CHAPTER 21

ALASKAN NATIVES

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SECTION 1. CLASSIFICATION OF ALASKAN NATIVES

The term "Natives of Alaska" has been defined to include members of the aboriginal races inhabiting Alaska at the time of its annexation to the United States, and their descendants of the whole or mixed blood.[1] Important native groups comprise the Eskimos, which are distinct from, although related to, the American Indian,[2] the kindred Aleuts, and the Indians. Among the Indian groups[3] are the Athapascans, Tlingits,[4] Haidas, and Tsimshians, which include the Metlakahtlans.[5] According to many reputable anthropologists, all these strains migrated to the New World by way of Bering Strait.[6]

The Eskimos (including the Aleuts) constitute almost two-thirds of the natives.[7] They inhabit the shores of the Arctic

[1] The following are some of the statutory provisions defining this term:

The Act of June 25, 1938, 52 Stat. 1169, amending the Alaska game law, defines "Indian" to include "Natives of one-half or more Indian blood," and "Eskimo" to include "Natives of one-half or more Eskimo blood."

Sec. 2 of the Act of April 16, 1934, 48 Stat. 594, 596, which grants special fishing privileges. to "native Indians," defines "native Indians" to mean "members of the aboriginal races inhabiting Alaska when annexed to the United States, and their descendants of the whole or half blood;" the term "Indian" is defined similarly in section 142 of the Act of March 3, 1899, 30 Stat. 1253, 1274.

Sec. 15 of the Reindeer Act of September 1, 1937, 50 Stat. 900, 902, defines the term "natives of Alaska" as meaning—

> the native Indians, Eskimos, and Aleuts of whole or part blood inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to the enactment hereof, have migrated into Alaska from the Dominion of Canada, and their descendants of the whole or part blood.

Sec. 19 of the Act of June 18, 1934, 48 Stat. 984, 988, provides: "For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians."

C. 80, section 142 of the Penal Code of Alaska, Act of February 6, 1909, 35 Stat. 600, 603, which makes the sale of liquor to Indians a crime, provides:

> That the term "Indian" . . * shall be construed to include the aboriginal races inhabiting Alaska when annexed to the United States, and their descendants of the whole or half blood, who have not become citizens of the United States.

The Indians of Alaska and Eskimos equally fall within the category of Natives of Alaska. *In re Minook*, 2 Alaska 200 (1904); 49 L. D. 592 (1923); 52 L. D. 597 (1929); 53 I. D. 593 (1932).

[2] Dr. Aleš Hrdlička, Curator of Physical Anthropology, Smithsonian Institution, in The Coming of Man from Asia in the Light of Recent Discoveries, Annual Report, Smithsonian Inst. for 1935. H. Doc. No. 324. pt. 1. 74th Cong., 2d sess. (1936), p. 469, expresses the opinion that the Eskimo, though a later comer to Alaska, is a blood relation of the Indian:

> The Eskimo appears to be a later offshoot from the same old stock that gave us the Indian. He came later and in two subtypes one nearer to, the other farther from, the Indian. The relation of the Indian and the Eskimo may best. perhaps be represented by a hand with outstretched fingers. The diverging fingers are the different types of the Indian; the thumb, which should be double, represents the Eskimo. The thumb is farther apart, but originates from the same hand. which is the old or paleo-Asiatic yellow-brown strain. a strain that gave us the ancestry of all the aboriginal Americans.

"Later studies by ethnologists have resulted in classifying all the natives except the Eskimos as remote. offshoots of the North American Indian stock." I Encyclopaedia Britannica (14th ed. 1936). p. 502.

[3] The 1940 census reports native Indians and Eskimos under six linguistic groups—Aleutian, Eskimauan, Athapascan, Haidan, Tlingit, end Tsimshian. All other Indians come under United States or Canadian stocks.

[4] See Jones, A Study of the Thlingets of Alaska (1914).

[5] See Survey of the Conditions of Indians in the United States, pt. 35 (Metlakahtla Indians); 74th Cong., 2d sess., Hearings Sen. Subcomm. on Ind. Affairs (1936). For an account of the conversion and civilization of these people through the indefatigable efforts of the missionary, William Duncan, see Arctander, The Apostle of Alaska (1909). and Wellcome, The Story of Metlakahtla (2d ed. 1909). Also see The Metlakahtlan. vol. 1. Nos. 1-8 (1888–91), a magazine published at Metlakahtla. The more recent history of these people is discussed in *Alaska Pacific Fisheries* v. *United States*, *248* U. S. 78 (1918), affg. 240 Fed. 274 (C. C. A 9, 1917), and *Territory* of *Alaska* v. *Annette Island Packing Co.*, 289 Fed. 671 (C. C. A. 9, 1923), cert. den. 263 U. S. 708 (1923).

[6] The chief deduction of American anthropology, in the substance of which all serious students concur, is that this continent was . . . peopled essentially from northeastern Asia. The deduction is based on the facts that man could not have originated in the New World, and hence must have come from the Old; that the American aborigines are throughout of one fundamental race, the nearest relatives of which exist to this day over wide parts of northern and eastern Asia: and that the only practicable route for man in such a cultural stage as. he must have been in at the time of his first coming to America was that between northeastern Asia and Alaska.

Hrdlička, *op. cit.*, Annual Report, Smithsonian Inst. for 1935, H. Doc. No. 324, 74th Cong., 2d sess. (1936), p. 463. See also Wissler, The Amer*ican* Indian (1922), pp. 389–400; Jenness, Anthropology-Prehistoric Culture Waves from Asia to America, 30 Jour. Washington Academy of Sciences No. 1 (1940). pp. 1-15.

Senator Charles Sumner alluded to this theory on April 9, 1867, in a speech before the Senate of the United States urging the ratification of the treaty between the United States and Russia *for* the purchase of Alaska. XI The Works of Charles Sumner (1875), p. 264. This speech (pp. 186–349) is an excellent summary of the contemporary knowledge of Alaska.

[7] Fifteenth Census of the United States, Outlying Territories and Possessions (1932). pp. 19, 20. On October 1. 1929. there were 19,028 Eskimos, (including the Aleuts) and. 10,955 natives of other linguistic stock. The total population was 59,278, of which the natives total slightly over half, or 29,983. For a discussion of the composition and distribution of the population, see Alaska, Its Resources and Development. H. Doc. No. 485, 75th Cong., 3d sess. (1938), pp. 35–38, 183. The unreliability of much of the contemporary writings on Alaska at the time of its purchase is evidenced by the fact that its population was then variously estimated at from 54,000 to 400,000. Probably the former figure was more nearly accurate, for it was adopted by the "Almanach de Gotha" for 1867 and the "Les Peuples de la Russie," the best authority at that time. it was estimated that there were not more than 2,500

Ocean, the islands of Bering Sea, and the Aleutian chain, and One-third of them live north of the Arctic circle.[8]

The Aleuts inhabit the Aleutian Islands and the adjacent mainland, while the Athapascan Indians, perhaps the most primitive, Occupy the Interior. reaching the coast only at Cook's Inlet.[9] The coastal Indians, which include the Tlingits,[10] a race of maritime nomads. the related Haidas, and the Tsimshians have their homes along the coastal area of Cook's Inlet, the Gulf of Alaska, and the shores of southeast Alaska.[11]

The natives reside in small, widely separated villages,[12] communities, or fishing camps, scattered along the 25,000 miles of coast and on the great rivers, principally along the southern and far northwestern coast. For the most part they do not fall into well-defined tribal groups occupying a fixed geographical area.[13] Most of them are engaged in hunting and fishing, sometimes supplementing these occupations by agriculture. The raising of reindeer provides subsistence for some and is expected to become more important in their economy.[14] An increasing number of natives are finding wage employment.[15]

Russians and Creoles, and 8,000 aborigines under the direct government of the Russian American Co.. and between 40,000 and 50,000 other aborigines who had only a temporary or casual contact with the company for purposes of trade. XI The Works of Charles Sumner (1875), pp. 261–263.

