Research Article

Alaska Native Sovereignty and the Federal Trust Responsibility: A Cultural Interpretation of Historical Relationships

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Abstract: Alaska Native Sovereignty and the Federal Trust Responsibility to Indigenous Peoples in Alaska are two principles that have evolved through time. Interpretation of their meanings and application of government policy reflects basic cultural differences between the settler and Indigenous populations.

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Introduction

Two major principles guide the relationship of the United States federal government to Indigenous Peoples in Alaska.[1] The government recognizes the sovereignty of Alaska Native Peoples over a range of their affairs. The federal government's trust responsibility is the government's commitment to Indigenous Peoples. In most of the United States this is recognized in the programs it provides as well as in how it upholds the conditions established in treaties. In Alaska there are no treaties although there are laws and court rulings that define the government's responsibilities with respect to Alaska Native people.

Both the extent of sovereignty (Indigenous jurisdiction) and the government's trust responsibility have evolved through time based on court rulings, federal legislation, government policy, and Native drive to control their own rights. Settlers in Alaska have sought to exert their place in the state through their interpretation of legislation and resolutions favourable to how they think Alaska Native people should be treated. Up until the 1970s, federal legistation and policy favoured assimilation of Alaska Native people with little understanding of their needs and ways of living on the land. The result has been a struggle played out between different cultural ways of framing and resolving Indigenous sovereignty. In recent years there have been efforts at the federal, state, and Tribal levels to overcome the divides, particularly in areas where the federal and state governments and Native communities work together to support village governance and the statewide delivery by Tribes of services such as health care.[2]

One way to understand the cultural divides between settler and Indigenous cultures is to consider the historical evolution of Western laws and policies that mark the impact on Alaska Native people. While much of the record demonstrates ignorance of Indigenous ways, neglect of federal responsibility, and racial prejudice, the most significant factor that emerges for most of the history is a lack of understanding of Alaska Native Peoples' cultures, sovereignty, and the federal government's responsibility to Indigenous Peoples. There was a marked change in 1970 when President Nixon ushered in a shift in federal response from termination to self-determination.[3] Most Alaskans are less informed of this shift in policy and fail to recognize how Indigenous people in Alaska have used the changes to gain greater control of their affairs. This is because these changes do not directly affect most non-Indigenous people.

The history of the United States government's recognition of Indigenous sovereignty can be traced back to Supreme Court Justice John Marshall who ruled in 1831 and 1832 that the federal government has a responsibility to recognize Aboriginal title to land.[4] The relationship between Indigenous Peoples and the government was defined by Chief Justice Marshall as one of "domestic dependent nations."[5] In the continental United States, the federal government recognized the sovereignty of Indigenous Peoples within the boundaries of their reservations and the conditions established in treaties between the government and the Tribes, but ultimate determination of the extent and limits of sovereignty was determined by Congress.

In Alaska, the government's responsibility to Alaska Native people was not limited to questions of land although land was central to the settlers' concerns and basic to Alaska Native Peoples' subsistence economy and ways of life. Beginning in the early years of the American period in Alaska, Alaska Native people expressed concerns about their rights and relationship to the government.[6] So, while land was central and the basic legal question prompting rulings on Indigenous sovereignty, for Alaska Native people, their concerns and expression of rights extended to a vision of what they needed to survive and participate in new opportunities under American administration.

The history presented here demonstrates the Alaska settlers' narrower interest in solving Alaska Native Peoples' land claims with the legal tools and cultural approaches central to their ways of life so they could proceed with clear title to land. Throughout this history, Alaska Native people were eager to preserve their land and control their own affairs while availing themselves of rightful opportunities under the law.

What follows is an overview history that reflects the evolution of relationships and interpretations of Indigenous rights reflected in federal, state, territorial, and settler approaches to sovereignty—a story that until recently reflected years of misunderstanding, paternalism, and unwillingness to support self-determination. Native Peoples' responses throughout the history have demonstrated their efforts to maintain their cultural interests and to seek opportunities within the context of new realities. The hope is that this work may also serve as a basis for comparison with the experiences of other Indigenous populations globally.

The Early Years (1867–1936)

The Treaty of Cession in 1867 recognized the relationship of the United States government to Alaska Native Peoples. Article III states:

> 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 [sic] 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 [sic] 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.[7]

Under this treaty, the United States assumed responsibility for the Indigenous people living in Alaska. That meant virtually all Alaska Native people.[8] In the early years of the American period this trust responsibility[9] was reflected in federal policies and rulings characterized by paternalism and reflected in an attitude that the federal government knew what was best for Alaska Native people—and that was assimilation. In the kindest interpretation of this policy, the government saw a responsibility to assist Indigenous people to become like White settlers in attitudes, vocation, and settlement because that was perceived to be in their best interest regardless of their different backgrounds.[10] This attitude permeated public thinking and government policy. In the eyes of the federal government and settlers in Alaska, it was impossible to be an Indigenous person while also enjoying the rights and benefits of full participation in American society. Federal policies and laws were therefore designed to provide avenues for individual Indigenous people to adopt settler ways. This is exemplified in the provisions for acquiring an allotment (title to land) and citizenship.[11]

Despite the emphasis on changing Alaska Native people to be like settlers, there was always a legal recognition that the extent of Indigenous rights, particularly as they related to land and access to subsistence resources had not been determined nor abolished.[12] Therefore there existed this tension between legal recognition that there were Indigenous claims, the federal government policies toward Native people, and strong sentiment directed at changing Alaska Native people to become settlers in custom, livelihood, and settlement.[13] The focus was on replacing group identity, settlement, and cultural practices with settler values based on the nuclear family, and rejection of identification with their cultural group.

The Middle Years (1936-1956)

The middle years are marked by contrast—settlers sought resolution of Indigenous land claims so they could secure their land rights while the United States Department of the Interior advanced its trust responsibilities in an aggressive effort to secure Indigenous reservations and village-based governance.

In 1936, the Alaska Reorganization Act (ARA) was a broad attempt to provide village-based government fashioned after Western governance and to provide economic incentives by way of money for village development projects. This was a well-meaning effort, but one defined by policy makers without understanding and direction from Alaska Native people.[14] To the credit of the ARA planners, they used their federal trust responsibility to create new opportunities within Alaska Native communities for economic development and Western style local governance.[15] In the long run, the village councils, while reflecting a Western legal framework, were a precursor and introduction to Indigenous directed corporate business.[16]

Reservations established by the secretary of the interior as part of the Alaska Reorganization Act proved particularly controversial, especially when these involved fishing grounds important to commercial fishermen and cannery operators. The Department of the Interior saw reservations as a way to provide Alaska Native people with land and waters that could be dedicated to their hunting, fishing, and trapping, but reservations became a lightning rod for those who questioned the right of the federal government to allocate large areas of land exclusively for Indigenous use.[17] Alaska Territorial Governor Ernest Gruening was an outspoken critic of reservations. He claimed that they would segregate Alaska Native people from the larger society and from opportunities such exposure could provide. Alaska Territorial Delegate Bob Bartlett agreed with him that reservations were not a good idea.[18]

Others objected to reservations by saying that the 1884 Organic Act, which created the district of Alaska and is often referenced as a basis for recognition of Indigenous claim to the land, was enacted at a time when Indigenous people were living a "traditional" life and that now many were moving into wage labour and less expansive land use, a reason to disavow reservations.[19]

