



1975

Staff Paper on Village Councils

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Suggested citation

Hippler, Arthur E.; & Conn, Stephen. (1975). "Staff Paper on Village Councils." Stephen Conn Papers. Fairbanks, AK: Bush Justice Development Program, Institute of Social, Economic & Government Research, University of Alaska, Fairbanks.

Summary

This excerpt from the forthcoming *UCLA-Alaska Law Review* article "The Village Council and Its Offspring: A Reform for Bush Justice" describes techniques used historically by Alaska Native village councils to resolve disputes. All of these techniques were observed in 1975 in villages where councils still aid in dispute adjustment.

Additional information

Excerpted from:

Hippler, Arthur E.; & Conn, Stephen. (1975). "The Village Council and Its Offspring: A Reform for Bush Justice." *UCLA-Alaska Law Review* 5(1): 22-57 (Fall 1975).

STANDARDS AND GOALS COURT'S TASK FORCE

Staff Paper on Village Councils

(NOTE: What follows is an excerpt from the text of a law review article by Stephen Conn and Arthur Hippler entitled, "The Village Council and Its Offspring," to be published in the UCLA-Alaska Law Review. The excerpt describes techniques used historically by village councils to resolve disputes. All of these techniques were observed in 1975 in villages where councils still aid in dispute adjustment. Footnotes have been deleted for purposes of this staff paper.)

When the councils were created the techniques of dispute resolution did not change, even though the verbiage and symbols of authority employed were somewhat different from earlier times. The authoritative word of the church or of the official of the United States (and later the State of Alaska) was employed to reinforce council directives. However, the process of fact gathering and truth seeking, as will be discussed below, continued to be directed toward an admission of wrong and a promise to correct conduct in order to live more compatibly with other villagers. The most significant change in council process was that individuals as well as groups of children were dealt with in council deliberation. When individuals were brought before the council, usually only a minimal demonstration of contrition beyond an admission of wrong was required as a preliminary step and not as a final

result of the proceedings. The persistent theme of council records, which deal intimately with abortions, adultery, sexual relations of young and old, gambling, property disputes, and other matters, was to remind the individual that even though potential mitigating circumstances were understood, his acts had reached an intolerable level. The council thus offered the possibility for the offender to renew his "social contract" as it were.

They also acted as a public memory and record not only of wrongdoing, but its causes and effects. The warnings given and the assumptions about the seriousness of an offender's attempts at rehabilitation based upon his renewed agreement or lack of it were communicated by the council to the entire community. This knowledge was permanent and carried over to other disputes brought to the council involving the same offender. The council was the central forum for social control. Other powerful figures - the police, the United States commissioner, the prosecutor, and the school teachers, were sometimes utilized to reinforce council authority. However, rarely did these agents override the council.

Rule Making, Rule Enforcing, and Conciliation

Because of the vast distances and immense logistical problems involved, U.S. law had little day-to-day realistic presence in Eskimo villages. The explicit mandate which devolved onto village councils by government agents because of this absence of formal authority was typically

that of rule maker and rule enforcer. Teachers, missionaries, and agents of the legal process considered councils as appropriate vehicles to make and enforce law which improved village life.

It must be made clear, however, that the village councils operated upon an unclear legal basis and in some cases extralegally. They did the implicit bidding of white society by maintaining order and handling wrongdoing, but had no permanent or explicit judicial or police authority to impose sanctions in most cases. This has had a significant impact upon the present evolution of village justice as we shall note below.

It would be a mistake, however, to view the council as merely a puppet for other authorities. In general, the council was quick to articulate a norm as "village law" but much less inclined to enforce it arbitrarily. Violators were usually given several chances, and rules were publicly posted and reviewed in public meeting. When these rules were not publically favored, they were ignored by the council. Finally, penalties were limited and were themselves reviewed, revised or ignored by the council, as particular situations arose.

Even when later state troopers, district attorneys, and others reinforced rules, they were careful to leave application of remedies to people within the village. That is, villages were not forced to adopt criminal laws or procedures but merely to decide for themselves what they wanted to enforce in all but the most serious offenses.

