *See id.* at 4 ("In Plaintiffs' view, ANCs do not meet the statutory definition of either 'Indian Tribe' or 'Tribal government.'").

15. Confederated Tribes of the Chehalis Rsrv. v. Mnuchin (*Confederated Tribes II*), 976 F.3d 15, 20 (D.C. Cir. 2020).

16. *Confederated Tribes I*, 471 F. Supp. 3d at 4.

17. *Confederated Tribes II*, 976 F.3d at 29.

18. *Id.* at 18.

19. *Id.*

20. *Id.* at 26 (discussing the longstanding confusion over the status of Alaska Natives).

21. *Id.* ("[I]t was highly unsettled in 1975, when [IISEDAA] was enacted, whether Native villages or Native corporations would ultimately be recognized. The Alaska clause thus does meaningful work by extending ISDA's definition of Indian tribes to whatever Native entities ultimately were recognized—even though, as things later turned out, no ANCs were recognized.").

22. *See* Yellen v. Confederated Tribes of the Chehalis Rsrv., 141 S. Ct. 2434, 2449 (2021) ("[I]t is quite doubtful that anyone in 1975 thought the United States was going to recognize ANCs as sovereign political entities.").

23. *Confederated Tribes II*, 976 F.3d at 23 ("Because no ANC has been federally 'recognized' as an Indian tribe, as the recognition clause requires, no ANC

Yet the Supreme Court, in a 6-3 decision, disagreed, holding that while ANCs are not federally recognized tribes, they are eligible to receive funds because Congress included ANCs within the ISDEAA definition of Indian tribes.[24]

This should have been an easy case that never reached the Supreme Court given the express inclusion of ANCs within ISDEAA,[25] the executive's consistent forty-five-year practice of recognizing ANCs as eligible for special programs provided to Alaska Natives,[26] federal case law affirming the treatment of ANCs as Indian tribes under the ISDEAA,[27] and longstanding congressional practice defining ANCs as "Indian tribes" in numerous statutes.[28] It was not so easily resolved, however, for two reasons.

First, the ISDEAA's definition of "Indian tribes" is poorly constructed. While ANCs were specifically enumerated in the statute, subsequent qualifying language included the term "recognized as eligible" for certain programs and services.[29] This gave clever lawyers fertile ground to argue that "recognized" is a term of art reserved only for tribes that are formally recognized by the Secretary of the Interior as sovereign pursuant to the Federally Recognized Indian Tribe List Act of 1994.[30]

Second, and more importantly for the purpose of this Article, the federal government's scattershot treatment of Alaska Natives has long

satisfies the [ISDEAA] definition.").

24. *Yellen*, 141 S. Ct. at 2452 ("The Court today affirms what the Federal Government has maintained for almost half a century: ANCs are Indian tribes under [ISDEAA]. For that reason, they are Indian tribes under the CARES Act and eligible for Title V funding.").

25. *Id.* at 2440.

26. *See id.* at 2451 ("The Executive Branch has treated ANCs as Indian tribes for 45 years.").

27. *See, e.g.*, Cook Inlet Native Ass'n v. Bowen, 810 F.2d 1471 (9th Cir. 1987).

28. *Yellen*, 141 S. Ct. at 2451; *Confederated Tribes I*, 471 F. Supp. 3d 1, 16 n. 9 (D.C. Cir. 2020) (noting that some statutes expressly include ANCs in the definition of Indian tribe while others do not).

29. The relevant portion of the ISDEAA amendment reads as follows:

> any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Pub. L. 93-638, § 4, 88 Stat. 2203, 2204 (1975) (codified as amended at 25 U.S.C. § 5304(e)).

30. *Yellen*, 141 S. Ct. at 2456 (Gorsuch, J., dissenting) (citing Pub. L. 103-454, 108 Stat. 4791 (1994) ("No one before us thinks the Secretary of the Interior should list the ANCs as federally recognized tribes. And given that, it is unclear how ANCs might count as federally recognized tribes under [ISDEAA].").

called into question the legal status and rights of Alaska Natives and Alaska Native entities. More specifically, since the purchase of Alaska from Russia in 1867, a combination of indifference, shifting policies, vague statutory guidance, and conflicting case law provided scholars, Native leaders, policymakers, and advocates plenty of ammunition to support various conclusions related to the rights of Alaska Natives and Native groups. These disputes covered a range of topics including (1) whether the federal government had a trust responsibility and, if so, the scope of this responsibility; (2) civil rights; (3) the rights Alaska Native entities retained to their land and resources; (4) whether Indian country existed in Alaska; and (5) which, if any, Alaska Native entities possessed tribal sovereignty.

To explore the root causes of the doctrinal confusion over the status of Alaska Natives, which has vexed many over the past 150 years, this Article will survey Alaska's unique history from the mid-1700s to the first part of the twentieth century.

This Article begins in Part II with a high-level overview identifying the primary reasons for confusion over the status and rights of Alaska Natives. It then turns to the history of Russian colonial rule in Alaska in Part III and then, in Part IV, the legal status of Alaska Natives during this period. From the early 1800s until the sale of Alaska to America, Russia granted some Alaska Natives, mostly those living along the coast, a broad array of legal rights and protection under Russian law while other Alaska Natives, mostly those residing in Interior Alaska and along the Arctic coast, were classified as independent tribes that were to be left alone. A third group of Alaska Natives straddled the boundary between these two worlds. It was against this backdrop that the United States entered the Treaty of Cession to purchase Alaska. As discussed in Part V, the Treaty obligated the federal government to grant those Alaska Natives who were Russian subjects full rights of naturalized citizens, while those who were members of independent tribes were to be subject to the same laws and regulations as other American Indians. Part VI will address how these classifications contributed, in part, to federal Indian policy in Alaska.

The classifications of Alaska Natives under Russian law were codified in the 1867 Treaty of Cession and created a tension that flows through Alaska's history; this tension is at the heart of the doctrinal confusion regarding the rights of Alaska Natives today. Starting in the late nineteenth century, one camp pushed for assimilation and granting Alaska Natives equality with all citizens under the law. Advocates within this camp fought to dismantle discrimination, extend civil rights, and ensure individual Alaska Natives were able to fully contribute to Western

society.[31] The flip side of this coin, however, is that those who held these views generally denied the existence of tribal sovereignty,[32] fought to restrict aboriginal rights to manage their own affairs,[33] and wanted to eliminate specific protections in federal law that would give Alaska Natives the right to their land, fish, and game.[34]

But since the Treaty also provided that those Alaska Natives who were members of "uncivilized native tribes" were to be afforded all of the rights Indians are entitled to under U.S. law,[35] a second camp had a legal basis to advocate for the federal government to fulfill its trust responsibilities by providing schools, health care, and special rights to

31. *See generally* DONALD CRAIG MITCHELL, TRIBAL SOVEREIGNTY IN ALASKA, HOW IT HAPPENED, WHAT IT MEANS 12 (Carolina Academic Press 2022) [hereinafter MITCHELL, TRIBAL SOVEREIGNTY] (discussing the Department of the Interior's push for assimilation and granting Alaska Natives civil rights and the 1884 Alaska Organic Act, which required all Alaska Natives to adhere to civil and criminal laws and required the Secretary of the Interior to make "proper provision for the education of children of school age in the Territory of Alaska, without reference to race"); *id.* at 13 (quoting Address of Dr. Jackson, Oct. 9, 1895, *printed in 1895 Report of the Board of Indian Commissioners* at 25) (quoting an 1895 speech from Sheldon Jackson, who served as the general agent for education in Alaska, advocating for full citizenship rights of Alaska Natives and for the "natives to have all the rights that any white man has. There has never been a time since the establishment of the courts in that land when a native could not go into court, could not sue and be sued, like any white man.").

32. The view that Alaska was bereft of sovereign nations is reflected in an 1899 Department of the Interior study that "listed over three hundred tribes in the states and territories. . . . But no mention whatever is made of Alaskan Indians." ERNEST GRUENING, THE STATE OF ALASKA 357 (Random House 1968). Many in Alaska, including the Alaska Supreme Court, continued to adhere to this view until 1999, when the court overturned precedent on the status of sovereign tribes in Alaska. *See* John v. Baker, 982 P.2d 738, 745–46, 749 (Alaska 1999) (overturning precedent that held that most Alaska Native "groups" were not sovereign). In 2017, the Alaska Attorney General issued a comprehensive opinion unequivocally acknowledging the existence of 229 federally recognized tribes in Alaska. Alaska Att'y Gen., Opinion Letter on Legal Status of Tribal Governments in Alaska (Oct. 19, 2017).

33. *See, e.g.*, Stephen W. Haycox, *Economic Development and Indian Land Rights in Modern Alaska: The 1947 Tongass Timber Act*, 21 WESTERN HIST. Q. 1, 20, 20–23 (1990) (discussing debates within the federal government in the 1930s and 1940s over federal Indian policy in Alaska).

34. *See* GERALD MCBEATH & T. MOREHOUSE, THE DYNAMICS OF ALASKA NATIVE SELF-GOVERNMENT 15 (Univ. of Alaska Press 1980) ("Under the *territorial* government, there were no special programs provided for Natives alone. . . . [N]o major programs supported Native subsistence or enhanced Native life styles." (emphasis added)).

35. Treaty Concerning the Cession of the Russian Possessions in North America, Russia-U.S., Mar. 30, 1867, 15 Stat. 539, at 24 [hereinafter "1867 Treaty" or "Treaty of Cession"]; *see* Eric Smith & Mary Kancewick, *The Tribal Status of Alaska Natives*, 61 U. COLO. L. REV. 455, 499–500 (1990) (noting that the United States agreed to apply Indian law principles to Alaska Natives).

land and resources.[36] This camp, however, encountered considerable resistance from many, including Alaska Natives, who rejected paternalistic policies and resented federal management of their lands and lives.[37]

None of the foregoing is intended to suggest these "camps" are mutually exclusive.[38] Nor does this Article intend to minimize how prejudice, ignorance, and greed have shaped Alaska's history, court decisions, and Indian policy. This Article's focus is modest: to survey the treatment of Alaska Natives between 1800 and the early twentieth century in order to help illuminate why so much confusion continues to surround the legal rights and status of Alaska Natives.

36. *See, e.g.*, *Sansonetti Op.*, *supra* note 3, at *23–25 (identifying federal laws and policies providing special programs and benefits to Alaska Natives); Robert T. Anderson, *Sovereignty and Subsistence: Native Self-Government and Rights To Hunt Fish and Gather After ANCSA*, 33 ALASKA L. REV. 187, 192–94 (2016) [hereinafter Anderson, *Sovereignty and Subsistence*] (detailing the relationship between the United States federal government and Alaska Natives in the nineteenth century); Haycox, *supra* note 33, at 26–29 (documenting Secretary of the Interior Harold Ickes's attempts to protect aboriginal title and ensure just compensation for tribes in Southeast Alaska). *See generally* CASE & VOLUCK, *supra* note 12, at 239 (discussing United States Supreme Court cases from the late eighteenth century and early nineteenth century establishing a common law federal guardianship or "trust responsibility" over Native Americans).

37. *Hearings on S. 2906 before the Comm. on Interior and Insular Affairs,* 90th Cong. 31, 33 (1968) (statement of Emil Notti, President, Alaska Federation of Natives) ("Controls by Federal agencies over the resources and lives of native people in Alaska has not met with any success though the reasons can always be rationalized away by those responsible for the failures. . . . I stand here before you to state in the strongest terms possible that the representatives here today, of 50,000 native people in Alaska do not want paternal guidance from Washington, D.C. We feel we have the ability to make our own way and once we get a fair settlement for our lands, it will enable us to operate our businesses."); *see also* REPORT TO THE SECRETARY OF THE INTERIOR BY THE TASK FORCE ON ALASKA NATIVE AFFAIRS 57 (Dec. 28, 1962) [hereinafter TASK FORCE REPORT] (finding that many Alaska Natives "generally opposed" the lower forty-eight reservation model and explaining that "[m]any felt that Indians residing on reservations do not have the same citizenship privileges and the same freedom of movement as other Americans"); *id.* at 63 ("The 1936 Act [allowing for the establishment of reservations in Alaska] was firmly opposed by many Alaskans—both native and non-native . . . .").

38. *See, e.g.*, Alaska v. Annette Island Packing Co., 289 F. 671, 674 (9th Cir. 1923) (noting that the Metlakahtla Indians on Annette Island are both citizens and "still subject to the care and protection of the United States. The inhabitants of the Island, being Indians, stand in the same relation to the United States as do Indians on other reservations."). Note, however, that this case turned, in part, on a specific Act of Congress that created a reservation for the Metlakahtla Indians. *See id.* at 672 (explaining that an Act of Congress "provided that the Annette Islands be set apart as a reservation").

II. ALASKA NATIVES' RIGHTS HAVE BEEN SHAPED BY ALASKA'S UNIQUE HISTORY

Before focusing on how the status of Alaska Natives under Russian rule informed the legal rights and status of Alaska Natives in the late nineteenth century, it is worth highlighting some of the other factors that contributed to the disarray over federal Indian policy in Alaska.

After many years of debate and conflicting court decisions related to federal Indian policy in Alaska, the Solicitor for the Department of the Interior issued a seminal 136-page opinion in 1993 analyzing the status of Alaska Native groups and villages.[39] The Solicitor observed that the complexity of questions concerning the sovereign powers and rights of Alaska Native tribes, groups, and corporations "arises in considerable measure from Alaska's unique circumstances and history."[40] The Solicitor begins his analysis by acknowledging that

> there is a fundamental difference between the approach to issues of Indian law and policy in the contiguous 48 and the situation in Alaska. . . . Dealings with Native groups in Alaska have, to be sure, reflected elements of then-current national policies. There has been, however, no consensus on the appropriate comprehensive framework for the relationship with Alaska Natives taking into account the unique circumstances of Alaska.[41]

A review of Alaska's history confirms that many factors contributed to the development of an incoherent and erratic federal Indian policy in Alaska, including the following six factors.[42]

A. Diversity Among Alaska Natives

Alaska Natives are not a monolith—many communities, villages, and tribes live in varied climates sprawled across a massive land mass with different languages, customs, traditional and cultural practices, and

39. *See Sansonetti Op.*, *supra* note 3, at *2 (discussing the considerable length and complexity of the opinion); *see also* Native Village of Eklutna v. U.S. Dep't of the Interior, No. 1:19-cv-02388, 2021 WL 4306110, at *8–10 (D.D.C. Sept. 22, 2021) (noting that the 1993 Sansonetti Opinion remains the governing standard for evaluating the rights of Alaska Natives under federal law).

