of the Constitution of the United States as Tee-Hit-Ton vs. United States, United States vs. Arco, and Inupiat Community v. United States, 680 F. 2d 122 (Ct. Cl.) cert. denied, 103 S.Ct. 299 (1982) verifies. Finally, the inviolability of Inuit sovereignty is not going to be heard nor addressed by the United States Supreme Court. The United States government cannot shield itself under Article 2, paragraph 7 of the United Nations Charter which asserts that "[N]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially the domestic jurisdiction of any state." The finality of the United States Supreme Court has precluded the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak from the domestic jurisdiction of the United States. The rights and the claims of the Inuit have been denied by the United States and our claims have now risen to third party claims and remedies in the circumstance of breach of peace, threat of peace, acts of aggression, war crimes, crimes against humanity, and colonialism. The Inuit have now exhausted their remedy for justice within the American administration. Now, therefore, this continuous denial has elevated the cause of action of the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak to the level of the International Court of Justice.

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THE SCOPE OF THE EXHAUSTION AND DEFERRAL REQUIREMENTS FOR UNRESOLVED ISSUES OF ALASKA

It is self-apparent by the rulings of the Supreme Court that the remedy for the lands and jurisdiction of the indigenous Peoples of the Americas is outside of the scope of the United States. This genocidal and involuntary liquidation of indigenous lands has been executed through third party interference and without service by the Court. This has been executed by no less than the Chief Justice of the Supreme Court of the United States within the Marshall Trilogy: Fletcher vs. Peck, McIntosh vs. Johnson, and Worcester vs. Georgia. The Marshall Court in all three cases recognized that Indian Tribes possessed inherent sovereign rights and the Court's decisions were really a defense of federal over state powers; not a defense of Indian Tribal sovereignty. The most profound aspect was that the Tribe was not even a party to the suit. The Marshall Trilogy is not applicable against Alaska Native (Inuit) Nations or their legal status.

In United States ex rel. Mackey v. Coxe, 59 U.S. (18 How.) 100, 103-04 (1855), in Scott vs. Sandford, 60 U.S. (19 How.) 393, (1857), in Ex Parte Crow Dog, 109 U.S. 556 (1883), in Elk vs. Wilkins, 112 U.S. 94 (1884), in In re Sah Quah, 1 Ak. Fed. Rpts. 136 at 140 (D.Ad.1886) in Talton vs. Mayes, 163 U.S. 376 (1896), in Tee-Hit-Ton vs. United States, in United States vs. Alaska, 422 U.S. 184 (1975), in Edwardsen vs. Morton, 369 F.Supp. 1359 (D.D.C.1973), United States vs. Atlantic Richfield Co., 612 F.2d 1132 (9th Cir.), cert. denied, 449U.S. 888 (1980), Inupiat Community v. United States, 680 F.2d 122 (Ct. Cl.), cert. denied, 103S. Ct. 299 (1982); the indigenous Peoples have demonstrated good faith

towards the United States Constitution and sought protection which was to no avail.

The influence of the Marshall Trilogy, Fletcher vs. Peck, Johnson vs. McIntosh, and Worcester vs. Georgia has had a pathological impact upon other indigenous populations within the sphere of influence of the British Commonwealth. This intergenerational extinguishment and genocidal treatment of Peoples was executed in the United States in the name of the "higher law" of Chief Justice John Marshall. In the British Commonwealth including Canada and Australia and other commonwealth jurisdictions this intergenerational extinguishment has been represented by the following court cases: Milirrpum v. Nabalco Pty. Ltd., 17 F.L.R. 141 (Sup. Ct. N.Terr. 1971) (Australia), St. Catherine's Milling and Lumbering v. The Queen, 13 S.C.R. 577, 601 (1887) , Calder v. Attorney Gen. of British Columbia, 34 D.L.R. 3d 145, 148-68 (Sup.Ct. 1973), Isaac v. Davey, 5 O.R2d 610, 620 (C.A. 1974), Attorney Gen. of Canada v. Morrow, [1973] 6 W.W.R. 150, Regina vs. Koonungnak, 45 W.W.R. 282, 302-09 (N.W.T. 1963), Regina v. White & Bob, 52 W.W.R. 193, 215-18 (B.C.App. 1964), Regina v. Sikyea, 43 D.L.R.2d 150, 159-62 (N.W.T. App. 1964), In re Southern Rhodesia, [1919] App. Cas. 211 (P.C. 1918), Tito v. Wadell, [1977] 2 W.L.R. 496 (Eng. Ch.), Regina v. Symonds, [1847] N.Z.P.C. 387, 390 (New Zealand), Oyekan v. Adele, [1957] 1 W.L.R. 876, 880-84 (P.C.) (W.Afr. Ct. App.), Tijan v. Secretary of Southern Nigeria, [1921] 2 A.C. 399, 409-10 (P.C.) (Nigeria Sup.Ct.).