Outside of Alaska, the argument over ancestral land was legally challenged in a court case involving the Hualapai people and the Santa Fe Railroad in 1941. The courts found that Indigenous land claims were not limited to actual land in use but could extend to lands they had once used. This finding became an important basis for considering Indigenous land claims in Alaska.[20]

In response to the establishment of reservations, Alaska Territorial Attorney General Ralph Rivers wrote an opinion piece to Secretary of the Interior Harold

Ickes on August 17, 1945, "Opinion of Alaska Attorney General Ralph J. Rivers on Aboriginal Rights of Alaska Indians."[21] The piece provides a reasoned response to the secretary's policies and is also instructive because it demonstrates the cultural divide between settlers and Indigenous people. Rivers was in a unique position to comment. He grew up in Alaska, knew the law thoroughly, and was responding to the secretary in his role as attorney general of the territory. Rivers, like other Alaskan political and business leaders of that time, recognized that Alaska Native people had unresolved claims to land but disagreed with the establishment of reservations as a way to address the claims. He believed that the best way to address the claims was through the US Court of Claims and he held that there should be monetary payments, as opposed to a land grant**.** He sought payments as the ultimate goal to resolve Indigenous claims.[22] He followed the well-worn path of offering money for land claimed; fair by settler standards but a policy that ignored the value of the land to Alaska Native people as homeland imbued with fish and wildlife critical to their life**.** The wider dimensions of Indigenous sovereignty as they might relate to governance of village affairs were not part of his response since his primary focus was on securing equal opportunity for all Alaskans to land and what he recognized as a fair settlement of Indigenous claims.

He further argued that Tribal or group recognition had not been investigated, was undocumented at the time, and therefore could not be claimed. Referencing the 1884 Organic Act he stated: "Only now, 60 years after enactment of the measure, is the Department of the Interior attempting to ascertain what their claims were."[23] Rivers pointed out that Tribal recognition was the prerequisite for Indigenous group rights. He stated: "Tribes or bands are of course, the basis upon which the conception of Indigenous rights is founded."[24]

Tribal recognition for much of the United States was codified in treaties that recognized their territory and extent of sovereignty. Because treaty making ended in 1871 shortly after the purchase of Alaska, there were no treaties with Alaska Native people and therefore no established agreement on land and other rights. While this is true, it obscures the more important point that Rivers was making about the lack of knowledge by the government concerning Indigenous group composition and collective ties to the land.

At issue was the fact that Alaska Native people did not have legally recognized documents (treaties) that described the limits of their claims and the government did not have any detailed investigations that could address the question.[25] So for Rivers the immediate issue to be settled was land, a common concern of both settler and Indigenous person despite the differences in how they viewed the land.

Despite the lack of information about Alaska Native people, even in the 1940s, the federal government attempted to meet its trust responsibilities through a series of government agencies.[26] Rivers's opinion piece attempted to make sense of Indigenous claims within the framework of Western legal tradition. From a settler's standpoint this is an understandable response to their land problem, but settlers tended to dismiss the fact that Indigenous land claims extended beyond the individual to the cultural group and were based on how that group, band, or Tribe defined and managed their land rights. This approach was different from the nuclear-family oriented land ownership that was the settler concept.[27] Of course, without learning more about Indigenous societies there was no empirical basis to determine the role of tradition and the different cultural ways of managing the land or clarifying the extent of Indigenous rights to self-govern.[28] Despite the lack of documentation and understanding of Indigenous ways at this point in Alaska history, the US Congress, in passing the Alaska Reorganization Act, recognized Indigenous rights and the possibility that a person could be simultaneously a citizen of a Tribe, nation, territory, or state.[29] How this could work is still evolving.[30]

Statehood (1956-1959)

Many Alaskans looked forward to the prospect of statehood and economic development. Framers of Alaska's constitution (1955-1956), like the leaders of the earlier period, cherished equal opportunity for all. Critical to the course of Alaska Native history are the common use provisions embedded in article 8 of the constitution. Under "Natural Resources," section 1, the "Statement of Policy" states: "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."[31] Sections 3 states: "Whenever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."[32] Section 4 states: "Fish, forests, wildlife, grasslands and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle subject to preferences among beneficial uses."[33]

The key concept reiterated here is that Alaska state management of subsistence resources will not be allocated based on users or user groups. Decisions on allocation must ensure equal opportunity for all citizens. Therefore, there can be no Indigenous or rural resident priority despite the obvious differences in needs between those who live a subsistence life and those who depend almost exclusively on wage labour.[34] Alaska Native people and other rural Alaskans were to be treated the same as urban dwellers despite the sharp differences in how they make their living and survive.

It is true that today many urban based Alaskans also hunt and fish every year, some depending to varying degrees on the resource, for others this is a supplement while also holding down full- or part-time jobs. It is also true that a growing number of Indigenous people in Alaska now are employed, some year-round, others seasonally. The argument for a rural Alaskan subsistence preference

is, however, based on the premise that life in rural Alaska depends on access to subsistence for most rural residents and urban residents do not have this extent of dependency to sustain them; they have other resources. Further, the argument has a cultural dimension. Subsistence in rural Alaska is a way of life rooted in places that have generations of meaning for people who live there, and who recognize the values of that life to their identity and well-being. They want to protect it for the present and future generations. If the citizens of Alaska value a diversity of ways of life, then the question is whether these should be accommodated in law? This question was not asked at the time the constitution was written, but it became a key issue after statehood when the State of Alaska began to select lands.

Compounding the problem at the time the Alaska constitution was written, was the fact that urban dwellers had little understanding of rural residents and Indigenous people in particular. At this point in history, Alaska Native people travelled to the city infrequently and had little interaction with most of the settler population, except government workers who went to rural Alaska on business.

The disconnect between rural and urban life was compounded by conflicting language in the Alaska Statehood Act (1958), which both confirmed the right of the State of Alaska to select lands to develop, and the necessity of not selecting lands that may be claimed by Alaska Native Peoples:

> As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians [sic], Eskimos [sic], or Aleuts [sic] (hereinafter called natives) or is held by the United States in trust for said natives;…[35]

Then, under "Selection from Public lands,"

> For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within thirty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas.[36]

Section 6 is specific as to the responsibility of the secretary of the interior: "Such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands."[37]

Both the potentially contradictory provisions of the Act and the common use provisions in the Alaska constitution laid the foundations for conflict with Alaska Native peoples over land and subsistence rights.

At first glance it is remarkable that the Secretary of the Interior at the time, Fred A. Seaton, did not intervene before passage of the Act as written.[38] It was not until 1966 that then Secretary of the Interior Stewart Udall issued a "land freeze" on State of Alaska selections until Native land claims were settled.[39]

The conflicting language in the Statehood Act set the stage for the state to proceed with land selections before the claims of Alaska Native Peoples were settled. This signalled a clear override of Indigenous concerns and created a backlash throughout the Alaska Native communities. When Secretary of the Interior Stewart Udall declared state selection halted until land claims issues were settled, this created resentment toward the federal government among settlers.