40. *Sansonetti Op.*, *supra* note 3, at *2.

41. *Id.*

42. While not all these factors are directly related to the period covered by this Article, they are key to understanding why this period of early history informs the confusion today. We acknowledge that there are many other factors, not included in this list, that are also important to the framework for understanding the present legal status and rights of Alaska Natives.

histories.[43] Alaska Natives include the Inupiat and Yup'ik Eskimo of northern and western Alaska; the Aleuts of the Alaska Peninsula and Aleutian Chain; the Athabascan of Interior Alaska; and the Tlingit, Haida, and Tsimshian of Southeast Alaska. Long before the arrival of the Russians, Alaska Natives had expansive populations and had established traditional forms of governments based on family groups, communities, land, and resources.[44] The considerable differences between Native groups across Alaska has made it difficult to make accurate categorical statements on a host of issues related to Indian policy.[45]

B. The U.S. Abandoned Treaty-Making with Tribes Shortly After the Alaska Purchase

Shortly after purchasing Alaska, Congress embraced a policy of assimilation and disavowed the use of treaties to resolve the rights and status of Indians. This seismic policy shift was driven by an apparent desire to move from national guardianship to providing individual Indians with all the rights and obligations of citizenship.[46] When

43. The State of Alaska is a large, ecologically diverse place. Its east-west span stretches approximately 2,400 miles and its north-south span stretches approximately 1,420 miles. *Geography of Alaska*, STATE OF ALASKA, https://alaska.gov/Kids/learn/aboutgeography.htm#:~:text=Diameter%3A%20East%20to%20west%2C%202%2C400,of%20tidewater%2C%20is%2047%2C300%20miles (last visited Apr. 14, 2022). It totals 375 million acres. FED. FIELD COMM. FOR DEV. PLAN. IN ALASKA, ALASKA NATIVES AND THE LAND 89 (Oct. 1, 1968). The state ranges in climatic extremes from the moderately mild marine areas in the southeast to the Arctic zone north of the Rocky Mountain System divide. *Id*. The Natives adapted themselves to live with and off this varied land, which meant great variation among the villages in their subsistence patterns. "The remote location, large size and harsh climate of Alaska further delayed the need to confront questions concerning the relationship between the Native peoples of Alaska and the United States." *Sansonetti Op.*, *supra* note 3, at *2.

44. *See* Rosita Worl, *Models of Sovereignty and Survival in Alaska*, CULTURAL SURVIVAL (Sept. 2003), https://www.culturalsurvival.org/publications/cultural-survival-quarterly/models-sovereignty-and-survival-alaska; *see also Sansonetti Op.*, *supra* note 3, at *9–12 (describing the considerable cultural and socio-economic diversity of Alaska Native groups); *Hearings on S. 2037 and S.J. Res. 162 Before the S. Comm. on Interior and Insular Affairs,* 80th Cong., 2d Sess. 149 (1948) (statement of Mr. Theodore H. Haas, Chief Counsel, Office of Indian Affairs) ("[L]ong before there was any Territory of Alaska, Indian communities in the Territory had their own system of government.").

45. *See* TASK FORCE REPORT, *supra* note 37, at 7 (discussing a continuum of assimilation among Alaska Natives); *id.* at 83–85 (discussing the broad diversity of political organizations).

46. Donald Craig Mitchell, Alaska v. Native Village of Venetie: *Statutory Construction or Judicial Usurpation? Why History Counts*, 14 ALASKA L. REV. 353, 357 (1997) [hereinafter Mitchell, *Why History Counts*] ("The Alaska purchase coincided by chance with the beginning of an historic change in the objectives of Congress's Indian policy."); *see also In re* Heff, 197 U.S. 488, 498–99 (1905) (describing the

addressing the rights of Alaska Natives, Congress was therefore operating under a "dramatically different" legal framework "from that of the policy that governed Congress's dealings with 'the tribes of American Indians' in the coterminous states."[47]

Abandoning treaties in favor of termination and assimilation had two profound ramifications for Alaska. First, because Alaska Native tribes never executed any treaties with the United States, and because Congress took over one hundred years to enact comprehensive legislation addressing the rights retained by Alaska Natives, there were no guiding documents or policies to establish rights and obligations for many years.[48] Second, unlike its treatment of tribes in the lower forty-eight, "[t]he linchpin of Congress's Native policy was to subject Alaska Natives at all locations throughout the territory to the same criminal and civil statutes to which Congress subjected non-Native residents of Alaska."[49]

C. Alaska Natives Were Never Forced onto Reservations

Under federal Indian law, reservations generally provide a territorial base for a sovereign tribe.[50] But, in Alaska, the sovereign powers of Alaska Native villages had been placed "largely in abeyance . . . because the tribes currently do not possess tribal domains."[51]

In the decades after purchasing Alaska, the federal government did not, for the most part, believe there was a need to form reservations in Alaska because there was no history of Indian wars (although there were skirmishes)[52] and thus no need to remove Indians from their lands in

dramatic shift in federal Indian law in 1870).

47. Mitchell, *Why History Counts*, *supra* note 46, at 358.

48. Treaty-making with Indians was ended by Congress in 1871, only four years after the Alaska Purchase. CASE & VOLUCK, *supra* note 12, at 239. *See generally* Anderson, *Sovereignty and Subsistence*, *supra* note 36, at 192–94 (discussing why Alaska Natives never entered into any treaties with the federal government).

49. Mitchell, *Why History Counts*, *supra* note 46, at 358–59. *But see Sansonetti Op.*, *supra* note 3, at *25–26 (collecting an extensive list of federal statutes defining Alaska villages as tribes); TASK FORCE REPORT, *supra* note 37, at 63–65 (identifying all the lands held in trust and noting that the federal government made more than 150 withdrawals from the public domain since 1900 for Alaska Native "use and occupancy . . . [including] the establishment of schools and hospitals, and for other programs of benefit to natives).

50. *See* United States v. Kagama, 118 U.S. 375, 381–82 (1886) (outlining the "semi-independent" relationship between Native Americans and the United States government).

51. 2 Am. Indian Pol'y Rev. Comm'n, No. 93-440, Final Report, 489, 490–91 & n.12 (1977).

52. DONALD CRAIG MITCHELL, SOLD AMERICAN, THE STORY OF ALASKA NATIVES AND THEIR LAND, 1867–1959, at 54–57 (1997) [hereinafter MITCHELL, SOLD AMERICAN].

order to protect the White population.[53] After all, there were only 430 non-Natives in Alaska by 1880 and 6,698 in 1890.[54] Moreover, "in the early days of the territory, the land resources of Alaska seemed limitless; thus the parallel of the westward migration of white civilization which displaced the tribes never occurred in Alaska."[55]

Nevertheless, the federal government did eventually form reservations in Alaska,[56] although most Alaska Native villages rejected the reservation model.[57] "Alaskans, both Native and non-Native, opposed creation of reservations on the grounds that reservations were socially divisive and tended to perpetuate a wardship rather than equality for the Natives."[58]

In short, the federal government never forced Alaska Natives onto reservations and very few were ever created, but without reservations or Indian country, many believed that tribal entities in Alaska lacked sovereignty.[59] Thus, the absence of reservations reinforced the belief that sovereign tribes did not exist in Alaska.[60]

53. *See* Metlakatla Indian Cmty. v. Egan, 369 U.S. 45, 51 (1962) ("There were no Indian wars in Alaska . . . ."); United States v. Atl. Richfield Co., 435 F. Supp. 1009, 1015 (D. Alaska 1977) (explaining that, unlike the rest of the states, Alaska did not create many Indian reservations).

54. ROBERT D. ARNOLD, ALASKA NATIVE LAND CLAIMS 71 (Alaska Native Foundation 1978).

55. Atkinson v. Haldane, 569 P.2d 151, 154 (Alaska 1977); TASK FORCE REPORT, *supra* note 37, at 64–65 (noting that many Alaska Native groups continued to have access to their lands and resources).

56. *See Metlakatla Indian Cmty.*, 369 U.S. at 51 (noting that some reservations, while few, were established); *see also* Morton v. Ruiz, 415 U.S. 199, 212 (1974) (acknowledging existence of scattered reservations in Alaska).

57. *See Atl. Richfield Co.*, 435 F. Supp. at 1015 ("In 1936 the Secretary of the Interior was authorized to designate reservations in Alaska upon vote of the adult Native residents within the proposed reservation. Only six such reservations were created . . . ."). "In 1962, a Department[] [of the Interior] task force found Indians, Eskimos and Aleuts 'generally opposed to having reservations.'" *Sansonetti Op.*, *supra* note 3, at *76 n.186 (citing TASK FORCE REPORT, *supra* note 37, at 57). *See generally* GRUENING, *supra* note 32, at 377–81 (discussing why many villages rejected or were opposed to forming reservations); *id.* at 378 ("The sentiment in many villages was that the reservation was a step backward and away from the full political, economic, and social equality which their people desired.").

58. *Atl. Richfield Co.*, 435 F. Supp. at 1015. The court's finding is oversimplistic. Certain villages, like Kake and Angoon, supported reservations post-statehood to protect their fishing rights. *See generally* Kyle E. Scherer, *Alaska's Tribal Trust Lands: A Forgotten History*, 38 ALASKA L. REV. 37 (2021) (detailing the support for reservations in certain villages).

59. Nat. Vill. of Stevens v. Alaska Mgmt. & Planning, 757 P.2d 32, 39–41 (Alaska 1988).

60. *Sansonetti Op.*, *supra* note 3, at *30–31.

D. The Federal Government Neglected Alaska for Decades

The federal government largely ignored Alaska for the first forty years after its purchase and left unresolved the issue of the fundamental rights of Alaska Natives for over one hundred years.[61] More specifically, "[i]n 1868, Congress designated Alaska as a 'customs collection district' and extended United States laws relating to customs, commerce, and navigation" to Alaska, but "this designation had no legal or practical effect on Alaska Natives and simply began a congressional practice of legislating for Alaska on a piecemeal basis."[62] This indifference resulted in all three branches of the federal government addressing their relationships with Alaska Natives "in a tentative and reactive way."[63] Worse, where aspects of the relationship between the federal government and Alaska Natives had been addressed, they were often "resolved without a clear or consistent understanding or application of the fundamental legal principles governing the relationship."[64] Without clear guidance from Congress, policy affecting Alaska Natives was shaped, at various times, by the military, missionaries, capitalists, conservationists, and bureaucrats that came to Alaska after the purchase.[65]

E. Federal Indian Policy Shifted Repeatedly Before Firmly Establishing Clear Rules

Federal Indian policy in the twentieth century swung between assimilation and equality, on the one hand, and fulfilling the federal government's trust responsibility[66] and, eventually, encouraging the

61. From purchase to statehood, "the federal government was involved only minimally with Alaska Natives." FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 739 (1982 ed.); *see also* GRUENING, *supra* note 32, at 33–78 (discussing how U.S. policy morphed from "total neglect" to "flagrant neglect"); *Sansonetti Op.*, *supra* note 3, at *9 ("The lack of attention paid to Alaska extended to the question of relations with the Native population."); *id.* at *17–18 (noting that the relative lack of conflict and tension between Alaska Natives and American immigrants resulted in little attention being paid to Alaska Natives and "official decisions on the legal status and rights of Natives [that] were fitful at best and less than consistent"); *Atl. Richfield Co.*, 435 F. Supp. at 1014 ("The claims of the Native people to the land and resources of Alaska had been a source of potential conflict and uncertainty for over a century before Congress finally undertook to settle the aboriginal claims in the late 1960's.").

62. Anderson, *Sovereignty and Subsistence*, *supra* note 36, at 190.

63. *Sansonetti Op.*, *supra* note 3, at *2.

64. *Id*.

65. *See generally* MITCHELL, SOLD AMERICAN, *supra* note 52, at 22–192 (discussing in detail the dominant role that these groups played in shaping policy in Alaska).

66. The relationship between the federal government and Indian tribes was described as a "guardian-ward relationship . . . because of the tribes'

formation of tribal governments to advance self-determination on the other.[67] The shifting and conflicting views on whether Alaska Natives should assimilate; the existence of Indian country; and, starting in the late-1970s, debates over the existence of federally recognized tribes[68] contributed to confusion over Indian policy in Alaska.[69]

This confusion was compounded by a general understanding "that the many native villages in Alaska were not Indian country, and it had been the general practice for Territorial officers to apply Territorial law in the native villages."[70] According to the Alaska Supreme Court, "the history of the relationship between the federal government and Alaska Natives up to the passage of the Alaska Indian Reorganization Act, 49 Stat. 1250 (1936) indicates that Congress intended that most Alaska Native groups not be treated as sovereigns."[71]

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subordinating their inherent sovereignty to that of the United States in exchange for the protection and supervision of the government." Alaska Chapter, Associated Gen. Contractors of America, Inc. v. Pierce, 694 F.2d 1162, 1167 (9th Cir. 1982); *see id.* at 1167 n.5 (noting this relationship was first articulated in *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831)).

67. MITCHELL, TRIBAL SOVEREIGNTY, *supra* note 31, at 35–36 (discussing the efforts in the late 1970s to get federal recognition for tribal entities); *Sansonetti Op.*, *supra* note 3, at *4 (quoting the 1977 American Indian Policy Review Commission report, which concluded that Alaska Native villages were "of the same genus as the other Indian tribes" within the United States and were "dependent domestic sovereigns, possessed of the same attributes and powers as the Native tribes of the lower 48").

68. *See Sansonetti Op.*, *supra* note 3, at *3–4 (citing AM. INDIAN POL'Y REV. COMM., FINAL REP., 95TH CONG., 1ST SESS. 489 (Comm. Print 1977), which discussed the similarities between Alaska Natives and previously recognized Native Americans); MITCHELL, TRIBAL SOVEREIGNTY, *supra* note 31, at 40 (noting that, in 1977, David Case authored *The Special Relationship of Alaska Natives to the Federal Government: An Historical and Legal Analysis*, which concluded that villages in Alaska were sovereign tribes).

69. *Sansonetti Op.*, *supra* note 3, at *3–5, 9–16 (summarizing the shifting and conflicting policies); CASE & VOLUCK, *supra* note 12, at 24–33 (outlining early lack of clarity in the Alaska Native-United States government relationship). *See generally* Miller v. United States, 159 F.2d 997 (9th Cir. 1947) (adjudicating the issue of whether Alaska Natives could obtain fee title under federal law); Haycox, *supra* note 33, at 22–23 (discussing the debates within the federal government during the 1940s regarding assimilation versus sovereignty).