The rights of men and women in the United States, it needs hardly to be stated, are far from perfect. The past sins are grievous and notorious: genocide and lesser violations of the Indian; slavery, racial segregation, and other badges of slavery for blacks; other racial, ethnic, and religious discriminations, including relocations and concentrations of citizens of Japanese ancestry in time of war; Chinese exclusion and other racist immigration laws; postwar anti-Communist hunts, which also "chilled" political freedoms of others, and many more.

The two-hundred years of judicial remedy against government violations of our rights is weak and ineffective. The judicial review is limited in scope just as the Marshall Trilogy can refuse to give effect to unconstitutional acts and they can often enjoin the application and enforcement of such acts. However, they cannot undo or repair past violations; they cannot themselves punish and thereby deter violations. For past violations there is no Consitutional remedy. Fortunately, rights under the American administration are not static and Americans are compelled to enforce their own Constitution upon themselves.

Therefore, the above cases have now exhausted any form of remedy under the Constitution of the United States as the Constitution had provided virtually no guidance for their resolution. The Constitution is silent regarding its applicability for indigenous Peoples beyond the borders of the United States. The court, in the above cases, did not seem to rely upon the interpretation and construction of

the constitutional text. The inescapable conclusion is that despite some nod to language, this jurisprudence does not derive from particular constitutional provisions. Instead, the Constitution was prostituted as a mere political tool to benefit Anglo-european special interests. However, the Inuit and Hawaiians have found their remedy in an established rule of international law, the Paquete Habana 175 U.S. 677, 678-79 (1900), which is the leading case concerning the incorporation of international law into United States domestic law. In Paquete Habana the Court stated:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations.

The acquisitions of Alaska and Hawaii by the United States have failed to meet the Constitutional standards which the constitution provides for. The territories of Alaska and Hawaii are neutral territories and therefore protected by the Neutrality Act of 1818.

This is the sixth section of an act of Congress approved April 20, 1818 (3 Stat. 449 [18 U.S.C.A. & 25 and note]), and forms part of a series of provisions enacted for the very purpose of preventing hostile incursions from our own territory into that of governments with which we are at peace, as well as the fitting out or arming vessels to operate by sea. This act is founded upon the highest considerations of justice, peace, and safety, and every person within the limits of the United States is bound to yield obedience to its provisions. It applies not only to citizens of the United States, but to all persons within their territory or jurisdiction, whether permanently or temporarily residing therein. It was the duty of the national legislature to enact this law, and it is the duty of every magistrate and every juror to whom any jurisdiction over the subject matter is committed, to give his aid, under proper legal rules, to the enforcement of its obligations.

The duty of a government to restrain its own citizens, and all others within its territorial limits, from engaging in military expeditions against Powers with which such government is at peace, arises out of the law of nations, and its faithful observance is of the very highest importance to the peace of the world, the stability and good order of society, and the welfare of mankind. Were individuals, however numerous or respectable, by whatever motives actuated, permitted, upon their own motion, to organize warlike enterprises in their native or adopted country, and engage in incursions into the territory of neighboring friendly nations, governments would no longer have control of the momentous

questions of war and peace. A comparatively small portion of the population of a country could effectually embroil it with other nations, and all the calamities of war be precipitated upon a people, at any moment, however unfavorable, without the sanction of their constituted authorities, and against the will of a majority of the people themselves. A country which should permit such a flagrant violation of its national obligations, would soon become a theatre from which hostile expeditions would issue, both by sea and by land. It would inevitably be brought into collision with every respectable government on the globe, whose disaffected citizens might seek its shore, in order to securely prepare and send forth the means of retaliation, revolution, or conquest. The honor and dignity of the United States, the reciprocal duties which rest upon it as one of the nations of the earth, and the welfare of its citizens, both native and adopted, all demand that this act of Congress shall be obeyed, or, if violated, that the offender shall be promptly punished. (from Hudson, 1936)

The Arctic Slope Native Association (ASNA) was the only region to vote against the Alaska Native Claims Settlement Act. ASNA claimed title to 56.5 million acres of the petorleum rich land north of the Brooks Range. Other regions did not even have legal representation. The following is a letter to Richard M. Nixon from Etok (Charles Edwardsen, Jr.) and Joseph Upicksoun.

