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September 1985

Book Review of *Village Journey* by Thomas R. Berger

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Suggested citation

Conn, Stephen. (1985). "Book Review of *Village Journey* by Thomas R. Berger". Review as submitted to the *Tundra Times*, Sep 1985. (<http://hdl.handle.net/11122/9779>).

Summary

This article reviews *Village Journey: The Report of the Alaska Native Review Commission* by Thomas R. Berger (New York: Hill and Wang, 1985). The Alaska Native Review Commission, headed by former Canadian parliamentarian and justice Thomas Berger, initiated an inquiry into the Alaska Native Claims Settlement Act (ANCSA) in 1984, visiting 62 villages and hearing 1600 residents to determine ANCSA's impact on Alaska Native lands and communities. Berger found that ANCSA had placed Native land at risk, endangering not only its title but the rights of Alaska Natives to subsist upon it.

Additional information

This review is as submitted to the *Tundra Times*. A revised version of the review, as edited by *Tundra Times* editorial staff, was published as "Doctrinal Overload Flaws Berger's 'Village Journey'" by Stephen Conn, *Tundra Times*, 23 Sep 1985, pp. 7, 11–12.

Book Review of Village Journey by Thomas R. Berger
(New York: Hill and Wang, 1985)

by

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JC 8704 .01

As submitted to the Tundra Times.

Village Journey by Thomas R. Berger. New York: Hill and Wang, 1985.

Tom Berger makes three essential points in Village Journey.

First, "[F]ar from securing (Native) land, ANCSA has placed their land at risk." "Alaska Natives believe they have been cheated." The land is a tribal storehouse of natural wealth. Stripped to its essentials, ANCSA is a twentieth century version of the General Allotment Act, fully intending to set in motion the destruction of Alaska Natives' tribal land base.

Second, that for Alaska Native villages, subsistence is "a way of life," a communal activity governed by traditional laws, "the business of Alaska Natives," and the single proven long-term source of jobs and survival. Berger views the Congressional extinguishment of aboriginal hunting and fishing rights in ANCSA and the coincidental enforcement of restrictive fish and game laws on rural villagers as destructive of village society present and future.

Third, that the redefinition of traditional or Indian Reorganization Act villages as state chartered municipalities coupled with a new dependence on ANCSA "lawyers, advisers and consultants who flocked to the villages like scavengers," now threatens the villages as self-governing communities, "successful, durable and ancient human invention(s)."

Berger's suggestions for reform are equally clear. Congress should facilitate the return of settlement land in fee simple to village-tribes, land taken without tribal consent. Tribal

government should act as governors of the land and pass laws to control subsistence and other activities on it to insure exclusive Native control. Aboriginal hunting and fishing rights if not specifically revived should be restored with mandated cooperative planning which prioritizes subsistence on surrounding state and federal land to "guarantee access to their other fishing, hunting, trapping and gathering areas."

Impediments should be removed. City governments should be dismantled and their activities absorbed by tribes to insure Native control. "Stockholders should transfer lands to tribal units. Congress should establish a fund to pay debts of Native corporations whose lands are in jeopardy."

"Congress has the power under the Commerce Clause to authorize retribalization of ANCSA land without regard to the rights of dissenting shareholders under Alaska state law," asserts Berger, citing as authority the opinion of Federal Indian Law specialist Ralph Johnson.

For Berger, then, control of land and subsistence through institutions of self-government which will enable Alaska Natives to defend their land is the single approach to Native survival. No legislated option and no other form of organization other than tribal offers this insurance.

As the fruit of hearings in sixty villages, hearings that often placed Berger in the role of silent witness to outpourings so personal as to embarrass the jaded urban observer, Village Journey was more than an assessment of the Alaska Native Claims

Settlement Act, its premise, its results, and its prospects for Alaska Natives. The hearings were an autobiographical statement of Alaska Natives in villages throughout the state.

Their passion was directed at ANCSA, but more than this, at all that had transpired in the nearly fifteen years since the Act was passed. The hearings and the transcripts that resulted remain the most phenomenal result of the Berger inquiry. Village Journey focuses the passion and detail of those hearings on the claims settlement act. As such it can be taken in two ways: as an attack on all who attempted to wrest a claims settlement act from Congress and on those who sought to implement it or as an attempt to define from the present reality of Alaska Natives a new agenda for legal and political activity.