Sec. 236 of Art. 3. Charter of the Russian-American Company defines Creoles as follows :

> Children born of a European or Siberian father and a native American mother, or of a native American father and a European or Siberian mother shall be regarded as creoles, equally with the children of these latter, of whom a special record is preserved.

See In *re Minook*, 2 Alaska 200, 214 (1904).

Dall, Alaska and Its Resources (1870), p. 537. estimates that the population of Alaska around 1867 was 29,097, of which 26,843 were natives and 1,421 Creoles or half bloods. At present the mixed-blood population is Increasing. XI Encyclopaedia of the Social Sciences (1935). p. 269.

[8] Spicer, The Constitutional Status and Government of Alaska (1927). p. 98; Jenness, The Eskimos of Northern Alaska : A Study in the Effect of Civilization, V Geographical Review (1918), Pp. 89-101.

[9] Osgood, The Distribution of the Northern Athapaskan Indians. Yale University Publications in Anthropology. No. 7 (1936) ; Ethnography of the Tanaina, ibid.. No. 16 (1937).

[10] Knapp and Childe, The Thlinkets of Southeastern *Alaska* (1896).

[11] Anderson and Eells, Alaska Natives (1935). p. 6, *et seq.*; Krieger Indian Villages of Southeast Alaska, Annual Report, Smithsonian Inst. for 1927, H. Doc. No. 58, pt. 1, 70th Cong., 1st sess. (1928), pp. 467–494 : also see Clark, History of Alaska (1930), pp. 22–31.

[12] A discussion of an Eskimo village is contained in Anderson and Eells, *op. cit.*, pp. 31–37. Also see Stefannson, My Life with the Eskimo (1913).

[13] Report of the Commissioner of Indian Affairs in Annual Report of the Secretary of the Interior (1937), pp. 200–201.

[14] See sec. 3. See also Alaska-Its Resources and Development, op. cit.. 41, 198.

[15] Alaska—Its Resources and Development. op. *cit.*, p. 41; for a table of the number of natives gainfully employed in all industries see Fifteenth Census of the United States, Outlying Territories and Possessions (1932). p. 27. Also see bearings before the subcommittee of the House Committee on Appropriations on the Interior Department Appropriations Bill for 1941. pt. I. pp. 875–876.

SECTION 2. CLASSIFICATION OF NATIVES UNDER RUSSIAN RULE

In determining the status of the natives with respect to civilization and citizenship, the courts have given considerable weight to their ethnology, the state of their civilization and their relationship to the antecedent Russian Government.[16] During the 67 years prior to acquisition by the United States of Alaska,[17] the Russian American Company, exercised practically absolute dominion over this country.[18] The imperial law of Russia recognized the settled natives, including the Aleuts, Kodiaks, Eskimos, and Tlingits, who embraced the Christian faith, as Russian citizens, on the same footing as white subjects.

> . . . the independent tribes of pagan faith who acknowledged no restraint from the Russians, and practised their ancient customs--were classed as uncivilized native tribes by the Russian laws.[19]

The interest of the Russian Government in trade with the natives [20] is indicated by the treaty made with the United States on April 17, 1824,[21] which deals Incidentally with the natives of Alaska Article I permitted the citizens of both contracting powers to navigate and fish in the Pacific Ocean and Article IV Permitted trading with the natives. Article V excepted from this commerce the sale of "spirituous liquors, fire-arms, other arms, powder. and munitions of war of every kind . . . ."[22] Several years later. Congress implemented this treaty by the Act of May 19, 1828,[23] which provided for the punishment of violators of Article V.

[16] *In re Minook*, 2 Alaska 206 (1904) ; *United States* v. *Berrigan*, 2 Alaska 442 (1905).

[17] Before Its cession. this territory was called Russian America.

[18] Organized in 1799 under a charter from the Russian Emperor. XI The Works of Charles Sumner (1875), p. 247. The company failed to renew its charter in 1863. Clark, History of Alaska (1930), pp. 50–59. See Andrews, Alaska Under the Russians, VII Washington Historical Quarterly (1916), pp. 278–295.

[19] *In re Minook*, 2 Alaska 296.218 (1904).

[20] See Sumner. *op. cit.*, pp. 262-263.

[21] 8 Stat. 302. Ratified January 11. 1825, proclaimed January 12. 1825.

[22] Art IV limited to 10 years the navigation of ships in the interior seas for the purpose of fishing and trading with the natives.

[23] C 57. 4 Stat. 276.

SECTION 3. TREATY OF CESSION

Alaska was ceded to the United States by Russia for $7,200,000 in gold by the treaty concluded March 30, 1867.[24] Article III, which deals with the inhabitants makes no distinction based on color or racial origin. It provides:

> 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.

The Treaty thus divided the Alaskan inhabitants into the following three classes :

(1) Those who returned to Russia within 3 years, and thereby reserved their natural allegiance;

(2) Those who remained in the territory, except "uncivilized native tribes"; and

(3) "Uncivilized native tribes."

[24] 15 Stat. 539. Ratified by the United States May 28, 1867. exchanged June 20. 1867, proclaimed by the United States June 20, 1867. For further details concerning the history of the purchase, see the bibliography cited, pp. 116, 117. in Spicer, op. *cit.* Also see Clark, *op cit.*, pp. 60–80.

SECTION 4. SOURCES OF FEDERAL POWER

The primary sources of federal power over the Alaskan natives are three.[25] First, since Alaska is a recognized territory,[26] it is subject to the paramount and plenary authority of Congress to enact laws for the government of the territory and its inhabitants.[27] section 3 of the Organic Act of August 24, 1912,[28] provides:

> That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States * * *.[29]

Second, the vacant, unoccupied and unappropriated land at the date of the cession became a part of the public domain of the United States.[30] Since 99 percent of Alaska consists of public lands,[31] the federal control over its property is a vital source of power.

Third, it is said that Congress may enact any legislation it deems proper for the benefit and protection of the natives of Alaska, because they are wards of the United States[32] in the sense that they are subject to the plenary power of Congress over Indian affairs.

