

On Venetie: Beyond the statutory law, there's the moral law

The ruling by Judge H. Russel Holland that passage of the Alaska Native Claims Settlement Act effectively precludes recognition of Indian Country in Alaska is a shocking disappointment. If it stands, it could destroy the young but promising movement for assertion of tribal rights that has begun to offer hope to thousands of Alaska Natives not fully enfranchised by the settlement act.

The settlement was never intended to be the final word in federal policy towards Alaska Natives, as subsequent laws, regulations and judicial decisions have made patently clear. In fact, the very Congressional intent that Holland cites as part of the basis for his decision, that no racial barriers should be erected in fulfillment of the settlement, provides the undoing of the barrister's logic. For Congress clearly intended that the special federal trust obligation to Alaska Natives would continue and ANCSA most certainly did not alter or abrogate the government-to-government relationship that exists between Alaska Natives and the United States. Precedent, practice and preference dictate that this relationship is properly accomplished through political structures (tribes), rather than economic structures (Native corporations). Tribes, and the exercise of their authority, have nothing to do with race.

This is far from the only flaw in Holland's decision, and the analysis is far from over. But beyond the morass of legal construction lie a couple of ironies. First, there is woven in the fabric of American law and society the concept that when Indian policy is being considered, and that consideration has fallen upon contradictions and conflict, a reasonable benefit of doubt is to be given to the Indian position. This notion, this red thread of justice, has not only practical implications for the tribes, but spiritual implications for conflicting cultures trying to reach some sort of harmony. It speaks in a redemptive way to some of the unspeakable horrors visited on Native Americans for nearly 500 years.

Second, the irony of the *Venetie* ruling is thickest where the politics of empowerment are considered. The State of Alaska has spent decades trying to force on Native communities a municipal form of government that is often undesirable and unworkable, only to decide in recent years that state support for municipalities and for rural services is no longer affordable. As small "city" governments, virtually bereft of tax base, began scrambling for ways to make ends meet, new hope had arisen that tribal structures could bring new flexibility, new resources and inspiration to address languishing social needs. Holland has seriously jeopardized that hope.

We salute those tribes and organizations who have voiced their strong support and solidarity with the Native Village of Venetie, as well as the Kluti Kaah and Tyonek tribes, as they continue in this critical legal quest.