The Alaska Statehood Act was passed during a period of federal government policy to terminate services to Indigenous people, a low point in the administration of trust responsibility. On April 1, 1953, House Concurrent Resolution 108 was passed by Congress proclaiming the federal policy of terminating services and protections to American Indians.[40] In many respects, termination was a continuation of the assimilationist model that advocated Indigenous "advancement" through replacement of their identity with settler identity. The claims court route to settling Indigenous claims was a long process, and its successor, the Indian Claims Court, often struggled to recognize the cultural aspects of settlement and land use that were inherent in the claims.[41]

In retrospect, Alaska statehood both ignored and clouded land rights and this period reflected a continuation of assimilation policies detrimental to the social, educational, and economic development of Alaska Native Peoples. This laid the groundwork for the response to the question of land rights and the host of other concerns that would be reflected in the testimony of Alaska Native people in regional meetings leading up to passage of the Alaska Native Claims Settlement Act in 1971.[42]

The Alaska Native Claims Settlement Act (1959-1971)

The land issue came to the forefront because it was an early impact of statehood on the lives of Alaska Native people, and an impediment to settlers' desire to secure title. The land question gained momentum when the state began to select land under provisions of the Statehood Act. Native land issues took on urgency with the 1968 discovery of oil at Prudhoe Bay on the North Slope of Alaska, north of the Brooks Range, and the desire of the nation to drill and build a pipeline to transport the oil to port. From a settler perspective, it became urgent to settle land claims. From the perspective of Alaska Native peoples, this was the opportune time to push for settlement.

At the first statewide meeting of Alaska Native leaders in 1966, delegates formed committees to deliberate not only on land, but on education, health and welfare, housing, transportation, and employment.[43] That statewide meeting evolved into the Alaska Federation of Natives (AFN) and became an ongoing voice for Alaska Native concerns. At that meeting a paper was distributed to the leaders, "What Rights to Land Have the Alaska Natives?: The Primary Issue." It was written by Iñupiaq leader Iġġiaġruk Willie Hensley, and in that document he made the case for land claims referencing the legal foundations from Western law and the basis for Indigenous rights. This marked one of the first examples of how the Alaska Native community used the legal tools of the government to present their claims.[44]

In the testimony by Alaska Native leaders to Congress in 1969, leading up to the final ANCSA bill, land and other issues such as poverty, housing, and employment, were seen as connected and, in some testimony, linked directly to acquiring title to the land.[45] For instance, leaders from the interior of Alaska testified and some took pains to draw the connection between land settlement as a resource to gain economic independence, a way to improve their standard of living, and an opportunity to manage their own affairs. Senator John Sackett, born at a spring camp on the Huslia River, a tributary of the Koyukuk River in the Interior Alaska, told the congressional delegation:

> Let me stress further that the bill before you is not just a question of land. It is a grasp, a handhold, for the development of our future. Again, how many programs has the Federal Government instigated for us—each has met with failure. We have had countless men come up and tell us what to do and how to do it, and each has gone home lacking accomplishment.[46]

Indigenous leader Emil Notti, born in Koyukuk, told the gathering:

> The condition of the native people is desperate. They need relief in the worst way. Settlement of the land problem is the remedy for solving the problems. I visualize sawmills coming into being to start a housing program. I visualize native businesses beginning to alleviate unemployment. There is a whole economy to be developed in rural Alaska and outside capital is reluctant to take the risk.[47]

For many who testified, the land was a bridge connecting a well-known way of life with economic opportunities that would enable development on their own terms. Claude Demientieff, a barge operator on the Yukon and Tanana rivers, who was born in Holy Cross on the Yukon River, told congress:

> When I go to the banker, he says, I don't have title to my land and you cannot take a mortgage out on it. Now I think that if we had the title to this land it would place something in us that I don't know what you call it—initiative maybe that would promote private enterprise.[48]

In the lead up to land claims, Governor Hickel assembled a task force to propose solutions to the settlement. Willie Hensley chaired that task force, and in the report they supported a corporate solution to settling land claims—regional Native corporations that would receive a cash settlement that they would then invest for shareholders in their region. Alaska Federation of Natives president Don Wright, speaking for the statewide organization, supported a corporate solution. Wright also emphasized the importance of a corporate solution in a March 28, 1971, memo. Wright concluded: "we stand ready to assist in any way possible with the drafting of appropriate language to incorporate the regional concept into the Administration bill prior to its transmittal to the Congress."[49] In testimony to Congress for s2906, Willie Hensley and Byron Mallott (Tlingit and later lieutenant governor) also spoke in favour of a corporate solution.[50]

ANCSA settled the question of land claims and gave the state a clear path to move on state selections and development unhindered by possible lawsuits from Alaska Native land holders. The federal government got authorization to study and propose new national parks and wildlife refuges (D-2 lands).[51] The Alaska Native community received 44 million acres of land and close to one billion dollars. The corporate solution that created for-profit regional corporations proposed and endorsed by prominent Alaska Native leaders has proven, in Western terms, to be an economic success.

Ironically, subsistence protections and Indigenous control over the "traditional" land base has proven elusive. The land selected by Native corporations would be subject to state and federal fish and game laws just like any other private landholding.[52] This was a significant blow to Indigenous control of their traditional way of life. The federal government recognized the loss and promised to address subsistence needs. Unfortunately, the federal solution has created additional problems and exacerbated the divide between urban and rural residents by creating different management mandates on Alaska state and federal land.[53]

The Alaska National Interest Lands Conservation Act (1980)

In Title VIII of the Alaska National Interest Land Conservation Act (ANILCA) the federal government attempted to address its trust responsibility to protect Indigenous subsistence. Title VIII gives rural subsistence users a subsistence priority on federal land.[54] The initial hope was that the State of Alaska would follow with a rural preference on state land. The state tried but the effort was thwarted by lawsuits and extended debate among Alaskans. At issue was, and still is, the common use provisions of the Alaska constitution that prohibit priority to any user group. Efforts to amend the constitution failed.[55] This demonstrates the deep divide between urban settler values and rural, mostly Indigenous, subsistence-oriented values. Today, Alaskans are left with two subsistence management systems, one on federal land with a rural subsistence preference, one on state-managed land with no rural preference, even in times of resource shortage.[56] The divide exposed two important things: lack of knowledge of rural community needs by urban Alaska, and the struggle by many Alaskans to reconcile equality of access for all with special consideration for the subsistence needs of rural Alaskans, most of whom are Indigenous.

If there had been more understanding of Indigenous lifeways at the time of statehood, there might have been accommodation for a rural and Native Alaskan subsistence preference. The urban population either simply did not anticipate and appreciate the impending conflict, or quite purposefully did not want to establish any priority. Title VIII proved an inadequate fix to a problem that has roots in the failure to consider Indigenous sovereignty at the time the State of Alaska constitution was drafted and the continuing impact of the common use provisions on Alaska Native people.