It has been said that from the viewpoint of congressional power the question of the Indian or non-Indian origin of the natives is unimportant.[33] In view of the broad powers over territories and wards, this statement is accurate. However, where the congressional power is derived from a source wholly applicable to Indians such as the power to regulate commerce with Indian tribes,[34] the distinction between Indians and non-Indians must be borne in mind.[35]

This exercise of federal power over territories, public property, and wards has been Judicially sustained in two cases. The first, the *Alaska Pacific Fisheries* case,' involved the right of the President to issue a proclamation without express statutory authority withdrawing from the public domain the waters adjacent to the Annette Islands and reserving the waters within 3,000 feet from the shore at mean low tide. The purpose of this reservation was to develop an Indian fishing industry.[37]

The Supreme Court Of the United States enjoined the deftib$+!ant corporation from maintaining a fish trap in the navig~~~e.~a@s within the territorial limit, holding that the creatiqp of the reservation was a valid exercise of federal power, and that thq~~er~ation included the adjacent submerged land and deep waters supplying fisheries essential to the welfare of the Indians who might otherwise become a public charge. The decision was based on the judicial conclusion that Congress intended to assist the Indians in their effort to become self-sustaining and civilized, and that Congress undoubtedly had the power to reserve waters, which were the property of the United States, since it protected the food supply of the Indians. In reaching this decision, the Court stated that it was influenced by the following considerations :

> * * * the circumstances in which the reservation was created, the power of Congress in the premises, the location and character of the islands, the situation and needs of the Indians and the object to be attained.[38] (P. 87.)

The Circuit Court of Appeals in a later case [39] involving the attempt of the Territory of Alaska to encroach upon the federal control of the Indians by levying an occupation tax on the output of a private salmon cannery on the Annette Island Reservation, operating under a lease executed by the Secretary of the Interior, held that the Territory of Alaska was not authorized to levy such a tax, on the ground that the lessee was an instrumentality of the Government to assist the Metlakahtla Indians to become self-supporting. The power of the Secretary of the Interior to execute the lease was also sustained.[40]

The exercise of federal power over other natives of Alaska has been similarly upheld. Thus, by virtue of his power to supervise the public business relating to Indians, the Secretary of the Interior may supervise a reservation created to enable the Department through the Bureau of Education to maintain a school, and may enter into a lease with a third party for the operation of a salmon cannery.[41]

Furthermore, even prior to the extension of the Wheeler-Howard Act [42] to Alaska, it was recognized that Congress possessed the power to create Indian reservations in Alaska.[43]

[25] Op. Sol., I. D. M.29147, May 6, 1937. See Chapter 5, see. 1.

[26] *Steamer Coquitlam* v. *United States,* 163 U. S. 346, *352* (1896).

[27] See Chapter 5. sec. 5.

[28] C. 387, 37 Stat. 512.

[29] 54 I. D. 39, 46 (1932).

[30] *United States* v. *Berrigan,* 2 Alaska 442, 448 (1905).

[31] Alaska, Its Resources and Development, op. *cit.,* p. 143.

[32] *Alaska Pacific Fisheries* v. *United States, 248* U. S. *78* (1918), affg. 240 Fed. 274 (C. C. A. 9, 1917) ; *Territory of Alaska* v. *Annette* Island *Packing Co., 289 Fed.* 671 (C. C. *A.* 9, 1923) ; *United States* v. Berrigan, 2 Alaska 442 (1905) ; *United States* v. *Cadzow, 5* Alaska 125 (1914); *Nagle* v. *United States,* 191 Fed. 141, 142 (C. C. A. 9, 1911) ; 49 L. D. 592 (1923) ; 50 L. D. 315 (1924) ; 51 L. D. 155 (1925) ; 52 L. D. 597 (1929) : 53 I. D. 593 (1932) ; 54 I. D. 15 (1932) ; Op. Sol., I. D. X20147, May 6, 1937. Sec. 6 discusses this subject.

[33] 54 I. D. 39 (1932) ; 53 I. D. 593, 595 (1932).

[34] U. S. Const., Art. I. sec. 8, cl. 3. See Chapter 5, sec. 3.

[35] For an example of the exercise of this power see Chapter 16.

[36] 240 Fed. 274 (C. C. A. 9. 1917). aff'd. 248 U. S. 78 (1918).

[37] The Proclamation of April 28, 1916. 39 Stat. 1777, creating the Annette Island Fishery Reserve provides:

> * * * the waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island, Walker Island, Lewis Island, Spire Island, Hemlock Island, and adjacent rocks and islets, * * * also the bays of said islands, rocks, and islets, are hereby reserved for the benefit of the Metlakahtlans and such other Alaskan natives as have joined them or may join them in residence on these islands, to be used by them under the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

[38] The Court also approved the portion of the regulations, prescribed by the Secretary of the Interior in 1915. recognizing the Indians as the only persons to whom permits may be issued for erecting salmon traps at these islands. See 25 C. F. R. § 1.1-1.68.

[39] *Territory* of *Alaska* v. *Annette Island Packing Co.,* 289 *Fed.* 671 (C. C. A 9, 1923), Cert. den. 263 U. S. 708 (1923).

[40] Accord: 49 L. D. 592 (1923). See Op. Sol., I. D. M.28978, April 19. 1937, which discusses the Alaska Fisheries case. Also see *Sutter* v. *Heckman,* 1 Alaska 188, 192 (1901). aff'd. *Heckman* v. *Sutter,* 119 Fed. 83 (C. C. A. 9, 1902). The court said "* • • no one, other perhaps than the natives, can acquire any exclusive right, either In navigating said waters or fishing therein."

[41] *Alaska Pacific Fisheries v. United States,* 248 U. S. 78 (1918), aff'g. *240* Fed. *274* (C. *C.* A. *9,* 1917) ; *Territory of Alaska* v. *Annette Island Packing Co.,* 289 Fed. 671 (C. C. A 9. 1923) : 49 L. D. 592 (1923). cited In 53 I. D. 593 (1932).

[42] For a discussion of the Wheeler-Howard Act and Alaska see sec. 9 *infra.*

[43] 18 Op. A. G. 557 (1887) ; 53 I. D. 593, 602 (1932) ; *Alaska Pacific Fisheries* v. *United States,* 248 U. S. 78 (1918). affg. 240 Fed. 274 (C. C. A. 9, 1917).

SECTION 5. CITIZENSHIP

The Treaty of Cession provided for the collective naturalization of the members of the civilized native tribes of Alaska. Congress impliedly consented to this contract which obligated it to incorporate the inhabitants, except uncivilized tribes, as citizens of the United States, by extending certain laws to the Territory and by passing the Organic Acts of 1884 and 1912.[44] The difficulty of defining civilization made the. legal status

[44] Act of May 17, 1884, 23 Stat. 24, providing for a partial civil government. Act of August 24, 1912, c. 387. 37 Stat. 512, providing for a civil government. See Spicer, op. cit., pp. 24-36.

of the natives of Alaska a matter of much doubt and uncertainty. The Minook case [45] throws some light on the distinction between civilized and uncivilized tribes. 'In denying the application for citizenship of the son of a Russian father and an Eskimo mother, and the husband of a native woman, Judge Wickersham held that the applicant was pot a Russian citizen, though he was born in Alaska in 1849, and, together with his parents, was a member of the Greek Church and a subject of Russia at the time of the cession. The court held that Minook was a citizen of the United States by virtue of the third article of the treaty with Russia, either as one of those inhabitants who accepted the benefits of the proffered naturalization, or as a member of an uncivilized native tribe who has voluntarily taken up his residence separate from any tribe of Indians and has adopted the habits of civilized life.[46]

In order to discover the intentions of the signatory nations, Judge Wickersham quoted and discussed portions of the charter of the Russian American Co. He also drew upon the science of ethnology to determine whether the tribe was civilized and quoted Prof. W. H. Dall [47] of the Smithsonian Institution, as to which natives were civilized. The next year he quoted with approval portions from this opinion and again used the same technique to prove that natives belonging to the Athapascan stock were uncivilized at the time of the cession and hence, as wards of the Government, were entitled to an injunction against the trespass of white men on their property.[48]

The General Allotment Act gave to two additional classes of Alaskan natives the status of citizenship: (1) Allottees. and (2) nonallottees who severed tribal relationship and adopted the habits of civilization.[49]

The Territorial Act of April 27, 1915.[50] provided a method whereby a nonallottee could secure a certificate of citizenship.[51] This procedure included proof of his general qualifications as a voter, his total abandonment Of tribal customs, and his adoption of the culture of civilization.