70. Letter from Roger Ernst, Asst. Sec'y of the Interior, to Hon. Emanuel Celler, Chairman, Comm. on the Judiciary, House of Representatives (Feb. 25, 1958), S. Rep. No. 58-1872, at 3 (1958), reprinted in 1958 U.S.C.C.A.N. 3348–49; *see also Sansonetti Op.*, *supra* note 3, at *9 (noting that "[n]o Indian agents were dispatched and the Indian office was not given responsibility for Alaska Natives until 1931").

71. Native Village of Stevens v. Alaska Mgmt. & Plan., 757 P.2d 32, 34 (Alaska 1988). *But see Sansonetti Op.*, *supra* note 3, at *11 ("Congress was not so sure that there were not Indians in Alaska. At an early date, it recognized that questions on the status of Alaska Natives and their relation to the land of Alaska had not been resolved.").

Notwithstanding the foregoing, a host of federal laws have been enacted to protect and provide benefits to Alaska Natives,[72] including authorizing tribes to file claims with the Indian Claims Commission.[73] The existence of these laws establishes that the federal government recognized aboriginal title and a responsibility to provide special programs and benefits for Alaska Natives, which are two hallmarks of sovereignty.[74] Even so, shifting federal policies called into question the status and rights of tribes in Alaska.

F. Alaska Natives Formed Statewide and Regional Organizations to Advance Alaska Native Interests

While tribes sought to protect their land rights throughout the twentieth century,[75] Alaska Natives formed statewide and regional organizations to advance and protect their collective rights and lands through litigation, legislation, and engagement with federal agencies.[76]

72. *See, e.g.*, Smith & Kancewick, supra note 35, at 457 ("In the years since Russia sold to the United States its rights to Alaska in 1867, Congress has passed a number of laws for the express benefits of Alaska Natives."); *id.* at 500 (noting that federal law has always treated Alaska Natives as subject to Indian law, which is why reservations were formed and special game laws were enacted). *But see* MITCHELL, SOLD AMERICAN *supra* note 52, at 98 (noting that Senator Stevens said in a speech to the Alaska legislature in 1982 that: "I have worked to ensure that Alaska's villages are treated equally with lower 48 tribes for purposes of receiving social and health benefits. It has *not* been my assumption that such treatment implied that Alaska Native villages had the same police powers, taxation ability and fish and game management authority as those reservations in the lower 48.").

73. *See* Tlinget & Haida Indians v. United States, 177 F. Supp. 452, 468 (Ct. Cl. 1959) (holding that tribes in Southeast Alaska are entitled to compensation for the loss of aboriginal title); TASK FORCE REPORT, *supra* note 37, at 65 (identifying twelve tribes that filed claims with the Indian Claims Commission to receive compensation); Haycox, *supra* note 33, at 27–31 (discussing attempts by the Department of the Interior in the 1940s to ensure tribes in Southeast Alaska were duly compensated for the loss of aboriginal lands).

74. *See, e.g.*, Smith & Kancewick, supra note 35, at 477–78 ("[H]istorical tribes are understood to have several basic defining rights under federal Indian law: aboriginal title, eligibility as 'wards' under the guardianship of the federal government, and inherent governmental powers.").

75. *See, e.g.*, Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955) (lawsuit by Tee-Hit-Ton Indians); United States v. Native Vill. of Unalakleet, 188 Ct. Cl. 1 (1969) (lawsuit by the Native Village of Unalakleet, Aleut Community of St. Paul Island, and the Aleut tribe); Aleut Cmty. of St. Paul Island v. United States, 127 Ct. Cl. 328 (1954) (lawsuit by Aleut Community of St. Paul Island); Tlingit & Haida Indians of Alaska v. United States, 147 Ct. Cl. 315 (1959) (lawsuit by Tlingit and Haida Indians).

76. The Alaska Native Brotherhood, which advocated for Native rights, was organized as a fraternity in 1912 by Natives in Southeast Alaska with chapters in southeast villages. MCBEATH & MOREHOUSE, *supra* note 34, at 14; *id.* at 40 (noting that, in the 1960s, organizations formed—including Fairbanks Native Association,

Thus, the large role played by Native organizations reinforced the perception among some that sovereign tribes did not exist in Alaska.

III. STATUS OF ALASKA NATIVES PRIOR TO 1867

The first migration from Asia into Alaska appears to have occurred about 12,000 years ago.[77] At the time of Russian arrival to Alaska in the 1700s, in what would be called Russian America or the "Russian-American Colonies," several distinct cultural groups of Alaska Natives existed: (1) the Inupiat (Northern Eskimo) and the Yupik (Southern Eskimo); (2) the Aleuts; (3) the Athabascans; and (4) the related, but distinct, tribes of southeastern Alaska, the Tlingit and the Haida.[78] These groups were, in turn, further separated into several dozen linguistic and cultural groups.[79]

A major reason Indian law has been different in Alaska than in the lower forty-eight is that the status of Alaska Natives under Russian rule informed the treatment of Alaska Natives after the United States purchased Alaska in 1867.[80] To understand the rights granted to Alaska Natives by the United States, one must begin with Russian America for the simple reason that "the United States stepped into Russia's shoes with respect to its relationship with the people who inhabited Alaska and occupied the land and waters."[81]

Inupiat Paitot, Den Nena Henash, Cook Inlet Native Association, and the Association of Village Council Presidents—to advocate for land claims and subsistence rights or to respond to regional concerns like Project Chariot or the Rampart Dam); *id.* at 41–48 (discussing the how formation of new groups like the Arctic Slope Native Association formed to advance native rights more broadly, which then in turn led to the formation of the Alaska Federation of Natives). *See generally* MITCHELL, SOLD AMERICAN, *supra* note 52, at 193–251 (detailing the role that the Alaska Native Brotherhood played in advancing the interests of Alaska Natives).

77. CLAUS-M. NASKE & HERMAN E. SLOTNICK, ALASKA: A HISTORY 30 (3d ed. 2011); *see generally* ARNOLD, *supra* note 54, at 1–18 (summarizing various Alaska Native groups prior to Russia's encroachment).

78. NASKE & SLOTNICK, *supra* note 77, at 23–30.

79. *Id.* "In aboriginal social and political organization, the Alaska Natives did not differ markedly from other American native peoples. They organized themselves into social and political units (groups or tribes) as various and multiform, but of the same general nature, as those evolved by the Indians of the lower 48." AM. INDIAN POL'Y REV. COMM., FINAL REP., 95TH CONG., 1ST SESS. 489 (Comm. Print 1977).

80. Atkinson v. Haldane, 569 P.2d 151, 154 (Alaska 1977). The rights of Alaska Natives under Russian rule continued to be at issue in litigation through the 1950s. *See, e.g.*, United States v. Kodiak, 132 F. Supp. 574, 578–82 (D. Alaska 1955) (where the City of Kodiak argued that Alaska Natives living in Kodiak were Russian subjects and, therefore, they became U.S. citizens under the 1867 Treaty).

81. Anderson, *Sovereignty and Subsistence*, *supra* note 36, at 189.

Russian merchants searching for fur to sell to Chinese markets marched eastward in the sixteenth century and reached the Pacific coast in 1639, which served as a beachhead for excursions into the North Pacific.[82] But the Russians were not focused only on furs and conquest—they were also driven by a desire to understand whether Asia and America were connected.[83] After years of academic debate in St. Petersburg, Peter the Great was determined to finally resolve this dispute,[84] and his last official act before he died was to order Vitus Bering to lead an expedition off the Siberian coast from Kamchatka.[85] Bering's first expedition in 1728 reached St. Lawrence Island, near what is now known as the Bering Strait, before he returned to Kamchatka.[86] Bering concluded that the continents were not joined and returned to Saint Petersburg in 1730.[87] Dissatisfied with Bering's results and the limited knowledge gained, the Academy of Sciences, which had been established by Peter the Great, tasked Bering with leading a second expedition to America.[88] In June of 1741, two Russian ships set sail from Kamchatka for America; Captain Alexei Chirikov, who commanded the second of two ships, became the first Russian to discover the coast of Alaska.[89]

82. NASKE & SLOTNICK, *supra* note 77, at 2; HECTOR CHEVIGNY, RUSSIAN AMERICA: THE GREAT ALASKA ADVENTURE 1741–1867, at 3, 13–21 (1979); *id.* at 26–27 ("The merchants in Peking were so avid for [sea otter pelts] that for one skin the paid the equivalent in trade of a year's income for a Russian clerk."); GWENN A. MILLER, KODIAK KREOL, COMMUNITIES OF EMPIRE IN EARLY RUSSIAN AMERICA 11 (2010) ("The Russian advance from the Kamchatka Peninsula . . . was only the last phase of a continental conquest that had been launched by Muscovy in the mid sixteenth century."); *id.* at 23–24 (noting that the extremely lucrative market in China for sea otters spurred a rush of Russian fur traders into the Pacific to the Aleutians).

83. CHEVIGNY, *supra* note 82, at 27–28.

84. *Id.* at 24; GRUENING, *supra* note 32, at 1. After Peter the Great came to power in 1689, he shifted Russia's focus from the Far East to the West. CHEVIGNY, *supra* note 82, at 23 ("His wish, to which he clung with passion, was for his people to turn from the Orient and retrieve their lost sense of belonging to Western Europe."). But, in December 1724, Peter caught pneumonia and "his feverish mind fastened obsessively" on whether America and Asia were connected. *Id.* at 24–25. "He thought of little else, saying it was something he had to know before he died." *Id.* at 25.

85. *Id.*

86. *Id.* at 27.

87. *Id.*

88. *Id.* at 27–28. The objectives of the second expedition focused on exploring and charting the north Pacific, gathering scientific data on geology, flora and fauna, and establishing international trade. LYDIA BLACK, RUSSIANS IN ALASKA: 1732–1867, at 29 (2004). "Enormous resources in men and material were committed to this expedition, which consisted of several sea and land arms and several auxiliary expeditions." *Id.*

89. *Id.* at 29–30; GRUENING, *supra* note 32, at 1–6. Chirikov sighted Prince of Wales Island, south of Sitka, in Southeast Alaska on July 15, 1741. *Id.* Bering's ship was separated from Chirikov's, and while Bering is often credited with the

Bering and Chirikov's 1741 expedition marked the beginning of Russian sovereignty in Alaska.[90] But the initial efforts to explore and conquer were not undertaken by the Russian government. Instead, "[i]t was left to the private entrepreneurs to validate this claim by the right of occupancy."[91] Spurred by a lucrative fur trade with China, Russian merchants were eager to exploit Alaska.[92] "There were plenty of men ready to risk their estates, fortunes, and lives for a chance to strike it rich in the search for furs . . . ."[93]

Throughout the second half of the eighteenth century, Russian merchants advanced their "commercial penetration of the Aleutian Islands," harvesting sea mammals and marten, sable, and fox furs.[94] During this period, Russia's dominion was not well-defined and no permanent settlements were formed, but the Russian traders plundered Alaska and brutalized Alaska Natives.[95]

Russia's oversight and involvement in Alaska increased as more Russians moved into the colony during the late eighteenth century.[96] The

discovery, he saw the coast of Alaska on the following day. *Id.* at 7. The Russians came to call America, "Bolshaya Zemlya," or the Great Land. NASKE & SLOTNICK, *supra* note 77, at 16. The Russians were not the first colonial power to reach Alaska; the Spanish and Japanese beat the Russians—the Spanish arrived in Alaska in the late sixteenth century. Andrei V. Grinev, *Foreign Ships Along the Shores of Russia America*, 32 ALASKA HIST. 29, 29 (2017).

90. GRUENING, *supra* note 32, at 17. "Later, the international recognition of Alaska's territorial extent took into account Bering's passage through Bering Strait in 1728 [and] his landfall on St. Lawrence Island. . . ." BLACK, *supra* note 88, at 39.

91. *Id.*; *see* VLADIMIR GSOVSKI ET AL., RUSSIAN ADMIN. OF ALASKA AND THE STATUS OF THE ALASKA NATIVES, S. DOC. NO. 152, at 45 (1950) (outlining duties owed to Alaska Natives by Russian companies with a presence in Alaska).

92. BLACK, *supra* note 88, at 59 (the Bering-Chirikov expedition "triggered what amounted to a run on America and opened the way for the expansion of the sea otter and fur seal trade"); *see also* Callsen v. Hope, 75 F. 758, 761–62 (D. Alaska 1896) ("Not long after the discovery of the Aleutian chain of islands and the main continent of North America, by Bering, in 1741, the large profits derived from the fur trade became generally known throughout the empire, and numerous expeditions, fitted out by single individuals as well as associated companies, were organized . . . .").

93. BLACK, *supra* note 88, at 59.

94. *Id.* at 64.

95. MILLER, *supra* note 82, at 25–27 (noting that as Russian hunters moved east along the Aleutians, they depleted resources and never established a permanent settlement until 1780); *id.* at 46 (describing the brutality inflicted on the Alutiiq); MITCHELL, SOLD AMERICAN, *supra* note 52, at 6 ("Within a generation of Chirikov's 'discovery' of Alaska, the Aleuts . . . were reduced in population to near extinction by disease and Russian atrocity."); GRUENING, *supra* note 32, at 18 ("For some forty years after Bering's discovery the American shores were visited only by buccaneering enterprises who slaughtered the fur-bearers, plundered the Aleuts, and killed those who resisted.").

96. *See generally* GSOVSKI ET AL., *supra* note 91 (describing how Russian rule in Alaska evolved over time).

significant risks associated with expeditions, depletion of furs, and increased costs resulted in more established companies displacing the independent merchants and buccaneers.[97] By the 1780s, there was also a growing chorus among the Russian elite for the government to establish a larger presence in Alaska to protect Russia's geopolitical interests. To achieve this objective, these elites pushed Catherine the Great to grant a monopoly similar to the Hudson's Bay Company.[98] These pleas were rejected because Empress Catherine was ambivalent about colonization in America,[99] supported free trade, and disdained monopolies.[100] As Empress Catherine declared: "It is for traders to traffic where they please. I will furnish no men, ships, or money. . . ."[101]

By the late 1790s, with Empress Catherine dead, Tsar Paul I decided the government should become more involved in Alaska to better advance and protect Russia's interests.[102] This policy reversal was largely triggered by three concerns.