Federal and State Positions on Native Sovereignty in the Post-ANCSA Era

Indigenous sovereignty over subsistence has been impacted, but in other areas there are signs of greater recognition of Indigenous rights. The 1970s marked a change in federal response to Native concerns. In addition to the Nixon Administration's new "Indian policy," ANCSA in 1971, has created great economic opportunities through the investments of the regional corporations. The Indian Self-Determination and Educational Assistance Act (ISDEA) in 1975[57] and the 1994 Tribal recognition listings for Alaska[58] each paved the way with new opportunities for Alaska Native organizations, communities, and even corporations to assume administrative control of their affairs under Tribal management with support from the federal government. Examples include federal funding to Tribes for medical programs and village courts with authority to hear certain types of legal cases such as child welfare. As noted by Katchen and Ostrovsky, the recognition by the federal government that the Alaska Native Regional Corporations (ANCs) could receive funding under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES) is another area where Tribal rights have been recognized. This was possible through an interpretation of language in the Indian Self-Determination and Education Assistance Act.[59]

In an announcement from the Alaska Native Justice Center, December 7, 2023, they reference the authority of the Tribes to administer justice with respect to domestic violence with specific reference to the federal Violence Against Women Act. The announcement states: "The memorandum underscores what Congress made clear in the 2022 reauthorization of the Violence Against Women Act." Further, it notes the authority to exercise criminal and civil jurisdiction over all Indigenous people "present in the village."[60] Further still it states authority to "issue and enforce civil protection orders involving all people within the village" (Indigenous and non-Indigenous).[61]

These recognitions of jurisdiction also include the area of child welfare cases where Tribal courts play a role in adjudicating claims. Tribal status has also had a positive effect on the ability of Tribes to establish contracts with the federal government in areas such as health care. The Alaska Tribal Health Consortium representing Tribes across the state now administers health care under a contract from the Indian Health Service.[62]

Most significantly, in 2017, the State Attorney General Jahna Lindemuth, in a memo to Governor Walker, outlined the extent of Indigenous sovereignty in Alaska, "Legal status of Tribal governments in Alaska." This was a major step by the State of Alaska to formally recognize Tribal rights. The memo to the governor begins with the statement that Tribes exist in Alaska and are governments with inherent sovereignty.[63] Further on, in reference to the Indian Self-Determination and Education Assistance Act she states: "Alaska Tribes may enter into agreements with the federal government to take over federally administered programs and services as a matter of self-governance."[64]

On the question of law making, she states: "A tribe's authority to adopt laws flows from the status as a sovereign political entity. This authority includes the power to enforce laws and administer justice systems such as courts."[65] Then,

in terms of power to terminate rights, she states: "Tribes' inherent sovereignty includes a 'colorable and plausible claim to jurisdiction' to terminate parental rights to tribal citizen children, even when the parent is not a citizen of that tribe."[66]

In the area of education, the Alaska Department of Education and Early Childhood Development announced in July 2021 a grant of one million dollars to the Alaska Federation of Natives to "scope" Tribal compacting of education. The grant funds came from CARES and the American Rescue Plan Act of 2021 (ARP). The grant was scheduled to end June 30, 2024.[67] It is significant that the state legislature had added its support to the development of Alaska Native education by passing the "State-Tribal Education Compact" law on July 28, 2022, supporting development of Tribal run K-12 public schools.[68]

In summary, these areas of US federal and Alaska state recognition of Tribal authority now provide legal opportunities for the Indigenous administration of justice, and eligibility for funding opportunities for Tribal-directed programs to serve their communities.

Conclusion

Canadian Justice Thomas R. Berger chose "Northern Frontier, Northern Homeland" for the title of his 1977 report on the Mackenzie Valley Pipeline Inquiry.[69] The inquiry was on the impact of a proposed gas pipeline on the Indigenous people of the Mackenzie Valley, an area culturally not too dissimilar from Alaska Native communities. His choice of the words "frontier" and "homeland" captures the conflict in culture that I have tried to describe in this article. The early settlers to Alaska saw it as a frontier to be explored, settled, and developed. These very terms denote an attitude of new opportunity. Rivers put it succinctly in his response to the US secretary of the interior when he wrote:

> We are all aware that the Natives have been pushed aside by the onward march of civilization, without their wishes having been consulted. This was not so because of moral dereliction on the part of individual white pioneers, but because of the social forces and necessity that made white men surge with aggressiveness into new country.[70]

The phrase "onward march of civilization" speaks to the cultural divides that shape attitudes and approaches. The phrase reflects the movement to bring a way of life to a frontier. This is in opposition to the Indigenous concept of homeland that depicts a place imbued with intimate knowledge of the land and resources forged over generations, and a belief in the sustaining value it has always supported.[71] This was what Alaska Native leaders expressed in testimony on the land claims bill before Congress. They talked about the land as a source that had always sustained them, a concept captured in the title of Lael Morgan's book *And the Land Provides*.[72] Some of the leaders spoke of the land as a bridge to new opportunities, all recognized what it had povided. The cultural differences in perspectives centre around an attitude of making something new in a land of unexplored opportunity, versus drawing on the knowledge of what has been possible based on experience and tradition and approaching future opportunities in a place known well.

For the federal government, their obligations to Indigenous Peoples have always been complicated by dual responsibilities: to recognize the sovereignty of Alaska Native people and to also meet conditions under the Treaty of Cession to take responsibility for the future of Alaska Native people. The Alaskan story is about how this tension plays out through history while simultaneously recognizing settler rights to land and resources in the territory. For instance, the early implementation of the Citizenship Act and the Allotment Act sought to provide incentives for Alaska Native people to change cultural practices in lifestyle, settlement, and association, to assimilate as a precondition to receiving benefits enjoyed by settlers, invoking the standards of Western "civilization" as the cost. Similarly, the well-meaning programs and policies of the Alaska Redevelopment Authority (ARA), in speaking for Indigenous Peoples, failed to ask how they wanted to govern their affairs.[73] Settlers and commercial interests feared that the policies of the ARA would block them from land, resources, and livelihood. They resented the government actions because it would affect them. Some also showed resentment toward Alaska Native people, asking why they should be given special protections and pointing out that Native life had undergone change and so their needs for large areas of land had also changed, and they might not need all that previously had been the case. This signalled a further extension of the divide between settlers and Indigenous people and led some to question why Alaska Native people should be treated differently from others.

Some politicians called for the Western value of equal treatment for all Alaskans irrespective of their culture. They saw "equality" as a value in its own right and as a goal that could be reached when Native land claims were finally settled. In their mind, settling land claims would put all Alaskans on an equal footing. This was one of the reasons the settlers and politicians were so active during the 1930s–1950s to settle land claims. Once claims were settled and all Alaskans were on equal legal footing, then the territory could remove the cloud of unsettled land ownership and move without interference on development of the territory. This point of view contrasted with Alaska Native claims and federal recognition of the special jurisdictional rights Indigenous people have to control their own land, resources, and internal affairs subject to the ultimate interpretation and control of Congress. Some Alaskans could never fathom that Alaska Native people have jurisdictional rights that extend beyond land claims and in addition to

their rights as citizens of the state and the nation. "Equal opportunity" became the basis of the common use provisions of the natural resource section of the Alaska constitution and this set up a direct threat to any attempt by the state to recognize an Indigenous or rural subsistence priority, unless there was an amendment to the constitution. The new state was not ready to do this nor is it ready today, and the tension between rural and urban Alaska reflects this impact. It also points to the lack of understanding and appreciation for cultural differences, but also the strong support for "equality." At the federal level, starting in the 1970s, things developed quite differently.

President Nixon's 1970 address to Congress on his new federal Indian policy marked a major sea change in how the federal government would meet their trust responsibilities and how they would recognize Indigenous sovereignty. Nixon moved the country from a policy of termination to one of self-determination. This was followed by the Indian Self-Determination and Educational Assistance Act in 1975 (ISDEA) that put into place the avenues for Tribes to secure funding and administrative authority to run programs that affect their lives. The Tribal recognition list for Alaska in 1993 and 1994 gave Native entities in Alaska the federal recognition to activate Tribal access to the opportunities in ISDEA. "Tribal status" has become the key to federal recognition of jurisdictional rights. The most recent state position paper on Indigenous sovereign rights (from Attorney General Jahna Lindemuth in 2017) now clearly defines the areas of Alaska Native jurisdictional authority as they relate to Alaskan state jurisdictional authority. Previous state administrations have not always viewed Tribal rights as important.