This statute became obsolete with the passage of the Citizenship Act,[52] which included the Alaskan natives,[53] and was finally repealed in 1933.[54]

In the case of *United States* v. *Lynch*,[55] the court held that though the members of the Tlingit tribe would undoubtedly have been classed as uncivilized, tider the provisions of Article III of the Treaty Of Cession, they, together with other native Indian tribes of the United States, were collectively naturalized by the Citizenship Act, Consequently, proof of civilization is no longer a condition precedent to citizenship.

[45] *In re Minook*, 2 Alaska 200 (1904).
[46] *Ibid.*, pp. 219. 220.
[47] See fn. *7 supra.*
[48] *United States* v. *Berrigan*, 2 Alaska 442 (1905).

[49] The case of *Nagle* v. United *States*, 191 Fed. 141 (C. C. A. 9, 1911). held that sec. 6 of the Act of February 8. 1887, 24 Stat 388, 390, known as the General Allotment Act, in conferring citizenship on Indians who severed their tribal relation and adopted the habits and customs of civilized life, applied to the Territory of Alaska. Contra: *In re Incorporation of Haines Mission*, 3 Alaska. 588 (1908).
[50] *C. 24.* Laws of Alaska, 1915. p. 52. repealed by c. 34. Laws of Alaska, 1933, p. 73.
[51] For the effect of citizenship on land rights of the Alaskan natives, see sec. 8C. *infra.*
[52] Act of June 2. 1924. c. 233. 43 Stat. 253. For a discussion of citizenship see Chapter 8. sec. 2.
[53] 53 I. D. 593 (1932).
[54] C. 34. Laws of Alaska, 1933, P. 73.
[55] 7 Alaska 568 (1927).

SECTION 6. STATUS OF NATIVES

The legal position of the individual Alaskan natives has been generally assimilated to that of the Indians in the United States.[56] It is now substantially established that they occupy the same relation to the Federal Government as do the Indians residing in the United States: that they, their property, and their affairs are under the protection of the Federal Government; that Congress may enact such legislation as it deems fit for their benefit and protection; and that the laws of the United States with respect to the Indians resident within the boundaries of the United States proper are generally applicable to the Alaskan natives.[57]

For example, it has been administratively held that the general laws enacted by Congress empowering the Secretary of the Interior to probate the estates of deceased Indians are applicable to Alaskan natives.[58]

The placing of the Alaskan natives on the same footing as other American Indians was the culmination of a shifting policy which has been well described in an opinion of the Solicitor far the Department of the Interior: [59]

> In the beginning, and for a long time after the cession of this Territory Congress took no particular notice of these natives; has never undertaken to hamper their individual movements ; confine them to a locality or reservation, or to place them under the immediate control of its officers, as has been the case with the American Indians: and no special provision was made for their support and education until comparatively recently. And in the earlier days it was repeatedly held by the courts and the Attorney General that these natives did not bear the same relation to our Government, in many respects, that was borne by the American Indians. (16 Ops. Atty. Gen., 141; 18 id., 139) ; *United States* v. *Ferueta Seveloff (2* Sawyer U. S., 311) ; *Hugh Waters* v. *James B. Campbell (4* Sawyer U. S., 121) ; *John Brady et al.* (19 L. D.. 323).
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> With the exception of the act of March 3, 1891 (26 Stat., 1095, 1101). which set apart the Annette Islands as a reservation for the use of the Metlakahtlans, a band of British Columbian natives who immigrated into Alaska in a body, and also except the authorization given to the Secretary of the Interior to make reservations for landing places for the canoes and boats of the natives, Congress has not created or directly authorized the creation of reservations of any other character for them.

[56] 49 L. D. 592 (1923) ; 53 I. D. 593 (1932).
Delegate A. J. Dimond, of Alaska, has said (83 Cong. Rec., pt. 9. PP. 179–180, 75th Cong., 3d sess. 1938) :

> * * * special appropriations for the education and medical welfare of the natives of Alaska * * * can be based only upon the theory that the Government and therefore Congress, does owe a special duty to the natives of Alaska. (P. 180.) * * * analogous to that owed by a guardian to his ward, a trustee to the beneficiary of the trust, or a father to his children. (P. 182.) * * * the Government * * * is bound in honor and good morals to enact suitable measures for their benefit and their economic welfare. (P. 180.)

[57] *52* L. D. 597 (1929) ; 53 I. D. 593 (1932) ; *Alaska Pacific Fisheries Case, supra ; United States* v. *Berrigan, 2* Alaska 442 (1903) : *united States* v. *Cadzow, 5* Alaska *125* (1914) ; *Territory of Alaska* v. *Annette Island Packing Co., 289* Fed. 671 (C. C. A. 9, 1923). cert. den. 263 U. S. *708* (1923).
[58] Op. Sol. I. D.. M.27127. July 26, 1932. and *cf.* sec. 1919. Compiled Laws of Alaska. 1933, referring to ward Indians. Also see 54 I. D. 15 (1932), in which the Solicitor of the Department of the Interior ruled that although the provisions of the Act of June 25, 1910. 36 Stat. 855. as amended, which relates to the administration of the restricted property of deceased Indians, are applicable to Alaskan natives. *a subordinate* officer, such as an employee of the Reindeer Service, lacks the power to settle such estates.
[59] 49 L. D. 592. 594-595 (1923). This portion of the opinion was quoted with approval in 53 I. D. 593 (1932)• Also see 54 I. D. 39 (1932). But *cf.* 19 L. D. 323. 324-325 (1894).

> Later, however, Congress began to directly recognize these natives as being, to a very considerable extent at least, under our Government's guardianship and enacted laws which protected them in the possession of the lands they occupied; made provision for the allotment of lands to them in severalty, similar to those made to the American Indians; gave them special hunting, fishing and other particular privileges to enable them to support themselves, and supplied them with reindeer and instructions as to their propagation. Congress has also supplied funds to give these natives medical and hospital treatment and finally made and is still making extensive appropriations to defray the expenses of both their education and *their support.*
>
> Not only has Congress in this manner treated these natives as being wards of the Government, but they have been repeatedly so recognized by the courts. See *Alaska Pacific Fisheries* v. *United States* (248 U. S., 78); *United States* v. *Berrigan et al.* (2 Alaska Reports, 442); *United States* v. *Cadzow et al.* (5 id., 125), and the unpublished decision of the District Court of Alaska, Division No. 1, in *the* case of *Territory of Alaska* v. *Annette Islands Packing Company* et- *al.*, rendered June 15, 1322.
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> From this it will be seen that these natives are now unquestionably considered and treated as being under the guardianship and protection of the Federal Government, at least to such an extent as to bring them within the spirit, if not within the exact letter, of the laws relative to American Indians; and this conclusion is supported by the fact that in creating the territorial government of Alaska and vesting that territory with the powers of legislation and control over its internal affairs, including public, schools, Congress expressly excluded from that legislation and control the schools maintained for the natives and declared that such schools should continue to remain under the control of the Secretary of the Interior.