First, British, Spanish, American, and French expeditions and traders were encroaching on Russia's colony, and Russia's temporary camps provided a weak claim to Alaska.[103] Second, traders had recklessly slaughtered the fur-bearing animals, causing alarm about the future viability of the fur trade.[104]

Third, and most important for our purposes, there was growing disgust among the liberal members of the imperial court about the exploitation and mistreatment of Alaska Natives, which many reformers

97. BLACK, *supra* note 88, at 65–67, 101; NASKE & SLOTNICK, *supra* note 77, at 51 (explaining how increasing operational costs "squeezed out the small operators"); *see also* CHEVIGNY, *supra* note 82, at 52–54 (describing the costs and risks of expeditions).

98. BLACK, *supra* note 88, at 65–66.

99. Some scholars have commented that while Empress Catherine did not want to spend her treasury advancing commercial interests in Alaska, she was pleased by her expanding empire and the revenues the Alaska fur trade generated. *See* MILLER, *supra* note 82, at 30. A number of the Russian elite "saw the territorial expanse of the empire as a mark of great strength and prestige . . . . They were preoccupied with learning as much about these new lands as possible and, beyond that, some were excited at the prospect of 'Russian Columbuses' entering the Americas." *Id.*

100. CHEVIGNY, *supra* note 82, at 50; BLACK, *supra* note 88, at 113; MILLER, *supra* note 82, at 31.

101. CHEVIGNY, *supra* note 82, at 50. Empress Catherine did send two naval expeditions to explore Alaska and, in 1793, after six years of continual pleas from prominent merchants, "granted permission to send priests, artisans, and peasants to Kodiak." MILLER, *supra* note 82, at 55, 58.

102. GRUENING, *supra* note 32, at 18.

103. BLACK, *supra* note 88, at 94, 112, 157; GRUENING, *supra* note 32, at 18; CHEVIGNY, *supra* note 82, at 52.

104. GRUENING, *supra* note 32, at 18.

believed was enabled by the lack of government oversight.[105] Empress Catherine implored government officials to improve the treatment of Alaska Natives by "impress[ing] upon the hunters the necessity of treating their new brethren and countrymen, the inhabitants of our newly acquired islands, with greatest kindness."[106] In response to reports of brutality, the Russia government eventually implemented policies to protect Alaska Natives.[107] For example, in an attempt to prevent the merchants' "evil practices," the Russian government in 1766 "expressly declared the natives of the Aleutian Islands and Alaskan Peninsula to be Russian subjects and tried to protect them against maltreatment by Russian traders."[108] Russian traders, however, ignored these directives and continued to exploit and abuse Alaska Natives.[109]

In response to the foregoing concerns, the Tsar finally decided to grant the Russian-American Company[110] a monopoly over Alaska along with governing powers in 1799.[111] "For the next sixty-eight years the Russian-American Company was not only the exclusive commercial enterprise in Russian America, but also exercised the governing power."[112]

105. *Id.*; BLACK, *supra* note 88, at 106–07, 113; MILLER, *supra* note 82, at 18, 26; NASKE & SLOTNICK, *supra* note 77, at 61 (noting that Tsar Paul I was "disgusted by reports of the abuses [the merchants] had heaped on the Natives").

106. CHEVIGNY, *supra* note 82, at 48; *see also* MILLER, *supra* note 82, at 58–59, 75 (noting Empress Catherine "wanted to find out how the companies were treating local indigenous peoples" and describing the changing views on marriages between Russians and Alaska Natives).

107. BLACK, *supra* note 88, at 106–07 ("[I]f the government became aware of violence [toward Natives], skippers, foremen, and crews were investigated, faced trial, and, if convicted, were subject to dire punishment. Though the death penalty had been abolished by Empress Elizabeth and reinstated by [Empress] Catherine only for a very limited number of crimes against the state, the government considered unprovoked violence against Natives to be one of those crimes. . . . The government also took steps to inform Native leaders that this was so and that they could seek redress if offered insults, violence, or abuse.").

108. GSOVSKI ET AL., *supra* note 91, at 2.

109. BLACK, *supra* note 88, at 107, 113, 127–28, 134–35; GRUENING, *supra* note 32, at 18. Russians' interactions and relations with indigenous peoples in Siberia informed the way they would behave towards Alaska Natives. MILLER, *supra* note 82, at 11–14.

110. The company was modeled after colonial corporations like the Hudson's Bay Company. CHEVIGNY, *supra* note 82, at 74. Such corporations were typically "stockholder-owned and privately controlled, yet were devices for imperialist expansion, ingenious instruments in that their degree of freedom to act was such that their home governments could at will claim or disclaim responsibility for their acts. They governed as well as exploited their domains, in theory preparing distant lands to come one day fully under the crown." *Id.*

111. *See* BLACK, *supra* note 88, at 101–14 (detailing how Russia and the Russian-American Company gained control); NASKE & SLOTNICK, *supra* note 77, at 61–63 (describing expansion under the new monopoly).

112. GRUENING, *supra* note 32, at 18; *see also* GSOVSKI ET AL., *supra* note 91, at 9

IV. THE RUSSIAN-AMERICAN COMPANY'S GOVERNANCE OF ALASKA

In exchange for its monopoly, the Russian-American Company was obligated to comply with a charter (or ukase).[113] The charter, which was amended and renewed several times between 1799 and 1867,[114] not only regulated the Russian-American Company's commercial interests, but also codified rights and responsibilities for Russian subjects, affording each certain rights, obligations, and privileges.[115] Maltreatment of Natives was a major impetus for amending the charter during this period.[116]

The 1844 Charter divided Alaska Natives into three distinct classes and established a legal framework where certain Alaska Natives were entitled to a broad panoply of legal rights, while others were to be left alone.[117] Alaska Natives with mixed Native and Siberian or European blood and those living in "settled areas" were treated as Russian subjects, whereas those living outside of settlements were largely disregarded.[118] These classifications would later inform the 1867 Treaty of Cession's division of Alaska Natives into two classes, which in turn contributed to the doctrinal confusion regarding the status of Alaska Natives into the twenty-first century.[119]

("From its inception the Russian American Company was intended to be an instrument of government policy with the appearance of a private company.").

113. GSOVSKI ET AL., *supra* note 91, at 7, 79. ("The provisions of these charters were included in the official Code of Laws of the Russian Empire (*Svod Zakonov*) and thus must be considered as the Russian law in force in Alaska at the time of its cession." (footnote omitted)).

114. *Id.* at 5, 7, 11.

115. BLACK, *supra* note 88, at 255–57, 259–60; *see also* CHEVIGNY, *supra* note 82, at 208 ("The clear intention behind this document, which was completed in 1844, was to retain the colony, and more importantly, to draw it closer to the empire. Mention was at last made of settlers. Though the Company retained the form of a commercial corporation, the emphasis was now on its role as an administrative agency."); *Sansonetti Op.*, *supra* note 3, at *8 ("The first charter of the Russian American Company did not significantly address the status of Natives. In contrast, the second charter, issued in 1821, and the third and final charter, issued in 1844, distinguished between classes of Natives.").

116. GSOVSKI ET AL., *supra* note 91, at 5 ("Maltreatment of the natives, first reported in the beginning of the 19th century . . . was confirmed by . . . Lieutenant Captain Golovnin . . . . His report induced the Russian government to revise the system of administration of the colonies and in the first place to define the status of natives.").

117. *Id.* at 15–18.

118. *Id.* at 17–19.

119. *Id.* at 11–12; *see also* Atkinson v. Haldane, 569 P.2d 151, 154 (Alaska 1977).

A. Creoles

Empress Catherine issued an edict in 1767 encouraging Russians "to unite in marriage with the conquered people" and, in 1794, the Siberian governor, Ivan Pil, who had domain over Russians in Alaska, provided similar recommendations to Russian men and the few Russian women in Alaska.[120] Russians "Creoles" were defined to mean those born to both Native and Siberian or European parents.[121] The 1844 Charter granted Creoles full rights as Russian subjects:

> The creoles are Russian subjects, and as such, shall have a right to the lawful protection of the Government, equally with all other subjects belonging to the rank of commoners; even should they not, by merit and for special cause, acquire the rights extended to people belonging to a different station.[122]

Colonial authorities were also required to "exercise special guardianship over the Creoles and their property."[123] Many Creoles held high positions in the Russian Navy and with the Company.[124]

B. Settled Tribes

The 1844 Charter provided rights for Alaska Natives living in "settled areas," which were defined as "the Kuril Islands, the Aleutian Island, Kodiak, and the adjacent Islands, and the Alaska peninsula; as also, and the natives living on the shores of America, such as the Kenai natives, the Chugachs, etc."[125] The Charter did not distinguish between Natives who converted to Christianity and those who did not.[126] Rather,

120. MILLER, *supra* note 82, at 70–71.
121. GSOVSKI ET AL., *supra* note 91, at 80.
122. *Id.*
123. *Id*.
124. *Id.* at 13; MILLER, *supra* note 82, at 66 (discussing the prominent role Alutiiq women, sometimes referred to as Aleuts, played in the Russian colony); *id.* at 104–39 (describing in detail the prominent role Creoles in the colony and the rights and privileges they were afforded under Russian law); *id.* at 145 (concluding that Creoles "became the backbone of the Russian enterprise in North America").
125. GSOVSKI ET AL., *supra* note 91, at 49.
126. Case & Voluck write, without citation, that the 1844 Charter classified Alaska Natives into three categories: "dependent" people, "semidependent" people, and "independent" people. CASE & VOLUCK, *supra* note 12, at 64. According to Case & Voluck, the semidependent people "where those who associated with the Russians from time to time, lived near their communities, but were distinguished from the dependent people by their refusal to adopt the Russian Orthodox Faith." *Id*. While this characterization may be accurate as an historical matter, it does conflict with the provisions of the 1844 Charter cited herein—there is no category of "semidependent" people and the Charter does not grant additional rights or privileges to Alaska Natives based on conversion to

all Natives living in settled areas were "recognized by the government,—equally with all the others,—as Russian subjects,"[127] and the Company was specifically required to provide protection to these Alaska Natives.[128]

Perhaps surprisingly, the 1844 Charter expressly provided these Alaska Natives with freedom of religion and prohibited clergy from coercing Natives to convert to Christianity.[129] The Charter also provided that the settled tribes were to be governed "by their chiefs under the supervision of the [Company's] superintendents" and the "chiefs and superintendents [had] to look after the natives under their jurisdiction, to settle their mutual disputes, and to take care of their needs."[130] Alaska Natives living in the settled tribes were, however, obligated to "conform to the common laws of the government."[131]

The Charter provided protections for the property rights of settled tribes: "Any fortune acquired by a native through work, purchase, exchange, or inheritance is his full property; whoever attempts to take it or to inflict personal injuries shall be punished strictly according to the law."[132] While property rights "were fully recognized . . . . this referred primarily to personal property."[133] The right to real property "remained totally unregulated."[134] "The actual holdings of the natives were, however, to be respected."[135] This right included an express right for

Christianity. To the contrary, the Charter expressly prohibits differential treatment based on religious affiliation. *See* GSOVSKI ET AL., *supra* note 91, at 12 ("The view that the Christian faith was a prerequisite for the recognition of a tribe as settled does not find any support in the Russian laws. These definitely provided for the possibility of existence of pagans among the tribes who, otherwise, were considered settled and enjoyed the status of the same."); CHEVIGNY, *supra* note 82, at 208–09 (detailing the relevant charter provisions surrounding missionaries).

127. GSOVSKI ET AL., *supra* note 91, at 81.

128. *Id.*

129. *Id.* at 51 (noting the following sections; 1844 Charter § 271: "Natives who do not profess the Christian faith shall be permitted to carry on their devotions according to their own rites"; 1844 Charter § 272: "The Russian clergy in making converts among the natives shall use conciliatory and persuasive measures, in no case resorting to coercion"; 1844 Charter § 273: "The colonial authorities shall see that the natives are not embarrassed under pretext of conversion to the Christian faith.").

130. *Id.* at 50; *see also Sansonetti Op.*, *supra* note 3, at *8 ("These tribes were not subject to taxation and were allowed to remain under the governance of Native chiefs. However, the chiefs were subject to appointment by the Administrator General of the Company and supervision by Company superintendents.").

131. GSOVSKI ET AL., *supra* note 91, at 81.

132. *Id.* at 50.

133. *Id.* at 14.

134. *Id.* Russia lacked a system of land titles, which "were unknown among the peasants in the greater part of Russia and were not regulated in the colonies." *Id.*

135. *Id.* at 14.