Arctic Slope Native Association
Barrow, Alaska

December 18, 1971

Honorable Richard M. Nixon
President of the United States
White House
Washington, D.C.

Dear Mr. President:

We, the Inupiat Eskimos of the Arctic Slope Region of Alaska, urge you in the strongest possible terms to veto the Alaska Native Claims Bill passed by Congress on December 14, 1971.

We regret taking this action, but are compelled to do so because the last chapter is being written in the tragic history of this nation's treatment of its Native Americans and their land rights. We hold aboriginal title to 56.5 million acres on Alaska's cold, barren Arctic Slope. For centuries our people have forged a unique life-style on this land and only now, with the passage of this legislation, will our aboriginal ownership be extinguished -- our land lost forever.

We undestand the necessity for resolving the land rights issue -- it is an obstacle standing in the way of the development of Alaska, and more particularly, a bar to transportation of Prudhoe Bay oil to market via the proposed trans-Alaska pipeline. Along with other Natives of Alaska we have looked to Congress instead of the courts for a fair, just and equitable settlement of our land rights.

But Congress has failed to act in a responsible manner in adjudicating our land rights. It has largely ignored the fundamental premise upon which the entire settlement is hinged: *Separate and distinct regional ethnic grops of Alaska Eskimos, Indians and Aleuts have property rights in their land, and congress is acting to extinguish those rights.* Unless the present legislation is to be nothing more than outright expropriation, there must be a direct relation between what is being taken from us and what we receive in exchange.

The Inupiat Eskimos of the Arctic Slope hold aboriginal title to perhaps the most valuable land on the North American continent. For the right to explore a mere 412,000 acres of our land, the oil companies paid the State of Alaska over $900 million. We did not receive one penny of this amount. The State of Alaska contends it owns this land, but the State does not abide by the terms of its own Statehood Act in which any right, title or interest in lands claimed or held by Eskimos, Indians, or Aleuts is expressly disclaimed. We do not recognize the State's "tentative approval" status of these lands as it violates this express disclaimer.

The Alaska Native Land Claims Bill before you for signature violates the basic tenets of a land rights settlement in several respects.

First, although some may think $962.5 million, and 40 million acres constitutes a fair settlement, the method by which the land and money are allocated among the native groups is far more important. Congress has chosen wrongly to follow a population allocation throughout almost the entire settlement, instead of an allocation based upon the size of each Native region's aboriginal land area. The latter method is the only one that even begins to approach the type of allocation a court would make, which would take into consideration not only the size of the area claimed, but its value.

Our population is sparse, only about 5% of the Native total, but that is because our land will not support as large a population as other Native regions. This does not diminish our aboriginal rights as they are not dependent upon how many of us there are, but upon dominion over land through use and occupancy. Adoption of the populaiton-based formula means that we will receive only 5% of the settlement's monetary proceeds, even though virtually all of the $500 million in 2% royalty revenues will come from our land. Is this fair? Does it comport with even the most basic concept of justice?

Second, the land which we are allowed to retain will be far from our villages and of little economic potential. Although this is a settlement of our land rights, the State of Alaska comes first, the Federal Government with its Naval Petroleum Reserve and Arctic Wildlife Refuge comes first, the third parties who have federal and state leases on our land come first. We, the aboriginal owners, come last. We were astonished to learn that the Conference Committee had recognized the given priority to land selections filed by the State of Alaska in December, 1968 and January, 1969. These selections came in the face of pending Native protests, a pending lawsuit to decide the State's right to make selections on Native-claimed land and Congressional consideration of the land rights issue. These and earlier selections directly contravened Section 4 of the Alaska Statehood Act in which the State disclaimed any interest in our land. With the existing and proposed federal reserves, state selections and third party invasions of our land, we will be left with the mountain tops.

Third, a Native group in southeast Alaska has a claim to a land area (2.6 million acres) that is 4.5% of the size of our land area (56.5 million acres) having a value that is infinitesimal compared to the value of our land. They are receiving from the proceeds of the settlement (and when translated into the differences of the cost of living index, represents 1,200 %), which under the terms of the Bill continues forever.