An explanation of the reasons for this changing policy will be helpful in understanding the legal position of the Alaskan natives. The United States at first followed the example of Russia. From 1867 to 1884, when the Organic Act of 1884[60] made Alaska a civil and judicial district, this vast land had hardly the shadow of a civil government and was little more than a geographical subdivision of the United States.[61] Save for the occasional activity of the military authorities, the natives shifted for themselves.[62] This neglect is indicated by the failure of the United States to provide a regular agent for them, as in the case of Indians generally. The responsible duties of such an official were delegated to a military commandant.[63]

One of the few exceptions to the failure to enact legislation was the extension of prohibitory liquor laws to Alaska.[64] However, these laws were flagrantly violated and little attempt to enforce them was made during the first two decades of American rule.[65]

Although the purchase of Alaska on June 20, 1867, occurred while the United States still was making treaties with Indian tribes,[66] no attempt was made to enter into treaties with the nalive% This was primarily because the- reasons which were responsible for treaty making by the Federal Government with the American Indians[67] were not present in Alaska, where there was plenty of land and little danger of serious hostilities. Alaska was not considered Indian country[68] until 1873 when sections 20 and.4 of the, Trade and Intercourse Act,[69] prohibiting liquor traffic in Indian country and with the Indians, were extended to include this territory. There was therefore no necessity for s&&,& and treaties extinguishing Indian title. The legal theory: was adopted of considering these Indians subjects and not dependent or domestic nations-having titles to be extinguished. Reservations *were* not established with the exception of the Annette. Island Reservation and those for educational purpose.[70]

There was an absence of federal laws in most fields[71] and even the few which were considered applicable to Alaska were not enforced. Questions concerning the. effect of tribal laws and customs were rarely raised. *In re Sah Quah*[72] was one of the few cases in which this issue was directly involved. In granting a writ of habeas corpus to the petitioner, a slave of a Tlingit Indian, the court said:

> What, then, is the legal *status* of Alaska Indians? Many of them have connected themselves with the mission churches, manifest a great interest in the education of their youth, and have adopted civilized habits of life. Their Condition has been gradually changing until the attributes of their original sovereignty have been lost, and they are becoming more and more dependent upon and subject to the laws of the United States, and yet they are not citizens within the full meaning of that term. (P. 328–329.)
>
> * * * * *
>
> The United States has at no time recognized any tribal independence or relations among these Indians, has never treated with them in any capacity, but from every act of congress in relation to the people of this territory it is clearly inferable that they have been and *now* are regarded as dependent subjects, amenable to the penal laws of the United States, and subject to the jurisdiction of its courts Upon a careful examination of the habits of these natives, of their modes of living, and their traditions, I am inclined to the opinion that their system is essentially patriarchal, and not tribal, as we understand that term in its application to other Indians They are practically in a state of pupilage, and sustain a relation to the United States similar to that of a ward to a guardian, and have no such independence or supremacy as will permit them to sustain and enforce a system of forced servitude at variance with the fundamental laws of the United States. (P. 329.)

Nevertheless, tribal custom and law is. recognized in some cases.[73] In theabsence of federal legislation, a marriage between the natives belonging to the uncivilized tribes, such as the Athapascans, when entered into according to long-established

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[60] Act of May 17, 1884, 23 Stat. 24. For a discussion of the history and interpretation of this act, see Nichols, Alaska (1924). pp. 71–113.

[61] Clark, *op. cit.*, pp. 81-97.

[62] They (the Alaska Indians) are too little known, and their relations to other inhabitants of that country and to our awn. government too little ascertained, to make it practicable to consider them.

Thayer, A People Without Law (1891). 68 Atlantic Monthly 540, 541. See also Hellenthal, The Alaskan Melodrama (1936). pp. 284, et seq.

[63] The Attorney General upheld the validity of such delegation by the President. 14 Op. A. G. 573 (1876). See also *In re Carr*, 5 Fed. Cas. No. 2432 (D. C. Ore. 1875), involving a false imprisonment by a military officer.

[64] For a discussion of these laws see Chapter 17, sec. 4.

[65] Wickersham, Old Yukon (1938), p. 123.

[66] Act of March 3, 1871, 16 Stat. 544. 566, declared it to be the policy of the United States not to treat further with the Indians as tribes, See chapter 3, sec. 5.

[67] See Chapter 3, sec. 4.

[68] See Chapter 1. sec. 3, and Chapter 17. fn. 85.

[69] Act of June 30. 1834, 4 Stat. 729, 732–733; Act of March 3, 1873, 17 Stat. 510, 530.

[70] Because of the restriction of native activities which accompanied the reservation policy among the Indians of the continental United States; the natives of Alaska, with the exception of the transplanted colony of Metlakahtla, have steadfastly opposed the development of reservations in Alaska. This opposition was Part of an insistent resistance to racial discrimination.

Alaska, Its Resources and Development, op. *cit.*, p. 10.

[71] A license to trade in Alaska is not required. See *Waters* v. *Campbell*, 29 Fed. Cas. No. 17264 (C. C. Ore. 1876); and see Chapter 16, sec. 2.

[72] 31 Fed. 327 (D. C. Alaska 1888); for. a discussion of the power of the Federal Government over tribes see *Kie* v. *United States*, 27 Fed. 351 (C. C. Ore. 1886), modify'g *United States* v. *Kie*, 26 Fed. Cas. No. 15528a (D. C. Alaska 1885); *United States* v. *Seveloff*, 27 Fed. Cas. No. 16252 (D. C. Ore. 1872); *United States* v. *Lynch*, 7 Alaska 568 (1927).

[73] 54 I. D. 39 (1932).

Customs, is valid, irrespective of the territorial laws regulating marriage among the inhabitants.[74]

The extension of the Wheeler-Howard Act [75] to Alaska has removed almost the last significant difference between the position of the American Indian and that of the Alaskan native.[76] The report of the Director of the Division of Territories and Island Possessions, Department of the Interior, for 1936 lists the "protection of the welfare of the native population," as the first of the "immediate considerations for the attainment of major ends." The director, Dr. Ernest Gruening, later Governor of Alaska, also wrote :

> The extension of the economic and social benefits of the Indian reorganization act to Alaska has paved the way for the security of approximately one-half of the present population of the Territory, whose stabilized future is not only an essential act of humanitarianism but also an important item of wholesome advance.[77]

[74] This is in accordance with the general rule. R. A. Brown, The Indian Problem and The Law (1930), 39 Yale L. J. 307, 315. Also see chapter 7, sec. 5.

[75] Act of June 18, 1934. 48 Stat. 984 ; Act of May 1, 1936, c. 254, 49 Stat. 1250. These statutes are discussed In sec. 9 *infra*.