Alaska Natives to fish and hunt in most areas.[136]

The Russian-American Company was, however, authorized under the Charter to demand service of up to fifty percent of males aged between eighteen and fifty, for up to three years.[137] The Company was required to provide these men with clothing, food, and boats and to pay them for the animals they harvested.[138]

In short, the Charter provided that Alaska Natives living in settled areas "were not to be oppressed or violated in any manner" and the company was required to undertake measures that would "improve their condition and avoid degradation."[139]

C. Independent Tribes

The last group of Alaska Natives were the "independent tribes," which were defined as those who did not settle in or near Russian communities.[140] These Natives were to be left alone, unless they requested assistance from the Company, in which case the Company was obligated to provide such assistance.[141] "The Russian laws not only have refrained from granting the Company any rights or privileges regarding the land occupied by such natives, but also have positively prohibited the Company from any 'extension of the possessions of the Company in regions inhabited' by such tribes."[142]

More specifically, the Company's regulations provided that "there was no need to penetrate the interior or subjugate the people who inhabited the mainland coasts."[143] If the Company desired to establish a post or trade, it could only do so with the express consent of the Natives who inhabited the area.[144] The Company was also "expressly forbidden

136. *Id.* at 50–51.
137. BLACK, *supra* note 88, at 257.
138. GSOVSKI ET AL., *supra* note 91, at 44.
139. BLACK, *supra* note 88, at 259, 276, 279 (discussing the vaccination campaigns and the construction of schools, hospitals, museums, libraries, and clinics); *see also* CHEVIGNY, *supra* note 82, at 200–01, 208–09 (discussing the company's construction of hospitals, schools, a seminary, and a college; the translation of books into Aleut; and the institution of an annual fair for Natives).
140. GSOVSKI ET AL., *supra* note 91, at 16.
141. *Id.*; BLACK, *supra* note 88, at 259.
142. GSOVSKI ET AL., *supra* note 91, at 23.
143. BLACK, *supra* note 88, at 257; *see also* GSOVSKI ET AL., *supra* note 91, at 23 (discussing the rights of independent tribes to their lands).
144. BLACK, *supra* note 88, at 257 ("Any factories (posts) the company wished to establish to enhance trade with the aboriginal peoples were to be built only with their express consent."); *see also* GSOVSKI ET AL., *supra* note 91, at 16 (if the company sought to establish a trading post, it was required "to apply all possible means to obtain their favor, trying to avoid anything which might arouse their suspicion of any intention to infringe upon their independence").

to demand . . . any tribute, iasak, tax, or any other form of involuntary giving."[145]

Alaska Natives living outside settled areas were, however, entitled to move into the settled areas and, if they did so, would "enjoy the rights and immunities granted to that class of persons."[146]

* * * * *

Alaska's colonization by Russia was limited to a few confined areas of Alaska—the number of Russians in Alaska averaged about 550 people and there were never more than 820 or so Russians.[147] Moreover, apart from Sitka and Kodiak, permanent settlements were very small.[148] In contrast, approximately 74,000 Eskimos, Aleuts, and Indians lived in Alaska when the Russians arrived in the mid-1700s.[149] Nonetheless, Russia's impact on Alaska Natives was profound. There is a wide range of scholarly views on the relationship between Alaska Natives and the Russians.[150] These debates are beyond the scope of this Article, which instead focuses on the legal rights and status of Alaska Natives under Russian law. Yet, it is worth emphasizing that the reality was often much different than the rules promulgated under the 1844 Charter. For example, while Russian law mandated that the Russian-American Company consider certain Alaska Natives as individuals with a place in society, they were often not regarded in the same way as other inhabitants.[151] Alaska Natives were largely seen simply as useful tools for the exploitation of trade resources, and some were more feared than the

145. BLACK, *supra* note 88, at 257.
146. GSOVSKI ET AL., *supra* note 91, at 16.
147. ARNOLD, *supra* note 54, at 19–20.
148. *Id.*
149. *Id.* at 8. Approximately 15,000 Aleuts lived in the Aleutians with a typical village consisting of twenty to thirty people. *Id.* at 9. Approximately 6,500 Koniags mostly resided on Kodiak Island. *Id.* at 11. Approximately 10,000 Tlingits lived in Southeast Alaska, with some villages having as many as 700 people. *Id.* Several thousand Athabascans inhabited interior Alaska. *Id.* at 13. And approximately 40,000 Eskimos resided mostly on the western and northern coast, with some villages having about 500 persons. *Id.* at 15.
150. *See, e.g.*, MILLER, *supra* note 82; CHEVIGNY, *supra* note 82; Alexander Markov, *A View of Russian America, 1845,* ALASKA HIST., Fall 2015, at 1 (Richard L. Bland trans.); Andrei V. Grinev, *Why Russia Sold Alaska: The View from Russia*, ALASKA HIST., Spring/Fall 2004, at 1 (Richard L. Bland trans.); Jonathan Dean, *"Their Nature and Qualities Remain Unchanged": Russian Occupation and the Tlinget Resistance, 1802–1867*, ALASKA HIST., Spring 1994, at 1.
151. *See* Lymann E. Knapp, *A Study Upon the Legal and Political Status of the Natives of Alaska*, 39 U. PA. L. REV. 325 (1891) (describing the policy and treatment surrounding Alaska Natives).

dangerous wildlife, and often treated as such.[152]

Even so, as detailed above, Creoles and members of settled tribes were considered Russian subjects and entitled to certain personal, civil, and property rights. For the settled tribes, the Russians codified a quasi-trust relationship where they mandated that the Company provide certain material benefits.[153] Indeed, by the early 1860s, there was a push to reform the governance in Alaska and to establish administration of the territory independent of the Company, a court system, and complete self-rule based on free elections, in which Alaska Natives could vote.[154] In contrast, the independent tribes were, largely, to be left alone.[155]

The impact of the 1844 Charter cannot be overlooked, given that it was the law in force at the time the territory was ceded to the United States and its provisions were subject to judicial notice.[156] As discussed in more detail below, the classifications of Alaska Natives, while not strictly adhered to, informed the federal government's treatment of Alaska Natives. For instance, certain "civilized" Alaska Natives were granted full citizenship and entitled to contract, to sue and be sued, and to sell property. In contrast, those in the second class of Alaska Natives were considered wards of the state and did not possess these rights.[157]

V. RIGHTS GRANTED TO ALASKA NATIVES UNDER THE TREATY OF CESSION

By the middle of the nineteenth century, there was little enthusiasm in Russia to sell Alaska and even less interest from America to purchase the colony.[158] Nonetheless, several factors led Russia to look for a

152. *Id.* at 329.
153. *See supra* note 139.
154. BLACK, *supra* note 88, at 281.
155. GSOVSKI ET AL., *supra* note 91, at 23–25.
156. United States v. Berrigan, 2 Alaska 442, 446 (D. Alaska 1905) ("Where territory has been acquired by the United States from a foreign power, its courts will take judicial notice of the laws which prevailed there up to the time of such acquisition. They are not, as to such acquired territories, foreign laws, but laws of an antecedent government.").
157. *See, e.g.*, MITCHELL, SOLD AMERICAN, *supra* note 52, at 70–71 (noting that when the secretary of the Board of Indian Commissioners visited Alaska in 1869, he was impressed by the Tlingit and Aleut that he encountered and concluded they did not need special protections; whereas the "wild tribes" (the Eskimos and Athabascan Indians) were to be placed on reservations and "amply provided for and protected").
158. CHEVIGNY, *supra* note 82, at 245. Indeed, the purchase was followed by recriminations in both countries. *See id.* at 242–45. *But see* BLACK, *supra* note 88, at 280–81 (explaining that, by the early 1860s, Russia's decision to sell Alaska "was already a foregone conclusion" for a variety of factors, including geopolitical concerns, fear of British and American expansion, and liberal criticism of a

purchaser.[159] In the 1860s, the Russian-American Company was becoming a drain on Russia's treasury.[160] Russia was also growing increasingly concerned about Great Britain's westward advance and wanted to create a buffer between Britain's interests in the North Pacific and Russia.[161] Some in Russia also believed that it was only a matter of time before the United States' commercial interests overtook Alaska.[162] Others wanted to continue to cultivate a relationship with the United States and thought the sale would help advance diplomatic initiatives.[163]

In the United States, the purchase was driven by Secretary of State William Seward, who wanted Alaska largely for military and trade reasons in order to "help the United States control the sea lanes."[164] Few Americans, however, even knew that Secretary Seward was engaged in negotiations, which lasted only a few weeks, with Russian Ambassador

government-run monopoly, but noting that much of the criticism and concerns expressed in Russia about the Company's management of the colony or its treatment of Alaska Natives did not reflect the facts on the ground).

159. *See generally* Grinev, *supra* note 150 (discussing and critiquing several theories for why Russia decided to sell Alaska).

160. There are conflicting views on Russian-American Company's financial health. *Compare* GRUENING, *supra* note 32, at 20–21 (describing the Company as "doing poorly"), *and Sansonetti Op.*, *supra* note 3, at *9 (attributing Russia's decision to sell, in part, to the Company's declining prospects, the failure to diversify, and faltering fur markets), *with* BLACK, *supra* note 88, at 273, 279 (noting that the Company's financial situation was improving in the late 1850s and early 1860s, and that "the prospects, now focusing on such natural resources as timber, fish, coal, and other minerals . . . were bright" and noting that in the early 1860s, "[c]ompany profits were up and prosperity was in the air"), *and* CHEVIGNY, *supra* note 82, at 236 (noting that, in 1860, the "Company's record had never been better, and its financial condition was excellent, its capital standing at an all time high"). Nonetheless, Russia was subsidizing the Company, and Russia was financially strapped. *See* CHEVIGNY, *supra* note 82, at 236 (explaining how rumors of the Company's potential sale spurred uncertainty about its future, which in turn "destroyed its credit, and its capital was soon gone. To keep it afloat, the government found itself contributing an annual 200,000 rubles"); GSOVSKI ET AL., *supra* note 91, at 32 (noting that London financiers were only willing to provide a loan to the Company if the Emperor provided a personal guarantee); NASKE & SLOTNICK, *supra* note 77, at 92 (discussing how the exhaustion of the Russian treasury played a role in the government's decision to sell the colony).

161. BLACK, *supra* note 88, at 275; *see also* GRUENING, *supra* note 32, at 20–21 (noting that geopolitical considerations drove the decision to sell); *Sansonetti Op.*, *supra* note 3, at *9.

162. CHEVIGNY, *supra* note 82, at 223, 227–28; *see also* BLACK, *supra* note 88, at 275 (noting the Company's concern that hordes of Americans flowing into British Columbia looking for gold would soon come to Alaska).

163. *See* NASKE & SLOTNICK, *supra* note 77, at 92 (identifying three main reasons for the sale: "[t]he RAC was in poor shape and had to be supported with treasury funds; the development of the Amur regions needed attention; and continued close relations with the United States was important").

164. *Id.* at 93.

Eduard Andreevich Stoeckl.[165] At the culmination of the rushed and secretive negotiations, Russia and the United States came to an agreement in March 1867.[166] The parties then quickly executed the "Treaty Concerning the Cession of the Russian Possessions in North America" ("the 1867 Treaty").[167] The 1867 Treaty is short[168] and has two provisions worth highlighting. First, Article VI identifies the property that the United States acquired:

> The cession of territory and dominion herein made is hereby declared to be free and unencumbered by any reservations, privileges, franchises, grants, or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property holders; and the cession hereby made, conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion, and appurtenances thereto.[169]

Second, Article III addresses the status of the inhabitants of Alaska:

> The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but 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.[170]

Thus, the 1867 Treaty defined what rights Alaska Natives retained: those "inhabitants" (Creoles and members of the settled tribes who were Russian subjects pursuant to sections 237 and 249 of the 1844 Charter) were entitled to citizenship, while members of the "uncivilized tribes" (defined in sections 280 and 285 of the 1844 Charter as members of the

165. *Id*.

166. *Id.* Negotiations and drafting began in early March and lasted about two weeks. *Id.* It took Seward an additional week to secure approval from the cabinet, Stoeckl received authorization to sign the treaty on March 29, and the treaty was executed on March 30. *Id.* Seward did not notify anyone in Congress about the treaty until several hours before he signed it. *Id.*

167. CHEVIGNY, *supra* note 82, at 240. After the Treaty was executed, it took Congress some time to ratify the agreement and pay Russia for the territory. *Id*.

168. *See* 1867 Treaty, *supra* note 35.

169. *Id*. art. VI.

170. *Id*. art. III (emphasis added).

"independent tribes"), were not.[171]

Several conclusions can be drawn from the 1867 Treaty. First, certain Alaska Natives were to be treated as individuals with the rights of citizenship.[172] Second, the federal government agreed to treat members of the "uncivilized tribes" as having "the same status of other federally recognized American Indians, through the treaty powers of the President and the Senate pursuant to article II, section 2, cl. 2 of the Constitution."[173] Therefore, the 1867 Treaty established that "Alaskan Natives are under the guardianship of the federal government and entitled to the benefits of the special relationship,"[174] and the 1867 Treaty mandated that federal Indian law would apply to the "uncivilized tribes."[175]

Put simply, the confusing status of Alaska Natives under federal law can be traced, at least in part, to the differential treatment set forth in Article III of the 1867 Treaty, where some Alaska Natives are classified as United States citizens and others as members of independent tribes

171. GSOVSKI ET AL., *supra* note 91, at 11–12 ("The provisions of the Charter of 1844 dealing with the natives are of special importance in view of the clauses of Article 3 of the Treaty . . . . This Article distinguishes two groups within the Alaskan population, which distinction unquestionably relates in some way to the one made in the Charter of 1844. Article 3 . . . promised to the inhabitants of Alaska 'all the rights, advantages and immunities of citizens of the United States' with the exception of the 'uncivilized tribes.'"). *See generally In re* Naturalization of Minook, 2 Alaska 200, 224 (D. Alaska 1904) (holding that the 1867 Treaty mandated that Alaska Native who were Russian subjects in 1867 became naturalized U.S. citizens); Atkinson v. Haldane, 569 P.2d 151, 154 (Alaska 1977) (discussing how the United States' relationship with Alaska Natives tribes differs from tribes in other states because the Treaty of Cession creates two classifications for Alaska Natives, and observing that, because of the Treaty, "the difference was not between Native and white Alaskans, but rather between the "civilized" and "uncivilized" tribes").

172. *See In re Naturalization of Minook,* 2 Alaska at 224 (holding that members of settled tribes were afforded citizenship under the Treaty).

173. Alaska Chapter, Associated Gen. Contractors of Am., Inc. v. Pierce, 694 F.2d 1162, 1169 n.10 (9th Cir. 1982).

174. *Id.*; *see also* Pence v. Kleppe, 529 F.2d 135, 138 n.5 (9th Cir. 1976) (observing that the Secretary of the Interior acknowledges that Alaska Natives are to be treated the same as Indians under federal law and noting that federal laws that refer only to "Indians" apply to Aleuts and Eskimos in Alaska).

175. *See* United States v. Lynch, 7 Alaska 568, 572 (D. Alaska 1927) ("Under this treaty the Tlinket tribe became subject to such rules and regulations as the United States may thereafter adopt as to the native Indians of the United States."); Anderson, *Sovereignty and Subsistence*, *supra* note 36, at 190 ("The United States was essentially a colonizing nation asserting rights without much regard to the indigenous population . . . . Under general principles of international law, discovering nations acquired the exclusive right to deal with indigenous peoples with respect to matters of land ownership and intergovernmental relations."); Smith & Kancewick, supra note 35, at 499–502 (describing how the Treaty influenced federal Indian policy in Alaska).

subject to federal Indian law.[176]

VI. A PERIOD OF NEGLECT: 1867–1910

After the Alaska purchase, the United States exhibited little interest in its new territory.[177] Federal oversight essentially amounted to an "era of total neglect" for citizens and Alaska Natives alike.[178] Natives, "who constituted an overwhelming majority of its approximately thirty thousand souls, were as devoid of attention, or even mention, as was the population as a whole."[179]

For the first few decades after acquiring Alaska, governance, such as it existed in the territory, was provided by the military and, for a brief period, the U.S. Department of Treasury. It was a pathetic state.[180] Congress enacted a few vague laws addressing the rights and status of Alaska Natives. But because Congress refused to extend any land laws to the Territory of Alaska, nobody—settler or Native—could acquire title to land; no property could be deeded or transferred; and no prospector could stake a mining claim.[181] In addition, the dearth of laws to govern Alaska even meant that no marriage could be legally consecrated and no will executed.[182] Alaska Natives protested this state of affairs into the twentieth century "to the Secretary of the Interior, the President and

176. Some scholars minimize or elide this distinction and conclude that virtually all Alaska Natives were treated as members of "uncivilized tribes." *See* CASE & VOLUCK, *supra* note 12, at 80 (arguing that ANCSA confirms that "under American law, the federal relationship to Alaska Natives is the same as the federal relationship to other indigenous Americans"). This view conflicts with the case law and the historic record. *See* GSOVSKI ET AL., *supra* note 91, at 11–25.