We have been denied our lands, the value of our lands, the opportunity to form an economic basis, and our culture is being banished to the eternal night of the Arctic Slope. Our lands are yielding substantially all of the $500 million, 2% royalty payment which Congress is giving to the other Natives. Meanwhile, the same favored group mentioned who are receiving the benefits of our land and who under the Bill receive title to 4 billion board feet of marketable timber, a renewable resource, are not required to share that with either ourselves or the other Natives. Political expediency has dictated these results. Congress has again perpetuated the basic error that has always existed in its relations with Native Americans by adopting a philosophy of a frontier society rather than a responsible criterion as is laid down in your message to the Congress in July of 1970.

"The heritage of centuries of injustice" is perpetuated. We are again being "deprived of our ancestral lands and denied the opportunity to control our own destiny." The bill fails "both as a matter of justice and as a matter of enlightened social policy," (the current value of our portion of the settlement will not even build a sewer system in Barrow). It contains substantially the same evils of House Concurrent, Resolution 108 which is described in your message. It does cast us adrift from the "special relationship" between Natives and the Federal Government. We will not even be able to build and maintain a high school or needed junior high and grade schools. It places us at the mercy of the frontier philosophy of Alaska and Federal paternalism. (Apart from the 30 million

acres of Federal withdrawals that we are denied access to, we are also subjected to the priorities of existing lease applications and leases covering 15 million acres, state selections of million acres, and potential further Federal withdrawals of 20 to 40 million acres, leaving us nothing but our bitter disappointment.)

As applied to us, the Bill sanctifies the complete violation by the Federal Government and the State of Alaska of the sacred provisions of Section 4 of the Statehood Act. It violates the very legal basis on which Congress purports to act on the one hand and completely frustrates the social goals intended to be obtained on the other hand.

JOSEPH UPICKSOUN
President,
Arctic Slope Native Association,
Barrow, Alaska

CHARLES EDWARDSEN, JR.
Executive Director,
Arctic Slope Native Association,
Barrow, Alaska

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RECOGNITION OF INDIAN SOVEREIGNTY

To continue this historical account there is a very important and relevant case titled Mohegan Indians v. Connecticut. This was the first formal litigation of North American Indian rights. In 1703, Oweneco, the son of the Mohegan leader, Uncas, petitioned the Queen in Council, claiming that colonial land grants by Connecticut officials violated the Mohegans' aboriginal title. The land dispute turned on the interpretation of a series of treaties and agreements negotiated between 1659 and 1681. Uncas had granted some form of title over all of the Mohegan lands to Major John Mason, an officer of the colony. Uncas then had a smaller tract of land entailed by the colony for the benefit of the tribe but then relinquished tribal title again to the colony in 1681 following an agreement that prohibited tribal land grants to anyone without the colony's consent. The Mohegans thought that the effect of the 1681 agreement was simply to grant the colony of Connecticut a right of first purchase in the land---a quite reasonable construction in light of the consent proviso. The colony thought otherwise, however, and began parceling the land out for settlement. The Mohegans petitioned the Crown for assistance. The case was heard thereafter by royal commissions on a somewhat less than active basis for almost seventy years between 1703 and 1773. While the Mogehans ultimately lost title to most of the land they claimed outside of areas actually occupied by the tribe, the

caseestablished two basic principles of Indian law: (1) the central government (then in the form of the British Crown government in London), rather than local colonial governments, ultimately controlled Indian policy; and (2) the Indian tribes were separate sovereign nations not controlledby local laws of the colony.

Perhaps the most important skirmish in this protracted litigation occurred in 1743, when non-Indian tenants in possession of Mohegan lands disputed the jurisdiction of the royal commission appointed to hear the case. They claimed that such royal intervention in colonial affairs violated the Connecticut colonial charter and the laws of the colony. In short, they basically were arguing that the Mohegans were subject to Connecticut laws and governance and that the resolution of their land claims should take place in colonial courts rather than through royal commissions. The royal commission rejected this attack on its jurisdiction: Commissioner Daniel Horsmanden of New York held, over one dissent, that the Indian tribes within colonial boundaries were distinct peoples subject neither to the laws of England nor of colonial courts. He argued that a land dispute between such a distinct people and English subjects must be determined by the law of nature and of nations and that hearing such international disputes was the province of royal commissions, not of local courts. The tribes and their members owed no allegiance to local law or local courts.