These developments, as Nixon's term "self-determination" implies, shifted part of the discussion from the federal government seeing its responsibility to dictate opportunity, to one of Native organizations defining where and how they might want to take on programs and responsibilities from the federal and state governments—"self-determination" and "Tribal" recognition" mean opportunities at the community and regional levels with financing, and under Native cultural control with positive impacts in areas such as health care and village justice. This is a chapter that is still emerging and an important window into how Alaska Native cultural groups want the programs and services that affect them to be run. Key to this evolution has been the defining of "Tribal jurisdiction" as it relates to jurisdiction of the Alaskan and federal governments.[74]

Notes

1. Indigenous Peoples in Alaska include eleven distinct languages and cultures: that reflect the various different Native Peoples of Alaska: "Eyak, Tlingit, Haida, Tsimshian peoples live in the Southeast; the Inupiaq and St. Lawrence Island Yupik live in the north and northwest parts of Alaska; Yup'ik and Cup'ik Alaska Natives live in southwest Alaska; the Athabascan peoples live in Alaska's interior; and south-central Alaska and the Aleutian Islands are the home of the Alutiiq (Sugpiaq) and Unangax peoples." Alaska Federation of Natives. *Alaska Native Peoples*. https://nativefederation.org/alaska-native-peoples/.
2. This article is not a legal analysis of the issue of sovereignty and readers seeking such a legislative history are invited to consult Donald Mitchell's volume, *Tribal Sovereignty in Alaska, How it Happened, What it Means* (Carolina Academic Press, 2022), and David S. Case and David A. Voluck, *Alaska Natives and American Laws* (University of Alaska Press, 2012). See also a panel discussion: David Case, Alex Cleghorn, and Rosita Kaaháni Worl, *Alaska Native Sovereignty* (Critical Issues Lecture Series, Alaska Historical Society, Anchorage, October 16, 2023), https://alaskahistoricalsociety.org/lecture-and-discussion-series.
3. "President Nixon Special Message on Indian Affairs, July 8, 1970," Public Papers of the Presidents of the United States, Richard Nixon, 1970, 564-567, 576-76. https://epa.gov/sites/default/files/2013-08/documents/president-nixon70.pdf.
4. Felix Cohen provides an exhaustive review of court cases establishing rights of Aboriginal title to the land and the government's responsibility to protect their interest until such time as the government makes settlement either in payment, or other form of compensation. Cohen recounts the record of court cases affirming the rights of Indigenous people as fully human beings with legal claim to the land they currently occupy and land that they may have occupied in the past. Further, Cohen demonstrates that the government had been diligent in compensation to Indigenous Peoples up to the time of his writing in 1947. Felix Cohen, "Original Indian Title," *Minnesota Law Review* 32, no. 1 (1947): 28–59. https://scholarship.law.umn.edu/mlr/1296.
5. Justice Marshall termed Tribes "domestic dependent nations," with the federal/Tribal relationship resembling "that of a ward to his guardian." United States Department of Justice, "Federal Trust Doctrine First Described by Supreme Court." See also Case and Voluck, *Alaska Natives*, 1. The original language is articulated in Cherokee Nation v. State of Georgia, 30 U.S. (5 Pet.) 1.1 (1831), https://supreme.justia.com/cases/federal/us/30/1/.
6. One of the earliest Alaska Native records from Interior Alaska is a letter composed by Chief Ivan of Cosjacket and Chief William of Tanana where they point out the impact of settlers on the land, particularly noting the cutting of timber: "Half of the white people are doing nothing but trapping and fishing where we have our hunting grounds for years and now we can not only depend on hunting, but have to cut wood, etc. … At the present we are making our living by cutting wood mostly, but the white people are cutting wood all around our villages which we do not want and wish to have it stopped. We are self-supporting Indians and all

we want to ask of you is to stop the whites to cut wood around our grounds. We wish to hear from you…". The Chiefs are indicating that they must cut wood to sell, presumably to the steamboats on the river and perhaps also to the Army post at Fort Gibbon. Letter from Chief Ivan of Cosjacket and Chief William of Ft. Gibbon and Tanana to the Secretary of War, August 18, 1906, Box 9, Folder 47A, Record Group 22, Entry UD-91, Records of the US Bureau of Fisheries, Division of Alaska Fisheries Administration, College Park, Maryland. In 1915, at the Tanana Chiefs Conference in Fairbanks with Judge Wickersham, the Chiefs voiced concern about employment opportunities, their relationship with the government, educational opportunities for their children, and health care. William Schneider et al., *The Tanana Chiefs, Native Rights and Western Law* (University of Alaska Press, 2018): 77–111. See also Wickersham Historic Site Manuscript Collection 1884–1970, Alaska State Library Historical Collection, ASL-MS-107-38-001: 31, https://vilda.alaska.edu/digital/collection/cdmg21/id/2277/rec/5.

