

# PEACEFUL STRUGGLE FOR JUSTICE

(EDITOR'S NOTE: The following article by Justice Arthur J. Goldberg was recently syndicated by the Associated Church Press for distribution to the religious media throughout the United States—Protestant, Catholic and Jewish. Although the subject matters the article has dealt with have been mentioned in the Tundra Times, Justice Goldberg has treated them concisely and with vast authenticity.)

By ARTHUR J. GOLDBERG

CONCERNED AMERICANS are joining with the Alaska Federation of Natives in its peaceful struggle for justice. The General Assembly of The National Council of Churches has unanimously adopted a resolution to support Alaska Native Land rights. Its call for just and equitable settlement of the Native Land issue by Congress reflects the conscience of America.

THE INDIANS, ESKIMOS, AND ALEUTS of Alaska are among the few hunting and fishing societies remaining in the world today. But, these 60,000 Alaska Natives are threatened with having their lands expropriated by the State of Alaska.

As far as justice is concerned, it is all on the side of the natives. They have conclusive legal and moral claims to most of Alaska's 375 million acres. Since 1823, when Chief Justice John Marshall, in the case of JOHNSON V. M'INTOSH announced that America's original inhabitants are "the rightful occupants of the soil with legal as well as just claims to retain possession of it," the Alaska Natives have neither sold, nor ceded their lands, nor have they lost them in war.

WHEN THE UNITED STATES acquired Alaska from Russia in 1867, it explicitly recognized Native land rights. Then, in 1958, when Alaska became a State, Congress granted it the right to select 103 million acres of land from the public domain. However, included in this Statehood Act was a stipulation by Congress specifically designed to protect Native land rights: "The State and its people do agree and declare that they forever disclaim all right and title . . . to any lands or other property (including fishing rights) the right or title to which may be held by any Indians, Eskimos, or Aleuts."

IN THE ORGANIC ACT of 1884, which established territorial government in Alaska, Congress further acknowledged the Natives' right to the land, stating, "The Indian . . . shall not be disturbed in the possession of any lands actually in their use or occupancy or now claimed by them."

DESPITE THIS clear statement, and violation of the express intent of the Congress to protect the Natives' rights to the land, the Department of Interior's Bureau of Land Management has, since 1958, granted the State "title" to 6 million acres of land and tentatively approved the transfer of another 12 million acres. The oil boom currently taking place in Alaska threatens to accelerate the dispossession of the Natives. The Atlantic Richfield oil strike at Prudhoe Bay and the \$900,000,000 sale of oil exploration rights on a portion of the North Slope in September 1969 are on lands selected by the State without due recognition of the Native land rights.

IN 1966, the then Secretary of the Interior, Stewart L. Udall, halted the transfer of the twelve million acres and suspended the issuance of new Federal oil and gas leases on Native lands pending a settlement by Congress of the issue of title to the lands.

THE PRESENT SECRETARY of the Interior, Walter J. Hickel, was governor of Alaska when Secretary Udall halted these further transfers. The State of Alaska, acting at Governor Hickel's direction, filed a law suit against Secretary Udall in the Federal District Court of Alaska seeking to compel Secretary Udall to complete the transfer of certain of the Native lands which he had blocked.

IN DECEMBER 1969, the U.S. Court of Appeals for the Ninth Circuit handed down an historic decision. The court rejected the State's argument that lands used by the Natives for trapping, hunting and camping are "vacant," and ruled that the State is prohibited from taking Native-used lands. Whether the State will contest this decision remains to be seen.

HOWEVER, one thing is clear: the Natives will never be secure in the possession of their land until Congress acts to grant them protection.

ALTHOUGH CONGRESS, in the Organic Act of 1884, promised to grant title to the Natives, it has failed to do so for close to a century. Justice is long overdue. In a bill now before Congress, the Alaska Federation of Natives, which represents the State's three aboriginal ethnic groups, has proposed that title to 40 million acres be apportioned among the many villages. This is roughly 10 per cent of the land which they claim.

IN RETURN for waiving their claims to more than 300 million acres of land—worth tens of billions of dollars—the Federation asks for cash compensation in the amount of \$500 million (about \$1.50 an acre) and a 2 per cent royalty on minerals, which would be paid to Native-owned villages, regional and statewide development corporations to be used for self-help programs in health, education, housing, employment and economic growth.

THE FEDERAL GOVERNMENT, on the other hand, has offered \$500 million, payable in installments over a long period without interest, no royalty, and 12 million acres of land, without mineral rights (the acreage it proposes amounts to only 3 per cent of the land, yet the Natives comprise 20 per cent of the State's population.) This fails to do justice to the rights and needs of the Alaska Natives, who regard the land as essential for their survival as people.

THE LAND is not only the basis of their ancient subsistence economy; it is the source of their social and cultural heritage, their spiritual strength, and their identity. Proud and self-sufficient, Alaska Native families live by hunting and fishing, much as they have for centuries. Settled in some 200 isolated villages, they range over an area three times the size of Texas in their search for food. Conservative in their use of the resources of the land and its waters, they find a livelihood where most of us could not survive for a week.

ESKIMOS TRACK HERDS of caribou by dogsled across the frozen tundra. They hunt whale, walrus, and seal from skinboats in the Arctic Sea. Indians on snowshoes stalk moose in the spruce forests of the Interior. Rivers and lakes are fished for salmon, whitefish, and pike. Summer brings flocks of ducks and geese. The importance of clean air, open spaces, and unspoiled streams, which the Natives still enjoy, urban America is only beginning to rediscover.

GIVEN THEIR LIMITED access to the mainstream of American economic life, it is not surprising that they look to the land for their present livelihood and future well-being.

THERE IS MUCH in the condition of the Native villagers that should trouble the national conscience. It is a shocking fact that the average age at death of an Alaskan Native is 35. Only one out of ten Native children finishes high school. The income of the average villager, if he has any income, is only one-quarter that of the white Alaskan. The Federal Government can take no pride in these findings after a century of its stewardship over Native affairs in Alaska.

THE SETTLEMENT proposed by the Alaska Federation of Natives would afford the Native people a meaningful opportunity for self-determination and a viable future. They live in delicate balance with the land; should their way of life be destroyed, their insights and skills will be lost to all of us, perhaps never again to be recovered.

THEY HOPE TO EVOLVE a life style unique in the world today—one that conserves the riches of their land and their traditional life and benefits from new opportunities that industry, science, and the arts can contribute to their personal and community fulfillment. In a world that is rapidly becoming uninhabitable, the Alaska Natives can perhaps show us a way to live in harmony with the land and all its creatures.

THE SENATE COMMITTEE on Interior and Insular Affairs, which is headed by Senator Henry M. Jackson, and the House Committee on Interior and Insular Affairs, headed by U.S. Representative Wayne N. Aspinall, are both considering bills to protect the rights of the Alaska Natives (S-3041 and HR-14212, respectively).

CHURCHMEN of all faiths have priceless opportunity to see that America does justice to its first inhabitants, whose treatment in the past reflects little glory on our nation.