Like the British Crown, the framers of the Constitution sought to deal with these problems by asserting complete centralized control of Indian affairs and by adopting a policy that recognized and protected Indian sovereignty and land rights. In adopting the Indian Commerce Clause, the framers deliberately excluded the two reservations of state authority contained in Article IX of the Articles of Confederation. As with the Proclamation of 1763, wherein the British recognized the indigenous Peoples of North America as sovereign and outside of their sphere of influence, the drafting of the Indian Commerce Clause reflected a determined policy of eradicating destructive local management of Indian affairs. During the Constitutional Convention, on June19, 1787, James Madison criticized a conservative plan of union offered by the New Jersey delegation:

> Will it prevent encroachments on the Federal authority? A tendency to such encroachments has been sufficiently exemplified, among ourselves, as well in every other confederated republic . . . By the federal articles, transactions with the Indians appertain to Congress. Yet in several instances the States have entered into treaties and wars with them.

Madison would later explain in "The Federalist":

> The regulation of commerce with the Indian tribes is very properly unfettered from two limitations in the articles of Confederation which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the States, and is not to violate or infringe the legislative right of any State within its own limits. What description of Indians are to be deemed members of a State, is not yet settled, and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible.

Thus, the cycle of history that characterized the evolution of national control of Indian affairs, from the Revolution to the adoption of the Indian commerce Clause of the Constitution and its implementation in the 1790 debates between the colonies and British Crown over the British centralization of control of Indian affairs occurring three decades earlier. Had this cycle been broken in 1787, one might assume that the nation had mastered the hard-learned lessons of history. Unfortunately, the next two centuries of federal Indian policy have replayed the very same debates and have continued the ambiguities of colonial history, even in the wake of the Proclamation of 1763. Excessive greed had been the driving force of colonial officials in their implementation, or misapplication, of a body of legal doctrine designed to protect Indian resources and prerogatives. This is status quo in Alaska today. The rulings of the Marshall Trilogy had nothing to do with the legal rights of the Indians of the Lower 48, but it is the manifestation of the greed of the Anglo Saxon culture that took legal form within the Marshall Trilogy and the legal concept wherein; "Sovereign right of first purchase refers to the exclusive rights that European explorers claimed over territory they discovered in the New World. According to this policy, the first to discover new territory obtained instant property rights against all other European explorers. These exclusive rights included the ability to "purchase" this land from the Indians and to establish settlements on the land. McIntosh, 21 U.S. (6 Wheat.) at 573.

Protection of aboriginal title was far from complete, for title could also be extinguished under British law and the laws of most other European colonial powers through actual conquest---presumably pursuant to a defensive, legitimate war----or through the voluntary abandonment of the land by its aboriginal occupants. Self-interested local colonial officials often interpreted

and enforced such legal rules in a fashion that severely constrained the scope of this right. Just as with the establishment of the so-called "praying Indian towns" in Massachusetts, so too the Reverend Sheldon Jackson recreated this misapplied and oppressive spirituality in Sitka, Alaska. The missionaries further divided the rest of the territory to diffuse the impact of the Russian Orthodox Church and to give to Alaska an Anglo-Saxon Christian face.

Today, the white man's courts, his executive branch and his elected legislators increasingly rely on law and legal arguments in their public discourses on Indian policy to justify the imposition of constraints on contemporary tribalism. Disturbingly, as white society finds itself confronting a resurgent discourse of tribal sovereignty, and as its intercourse with once remote Indian Nations in the West grows more frequent, it increasingly draws upon themes of tribalism's supposed deficiency and unassimilability to sustain its privileges as "rightful judge" in the Indian's Country. These privileges, sustained by legal argument, are unashamedly declaimed in public discourses which assume white society's superior right to dictate the implied limitations on tribal sovereignty, the philosophy that ought to govern tribal economic development initiatives, and the procedural and substantive norms that ought to be enforced in tribal courts. These contemporary discourses of opposition to tribal self-determining autonomy, which draw so heavily on familiar themes of tribalism's deficiency and unassimilability appear to be clearly situated within the same narrative tradition that once explained white society's privilege to colonize the Indian's America and to remove the Indian from the eastern United States. (from Williams, 1989)

Like all the varied discourses compromising and enriching Western society's thousand-year-old legacy of aggression against peoples of color, the discourses of opposition to tribal sovereignty reflected throughout the various documents of barbarism of past and contemporary Indian policy seek to justify the white man's privileges of aggression against tribalism through racism. The tribal Indian's cultural inferiority justifies the superior white society's privilege of domination. This use of racism to privilege the white man's aggression against peoples of color is the fundamental mechanism common to all European-derived colonizing discursive practices.