7. Alaska Purchase. The Treaty concerning the Cession of the Russian Possessions in North America by his Majesty the Emperor of all the Russias to the United States of America, June 20, 1867, Article 3. https://www.loc.gov/resource/gdcwdl.wdl_16743/?st=gallery.
8. Describing the designation of Indigenous people under Russian influence, Case and Voluck point out that the "inhabitants" were divided into three groups: those who had adopted Russian ways of life and were subject to the Russian Czar, those who were semi-independent and associated with the Russians but did not accept the Russian Orthodox faith, and the independent inhabitants over whom the Russians exercised no control: Case and Voluck, *Alaska Native*s, 63–64. In reality, under American rule most Indigenous people were treated the same at this point in history until and unless they demonstrated they had given up their Tribal affiliations. Secretary of State William Seward indicated in an undated memorandum that the Indigenous people in Alaska should be treated the same as the Indigenous people in the rest of the United States: cited in David Hunter Miller, *The Alaska Treaty* (The Limestone Press, 1981), 71. In reality, there was considerable debate in the federal government over which department should administer to Alaska Native Peoples: Stephen Haycox, "Races of a Questionable Ethnical Type: Origins of the Jurisdiction of the U.S. Bureau of Education in Alaska, 1867–1885," *Pacific Northwest Quarterly* 75, no. 4 (1984): 156–162. https://www.jstor.org/stable/40490449.
9. The federal trust responsibility to Indigenous Peoples derives from John Marshall's ruling in Cherokee Nation v. Georgia where he wrote: "Their relations to the United States resemble that of a ward to his guardian. They look to our Government for protection, rely upon its kindness and its power, appeal to it for relief to their wants, and address the President as their Great Father": Justia US Supreme Court, Cherokee Nation v Georgia, 30 US. 1 (1831), 30.
10. Anthropologists describe this as a belief in a unilineal theory of cultural evolution. Field studies in the early years of the twentieth century disproved this theory, but public recognition and respect for cultural differences has taken much longer to be accepted. Felix Cohen also dismissed the notion of ranked levels of civilization. Stephen Haycox, "Felix Cohen and the Legacy of the Indian New Deal," *The Yale University Library Gazette* 68, no. 3/4 (1994): 135–156, 141–142.
11. Under the Alaska Native Allotment Act of 1906 (34 Stat. 197), Alaska Native heads of household could apply for up to 160 acres of land but needed to live on that land continuously for five years. This represented a renouncement of traditional settlement dictated by a yearly cycle of far-ranging subsistence pursuits. Under the 1915 Alaska Native Citizenship Act, in order to acquire citizenship Natives had to abolish tribal ways and embrace "habits of civilized society" (ASL-KFA-1225. A3-1915).
12. The 1884 Organic Act, section 8, stated that Alaska Native occupancy and land use rights are to be respected (23 Stat. 24). In the United States v. Berrigan, Judge Wickersham upheld Aboriginal claims while maintaining that dispossession of Native held land remained a federal prerogative: United States v. Berrigan, 2 Alaska 442 (D. Alaska 1905), June 21, 1905.
13. During the early period, before 1936, the pressure was on for Alaska Native people to take up a settled existence, which would require abandoning traditional patterns of their yearly subsistence cycle.
14. Kenneth R. Philp concludes, "Instead of carefully studying the social implications of contemporary native culture, New Deal reformers imposed their ideas of social justice on the Aleuts, Eskimos, and Indians. The Alaskan Reorganizational Act was drafted without native input and when many natives resisted the creation of reservations, the Interior Department issued legal rulings that enabled the Secretary of the Interior to set aside extensive areas of land and water. This well intentioned policy led to confusion within the Roosevelt administration…": Kenneth R. Philp, "The New Deal and Alaska Natives 1936–1945," *Pacific Historical Review* 50, no. 3 (1981): 309–327, 326. https://doi.org/10.2307/3639602.
15. During the New Deal era of United States history, US Department of the Interior solicitor Felix Cohen suggested that instead of "wardship," the term "trustee" best describes the relationship of the government with Indigenous people because it emphasizes that the federal government should be responsive to Native interests and not predetermine and dictate how they should be treated: Haycox, "Felix Cohen," 148. This interpretation took on additional significance years later in President Nixon's new Indian policy that proclaimed a change from "termination to self-determination." See Nixon, "Special Message."
16. Stephen Haycox notes the influential role that Anthony Diamond played in shepherding the Indian Reorganization Act for Alaska through Congress and his support for the establishment of village based governance: Stephen Haycox, "The Uneasy Relationship of Biography and History in Alaska: Anthony Diamond, Ernest Gruening, and Bob Bartlett," *Alaska History Journal* 34, no. 2 (Fall 2019): 44–59, 46.
17. Reservations in Southeast Alaska proved particularly controversial with representatives of the fishing industry who saw their livelihood threatened: Jessica Leslie Arnett, "Unsettled Rights in Territorial Alaska: Native Land, Sovereignty, and

Citizenship from the Indian Reorganization Act to Termination," *Western Historical Quarterly* (August 2017): 233–254, 244. https://www.jstor.org/stable/26782857.

18. In hearings on reservations, Bartlett stated: "I think that it is extremely important because the reservation policy, once adopted for Alaska, can lead on, I believe, to disaster, and I subscribe entirely to Governor Gruening's view that the disaster will be felt chiefly by the native people": Hearings Before the Committee on Interior and Insular Affairs, United States Senate, Eighty-First Congress, Second Session on Order of Secretary Jules A. Krug, "Creating Certain Indian Reservations in Alaska," February 2, 1950. E. L. Bob Bartlett Collection, Series, "Native Land Claims," Box 2, File number 16. Alaska and Polar Regions Collections and Archives (APRCA), University of Alaska Fairbanks.
19. Arnett, "Unsettled Rights," 246.
20. United States v Santa Fe Pacific Railroad Company, 314 U.S. 339 (1941). Haycox writes, "… the case confirmed the extraordinary principle that abandonment by Indians of land they had once used but which they used no longer did not constitute extinguishment of the Indians' title to that land…": Haycox, "Felix Cohen," 146. Native land rights were further reinforced by the Marigold ruling on the rights of the Secretary of the Interior to establish reservations with extensions to include adjacent water bodies. See Nathan Marigold, To United States Senate, Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, March 1, 1948. Eighteenth Congress, Second Session on S. 2037 and S.J. Res. 162, 1948, 421. [Original brief dated February 13,1942, to Secretary of the Interior, Harold Ickes].
21. Ralph J. Rivers, "Opinion of Alaska Attorney General Ralph J. Rivers on Aboriginal Rights of Alaska Indians" (1945), Bob Bartlett Collection, Series A, Subsection 1, Box 1, Folder 2, APRCA.
22. Rivers, "Opinion," 14.
23. Rivers, "Opinion," 4.
24. Rivers, "Opinion," 7.
25. In part as a reaction to this perceived need for information about the extent and nature of Native land use and cultural use rights, the US Department of the Interior initiated a major study of Native land use in Southeast Alaska. The study is noteworthy because it was conducted by Walter Goldschmidt, an anthropologist, and Theodore Haas, a lawyer. Together, they completed investigation of current use and traditional use areas of Alaska Native people in Southeast Alaska and a small portion of the Interior. This study laid the groundwork by demonstrating Native claims both for the Tlingit-Haida lawsuit that was in court and the larger statewide Alaska Native Land Claims that would follow years later. Their report was published years later: "Possessory Rights of the Natives of Southeast Alaska," in *Haa Aaní / Our Land: Tlingit and Haida Land Rights and Use,* ed. Thomas F. Thornton (University of Washington Press, 1998).
26. Despite the lack of legal resolution of sovereignty during this period, the federal government defined its trust responsibility through the Bureau of Education and later the Bureau of Indian Affairs. The 1905 Nelson Act (chapter 277, section 7) established schools funded by the federal government for "Indians" and "Eskimos." The federal government also offered limited educational and health services, in the early years with the assistance of religious groups who set up missions. Stephen Haycox points out that before 1885 the federal government argued over which government agency should administer to Alaska Native people since they questioned whether the Native people in Alaska were Indians. This led to the Bureau of Education having responsibility until the 1884 Organic Act that called for the Secretary of the Interior to "…make meaningful and proper provisions for the education of children of school age in the Territory of Alaska…" (Section 13, Organic Act of May 12, 1884). Presbyterian Minister Sheldon Jackson was appointed Commissioner of Education in 1885 and he worked to support the development of schools in Alaska. See Haycox, "Races," 162**.** The Bureau of Indian Affairs was in charge of schools until 1986. See Carol Barnhardt, "A History of Schooling for Alaska Native People," *Journal of American Indian Education* 40, no. 1 (Fall 2001): 1–30.
27. Speaking of the Iroquois Confederacy, Dorothy Jones describes how the Iroquois concept of land differed from the British in the early years of Empire. The Iroquois concept emphasized relationship and "mutually acknowledged rights and obligations." Dorothy V. Jones, *License for Empire: Colonialism by Treaty in Early America* (University of Chicago Press, 1982), 19. Her observations while distant in time, place, and cultures seem apt in pointing out expanded dimensions of the Alaska Native relationship to the land, what we would recognize in Alaska as commonly understood use rights among Native groups. These are exemplified in, but not limited to, rights to fishing sites and traplines. The contrast between settler concepts of land ownership and use and the group use rights recognized by Indigenous people is an important difference in how each saw issues of land.
28. Perhaps the most influential American anthropologist of the twentieth century was Franz Boas. Boas and his students documented societies around the world and championed appreciation for cultural differences and the importance of understanding the value of each culture on its own terms. In a letter to President Franklin D. Roosevelt in 1933 at the time the president was considering who to hire as Commissioner of Indian Affairs, Boas reflected on prospective candidates and previous policy. He wrote, "… one fundamental error in their attitude was the same as the one made by Carl Schurz when he was the Secretary of the Interior, namely to assume that by administrative measures the Indian can be changed immediately into a White citizen. I believe they fail to understand the impossibility of overcoming the deep influence that the old ways of Indian life still exert upon the Indian community. Whomever is in charge of the Bureau of Indian Affairs ought to understand this fact": Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, Vol. II (University of Nebraska Press, 1984), 939.
29. In 1924 the United States Congress passed the Indian Citizenship Act granting citizenship to Natives in the United States. Public Law 68-175. 43. Stat. 253.