177. Sturgeon v. Frost, 139 S. Ct. 1066, 1073 (2019) (quoting GRUENING, *supra* note 32, at 31) ("For 90 years after buying Alaska, the Federal Government owned all its land. At first, those living in Alaska—a few settlers and some 30,000 Natives—were hardly aware of that fact . . . . They paid no attention to the new area, leading to an 'era of total neglect.'").

178. GRUENING, *supra* note 32, at 33–43 (detailing the paucity of laws and oversight during this period).

179. *Id.* at 355; *see also* Tlingit & Haida Indians of Alaska v. United States, 177 F. Supp. 452, 464–67 (Ct. Cl. 1959) (discussing the limited interference and interaction between the United States government and Alaska Natives for the first twenty years after the acquisition).

180. *See* MITCHELL, SOLD AMERICAN, *supra* note 52, at 29–32, 42–57 (describing the hostility, resentment, and fear that pervaded military rule); CHEVIGNY, *supra* note 82, at 260 (describing how soldiers "caroused, raped, and looted" the area).

181. GRUENING, *supra* note 32, at 35–36; *see Tlingit*, 177 F. Supp. at 464 ("The negotiations leading up to the Treaty and the language of the [T]reaty itself show that it was not intended to have any effect on the rights of the Indians in Alaska and it was left to the United States to decide how it was going to deal with the native Indian population of the newly acquired territory.").

182. GRUENING, *supra* note 32, at 35–36.

Congress. These protests received little, if any, response."[183]

But, slowly and fitfully, all three branches of the federal government began to address the status and rights of Alaska Natives. By the beginning of the twentieth century, two features began to stand out: policies based on both an inchoate trust responsibility and a view that Alaska Natives should be treated as equal citizens with full rights under the law.

A. Early Federal Legislation

For the most part, federal legislation between the 1867 Treaty of Cession and the early twentieth century largely dodged the issue of native rights in Alaska. However, the few laws that were enacted addressed some issues important to Alaska Natives during this period.

Before addressing the situation in Alaska, analysis must start with the first laws that Congress enacted regarding the status and sale of Indian lands. The Indian Trade and Intercourse Act of 1790 stated, in part:

> [t]hat no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.[184]

After a series of U.S. Supreme Court cases in the first part of the nineteenth century,[185] aboriginal title[186] became the law of the land, with the Court acknowledging that Indians have a right to possess the lands that they have historically occupied for their "exclusive enjoyment."[187]

The early federal legislation pertaining to Alaska was largely

183. *Sansonetti Op.*, *supra* note 3, at *36; ARNOLD, *supra* note 54, at 75–78.

184. Act of July 22, 1790, ch. 33, § 4, 1 Stat 137, 137–38.

185. Robert T. Anderson, *The Katie John Litigation: A Continuing Search for Alaska Native Fishing Rights After ANCSA*, 51 ARIZ. ST. L.J. 845, 849–50 (2019) [hereinafter Anderson, *The Katie John Litigation*] (discussing the evolution of Supreme Court Indian country jurisprudence through the 1830s); *see also* Joseph D. Matal, *A Revisionist History of Indian Country*, 14 ALASKA L. REV. 290–92 (1997).

186. "Aboriginal title refers to land claimed by a tribe by virtue of its possession and exercise of sovereignty rather than by virtue of letters of patent or any formal conveyance. The concept of aboriginal title . . . comes from a recognition that the property rights of indigenous people persist even after another sovereign assumes authority over the land. Aboriginal title was recognized by all European sovereigns and the United States, and is considered as sacred as the fee simple of the whites." United States v. Abouselman, 976 F.3d 1146, 1155–56 (10th Cir. 2020) (quotations and citations omitted).

187. Mitchel v. United States, 34 U.S. 711, 713 (1835). For a more thorough discussion, see Anderson, *Sovereignty and Subsistence*, *supra* note 36, at 190–92.

prompted by control of the liquor,[188] fur, and fishing trades. The rights of Alaska Natives, along with some semblance of aboriginal land rights, weaved their way through several of these early acts, but, as discussed below, the jurisprudence did not always follow.[189]

For example, in the first act after the Treaty of Cession, the Act of July 27, 1868, Congress made it "unlawful for any person or persons to kill any otter, mink, marten, sable, or fur seal, or other fur-bearing animal, within the limits of said territory [the territory ceded by Russia, which includes St. Paul Island], or in the waters thereof."[190] Shortly thereafter, Congress reserved the Pribilof Islands of St. Paul and St. George for the protection of the fur seals, allowing only limited seasonal hunting of the fur seal but carving out an exception for Native customary and traditional uses.[191]

After significant pressure from the commercial fur industry, coupled with a desire to preserve the seal population, Congress reopened the lands closed by the Act of July 27, 1868. In the Act of July 1, 1870, Congress directed the Secretary of the Treasury to accept bids to lease the right to take fur seals on the island of St. Paul but to give "due regard to the interests of the government, the native inhabitants, the parties heretofore engaged in trade, and the protection of the seal fisheries . . . [and] to the preservation of the seal fur-trade of said islands, and the comfort,

188. 14 Op. Att'y Gen. 327 (Nov. 13, 1873) (determining that alcohol cannot be imported into Alaska because "Alaska is to be regarded as 'Indian country'" pursuant to 17 Stat., 530 (March 3, 1873)).

189. At this time, federal Indian law was undergoing a seismic shift. In 1871, Congress ended a long tradition of treaty-making with Native Americans. For a brief discussion on the appropriations stalemate caused by the House of Representatives in the 1860s, see Anderson, *Sovereignty and Subsistence*, *supra* note 36, at 192–93. The Indian Appropriations Act of 1871 provided "[t]hat hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty." Indian Appropriations Act of 1871, ch. 120, § 1, 16 Stat. 544, 566 (1871). While the controversy over treaties was not necessarily at issue in Alaska at the time, the 1871 Act eliminated the federal government's ability to enter into treaties with Alaska Natives, which, in turn, left open the question of sovereignty and federal recognition.

190. Act of July 27, 1868, ch. 273, § 6, 15 Stat. 240, 241.

191. Act of March 3, 1869, 40 Res. No. 22, 15 Stat. 348, 348. There were similar carve-outs for the customary and traditional uses of the Native peoples in subsequent statutes and regulations. *See* Act of June 7, 1902, ch. 1037, § 1, 32 Stat. 327, 327 (amended 1908) (exempting Natives (among others) from season and bag limits when hunting for food); Alaska Game Law, ch. 75, § 10, 43 Stat. 739, 743–44 (1925) (amended 1938, 1940, 1943) (also allowing Natives (among others) to take game and birds out of season if other food is not available); Anderson, *Sovereignty and Subsistence*, *supra* note 36, at 195 (identifying a number of exemptions in federal law for Alaska Natives to practice customary and traditional hunting and fishing activities).

maintenance, and education of the natives thereof."[192] With this language there was at least a tacit acknowledgement of the importance of the seal fur to the Alaska Natives and some right thereto.[193]

The most significant piece of legislation during this period was the 1884 Organic Act ("Organic Act"), which established a civil government in Alaska under the general laws of the State of Oregon.[194] The Organic Act was limited in scope, vague, and left many issues unresolved.[195] It did, however, provide that Alaska Natives should not be disturbed in the possession of any lands actually in their use or occupation, or claimed by them, until terms for acquisition of title were established in future legislation. The Senate Report on the legislation explained:

> [T]he rights of the Indians to the land, or some necessary part of it, have not yet been the subject of negotiation or inquiry. It would be obviously unjust to throw the whole district open to settlement under our land laws until we are advised what just claim the Indians may have upon the land, or, if such a claim is not allowed, upon the beneficence of the Government.[196]

Whether this was an intentional recognition of aboriginal land rights or merely an effort by Congress to beg off the question of native landownership for a later date is a topic of debate. Nonetheless, the bill's sponsor, Senator Benjamin Harrison, said, "It was the object of the committee absolutely to save the rights of all occupying Indians in that Territory until . . . the Secretary of the Interior could ascertain what their claims were and could definitely define any reservations that were necessary to be set apart for their use."[197]

The language in the Organic Act could certainly support this contention. For example, to aid the Secretary's determination, a provision of the Organic Act, presaging future legislation, provided for a

192. Act of July 1, 1870, ch. 189, § 4, 16 Stat. 180, 180–81.

193. When these leases ultimately expired, Congress gained exclusive control of the right to kill seals on the islands. Aleut Cmty. of St. Paul Island v. United States, 117 F. Supp. 427, 430 (Ct. Cl. 1954). Under the Act of April 21, 1910, seals could be killed only "by officers, agents, or employees of the United States appointed by the Secretary of Commerce and Labor, and by the natives of the Pribilof Islands under the direction and supervision of such officers, agents, or employees, and by no other person." Act of April 21, 1910, ch. 183, § 1, 36 Stat. 326, 326. Notably, the Act required that Alaska Natives should be used for the hunting, killing, and curing of the furs and should receive fair compensation. *Aleut Cmty.*, 117 F. Supp. at 430.

194. Act of May 17, 1884, ch. 53, § 5, 23 Stat. 24, 25.

195. GRUENING, *supra* note 32, at 49–52 (discussing the deficiencies and shortcomings of the Act).

196. S. REP. NO. 3, at 2 (1883).

197. 15 Cong. Rec. 531 (1884) (statement of Sen. Harrison).

commission to examine, inter alia, "the condition of the Indians residing in [Alaska], what lands, if any, should be reserved for their use, [and] what provision shall be made for their education."[198] In a Supreme Court case where the Tee-Hit-Ton Indians of Southeast Alaska sought to recover compensation from the United States for taking of timber on their occupied lands, the Court dismissed the Tee-Hit-Ton's aboriginal claim.[199] However, in a dissenting opinion, Justice Douglas, Chief Justice Warren, and Justice Frankfurter opined that the text and legislative history of section 8 of the Organic Act make "clear that Congress . . . recognized the claims of these Indians to their Alaskan lands. What those lands were was not known. Where they were located, what were their metes and bounds were also unknown . . . . But all agreed that the Indians were to keep them, wherever they lay."[200] They cited to a colloquy between Senator Preston Plumb and Senator Benjamin Harrison during consideration of an amendment to add the words "or now claimed by them":

> Senator Benjamin Harrison, in accepting the amendment, said, "[] it was the intention of the committee to protect to the fullest extent all the rights of the Indians in Alaska and of any residents who had settled there, but at the same time to allow the development of the mineral resources. []" . . .
>
> Senator Plumb went on to say, "I propose that the Indian shall at least have as many rights after the passage of this bill as he had before."
>
> Senator Harrison replied that . . . "It was the object of the committee absolutely to save the rights of all occupying Indians in that Territory until the report which is provided for in another section of the bill could be made, when the Secretary of the Interior could ascertain what their claims were and could definitely define any reservations that were necessary to be set apart for their use."[201]

This debate has carried on in subsequent scholarship.[202]

198. Act of May 17, 1884, ch. 53, § 12, 23 Stat. 24, 27.

199. Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 278 (1955) ("We have carefully examined these statutes and the pertinent legislative history and find nothing to indicate any intention by Congress to grant to the Indians any permanent rights in the lands of Alaska occupied by them by permission of Congress. Rather, it clearly appears that what was intended was merely to retain the status quo until further congressional or judicial action was taken.").

200. *Id.* at 294 (Douglas, J., dissenting).

201. *Id.* at 291, 292–93 (Douglas, J., dissenting) (citations omitted) (quoting 15 Cong. Rec. 531 (1884)).

202. *Compare* CASE & VOLUCK, *supra* note 12, at 24, *with* Anderson, *The Katie*

Significantly, the Organic Act also set laws for equal treatment with respect to education for all who reside in Alaska. It authorized the Secretary of the Interior to provide for "the education of the children of school age in the Territory of Alaska, without reference to race."[203]

In summary, scant federal legislation pertaining to Alaska Natives was enacted during this period. There were several acts relating to the fur and fishing trades that purported to protect some Native rights, but the major legislation establishing a civil government largely avoided addressing any such protections. This early legislation established a pattern where Congress would tackle issues in a piecemeal fashion and abstain from meaningfully addressing the rights of Alaska Natives.

B. Executive Branch Actions in Alaska

Throughout the nineteenth century and the first part of the twentieth century, "for the most part, Alaska Natives maintained their ways of life and continued to occupy their territories largely without outside interference."[204] Even so, beginning in the late nineteenth century, the federal government did recognize that Alaska Natives were entitled to special programs and differential treatment—despite the lack of formal recognition as sovereign tribes, absence of reservations, and refusal to recognize Indian country.[205]

John Litigation, *supra* note 185, at 851.

203. Act of May 17, 1884, ch. 53, § 13, 23 Stat. 24, 27–28.

204. Anderson, *Sovereignty and Subsistence*, *supra* note 36, at 194.

205. Aboriginal title, also known as original Indian title or Indian country, stems from the Natives' own long-standing connection to and dominion over a known territory. United States v. Abouselman, 976 F.3d 1146, 1155–56 (10th Cir. 2020). Unlike other Indian property rights, it does not depend for its existence upon a grant or confirmation of rights from the United States. Recognized by European powers upon their arrival on the continent as well as by the United States, it protected the continued existence of Native peoples in their aboriginal state until the federal government provided otherwise. *See* Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 573–74 (1823); *see also* Cherokee Nation v. Georgia, 30 U.S. 1, 10 (1831) ("The Indians are acknowledged to have an unquestionable, and heretofore an unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government."). In *Bates v. Clark*, the Supreme Court held that Indian country was determined by reference to aboriginal title and explained: "The simple criterion is that . . . it was Indian country whenever the Indian title had not been extinguished, and it continued to be Indian country so long as the Indians had title to it, and no longer." 95 U.S. 204, 208 (1877). Congress first defined the term "Indian Country" in the 1834 Indian Trade and Intercourse Act to mean land "to which the Indian title has not been extinguished." Act of June 30, 1834, ch. 161, 4 Stat. 729 (codified as amended at 18 U.S.C. § 1154(a)). In *Miller v. United States*, in a condemnation action brought by the United States to obtain unencumbered fee title to tidelands in Juneau for the purpose of building a wharf, the Ninth Circuit held that no communal claim of aboriginal title survived the Treaty of Cession. 159 F.2d 997, 1002 (9th Cir. 1947).