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THE NEUTRALITY ACT

The precept of the international law of neutrality has been maintained by the United States. In recent history it was further acknowledged by the United States by their adoption of the Neutrality Act of April 20, 1818 and the Non-intercourse Act. This philosophy and declaration were further proclaimed within the Monroe Doctrine. Today, there is still in effect a United States policy of political non-interference as defined in the Monroe Doctrine. The Monroe Doctrine was written to protect the United States from European interference.

However, in our own political history, the Monroe Doctrine was violated during the Republican administrations's acquisition of the Territory of Alaska. The United States fulfilled their own philosophy of Manifest Destiny, outside of the United States Constitutional framework and against their own doctrine of non-interference as outlined in the Monroe Doctrine. In retrospect, the United States has failed its suzerainty which it self-proclaimed in the Monroe Doctrine.

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THE MARSHALL TRILOGY

We must assess the Marshall Trilogy; Fletcher vs. Peck, McIntosh vs. Johnson, and Worcester vs. Georgia, as they are violative of the Constitution of the United States and the laws of the international community. As early as the 1600s, Grotius recognized that crimes against the law of nations are "offenses which affect human society at large . . . .and which other states or their rulers have a right to deal with." Grotius had also recognized the propriety of a "war" against a ruler who engages in a "manifest oppression" of his or her people, noting that such a military response was "undertaken to protect the subjects of another ruler from oppression" and to assure that they are not further denied "the right of all human society" to freedom from oppression. In that sense, "war" against the oppressor-ruler was a form of sanction strategy in response to acts of oppression that could affect human society at large. (from Paust, 1986)

We must disentangle views of political theory, political morals, constitutional policy, and doctrines as to that convenient refuge for loose thinking which is vaguely called the "spirit" of the Constitution, from doctrines of constitutional law. Very often this is not carefully and consistently done. And so it happens, as one looks back over our history and the field of political discussions in the past, that he seems to see the whole region strewn with the wrecks of the Constitution,---- of what people have been imagining and putting forward as the Constitution. That it was unconstitutional to buy Louisiana and Florida; that it was unconstitutional to add new states to the Union from territory not belonging originally to it; that it was unconstitutional to govern the territories at all; that it was unconstitutional to charter a bank, to issue paper money, to make it a legal tender, to enact a protective tariff,----that these and a hundred other things were a violation of the Constitution, has been solemnly and passionately asserted by statesmen and lawyers. Nothing that is now going forward can exceed the vehemence of denunciation, and the pathetic and conscientious resistance of those who lifted up their voices against many of these supposed violations of the Constitution.

The trouble has been, then as now, that men imputed to our fundamental law their own too narrow construction of it, their own theory of its purposes and its spirit, and sought thus, when the question was one of mere power, to restrict its

great liberty. That instrument, astonishingly well adapted for the purposes of a great, developing nation, shows its wisdom mainly in the shortness and generality of its provisions, in its silence, and its abstinence from petty limitations. As it survives fierce controversies from age to age, it is forever silently bearing witness to the wisdom that went into its composition, by showing itself suited to the purposes of a great people under circumstances that no one of its makers could have foreseen. Men have found, as they are finding now, when new and unlooked-for situations have presented themselves, that they were left with liberty to handle them. Of this quality in the Constitution people sometimes foolishly talk as if it meant that the great barriers of this instrument have been set at naught, and may be set at naught, in great exigencies; as if it were always ready to give way under pressure; and as if statesmen were always standing ready to violate it when important enough occasion arose. What generally happens, however, on these occasions, is that the littleness and the looseness of men's interpretation of the Constitution are revealed, and that this great instrument shows itself wiser and more far-looking than men had thought.

On the other hand, the United States did not begin with any such reservoir of power; it had and has only what is granted in the Federal Constitution for the general purposes. But these granted powers, while limited in number, are supreme, full, and absolute in their reach, subject only to any specific abatements made in the Constitution itself.