Because Berger weaves the testimony into both the history of American Indian law and the international development of legal rights for indigenous peoples from the early days of colonialism to the era of present postwar self-determination, he must flatten events. The rich detail of Native and non-Native engagement of the legal and political process to make ANCSA work and to force state services to respond to village needs becomes, then, a simplistic matter of bad guys doing bad things to defenseless good guys. Village Journey's doctrinal overload makes of village Natives passive targets of outside manipulators intent on robbing them of their land. That a generation of young Native leaders fought for ANCSA and to make it work and that villages used ANCSA wealth as a lever on the state and congressional political process is written out of this history in order for the basic prem-

ises of the book to flow. This treatment of the ANCSA generation will be a bitter pill for it to swallow and will make more difficult instrumental use of this same generation to renegotiate ANCSA in Congress.

To accomplish the Berger agenda, villages must gather critical information on traditional subsistence laws and integrate them into tribal legal structures. Tribal governments must be redesigned and activated. Villagers will demand proof of their competence before seeking transfer of land and authority.

Alaska the state must be convinced that tribal governments armed with federal subsidies will take up activities that the state cannot afford nor effectively carry out. The non-Native rural population must be assured that its civil rights will not be trampled as city governments are dismantled.

Many legal questions implicit in Berger's call for reform must be litigated or negotiated. Minority stockholder interests will not merely concur in a law professor's opinion. Federal Indian law experts and tribal government attorneys will flock to the state in search of retainers. What is to stem an influx of tribal "lawyers, advisers and consultants" who "like scavengers" will teach tribal government to Alaska Natives?

Berger suggests, "[T]here is no real prospect of wages or salaried employment except for a few persons in each village. The only possibilities for any measure of self-sufficiency lie in access to fish and wildlife."

If his assessment is true, what future does village Alaska have under any legal regime, given the explosive birth rate and population growth that has outstripped departures from the village? At what point will the subsistence base collapse under the weight of population without continued efforts at economic development in the bush?

Berger supports regional tribes as well as village tribes. How will regional tribes avoid domination by non-Native consultants and a town-based Native elite?

Will Berger's formula be adopted? Not without substantial efforts at negotiation both within Native society and between villages and the state of Alaska. It is a pity that the book's premise: to convey the from-the-gut reactions of Alaska Natives to ANCSA and their present existence was transformed by theoretical posturing that ascribed motives to Natives and non-Natives alike that will embitter many.

Village Journey is a blueprint for a new beginning in the ebb and flow of Alaska Native history. The historical and theoretical perspective should persuade the non-Alaskan majority to consider anew the reality of Alaska Natives. It should not serve to divide generations of Alaska Natives or non-Natives who work and live in village Alaska.

The Berger hearing transcripts remain the best work on the state of village Alaska today.

Those transcripts and Village Journey will be Berger's lasting contributions to Alaska and Native history.

Appendix:

Letter to Justice Thomas Berger, October 28, 1985



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SCHOOL OF JUSTICE

October 28, 1985

Justice Thomas Berger
171 Waterstreet
Suite 300
Vancouver, British Columbia
Canada V6B1A7

Dear Justice Berger:

In view of some feedback from David Case and others I want to point out that my review of your book was rearranged by the editor of the Tundra Times in a way which made it appear more critical than it would have seemed had it been left as I prepared it.

My review as submitted began with "Tom Berger makes three essential points in Village Journey." The material above that paragraph followed a lengthy summary of your points and recommendations.

As written, the critical remarks were countered by remarks found at the end of the review. They followed an even-handed account of the book.

As published, the critical remarks were elevated as lead comments and the thrust of the review was substantially changed.

I am enclosing a copy of the review as submitted. Everyone has experiences with editors. In journalism, little can be done but to suffer the consequences.

The book is a fine one and will find its way into my classes just as it has already found its way into village and regional policy deliberations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen Conn".

Stephen Conn
Professor of Justice

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