

When we think of land occupied by people becoming the territory of another; how do we think that happens; loss of territory, gifting of the land, by treaty? During the sixteenth and seventeenth and eighteenth centuries, European powers were competing for territory and wealth in the new world. These discovering nations adopted a rule amongst themselves under which the first nation discovering a new world would acquire title to the land and dominion over the aboriginal inhabitants exclusive of any other discovering nation. The discovering nation had exclusive authority to extinguish possessory rights but discovery alone did not automatically extinguish the aboriginal title.

In America the foundations of Indian law are based on the Marshall Trilogy. Under these legal rulings aboriginal land can only be transferred to the federal government. A federal trust responsibility creates a domestic dependent nation and an inherent recognition of the powers of Indian tribes. Indian tribes have a special legal status as sovereign nations under the US Constitution and federal law. Tribe- tribal powers were not extinguished by the US Constitution. Under the Indian Commerce Clause Congress has the plenary authority over Indian tribes. Russia discovered Alaska in 1741 or more pointedly Alaska's first people discovered the Vitus Bering expedition on their shores. The impact of the Russians was not on the land. They were more interested in the harvest of fur bearing sea mammals, mostly otter. The need for the land was minimal. There were few permanent settlements created. Impacts were to the coastal people.

The discovering nations sold their improvements to the land to the United States via the Treaty of Cession. The Treaty of Cession of 1867 was our only applicable treaty since US treaty making ended in 1871. It stated Alaska Natives or uncivilized tribes would be treated as the US treated the already discovered aboriginal tribes in America. It did not clearly define the status of Alaska Natives, their rights or matters of land ownership and did not expressly extinguish aboriginal title to the land. Under this treaty the US acquired the right to resolve the land rights of Alaska Natives.

Alaska's lands and waters became public domain. Transfer of land into private ownership required congressional action. Alaska was governed first by the Army, then the Collector of Customs; then the Navy. There were no laws adopted by Congress to give title to the land to anyone. Few settlers moved into Alaska. Miners were beginning their move into Alaska and canneries were established; the first gold was discovered. The Organic Act of 1884 was the first land law for Alaska; it afforded protection to claims of miners and land used by missionaries. The act recognized possessory rights and offered a promise of protection of land used and occupied by Alaska Natives; this was not to be realized. Mining laws were extended to Alaska providing a legal means for miners to acquire title to the lands they used.

Aside from mining claims, the first transfer of land rights by Congress in Alaska took place in 1891 with land going to a group of Tsimshian Indians who

immigrated from Canada to Metlakatla. Congress opened land for town sites and businesses. The president was authorized to set aside timbered areas as public reserves. Millions of acres of land were withdrawn from the public domain to create the Tongass and Chugach National Forests and Denali National Park. Still no provision for Alaska Natives to acquire legal title to land under the laws of the United States existed. But from a quote by Bob Arnold in his book; Alaska Native Land Claims page 43, "The concept of aboriginal or Indian title was developed to distinguish the land title of the English system and the land ownership among American Indians." Indian title is founded on use and occupancy since ancient times. That is from time immemorial, reoccurring phrase in Indian treaties. When Indian groups ceded land to the government, Indian title to it was said to be extinguished. Ownership was transferred to the federal government. It became part of the public domain; land available for sale or other disposition under laws adopted by Congress. Where were Alaska Natives while all this was taking place? The actual physical presence of Russians in Alaska was so limited that the vast majority of Alaska Natives never saw a Russian. Most of the contact was in the coastal areas and Alaska Natives were unaware of Russia's claim of ownership and the sale of the land by one nation to another. This was most likely the first act where everyone failed to consult with tribes.

When they first learned of the sale, Tlingit Chiefs objected, advising the US that Russians had lived in the country only with their permission. Dissatisfaction

arose from the fact their land was sold without their consent. In the early 1900s, Congress passed two acts allowing Alaska Natives to acquire a land title. The Native Allotment Act of 1906 provided conveyance of a hundred and sixty acres to adult males but few Alaska Natives were aware of this authority and land could not include mineral deposits. The Native Townsite Act of 1926 in which individual lots within a town were surveyed into tidy lots, blocks and streets and conveyed to Alaska native adults, usually the male. Land conveyed withheld under a term called restricted title and required the permission of the Secretary of the Interior to change land status. The Citizenship Act of 1924 allows Native Americans and Alaska Natives citizenship. Not many people were aware of this or took action to implement. The Indian Reorganization Act of 1934 was amended for Alaska in 1936. Under this act the Secretary of the Interior could establish reservations for Alaska's Eskimos, Indians and Aleuts and the land would be held in trust.

The idea of reservations was controversial for all. Alaska Natives said they would be confined to small areas with limited resources. Non-natives feared the land would be locked up preventing further development. Seven reservations were established between 1941 and 1946. No formal actions were taken and only one reservation remains today, the one established in 1891 by presidential order in Metlakatla. The IRA is mostly referred to as a method of organizing a tribe's government. Tribes can choose how they wish to be recognized; the IRA

is one choice. Traditional tribal governments are also recognized by the federal government.

Let's review the land situation as it pertained to aboriginal title. None of the actions of the Russians were viewed as having extinguished the aboriginal title of Alaska Natives. Under the Treaty of Cession, Alaska Native aboriginal title was not extinguished and the US acquired the right to resolve the land rights of Alaska Natives. All Alaska's lands and waters passed into the public domain and federal ownership. The Organic Act of 1884 created a form of government and promised protection of lands used and occupied by Alaska Natives; aboriginal title was still in tact. The promise to protect land for Alaska Natives was again repeated in the Statehood Act.