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GENOCIDAL POLICIES OF THE UNITED STATES

The uncompromising and racist legal discourse of the opposition to tribal sovereignty had been advanced through the Office of the President, from Thomas Jefferson and confirmed by the most blatant Indian hater of them all, President Andrew Jackson. Jackson's views against Chief Justice John Marshall were a demonstration of disregard for the Constitution and the supreme law of the land. The Marshall Court's 1832 decision in Worcester vs. Georgia recognized the inherent sovereignty of Indian Tribes. Jackson's response to the Supreme Court was to show a racist reactionary face to the people of America by telling Marshall to go ahead and enforce the decision if he could; "Let him enforce it." However, there had been established a more enlightened view within the American Constitutional Convention as the guiding principles for America were developed. These are the words of Noah Webster:

> The truth is that government takes
> its form and structure from the genius
> and habits of the people, and if on paper
> a form is not accommodated to those
> habits, it will assume a new form, in
> spite of all the formal sanctions of the

> supreme authority of a State.
> To credit a perfect wisdom and probity
> in the framers of the Constitution is
> both arrogant and impudent. The very
> attempt to make perpetual constitutions,
> is the assumption of a right to control
> the opinions of future generations and to
> legislate for those over whom we have
> as little authority as we have over a nation
> in Asia.

The genocidal policies of the Jackson administration has been a legacy of European racism and colonialism in United States official discourse regarding relations between indigenous Peoples and the colonialists. The intergenerational racism has been continued into modern times in Alaska wherever indigenous Peoples are kept from a vital involvement of real self-determination. This conduct of human administration has been reviewed in the past by the writings of Albert Memmi in The Colonizer and the Colonized, 1965. Memmi found the following definition of racism within the European-derived imperial context:

> Racism is the generalized and final assigning of
> values to real or imaginary differences, to the accuser's
> benefit and at his victim's expense, in order to justify
> the former's own privileges or aggression.

His "analysis of the racist attitude" revealed the following "essential" elements, or discursive strategies, of European-derived racist-imperial discourse:

1) Stressing the real or imaginary differences between the racist and his victim.

2) Assigning values to these differences, to the advantage of the racist and the detriment of his victim.

3) Trying to make them absolutes by generalizing from them and claiming that they are final.

4) Justifying any present or possible aggression or privilege.

All four of the racist discursive strategies Memmi articulates can be found deployed throughout the narrative tradition of tribalism's normative deficiency and unassimilability, and also as specific discursive strategies of the discourse

of opposition to the Alaskan Inupiat, Athabascan,Aleut, Tlingit, Haida, Yupik, and Eyak sovereignty.

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RECOGNITION OF INHERENT RIGHTS

The first time that the United States recognized Inuit inherent rights was in the Russian and American Treaty of 1824 which was entered into force by the advice and consent of the U.S. Senate on January 11, 1825. This was the Convention Regarding Navigation, Fishing, and Trading on the Pacific Coast which was signed at St. Petersburg April 17, 1824. (8 Stat. 302;TS 298; 11 Bevans 1205).

The second instance was within a memorandum descriptive of the Russian imperial system of Russian America which included land tenure, status of natives, and was prepared by Mr. Kostlivtsev of the Russian Ministry of Finance pursuant to the communication by the Honorable W.H. Seward, United States Secretary of State, August 7, 1867. In that year Kostlivtzov disclaimed Russian sovereignty over the Inupiat, Athabascan, Aleut, Tlingit, Haida,Yupik, and Eyak when he wrote:

> However, although they do not recognize Russian sovereignty and consider the land on which they live their property, these tribes are, in general, peaceful, and do not disturb our settlements. It would not take too much effort to have closer contact with them and to train them gradually to consider themselves Russian subjects.

This report by Kostlivtzov, regarding the status of the Inuit, clearly acknowledges our Inuit Peoples' sovereign independence. There is an 1832 opinion by Chief Justice Marshall of the U.S. Supreme Court, regarding the rights of discovery. Marshall found in Worcester v. Georgia, 6 Pet. 515 (1832) that:

> "The right of discovery regulated the European discoverers, but could not affect the rights of those already in possession, either as aboriginal occupants or as occupants by virtue of a discovery made before the memory of man."

Clearly then, as shown by these two examples, and under the constraints of their own legal system, the United States and Russia committed fraud against the Inuit in their paper exchange of title known as the Treaty of Cession. English law, in particular, has always accepted possession as being itself a root of title. As Judge Huber wrote in the 1928 Island of Palmas case: "The continuous and

peaceful display of sovereignty is as good as title." This opinion by Huber forms one of the legal arguments for the continued maintenance of Alaska Native Peoples' original title and sovereignty.