1. Push for Assimilation

One of the first pronouncements on the status of Alaska Natives came from Secretary Seward, who declared in 1869 to the Secretary of War that laws regulating intercourse with Indian tribes applied to Alaska, and, based on this view, "the military in Alaska proceeded to treat Alaska as Indian country."[206] Although this policy expressly assumes the existence of sovereign tribes in Alaska, Seward's belief that Alaska should be treated as Indian country was ultimately rejected by federal courts and agencies.

In 1886 the Interior Department's General Agent of Education in Alaska, Dr. Sheldon Jackson, authored a Report on Education in Alaska in which he "asserted that treating Natives as Indians 'is a mistake.'"[207] Dr. Jackson's report, which reflected the opinion of many that Indian policy should be focused on tribal termination and assimilation, endorsed the federal court view that Alaska Natives "are not Indians—that they can sue and be sued, make contracts, go and come at pleasure, and do whatever any other person can do lawfully."[208] Indeed, during this period, the federal government generally did not grant Alaska Natives the rights and protections afforded to Indians in the lower forty-eight.[209] For example, Alaska Natives were not served by the Bureau of Indian Affairs, but by the Department of the Interior's Bureau of Education,[210] albeit in segregated schools.[211]

2. The Treatment of "Civilized" and "Uncivilized" Alaska Natives

An 1891 article written by Territorial Governor Lyman E. Knapp[212] captures the shifting views prevailing by the late nineteenth century. The article was prompted by the likely extension of the townsite law to Alaska, which would advance the organization of municipalities.[213] This, in turn, required an examination of who was entitled to the privileges of

However, this holding was impliedly overruled by the Supreme Court in *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 278–79 (1955), which recognized aboriginal title but held that it is non-compensable absent contrary legislation.

206. *Sansonetti Op.*, *supra* note 3, at *10.

207. *Id.* at *11 (citing Jackson, Report on Education in Alaska, S. Exec. Doc. No. 85, 49th Cong., 1st Sess. 10 (1886)).

208. Jackson, Report on Education in Alaska, S. Exec. Doc. No. 85, 49th Cong., 1st Sess. 10 (1886).

209. Daniel H. Jorjani, Solicitor Opinion M-37064 at 29 "Permanent Withdrawal of Solicitor Opinion M-37043, "Authority to Acquire Land into Trust in Alaska" (citing John Brady, 19 Pub. Lands Dec. 323 (1894)).

210. MITCHELL, SOLD AMERICAN, *supra* note 52, at 77, 87–89.

211. *Id.* at 89–90.

212. Knapp, *supra* note 152.

213. *Id.* at 325.

citizenship and the elective franchise.[214] Knapp wrote that whether Congress viewed Alaska Natives as citizens was unclear: "we are left to our own surmises as to whether Congress considers them citizens or resident aliens."[215]

Knapp's article began by summarizing federal Indian common law and observed that "various Indian tribes of the United States have been treated as free and independent within their respective territories, governed by tribal laws and customs . . . . They have been excused from all allegiance to the municipal laws of the whites in relation to tribal affairs" subject to certain restraints.[216] Knapp noted that, in 1871, Congress adopted a new policy disfavoring the recognition of new independent nations because acknowledging sovereign nations within the United States "has been a fruitful source of trouble and danger to the people, and a most perplexing problem for the statesman."[217] According to Knapp, the most troubling outcome of the former policy was that "we have people permanently residing within our borders who are not subject to our laws in all respects, but for whom we are responsible."[218] Knapp noted, however, that the pre-1871 policies had not been applied to Alaska Natives and that they "now sustain a very different relation to us; and the question is, what is that relation?"[219]

To elucidate the legal status of Alaska Natives, Knapp first turned to the 1867 Treaty and noted that the critical question centers on who is included in the class of "uncivilized tribes."[220] According to Knapp, the Russian-American Company initially

> considered the great mass of natives as individuals rather than tribes, though individuals of a lower order. They were accessories to business, useful in many ways, but more to be feared than the wild beasts of the forests, and perhaps thought of more frequently than otherwise as dangerous animals without responsibility and without rights.[221]

Eventually, however, "a different relation [became] more and more frequent among them until a large portion of the Aleuts and the Kadiak Eskimos were apparently on the same footing as whites."[222] In support of this proposition, Knapp cited a 1787 address from Catherine the Great "to

214. *Id.*
215. *Id.*
216. *Id.* at 326.
217. *Id.* at 326–27.
218. *Id.* at 327.
219. *Id.* at 328.
220. *Id.*
221. *Id.* at 329.
222. *Id.* at 329–30.

the Aleuts in which she called them her 'faithful subjects.'"[223] Knapp concluded that because "under the Russian regime the Christianized Aleuts and Eskimos, and of course those of mixed blood, were citizens of the Czar's dominion, the United States, as the legal successor to Russia . . . must also receive and treat them as citizens and give them all the privileges which that term applies."[224]

Knapp then turned to the history of the governance of Alaska Natives since 1867. He remarked that "the United States has universally adhered to the rule received from its predecessor, and even extending the policy to the Eskimos and Athabascan tribes, of treating them as individuals and not as aggregations. It has at no time recognized any tribal relation among them."[225] Knapp added that Alaska Natives' "local customs or laws for the enforcement of contracts and for the punishment of offenses among themselves have been ignored or forcibly suppressed."[226] After reviewing applicable laws and cases, Knapp concluded that the federal government's "dealings with the uncivilized tribes" had revealed "that they are individual subjects of the United States, amendable as such to all general laws of the land . . . having the same privileges . . . that the whites have, and no more."[227] Knapp added that Alaska Natives have "no special privileges of local rules and customs which are at variance with the laws of the United States, and [they are] entitled to no support or other especial immunities."[228]

After analyzing case law on the legal status of Indians, Knapp opined on which Alaska Natives should be afforded the rights of citizenship.[229] He concluded, based in part on the 1867 Treaty, that Aleuts, Kodiak Eskimos, and some Tlingit and Haida, who were recognized as Russian subjects, are to be regarded as U.S. citizens, "whose rights, as such, cannot be abridged by class legislation based upon race or color, whether civilized or not."[230] For "Arctic Eskimos and the Athabascans of the interior," their rights turn on whether they are "civilized peoples, or uncivilized tribes."[231] In other words, citizenship for these Natives

223. *Id.* at 330.
224. *Id.* at 331.
225. *Id.* The contention that Russia did not treat Alaska Natives as sovereign tribes conflicts with the historical record. *See* GSOVSKI ET AL., *supra* note 91, at 49–50; BLACK, *supra* note 88, at 257–60 (describing the rights of tribes and individual Alaska Natives under Russian rule).
226. Knapp, *supra* note 152, at 332.
227. *Id.* at 333.
228. *Id.*
229. *Id.* at 337.
230. *Id.* Some modern scholars have claimed that the United States narrowly construed Article III of the 1867 Treaty to exclude most Alaska Natives from U.S. citizenship. *See* CASE & VOLUCK, *supra* note 12, at 63–64.
231. Knapp, *supra* note 152, at 337.

depends on whether they have adopted the habits of a civilization and, if so, then such individuals should be considered U.S. citizens.[232] If, however, the individuals are not civilized and exercise "divided fealty" to the United States and to their tribes "then they are subject to the 'laws and regulations' adopted by the United States in regard to its aboriginal tribes, and those laws and regulations already in force in other sections of the country *are equally applicable here because the conditions are the same*."[233]

3. The Formulation and Application of Wardship Policies

As the white population began to grow in Alaska, conflicts, exploitation, and the waste of natural resources forced the federal government to reevaluate its trust responsibility. By the late nineteenth century, the non-native population grew from 430 in 1880 to over 39,000 in 1909.[234] The population growth was driven largely by Alaska's first gold rush and the advance of the commercial salmon industry, which, in turn, generated significant disputes over lands and resources.[235] "[C]onditions of Natives caused by the advance of whites in the territory can only be viewed as disgraceful to a nation claiming to be civilized, humanitarian, or Christian."[236] In response to deteriorating conditions and growing conflicts, federal officers began to assert the government's trust responsibility.[237] For example, the Department of the Interior "acted to protect" lands occupied by Natives "from non-Native entry" by "refus[ing] to approve a townsite that included a waterway actually used by [an Alaska] Native village as a source of fresh water for domestic use and consumption."[238] Thus, by the late nineteenth century, the executive

232. *See id.* at 337–38 (listing characteristics of "civilization").

233. *Id.* at 338 (emphasis added). Judge Wickersham came to adopt Knapp's reasoning in *In re Naturalization of Minook*, 2 Alaska 200, 211–12 (D. Alaska 1904), which held that the 1867 Treaty mandated that Alaska Natives who were Russian subjects in 1867 became naturalized U.S. citizens.

234. ARNOLD, *supra* note 54, at 71. The Native population, by contrast, declined from 32,996 to 25, 331. *Id.*

235. *Id.* at 66–68, 72–77 (describing the adverse impacts and disputes caused by the encroachment of those seeking to extract natural resources from native lands); *id.* at 74 ("For Natives, the gold stampede meant a drastic reduction in moose, caribou, and small game as prospectors hunted these animals for their food supply. In many areas, gold mining resulted in siltation of salmon streams, destroying them."); *id.* at 75–78 (describing the widespread destruction caused by the commercial salmon and whaling industries).

236. *Id.* at 79 (quoting, in part, Major General A.W. Greely).

237. *Id.* at 77–78 (describing the pleas for help from government officials in response to the destruction of natural resources); *id.* at 79 ("Having largely destroyed their food supplies, altered their environment, and changed their standards and methods of life, what does a nation that has drawn products valued at $300,000,000 owe to the natives of Alaska? Will this nation pay its debt on this account?") (quoting Major General A.W. Greely).

238. *Sansonetti Op.*, *supra* note 3, at *36 (citing 24 Interior Dec. 312 (1897)).

branch began to protect the interests of Alaska Natives.

These early efforts set the groundwork for President Roosevelt's 1904 State of the Union address, which appears to be the first presidential address to discuss the plight of Alaska Natives. President Roosevelt observed that "[i]n some respects [Alaska] has outgrown its present laws, while in others those laws have been found to be inadequate."[239] He specifically stated that the federal government must do more to address the issues facing Alaska Natives.[240] President Roosevelt also remarked that, for Alaska Natives, "[t]heir country is being overrun by strangers, the game slaughtered and driven away, the streams depleted of fish, and hitherto unknown and fatal diseases brought to them, all of which combine to produce a state of abject poverty and want which must result in their extinction."[241] He concluded that action to protect Alaska Native interests "is demanded by every consideration of justice and humanity."[242]

To address the deprivations and injustice facing Alaska Natives, President Roosevelt asked Congress to establish hospitals "so that contagious diseases that are brought to them continually by incoming whites may be localized and not allowed to become epidemic, to spread death and destitution over great areas."[243] He also requested that Alaska's governor be provided "with the means and the power to protect and advise the native people, to furnish medical treatment in time of epidemics, and to extend material relief in periods of famine and extreme destitution."[244] Finally, President Roosevelt requested that the "Alaskan natives should be given the right to acquire, hold, and dispose of property upon the same conditions as given other inhabitants; and the privilege of citizenship should be given to such as may be able to meet certain definite requirements."[245]

Thus, embodied in President Roosevelt's address are the same principles that run throughout this period: Alaska Natives should be given the full rights of citizenship and the federal government has a moral obligation to provide special programs and services. Springing from this address were a range of congressional and executive branch initiatives designed to advance these objectives.[246]

239. President Theodore Roosevelt, Annual Message of the President of the United States (Dec. 6, 1904).
240. *Id.*
241. *Id.*
242. *Id.*
243. *Id.*
244. *Id.*
245. *Id.*
246. Consistent with President Roosevelt's State of the Union address, the legislative and executive branches of the federal government undertook periodic

C. Defining Native Rights Through Adjudication: 1867–1911

During the decades after the Alaska purchase, federal courts were also forced to examine the legal status of Alaska Natives with a dearth of guidance from Congress. These early cases were often predicated on the view that Alaska Natives fell into two classes: civilized—with full rights of citizenship—and uncivilized—with restrictions on the exercise of certain rights but with certain other protections. The outcome of litigation involving Alaska Natives, therefore, often turned on whether the Alaska Native subject to the suit was considered civilized.

1. Application of Federal Criminal Laws

As a general matter, federal criminal laws applied to Alaska Natives. In 1872, the U.S. District Court for the District of Oregon (which then had judicial jurisdiction over Alaska) dismissed a prosecution for the sale of liquor to Alaska Natives, which federal law prohibited in Indian country, because it determined that Indian country did not exist in Alaska, and, therefore, laws designed to protect Indians in the lower forty-eight did not apply.[247] Other cases during this period also applied the federal criminal laws to Alaska Natives because no Indian country existed in Alaska.[248]

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efforts to protect Alaska Native hunting and fishing rights and allowed for the acquisition of property. In 1906, Congress enacted the Alaska Native Allotment Act, which was intended to significantly increase Native land ownership. Pub. L. No. 59-171, 34 Stat. 197 (1906). In 1908, Congress amended Alaska's first game law, allowing for Alaska Natives to take game animals. The Act for the Protection of Game in Alaska of 1908, Pub. L. No. 57-147, 32 Stat. 327 (1902), *amended by*, Act of May 11, 1908, 35 Stat. 102. And, in 1942, the Department of the Interior issued an opinion concluding that Alaska Natives have broad aboriginal fishing rights, which have "been construed to include the occupancy of water and land under water as well as land above water." Aboriginal Fishing Rights in Alaska, 57 Interior Dec. 461, 474 (Dep't of Interior ,Feb. 13, 1942). For federal litigation efforts to protect aboriginal rights, see *Alaska Pac. Fisheries v. United States*, 248 U.S. 78 (1918), where the United States filed suit to enjoin a commercial fishery from operating in a reservation established to protect Alaska Natives' fishing rights; *United States v. Libby, McNeil & Libby*, 107 F. Supp. 697 (D. Alaska 1952), discussing the federal efforts to reserve fishing rights for Alaska Natives; *Tlingit & Haida Indians of Alaska v. United States*, 177 F. Supp. 452 (Fed. Cl. 1959), discussing Alaska Native land claims and federal efforts to protect hunting and fishing; and *Metlakatla Indian Cmty., Annette Islands Rsrv. v. Egan*, 369 U.S. 45 (1962), discussing federal efforts to protect Alaska Native fishing rights.