30. In an essay by historian Frederick Hoxie Swandlund for the 75th year review of the IRA, he points out that: "Congress endorsed the idea that individuals could be both U.S. and tribal citizens." "The Indian Reorganization Act 75 Years later: Renewing our Commitment to Restore Tribal Homelands," Hearings before the Committee on Indian Affairs, United States Senate, 112th Congress, First Session, June 23, 2011: 3–4.
31. Alaska State Constitution, "Natural Resources," section 1, Statement of Policy.
32. Ibid., section 3.
33. Ibid., section 4.
34. William Schneider, "When a Small Typo has Big Implications," *Alaska History Journal* 36, no. 1 (Spring 2021): 1–30.
35. Alaska Statehood Act, 48 USC Ch. 2, section 4.
36. Alaska Statehood Act, 48 USC Ch. 2, section 6(a).
37. It is unclear why the secretary of the interior did not object.
38. Stephen Haycox reports how Gruening tried to get the Native disclaimer removed from the final language in the statehood bill and how Bartlett also wanted the disclaimer removed with the promise Congress would soon address the question of Native land claims: Haycox, "The Uneasy Relationship," 56–57.
39. The secretary of the interior reflected on the land freeze at the sixth anniversary banquet of the *Tundra Times*, "Excerpts of Remarks by Stewart L. Udall at 6th Anniversary Banquet of the *Tundra Times*," US Department of the Interior, Indian Affairs, Oct 6, 1968. https://www.bia.gov/as-ia/opa/online-press-release/excerpts-remarks-stewart-l-udall-6th-anniversary-banquet-tundra.
40. "House Concurrent Resolution 108 which formally announced the policy of termination, directed that the end of reservations and federal services and protections be completed 'as rapidly as possible'": Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (W. W. Norton and Company, 2005), 53.
41. Nancy Oestreich Lurie, "The Indian Claims Commission," *Annals of the American Academy of Political and Social Science* 436, no. 1 (March, 1978): 56–70. https://jstor.org/stable/1042172.
42. Two events in Arctic Alaska galvanized Native leaders to organize and express their concerns: Project Chariot, the plan to detonate an atomic bomb to create a port in Northwest Alaska, and the attempted enforcement of a ban on spring waterfowl hunting by villagers in Utqiagvik. These led to a gathering in 1961 at Utqiagvik to express resistance and to air concerns about access to hunting, education, housing, employment, and transportation. *Indian Affairs*, the newsletter of the Association on American Indian Affairs, December 1961, in Bob Bartlett Collection, Alaska and Polar Regions Collections and Box 2, Folder 18 (APRCA). See also Dan O'Neill, *The Firecracker Boys: H-Bombs, Inupiat Eskimos, and the Environmental Movement* (St. Martin's Press, 1994). Similarly, concern over incursion on Native hunting and fishing areas spurred the Interior Alaska Native people to organize. In a meeting in Tanana, June 24–26, 1962, they met to discuss their grievances. Protecting access and use of the land was primary but again, education, jobs, and the economy were discussed at length. "Chiefs' Conference," Tanana, Alaska, June 24-26, 1962. *Dena' Nena' Henash (Our Land Speaks)*, Alaska Native Rights Association. In Alfred R. Ketzler Sr., Alaska Native Land Claims Settlement Collection, Box 7, Folder 10, APRCA.
43. First Statewide Native Conference, October 18–22, 1966. In Ernest Gruening Papers, Series 5C1, Box 243, Folder1978, Indians-2-General 1966-1967. APRCA.
44. The paper written in May 1966 outlined the rights of Alaska Native Peoples in Western legal terms. It is widely circulated today and is a primary reference in the words of a respected young Native leader on Native legal rights: William L. Hensley, "What Rights to Land Have the Alaska Natives?: The Primary Question." With 2001 introduction, https://alaskahistoricalsociety.org/wp-content/uploads/Hensley-paper-of-1966.pdf.
45. Senate Hearing, 90th Congress: Alaska Native Land Claims. Hearings before the Committee on Interior and Insular Affairs, United States Senate, Ninetieth Congress, second session on S2906, A Bill to Authorize the Secretary of the Interior to Grant Certain Land to Alaska Natives, Settle Alaska Native Land Claims and for Other Purposes, and S1964, S2690 and S2020, Related Bills. February 8,9, and 10, 1969. https://www.govinfo.gov/app/details/CHRG-90shrg92002p1.
46. Senate Hearing, 90th Congress, 366
47. Senate Hearing, 90th Congress, 33.
48. Senate Hearing, 90th Congress, 382.
49. Neil Risser Bassett Papers (1940-1991), UAA/APU Consortium Library Archives and Special Collections, University of Alaska Anchorage, Box 3, Folder 7.
50. S2906 testimony: Hensley, 65, and Byron Mallott, 55.
51. This is in reference to section 17D of the 1971 Alaska Native Claims Settlement Act, 43 U.S. Code, Chapter 33.
52. In an extensive legal opinion written by Solicitor Thomas Sansonetti, he determined that Native "territorial reach" did not extend to their corporate holdings. This means that Alaska Native people do not exert special rights on lands granted under ANCSA. In relation to control of fish and game, this means that Alaska Native people do not control resources that are reserved under the State constitution for control by the State. US Department of the Interior, Office of the Solicitor, Memorandum to the Secretary of the Interior, "Governmental Jurisdiction of Alaska Native Villages over Lands and Non Members," American Indian Policy Review Commission, Final Report, 95th Congress, First Session, 489 (1977), M-36975 (1-133). Report signed by solicitor and approved by the secretary, January, 1993. Native corporation land managers do have the power to restrict trespass. See https://www.doi.gov/sites/doi.gov/files/uploads/m-36975.pdf.
53. Congress's ANCSA Conference Committee report states: "The Conference Committee, after careful consideration believes that all native interests in subsistence resource land can and will be protected by the secretary through the exercise of his existing withdrawal authority": Case and Voluck, *Alaska Natives*, 292.
54. Title VIII of ANILCA sec. 802, under Policy: "…consistent with sound management principles, and the conservation of healthy populations of fish and

wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to Titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so; ..."