* * * *

We, Inuit, must now apply through the written word against the desires of the United States as written in their Constitution of September 18, 1787. From the period of 1776 to 1787, it was known to many colonists that the issue of sovereignty was not resolved by their Declaration of Independence. The concept of "sovereignty" continued to be the most important theoretical question throughout the decades following the Declaration.

The creation of American sovereignty was done on a theoretical plane and drawn upon blanksheets of paper. The confederation the colonists formed, therefore, was not a sovereign government. John Adams reflects this weakness in his diary in 1787:

> Regarding the greatest Question yet agitated---the idea of sovereignty, that should some where be lodged a supreme power over the whole---this was the heart of the Anglo-american argument that led to the Revolution.

Almost every writer, British or American, who groped for an acceptable compromise that would prevent the breach, had sooner or later stumbled over this problem of sovereignty. The doctrine of sovereignty, by itself, compelled the imperial debate to be conducted in the most theoretical terms of political science. It was the single most important abstraction of politics in the entire Revolutionary era.

In the contest between the states and Congress, the ideological momentum of the Revolution lay with the states, but in the contest between the People and the state governments it decidedly lay with the People. For the Continental Congress had realized that the Articles of Confederacy was not a government and the Articles held no sovereignty. In Massachusetts the General Court proclaimed, "In every government there must exist somewhere a 'supreme sovereign absolute' and an uncontrollable power."

> But this Power resides, always in the body of the People, and it never was, or can be delegated, to one Man, or a few. In one sense this was a traditional utterance, for no one doubted, even most Tories, that all power

ultimately resided in the people.

During the federal convention debate of 1787, Benjamin Rush, said; "The people of America have mistaken the meaning of the word 'sovereignty'. It is often said that the sovereign and all other power is seated in the people. This idea is unhappily expressed for it should be all power is derived from the people."

The confusion continued surrounding the concept of "sovereignty". During the federal convention Noah Webster argued with great persuasiveness that Americans could not have their constitutional remedies without the evils and that all of the developments and devices of the decade since Independence were inextricably bound together "leading eventually, if not totally repudiated, to a subversion of all government." Webster wrote:

> A fundamental maxim of American politics
> is that sovereign power resides in the people.
> Written constitutions and bills of rights can
> never be effective guarantees of freedom.
> Liberty is never secured by such paper
> declarations, nor lost for want of them.

Moreover, on November 4, 1988 the United States elected to become civilized by signing the Genocide Treaty and the Senate gave its advice and consent. According to this policy the supreme law of the land is confirmed and on May 22, 1970 Senator Sam Ervin informed the Committee on Senate Foreign Relations that; "If the Senate should ratify the Genocide Convention, these constitutional provisions would automatically make the convention the law of the land, put all of its self-executing provisions into immediate effect as such, and impose upon the United States the obligation to take whatever steps are necessary to make its non-self-executing provisions effective. This means that the provisions of the Genocide Convention would immediately supersede all State laws and practices inconsistent with them, and would nullify all provisions of all acts of Congress and prior treaties of the United states inconsistent with them."

Finally, the United States and Russia have created an incident of world class folly. Therefore, international arbitration proceedings over the sovereignty dispute shall be initiated in a timely maner by the Inuit and submitted for an advisory opinion under the compulsory jurisdictional section of the International Court of Justice, Article 36, for final determination.

We, the Inuit of the Inupiat Community of the Arctic Slope and the Kasigluk Elders Conference, recommend to President Clinton that he submit to Congress the State of the Union of the Inuit of Alaska and the Hawaiians under Public Law 99-239. We further urge, through the leadership of the Senate Committee on Indian Affairs, with the appropriate committees; Senate Foreign Relations,

Senate Judiciary, Senate Committee on Energy and Natural Resources, under Senate Rule XXV Standing Rules of the Senate, to convene joint hearings on the Republic of the Arctic and the final restoration of the Kingdom of Hawaii and an International Conference for the creation of the Republic of the Arctic with the United States and Russia to submit to the United Nations. This to be voted upon by the United Nations General Assembly for a final vote for the self-determination of the Inuit and the Hawaiians for the Republic of the Arctic and for the Kingdom of Hawaii.

Respectfully Submitted to the United States Congress,

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