[76] In holding that sec. 23 of the Act of June 25, 1910. 36 Stat. 855, 861, regarding preference 'to purchase of Indian "products applies to Alaskan natives, the Solicitor said :

> In considering the application to Alaskan natives of laws relating to Indians it is well to bear in mind the following point: The laws which relate specifically to Alaska normally define the terms "natives" or "Indians" and define them as including Indians, Eskimos, Aleuts and other aboriginal tribes. Illustrations of such laws are the Alaska Reorganization Act, the act penalizing the sale of liquor or firearms to Indians in Alaska (see. 142. chap. 8. act of March 3. 1899 30 Stat. 1253). and various acts appropriating funds for the education of the natives. However, in the case Of the application to the natives of laws drafted to 'coves; the Indians in the United states. it is apparent that the law itself will refer only to "Indians," and the general rule must be followed that the laws relating to Indians in the United States are applicable to the natives in Alaska in so far as they are suitable to the circumstances of the case. The outstanding example of such a law is the Indian Citizenship Act of June 2, 1924 (43 Stat. 253). Memo. Sol. I. D., June 5. 1940.

[77] Annual Report of the Secretary of Interior (1936), p. 30.

SECTION 7. EDUCATION [78]

From 1884 to March 16, 1931, the Bureau of Education.[79] rather than the Office of Indian Affairs, controlled native education and welfare work. Such service presents peculiarly difficult and important administrative problems.

The area of Alaska is about one-fifth the size of the United States. Many settlements are beyond the limits of transportation and regular mall service, and one-third of the natives live north of the Arctic Circle.[80] Villages are usually far apart and transportation is largely limited to boats for coastal travel, dog teams for Interior travel, and aeroplanes. Even on the coast and rivers, boats are infrequent, and in the winter can be used only in the south.

Neither the federal control over education on reservations, nor the system of annulties for educational purposes, nor the boarding school program was carried into this Territory. The importation of reindeer, and instruction in herd management were integrated with the educational system for northern and western Alaska.[81] Vocational training was also established.[82]

Reservations have been created which are devoted to educational purposes,[83] and such diverse activities as native assistance on road building [84] and the leasing of canneries [85] have been justified as incidental to education.

Originally no differentiation was made between the education of the natives and the whites.[86] As a result of the Act of January 27, 1905,[87] a dual system of education was instituted; one part was mainly devoted to white children and the other to the children of the Natives.[88]

The interpretation of the term "civilization" as used in this statute was an issue in the case *of Davis* v. *Sitka School Board.*[89] In denying the petition for a writ of mandamus to require the school board to admit the plaintiff's children who were of mixed blood, the court took the view that civilization is achieved only when the natives have adopted the white man's way of life and associated with white men and women.[90]

[78] See Chapter 12. sec. 2. For a discussion of native education see 53 I. D. 593 (1932) ; also see Spicer, op. *cit.*, PP. 97-101 ; Alaska. Its Resources and Development. op. cit., pp. 43-44 ; Anderson and Eells, op. cit.. pt. 2.

[79] Now known as the United States Office of Education. See Cook, Public Education in Alaska. Bull. No. 12 (1936), Office of Education, Department of Interior. pp. 20-54.

Commissioner of Indian Affairs Rhoads, in his annual report for 1931, wrote :

> The administrative change whereby responsibility for education in Alaska was transferred to the Office of Indian Affairs in March, 1931, is paicularly important as an indication of a national unified policy for the education of various indigenous groups. More important than this, however. is the fact that the Alaskan education enterprise has been carried out in the past with a different philosophy and different practice. In contrast to the Indian Service, with its hoarding schools. the Office of Education in Alaska until very recently confined its efforts to local community schools and a program of education that took into account in an amazing way the health and social and economic life of the native group. The Alaska program, therefore, represented the other extreme from the Indian policy in the States. * * * (P. 12.)

[80] Spicer, op. *cit.*, p. 98.

[81] Spicer, op. cit.. P. 98.

[82] Act of February 25, 1925, c. 320, 43 Stat. 978. authorizes the Secretary of the Interior to establish a system of vocational training for aboriginal native people of the Territory of Alaska, and to construct and maintain suitable school buildings. See U. S. Bureau of Education, Department of Interior. A Course of Study for United States Schools for Natives of Alaska (1926). particularly pp. 2-3.

[83] 53 I. D. 111 (1930).

[84] *United States* v. *Sitarangok*, 4 Alaska 667 (1913).

[85] *Alaska Pacific Fisheries* v. *United States*. 248 V. S. 78 (1918). affg. 240 Fed. 274 (C. C. A. 9. 1917) ; 49 L. D. 592 (1923).

[86] The *Organic* Act of 1884 (Act of May 17. 1884. sec. 13. 23 Stat. 24. 27). authorizes 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 . . * ." This phrase was repeated in other appropriation acts, such as the Act of March 3. 1899. 30 Stat. 1074, 1101.

[87] 33 Stat. 616, 619. sec. 7 :

> . . . schools for and among the Eskimos and Indians of Alaska shall he povided for by an annual appropriation, and the Eskimo and Indian children of Alaska shall have the same right *to* be admitted to any Indian hoarding school as the Indian children In the States or Territories of the United States.

For a discussion of this statute see *Sing* v. *Sitka School Board.* 7 Alaska 616 (1927). The Act of August 24. 1912. c. 387. sec. 3, 37 Stat. 512, creating the Territory of Alaska expressly reserves from the legislature any power to amend this statute and acts amendatory thereof.

[88] See Alaska, Its Resources and Development. op. cit., pp. 43–44, and Anderson and Eells, op. *cit.*, pp. 202–204 for a discussion of segregation.

[89] 3 Alaska 481 (1908). The court laid down the following test of civilization :

> * . . . as to whether or not the Persons in question have turned aside from old associations, former habits of life, and easier modes of existence ; in other words, have exchanged the old barbaric, uncivilized environment for one changed, new, and so different as to indicate an advanced and improved condition of mind, which desires and reaches out for something altogether distinct and unlike the old life. (P. 488.).
>
> Civilization * * * includes * * * more than a prosperous business, a trade, a house, white man's clothes, and membership in a church. (P. 491.)

The attitude of another court toward the native culture is brought out in the case of *In re Can-Ah-Couqua*, 29 Fed 687 (D. C. Alaska 1887). involving the rights of a mother of a child attending a mission school. This case is discussed in Chapter 12. fn. 62.

[90] Considerable stress was placed on the fact that the playmates of the children were native and that the children Joined in the hunting

The territorial legislature was first granted power over schools by the Act of March 3, 1917,[91] which empowered it "to establish and maintain schools for white and colored children and children, of mixed blood: who lead a civilized life * * *."[92] Pursuant to this act a writ of mandamus was granted[93] compelling the city of Ketchikan, Alaska, to admit to its schools attended by the whites a resident child of mixed blood who led a civilized life, although she could attend an Indian school in the city, and thereby make room for the attendance of nonresident white children. The court said :

> The legislative power of the territory of Alaska with regard to schools derived from this section makes no provision as to the segregation of races, nor does it refer to the race or color of the children to be provided for in the municipal schools, and such act must necessarily be construed in the light of the section quoted limiting the authority of the Legislature to provide schools for white and colored children and children of mixed blood. (P. 147.)