247. United States v. Seveloff, 27 F. Cas. 1021, 1024 (D. Or. 1872) (No. 16,252). "The early Alaska Indian country decisions have been criticized by modern commentators" for failing to adhere to federal Indian common law. *Sansonetti Op.*, *supra* note 3, at *10 (citing Native Vill. of Venetie I.R.A. Council v. Alaska, 944 F.2d 548, 558 (9th Cir. 1991)); *see also* CASE & VOLUCK, *supra* note 12, at 2 n.6 (discussing the common law principles of Indian law).

248. *See, e.g.*, Kie v. United States, 27 F. 351, 356 (C.C., D. Ore 1886) (applying

2. Application of Federal Civil Laws to Regulate Internal Native Affairs

Perhaps the first civil case to substantively address the status of Alaska Natives was an 1886 habeas corpus case, *In re Sah Quah*,[249] wherein the court rejected the inherent sovereignty of Alaska Natives to manage their own affairs.[250] This case involved a dispute over whether federal law, the Thirteenth Amendment, and the 1866 Civil Rights Act prohibited one Tlingit from enslaving another.[251] The court initially observed that the United States Supreme Court had repeatedly stated that "the various Indian tribes of the United States have been treated as free and independent within their respective territories, governed by their tribal laws and customs, in all matters pertaining to their internal affairs . . . [and] have been excused from all allegiance to the municipal laws."[252] The court rejected the idea that the principle of Indian national sovereignty enunciated in *Worcester v. Georgia*[253] applied to "the Indians of Alaska," explaining that the Alaskan tribes were not like Indians in the lower forty-eight for a variety of reasons, including that Alaska Natives had been accorded different treatment by the U.S. government.[254] Accordingly, the court held that federal laws applied to Alaska Natives and prohibited them from owning slaves.[255]

3. No Restrictions on Conveying Real Property

Contrary to federal Indian law, Alaska Natives living in settled communities, like Juneau and Sitka, were able to convey title to lands that they possessed.[256] In an 1894 opinion issued by the Department of the Interior, a solicitor was asked if the Department was required to approve

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the federal murder statute to Alaska).

249. 31 F. 327 (D. Alaska 1886).

250. *Id.* at 328.

251. *Id.* at 327–30.

252. *Id.* at 329.

253. 31 U.S. 515, 559–60 (1830). Chief Justice Marshall wrote: "the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self-government, by associating with a stronger, and taking its protection." *Id.* at 520.

254. *In re Sah Quah*, 31 F. at 329.

255. *Id.* at 331.

256. Under Russian rule, private property rights and land tenure did not involve formal instruments—Russian subjects in Alaska did not hold formal title to land. BLACK, *supra* note 88, at 285. For settlers, "first occupancy and use constituted title without any formalities." *Id.* For Alaska Natives, "neither the government nor the company had ever had any influence upon the mode of division of lands between said natives, who . . . use such lands in perfect freedom, without any foreign influence or restrictions." *Id.* Thus, by the fall of 1867, "no documents certifying ownership existed anywhere in Alaska." *Id.* at 286; *see also Sansonetti Op.*, *supra* note 3, at *8 ("Russia had not established a formal system of land titles.").

a land sale in Sitka between a white man and an Alaska Native.[257] To address this question, the solicitor had to opine on "the legal status of the aborigines of the District of Alaska."[258] The solicitor found that Indian country does not exist in Alaska and the Office of Indian Affairs "has never exercised any jurisdiction over any of the inhabitants of Alaska as Indians. No Indian agencies have been established, and none of the moneys appropriated for Alaska have been disbursed under the supervision of the office of Indian Affairs."[259] The solicitor added that "Congress has not as yet given to the natives of Alaska a definite political status."[260] He therefore concluded that the agency did not have to approve the sale of land.[261] Courts affirmed this analysis.[262]

4. Citizenship of Alaska Natives

During this period, courts also addressed whether Alaska Natives were U.S. citizens. *In re Minook*[263] involved an Alaska Native, John Minook, who was born in 1849 in the village of St. Michael.[264] He was the son of a Russian trader and Eskimo mother.[265] After filing an application with the court to become a U.S. citizen, Minook appeared in court with witnesses in support of his application, claiming that—since he was a Russian subject when the United States purchased Alaska and he was not a member of an "uncivilized tribe"—the 1867 Treaty granted him U.S. citizenship.[266] Judge Wickersham agreed.[267] The case specifically addressed whether "civilized" Alaska Natives became U.S. citizens upon the purchase of Alaska.[268] After reviewing the rights provided to Alaska Natives under the 1844 Charter,[269] and the applicable provisions in the

257. Dep't of the Interior, Op. Regarding Legal Status of Alaska Natives, 19 Pub. Lands Dec. 323 (1894).
258. *Id.* at 323.
259. *Id.* at 324.
260. *Id.* at 325.
261. *Id.*
262. *See, e.g.*, Sutter v. Heckman, 1 Alaska 81, 88–89 (D. Alaska 1900); Worthen Lumber Mills v. Alaska Juneau Gold Mining Co., 229 F. 966, 968–69 (9th Cir. 1916). These decisions have been criticized by modern scholars. *See* CASE & VOLUCK, *supra* note 12, at 66–70.
263. 2 Alaska 200 (D. Alaska 1904).
264. *Id.* at 219. St. Michael was founded in 1833 by the Russian-American Company to serve as a trading post with the Yup'ik people who resided in the area. *The History of St. Michael, Alaska*, EXPLORENORTH, https://explorenorth.com/alaska/history/st_michael-history.html (last visited Apr. 9, 2022).
265. *In re Minook*, 2 Alaska at 200.
266. *Id.* at 202–03.
267. *Id.* at 224.
268. *Id.* at 212.
269. *See* discussion *infra* Section IV.A.

1867 Treaty, Judge Wickersham found that (1) the 1867 Treaty granted all Russian subjects citizenship; (2) Minook, as a member of a settled tribe, was a Russian subject under the 1844 Charter; and, therefore, (3) Minook was a U.S. citizen.[270] Judge Wickersham explained that Russia specifically negotiated in the treaty for the U.S. to admit as citizens "Russian colonists, creoles, and settled tribes" and to ensure that these Russian subjects were protected "in the free enjoyment of their liberty, property, and religion."[271] Judge Wickersham then held: "It is my judgment that . . . the settled tribes, designed in the imperial ukase of 1844, *both from an ethnological and a legal standpoint*, were civilized people at the date of the treaty of cession . . . and upon accepted its provisions became, *ipso facto*, citizens of the United States."[272]

Similarly, in *Nagle v. United States*,[273] another federal court was willing to categorize an Alaska Native as "civilized" and, therefore, a U.S. citizen.[274] In *Nagle,* the Ninth Circuit addressed whether a non-Native citizen could be criminally prosecuted for selling liquor to an Alaska Native, Billie Hooker.[275] The case turned on whether Hooker was a U.S. citizen, for, if he was, the defendant could not be prosecuted for selling him liquor.[276] After analyzing the 1867 Treaty, territorial laws, and case law, the court concluded:

> Two classes of Indians born within the territorial limits are declared to be citizens thereof, namely, Indians who have received allotments under any act or treaty, and Indians who have severed their tribal relations by taking their residence separate and apart from any tribe and have adopted the habits of civilization.[277]

The court then found that the jury should have been able to address whether Hooker had become a citizen "and, if found to be such, then the

270. *In re Minook*, 2 Alaska at 218–19.
271. *Id.* at 219.
272. *Id.* (emphasis added). Judge Wickersham erred, however, in stating that only those settled tribes who embraced Christianity were deemed to be Russian subjects. *Id.* at 218. "The view that the Christian faith was a prerequisite for the recognition of a tribe as settled does not find any support in the Russians laws. These definitely provided for the possibility of existence of pagans among the tribes, who, otherwise, were considered settled and enjoyed the status of the same. . . . Moreover, the exercise of native faith was expressly guaranteed (sections 271–273)." GSOVSKI ET AL., *supra* note 91, at 12.
273. 191 F. 141 (9th Cir. 1911).
274. Some scholars claim that, during this era, there was a widespread judicial practice of categorizing "nearly all Alaska Natives" as "uncivilized." CASE & VOLUCK, *supra* note 12, at 24, 63–65.
275. *Nagle,* 191 F. at 141.
276. *Id.*
277. *Id.* at 145–46.

acquittal of the accused should follow."[278] The case, therefore, illustrates that courts broadened the test provided in the treaty to determine who qualified as a citizen and thus allowed any Alaska Native who took "up the pursuits of civilized life" to be deemed a U.S. citizen who was to be treated differently under federal law than Alaska Natives who remained with their tribe.[279]

5. Scope of the Federal Government's Trust Responsibility

By the end of the nineteenth century, the federal government began to assert a trust responsibility for Alaska Natives despite the absence of treaties and reservations and little guidance from Congress. A seminal case heralding a shift in federal policy involved Athabascans living in a village lying at the confluence of the Tanana and Little Delta rivers.[280] The tribe had long occupied this site when a group of white settlers trespassed on their land, claimed the parcels after offering a nominal sum of money, and ejected the Alaska Natives from their land and homes.[281] The federal government, through the district attorney, filed suit on behalf of the tribe to remove the settlers and return the land to the tribe.[282] The defendants responded to the suit by claiming that they purchased the land "for a nominal sum and the promise to pay a larger sum in the future."[283]

Judge Wickersham found that the "Indians have good-naturedly accepted all sums and signed every paper offered and it was not until the whites had wholly occupied their land, cut their wood, and entered into their cabins and excluded them that they complained."[284] Notably, the court also recognized that "[t]he Indians were camped in a tent on a sand bar above their old homes when the evidence was taken, while the defendants occupied their homes and lands."[285] The Government's case centered on its contention that it had a duty to protect these Alaska Natives, who they characterized as "illiterate, uneducated, [and with] no knowledge of property values" and who "were cheated and wronged out

278. *Id.* at 146.

279. *Id.*; *see also* Metlakatla Indian Cmty. v. Egan, 362 P.2d 901, 918 (Alaska 1961) (discussing how certain Alaska Natives gained citizenship over time), *vacated sub nom.* Metlakatla Indian Cmty., Annette Islands Rsrv. v. Egan, 369 U.S. 45 (1962), *aff'd sub nom.* Organized Vill. of Kake v. Egan, 369 U.S. 60 (1962).

280. United States v. Berrigan, 2 Alaska 442, 444 (D. Alaska 1905).

281. *Id.*

282. *Id.* "From an administrative standpoint, it is most significant that the United States brought this suit in the first place; it indicates an executive determination that the federal government had an obligation to protect Alaska Native aboriginal possession from non-Native encroachment." CASE & VOLUCK, *supra* note 12, at 26.

283. *Berrigan*, 2 Alaska at 444.

284. *Id.*

285. *Id.* at 445.

of their lands and homes."[286] Judge Wickersham agreed.

The court first found that these Alaska Natives "were uncivilized native tribes at the date of the treaty with Russia, and the evidence in this case shows that the band for which this suit is brought still occupies that plane of culture."[287] Given this status, the court ruled that this tribe was entitled to "equal protection of the law which the United States affords to similar aboriginal tribes within its borders."[288]

Next, the court reviewed the laws enacted by Congress between 1867 and 1900, which "provided for the protection of the Indian right of occupancy upon the public domain in Alaska."[289] The court concluded that the settlers were prohibited from acquiring any lands occupied by Alaska Natives or undertaking "any other act which shall disturb their possession," and that "all attempts to dispossess them by deed or contract" were "void."[290] In reaching this conclusion, Judge Wickersham, using a strategy that had been rejected by some earlier decisions, analogized the situation of Alaska Natives to the situation of Indians generally: "The United States has the right, and it is its duty, to protect the property rights of its Indian wards."[291]

VII. CONCLUSION

In *Yellen v. Confederated Tribes of the Chehalis Reservation*, a number of federally recognized tribes attempted to prevent thousands of Alaska Natives from receiving critical funding to respond to the COVID-19 pandemic. The plaintiffs' case centered on the proposition that Indian policies developed for the lower-forty-eight tribes apply to Alaska Native groups. The United States Supreme Court rejected these arguments, however, because Congress has long understood that Alaska is different. In particular, the status of Alaska Natives under federal Indian law is *sui generis* and federal policies developed for lower-forty-eight tribes do not

286. *Id.*

287. *Id.* at 447–48.

288. *Id.* at 448. While the court's analysis was predicated on a finding that this tribe was "uncivilized"—that is, it was not a settled tribe under the 1844 Charter and its members were, therefore, not naturalized as U.S. citizens—this did not dissolve the United States' trust responsibility to Alaska Natives who became citizens. *See, e.g.*, United States v. City of Kodiak, 132 F. Supp. 574, 577, 582 (D. Alaska 1955) (rejecting argument that members of a "civilized tribe" could not be made wards of the state); CASE & VOLUCK, *supra* note 12, at 69.

289. *Berrigan*, 2 Alaska at 448–50 (discussing various laws providing that Alaska Natives were not to be disturbed).

290. *Id.* at 449–50.

291. *Id.* at 450. Judge Wickersham also declined to follow an early ruling providing that Alaska Natives do have the power to enter into contracts and convey rights. *Id.* at 451.

fit comfortably within Alaska's unique landscape. Instead, policies affecting Alaska Natives have been the outgrowth of confusing and, at times, contradictory objectives.

Flowing from Russian rule, the 1867 Treaty established two regimes for Alaska Natives, which, in turn, informed federal laws, policies, and court decisions in the nineteenth century that grouped Alaska Natives into two categories—"civilized" and "uncivilized"—with the legal status of Alaska Natives contingent on which category they fell into. Over time, these classifications fell away as the federal government began to apply certain Indian policies to all Alaska Natives. Yet the tension remained. This peculiar arrangement set the foundation for contentious debates that remain to this day. It is only by understanding this history—and, importantly, how the status and rights of the Alaska Natives were based, at least in part, on the foundations laid by the Russians—that we can begin to understand why there is still so much confusion regarding the legal status and rights of Alaska Natives.