55. A key legal challenge to the State of Alaska when it attempted to establish a rural subsistence priority was raised by Sam McDowell in a case finally settled in State Superior Court in 1989 (785 P24 1989). The decision held that the State could not uphold a rural subsistence preference because it violates State law, noting in particular the common use provisions of the State constitution. During Governor Tony Knowles's administration, he convened several legislative sessions to resolve the dilemma between federal and State management of fish and game and attempted to get a ballot initiative that would allow the public to decide on the question of a rural subsistence preference: Governor Knowles and Lieutenant Governor Fran Ulmer interview, September 16, 2020, Oral History Collection, Archives and Special Collections, Consortium Library, University of Alaska Anchorage. See also timeline of events: "Subsistence—Alaska's Contentious History," *Anchorage Daily News* (Anchorage, Alaska), May 12, 2002.
56. The most recent example of the conflict over management of fish and game is the legal ruling by federal judge Sharon Gleason that federal officials were within rights to extend a special hunt on federal land during the first year of COVID-19. Reporter James Brooks writes: "A federal judge in Anchorage has ruled that U.S. government officials did not overstep when they allowed an emergency hunt near the Southeast Alaska town of Kake during the first year of the Covid-19 pandemic": James Brooks, "Federal Judge Rules Against State of Alaska in Lawsuit Challenging COVID Emergency Hunt," *Alaska Beacon*, November 8, 2023. https://alaskapublic.org/2023/11/08/federal-judge-rules-against-state-of-alaska-in-lawsuit-challenging-covid-emergency-hunt/.
57. Indian Self-Determination and Education Assistance Act (ISDAEAA), Pub.L 93-638.
58. First in 1993 and then in 1994, the Department of the Interior published a listing of villages in Alaska that qualified for Tribal status, a recognition of jurisdictional status.
59. Katchen and Ostrovsky point to the wording in the ISDEA Act that was used to justify the interpretation: "The term 'Indian Tribe' was defined in the Indian Self-Determination and Education Assistance Act (ISDEAA) as 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 USC 1601–1629b which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians": Jon W. Katchen and Nicholas Ostrovsky, "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," *Alaska Law Review* 9, no. 1 (2022): 1–47, 2–3. https://scholarship.law.duke.edu/alr/vol39/iss1/10.
60. Tribal Jurisdiction in Alaska, 25 U.S.C. § 1305(a).
61. "Department of Justice Confirms Tribal Jurisdiction," Legal and Policy Updates, Alaska Native Justice Center. December 7, 2023. https://anjc.org/2023/12/department-of-justice-confirms-alaska-tribes-inherent-authority-to-exercise-criminal-jurisdiction-over-all-native-people-within-their-villages/.
62. "The Alaska Area Indian Health Service (IHS) works in conjunction with Alaska Native Tribes and Tribal Organizations (T/TO) to provide comprehensive health services to 163,835 Alaska Native people: Indian Health Service, US Department of Health and Social Services." https://www.ihs.gov/alaska.
63. Attorney General Jahna Lindemuth to The Honorable Bill Walker, Governor of Alaska, "Legal Status of Tribal Governments in Alaska," October 19, 2017 (1-16), 2.
64. Ibid., 12.
65. Ibid., 12–13.
66. Ibid., 14.
67. Alaska Department of Education and Early Development, https://education.alaska.gov/news/releases/2021/7.15.21%20DEED%20partners%20with%20AFN%20to%20scope%20tribal%20compacting%20of%20education.pdf. For an overview of Alaska Native education issues see Diane Hirshberg and Alexandra Hill, "Indigenous Self-Determination in Education in Alaska: How Can Communities Get There?" in *Alaska Native Studies Conference Proceedings, 2014. Transforming the University: Alaska Native Studies in the 21st Century,* ed. Beth Ginondidoy Leonard et al. (Two Harbors Press), 96–117.
68. *Fairbanks Daily News Miner,* July 29, 2022. The language for the Act, Senate Bill 34 states: "An Act relating to a demonstration state-tribal education compact; relating to demonstration state-tribal education compact schools; and providing for an effective date." The bill was signed into law on July 28, 2022.
69. Thomas R. Berger, *Northern Frontier, Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry, Vol 1* (Supply and Services Canada, 1977). https://publications.gc.ca/collections/collection_2015/bcp-pco/CP32-25-1977-1-eng.pdf.
70. Rivers, "Opinion," 2.
71. See Richard Frank: "There is no question in my mind that this was my ancestor's land. They used to hunt and fish the same way it had been done for hundreds of years. We didn't have any maps or Bureau of Land Management, or anything like that. People just knew who belonged to what land," page 384, Senate Hearing, 90th Congress: Alaska Native Land Claims. Hearings before the Committee on Interior and Insular Affairs, United States Senate, Ninetieth Congress, second session on S2906, A Bill to Authorize the Secretary of the Interior to Grant Certain Land to Alaska Natives, Settle Alaska Native Land Claims and for Other Purposes, and S1964, S2690 and S2020, Related Bills. February 8,9, and 10, 1969. https://www.govinfo.gov/app/details/CHRG-90shrg92002p1. And from page 386,

Richard Frank: "It has taken 84 years for us to sit down across the table from each other and talk about land claims. In the old days, and even today, a lot of the old people cannot understand what it is about. We know that this is our father's land. We know that for our children to be part of the new America we have to live in villages or in the city for them to go to school. But that doesn't mean that we have forgotten about our land …. We have a right to our ancient land."

72. Lael Morgan, *And the Land Provides: Alaska Natives in a Year of Transition* (Doubleday, 1974).
73. It is important to note the role of Felix Cohen, a brilliant lawyer who served in the Interior Department during this period and went on to write the *Handbook of Federal Indian Law*. Of his many contributions was the distinction he drew between "wardship" and "trusteeship" as it relates to Native rights. Cohen argued the government relationship with Indigenous Peoples was more akin to trusteeship because of the "inherent rights of self government." This was an historically early and significant shift toward "self determination." Haycox, "Felix Cohen," 148.
74. This point was emphasized by David Case in his presentation at the Alaska Historical Society Critical Issues Lecture Series: "Alaska Native Sovereignty," October 16, 2023. https://alaskahistoricalsociety.org/lecture-and-discussion-series/.

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Exploring human experience in the North

Research Article

Breaking New Trail? First Nations and Municipal Government Cooperation in Rural Yukon

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Abstract: Rural communities in the Yukon tend to be very small, most with fewer than 1,000 people, with mixed Indigenous and non-Indigenous populations. Although small, these communities face economic, social, and environmental issues similar to larger centres. These problems are complex and require a collective response from multiple governments or organizations. This research project explored the factors of inter-organizational collaboration and examined the status of cooperation between Self-Governing First Nations (SGFNs) and municipalities in rural Yukon in order to understand the factors that strengthen collaborative processes and any barriers to these processes. The project involved interviews with six key informants who are, or were, directly involved with a municipality, territorial government, or an SGFN. The research found that while most SGFNs and municipalities engage with each other, the trend is towards minimal cooperation, although relationships are improving slowly. All respondents agreed that SGFNs and municipalities in rural Yukon should collaborate more, for reasons including the need to make the best use of resources and social justice such as reconciliation. Frequently cited barriers to collaboration include a lack of human resource capacity and staff turnover. Other barriers are community histories and Indigenous and non-Indigenous relationships. The enabling factor of common understanding has some unique features in the Yukon. The region is a complex myriad of jurisdictions—territorial, First Nations, and municipal governments—with conflicting, competing, and separate mandates. However, the informants felt that a common understanding for First Nations and municipalities should be working together to benefit their entire communities.

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