Only mission schools existed between 1867, the date of the purchase of Alaska, and 1884.[94] Thereafter, until 1900, annual federal appropriations, ranging from a few thousand dollars to $50,000 were made for the education of native and white children.[95] For the next 5 years education was supported by a license tax. Schools in incorporated towns were under local control, while the Secretary of the Interior continued to direct rural schools. Beginning with 1905, annual appropriations in increasing amounts were made enabling the Secretary of the Interior, in his discretion, to provide for the education and support of the natives of Alaska.[96] The territorial schools established in 1905 were supported by territorial and federal funds and served white children and "children of mixed blood who lead a civilized life."[97]

The Indian Service maintains schools in approximately 100 villages.[98] During the fiscal year 1933–1934, 4,338 native children were enrolled in the federal schools, 1,874 in the territorial schools, and approximately 1,000 in mission schools.[99]

By the Act of May 14, 1930,[100] the Secretary of the Interior was authorized to contract with school boards which maintained schools in certain cities and towns to educate children of nontaxpaying natives, including those of mixed native and white blood, to lease school buildings owned by the United States Government to such boards, and to pay such boards for services rendered an amount not in excess of the cost of operating a school for natives under present appropriations in such town.

Chapter 85, Laws of Alaska, 1935, authorized the Territorial Board of Administration of the Territory of Alaska to enter into a contract or contracts with the Secretary of the Interior for educational and welfare work among the Alaskan natives.[101]

The Act of May 31, 1938,[102] authorized the Secretary of the Interior to withdraw and permanently reserve small tracts of land not exceedlug 640 acres each, of the public domain in Alaska for schools, hospitals, and other necessary purposes in administering the affairs of the natives.[103]

Congress has recognized that in many places the Alaska school service is the only federal agency in daily contact with the natives. The Act of March 3, 1909,[104] authorized the Attorney General to appoint as special peace officers employees of the educational service designated by the Secretary of the Interior. These officers were endowed with the ordinary authority of a policeman to arrest natives charged with the violation of any provision of the Criminal Code of Alaska or white men charged with the violation of any of its provisions to the detriment of any native of the Territory.[105]

and fishing expeditions of the native bands. Apparently the court did not recognize that hunting and fishing were recreations of social significance among the whites and a source of livelihood for some whites and many natives.

[91] c. 167, 39 stat. 1131.

[92] The schools were under the general supervision of the Territorial Board of Education authorized by the Legislature of Alaska, Spicer, op. cit., p. 99.

[93] *Jones* v. *Ellis*, 8 Alaska 146 (1929).

[94] Beatty, The Federal Government and the Education of Indians and Eskimos, Journal of Negro Education, vol. 7, No. 3 (July 1938). p. 271.

[95] The first statute, the Act of July 4, 1884. 23 Stat. 76, 91, appropriated $15,000. Some appropriation acts, during this period, authorized the Secretary of the Interior to use a specified sum from the general education appropriation "for the education of Indians in Alaska," e. g., Act of March 2. 1895, 28 Stat. 876, 904.

[96] Act of March 3, 1905, 33 Stat. 1156, 1188. See also Act of June 30, 1906, 34 Stat. 697. 729; Act of May 24, 1922, c. 199, 42 Stat. 552, 583. From 1884 to 1934 the United States has spent almost nine million dollars for native education and welfare. Anderson and Eells, op. *cit.* p. 227.

[97] Act of January 27, 1905, sec. 7, 33 Stat. 616, 619.

[98] Report of the Commissioner of Indian Affairs in Annual Report, Interior Department (1939). p. 25; Annual Report of the Governor of Alaska (1939). pp. 47–49.

[99] Information supplied by Alaska Section. Office of Indian Affairs, Department of the Interior. The present appropriation for native education exceeds $900,000 annually. Hearings before Subcommittee of House Committee on Appropriations. 76th Cong., 3d sess., on Interior Department Appropriation Bill for 1941, Pt. II, pp. 377 et *seq.*

[100] C. 273, 46 Stat. 279, 321.

[101] This statute was passed to secure the benefits of the Johnson-O'Malley Act of April 16, 1934. 48 Stat 596. See Chapter 12, sec. 2A.

[102] C. 304, 52 stat. 593.

[103] "This authority is proving of material assistance in the develop ment of the Alaska program." Report of Commissioner of Indian Affairs in Annual Report, Interior Department (1938), p. 213.

[104] 35 Stat. 837.

[105] Then described as the District of Alaska.

SECTION 8. PROPERTY RIGHTS

Problems relating to the property rights of Alaskan natives arise out of their activities in hunting and fishing, their use and ownership of land and their ownership of reindeer. Land, except mineral land, is comparatively unimportant in the Alaskan economy.[106] This is due to the fact that the population is sparse (averaging one person per 10 square miles) [107] and that most of the land is unsuitable for agriculture.[108] Therefore, much greater attention must be paid to other forms of property.

A. FISHING AND HUNTING RIGHTS [109]

Fishing is the most important industry of Alaska [110] and from time immemorial has been the principal source of food for the

[106] Clark, op. *cit.* pp. 156–180; Anderson and Eells, *op* cit. pp. 195–202; Thomas, Economic Rehabilitation of the Indians of Alaska with Special Reference to Fishing, Trapping, and Reindeer, Indians of the United States (Indians at Work, April 1940, Supp.), p. 53; Brooks, The Future of Alaska, Annals of the Association of American Geographers (December 1925), p. 178; Department of the Interior, The Problem of Alaskan Development (April 1940).

[107] Fifteenth Census of the United States, Outlying Territories and Possessions (1932). p. 7.

[108] Although the gross area of the land end water of Alaska is 586,400 square miles, only about 65,000 square miles are suitable for agriculture, *ibid.*, p. 7, and see Alaska, Its Resources end Development, op. cit., p. 114.

[109] Sec. 3 of the Organic Act of Alaska, Act of August 24, 1912. c. 387. 37 Stat. 512. provides that the authority granted to the legislature of the Territory shall not extend to general laws of the United States or to the, "game, fish, and fur-seal laws and laws relating to fur-bearing animals of the United States applicable to Alaska * * * ."

[110] Alaska, Its Resources and Development, op. *cit.*, pp. 17, 41, 55-74. See Pacific Fisherman Yearbook (1939). There were 30,331 persons

natives.[111] "Fur production is third in rating of all commodities in Alaska as to total value." [112] Fur trading was the primary occupation of the Russians who came to Alaska during the latter half of the eighteenth century.[113] Since that time' the natives have depended on fur trading for a substantial part of their livelihood.[114]

The Bureau of Fisheries, formerly with the approval of the Secretary of Commerce, and now with that of the Secretary of the Interior, drafts fishing regulations specifying the areas in which traps may be operated, and their number.[115] A license for a trap must be obtained from the territorial treasurer, and to prevent obstructions to navigation, the Secretary of War must authorize the plans. In 1927 the number of traps in operation reached almost 800, but there has subsequently been a steady decline in this figure.

Judicial and legislative cognizance has been taken of the importance of fishing and hunting in the native economy. The Supreme Court of the United States in the *Alaska Pacific Fisheries* case [116] said:

> They (the Metlakatlans) were largely fishermen and hunters, accustomed to live from the returns of those vocations, and looked upon the islands as a suitable location for their colony, because the fishery adjacent to the spore would afford a primary means of subsistence and a promising opportunity for industrial and commercial development (P. 88.)

In many conservation statutes the natives are given special privileges. The Act of July 1, 1870, [117] makes unlawful the killing of fur seals upon the Pribilof Islands except during the months of June, July, September, and October in each year, and the killing of such seals at any time by firearms. The privilege of killing of young seals necessary for- food and clothing and old seals necessary for clothing and boats by the natives for their own use was permitted, subject to regulations of the Secretary of the Treasury.[118]

The validity of section 6 of the Act of July, 27, 1868,[119] which prohibits; the killing of. fur-bearing animals within the limits of the Territory, or in the waters thereof, and empowers the court, in its discretion, -to confiscate vessels violating this st$$~~a\i'il@held in *The James G. Swan* [120] case. The court sustained the libel for the forfeiture of- a boat owned by an Indian of the Makah Tribe, despite the contention that such forfeiture violated a treaty with this tribe.[121]

The Act of April 6, 1894,[122] prohibits the killing of fur seals by United States citizens in waters of the Pacific Ocean surrounding the Pribilof Islands. It also prohibits the killing of fur seals from May 1 to July 31 in a circumscribed part of the Pacific Ocean, including Bering sea.[123]

Section 6 permits Indians dwelling on the coasts of the United States to take fur-bearing seals in open, unpowered boats not manned by more than five persons using primitive methods, excluding firearms. Such fishing may not be done pursuant to a contract of employment.[124] The Act of December 29, 1897,[125] prohibiting the slaying of fur seals in the North Pacific Ocean contained a similar exemption.

Section 3 of the Act of April 21, 1910,[126] provides that whenever seals are taken, the natives of the Pribilof Islands shall be employed in such killing and shall receive fair compensation. Section 6 permits thenatives of these islands to kill such young seals as may be necessary for their own clothing and the manufacture of boats for their own use, subject to regulations prescribed by the Secretary of Commerce. Section 9 authorizes this official to furnish food, clothing, shelter, and other necessities to the native inhabitants and to provide for their education.[127]

The Act of August 24, 1912,[128] gave effect to the Convention of July 7, 1911,[129] between. the United States, Great Britain, Japan,

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engaged In the fishing industry in Alaska in 1937. Salmon, which is the backbone of the Territory's economic structure, accounted for 75 percent of the total weight and 90 percent of the total value of its fisheries products In 1937, Annual Report of Secretary of Commerce (1938), p. 104. Also see reports on Alaska fishing and fur-seal industry, collected in Bulletin of the Bureau of Fisheries, vol. XLVII, No. 13 (1933).

[111] The salmon formed one of the important food supplies for the natives from prehistoric times. Bulletin of Bureau of Fisheries, vol. XLIV, Doc. No. 1041 (1928), p. 41. *Alaska Pacific Fisheries v. United States*, 248 U. S. 78 (1918). affg. 240 Fed. 274 (C. C. A. 9. 1917); *Territory of Alaska v. Annette Island Packing Co.*, 289 Fed. 671 (C. C. A. 9; 1923), cert. den. 263 U. S. 708 (1923). Also see *Heckman v. Sutter*, 119 Fed. 83 (C. C. A. 9, 1902), affg. *Sutter v. Heckman*, 1 Alaska 188 (1901), in which the court said: "The fact that at that time the Indians and other occupants of the country largely made their living by fishing was no doubt well known to the legislative branch of the government . . ." (P. 88.) See also *United States v. Lynch*, 8 Alaska 135 (1929), and *Johnson v. Pacific Coast S. S. Co.. 2* Alaska *224* (1904).

The Commissioner of Indian Affairs in his Annual Report for 1937, p. 232, notes the destruction of the balanced primitive economy of the natives; instead of fishing and hunting for their own needs, they fish for, or work in the canneries. See also Hearings on Alaskan Fisheries, held pursuant to H. Res. 162, 76th Cong., 1st sess. (1939), pp. 118 152, 444-449, 596. On employment of natives in canneries. see *ibid.*, p. 347.

[112] Alaska, Its Resources and Development. op. *cit.*, p. 107. Also see pp. 84–90, 108.

[113] XI. The Works of Charles Sumner (1875), p. 263; Alaska, Its Resources and Development. *op. cit.*, P. 84.

The fur-bearing aquatic mammals had been ruthlessly exploited during the period of Russian occupancy and were facing extinction at the time of the cession. Alaska, Its Resources and Development, pp. 55; 56.

Until the development of the gold industry, the fur resources were considered the most valuable by the Americans. It is, therefore, not surprising that, prior to 1884, legislation for the new territory was mainly confined to the protection of the seal fisheries and other fur interests of the District. Sen. Doc. No. 142. 59th Cong., 1st sess. (1905–1906), P. 7.

[114] Annual Report. Chief of Bureau of Biological Survey, Department of Agriculture (1937). p. 55.

[115] Act of June 6. 1924. 43 Stat. 464. c. 272. sec. 1. amended by Act of June 18. 1926. 44 Stat 752. The preparation and enforcement of these regulations are difficult tasks, especially since the Bureau lacks sufficient funds for biological research and enforcement. See Hearings on Alaskan Fisheries, held pursuant to H. Res. 162. 76th Cong., 1st sess. (1939). pp. 46–47, 135–150, 394. 510.

[116] *Alaska Pacific Fisheries v. United States*, 248 U. S. 78 (1918), affg, 240 Fed. 274 (C. C. A. 9, 1917); also see *Johnson v. Pacific Coast S. S. Co.*, 2 Alaska, 224 (1904); Act of May 14, 1898, sec. 10, 30 Stat. 409, 413.

[117] C. 189, 16 Stat. 180.

[118] The Act-of April 22. 1874, 18 Stat. 33. authorized the Secretary of the Treasury to study the fur trade in Alaska and "the condition of the people or natives, especially those upon whom the successful prosecution of the fisheries and fur trade is dependent . . ." By Act of April 5, 1890. 26: Stat. 46; the Secretary was authorized to study the condition of the seal fisheries of Alaska. See Alaska. Its Resources and Development, op. *cit.*, p. 90.

[119] 15 Stat. 240, 241. R. S. § 1956.

[120] *United States* v. *James G. Swan*, 50 Fed. 108 (D. C. Wash. 1892).

[121] Treaty of January 31. 1855. 12 Stat. 939.

[122] Art. 1, 28 Stat. 52.

[123] Ibid., Art. 2.

*The Makah Indians are subject to the prohibitions of this act save for the exception of sec. 6. 21 Op. A. G. 466 (1897).

[125] Sec. 6, 30 Stat. 226.

[126] C. 183. 36 Stat. 326.

[127] In this and subsequent acts. Congress has made appropriations for this purpose. More than 400 natives of these islands are largely dependent upon the United States for subsistence. Alaska, Its Resources and Development. *op.* cit., p. 66.

[128] C. 373, 37 Stat. 499.

[129] 37 Stat. 1542. To terminate the gross economic waste which threatened to destroy all the herds of fur seals. the United States arranged a conference of interested nations known as the International, Fur Seal Conference which convened from May 11 to July 7, 1911. This meeting adopted the Convention of July 7. 1911. 37 Stat. 1542. between the United States, Great Britain, Japan, and Russia. Ratification advised July 24, 1911. Ratified by the President November 24, 1911. Ratified by Great Britain August 25. 1911. Ratified by Japan November