An example of this resistance to arbitrary white norms and sanctions occurred when a village teacher in a remote community attempted without success for more than a year to encourage the council to adopt severe criminal laws. When the council finally accepted village laws along with stiff penalties suggested by the teacher, they declined to enforce them. Instead, the council met privately in the chief's cabin to resolve cases of theft and other matters that surfaced.

Village rules, however, did serve an important purpose. They were the mandate from which the council could launch broadbased inquiries which resulted in compromises.

As in the case of the Zapotec village studied by Nader, the style of dispute settlement cannot be neatly categorized. A mixture of adjudication and conciliation was employed depending upon the case. Rules afforded councils with a legitimacy and a means of communicating disputes to outside authority. Conciliation was the remedial alternative that made the results of dispute settlement credible and acceptable to villagers.

Council Techniques

Scolding and Probation

Although formal probation as such was never used, council actions typically included lectures which focused on future conduct and also set disputes in the context of continuing relationships among the villagers. The members of the village council usually could, without great repetition,

make clear to disputants that past acts, good and bad, had been considered in, and were integrated into, discussions and decisions. Each disputant was a whole person before the council, viewed as an individual who was expected to and who himself expected to live in the village according to the norms of village life.

Tactics also reflected traditional statuses. Women were only comfortable in the presence of women. Female disputants and witnesses were therefore often quizzed privately by female members, and their stories were reported back to the whole council. This insured that a more accurate version of events would be garnered.

Where the church was powerful and disputants were church members, the cases were usually referred to the church board of elders. Even when the church had high status, however, the council was prepared to deal with pastors who engaged in misconduct. In reality boards of elders (church leaders) and councils (secular leaders) tended to interlock. Jealousies of areas of jurisdiction were avoided by having sequences of hearings, especially where "moral" issues were concerned.

The key to compromise either between two disputants or between the disputant and his village was an admission of guilt and contrition. No other posture was acceptable.

This is an important point and should be understood. Eskimo councils were (and are) not concerned so much with punishment as with ameliorating the potentially destructive aspects of tension and conflict within a small community.

Confession of guilt simply indicated a readiness to solve the problem. It is crucial to remember the council wished to avoid or head off violence above everything else. The contrite individual would neither elicit violence from the person he had offended nor engage in it himself.

Real harm or the potential for real harm was the stimulus that set the council in motion. Thus, the potential for violence in gambling and not gambling per se caught the council's attention. Note passing between single women and married men was considered serious, but sexual activity per se was not.

The council was always prepared to narrow its inquiry if it felt that a deeper inquiry would lead to more unresolvable conflict or on the other hand to broaden inquiries if this seemed the best way to achieve a solution avoiding violence. For example, when X complained about gossip regarding a liaison with B's husband, the council merely suggested that X talk to B's wife. X was known to be sexually active with many village men. Only when it was discovered that X had venereal disease which imperiled the health of the community were X's activities fully investigated.

The council was particularly sensitive to the signals of potential violence which had not yet occurred. It often reacted in anticipation of violence to cues that only the council as opposed to outside authorities could recognize. This same attitude marked the later response to cases brought to and disposed of by the conciliation board developed by the authors in collaboration with an Eskimo community and discussed below.

In short, the goal of the council was temporary harmony rather than rule of law. Harmony was perceived as relative calm in the interpersonal matrix of village relationships, instead of an absolute obedience to rules simply because they were village law. This same attitude effects modern law enforcement in the village.

For example, in an Eskimo village today persons who commit violent acts while intoxicated are viewed as temporarily insane and returned to sanity when they are sober. They are not blamed while sober for the consequences of their acts while drunk. They are not chastised because they were drunk. Consequences of acts and not violation of rules are primarily important.

Village Councils and the Modern Legal System

Village councils have never operated in isolation from agents of territorial or state justice. Their authority to resolve disputes was reinforced primarily by their ties first to U.S. marshals, then territorial police, and finally to state troopers.

From the perspective of police, the councils were an effective means of resolving minor problems, thus avoiding the necessity of personal police intervention to arrest the offender and remove him from the village. Even when police did come into the villages, many minor cases were handed over to the councils for disposition.

This flexibility in law enforcement on the part of the police resulted from several factors. First, police were given improbable jurisdictions of thousands of square miles of sea, tundra, and river to patrol. Second, some police recognized that local resolution of disputes was more effective than removal of the offender to distant courts. Third, from the early territorial days to the near present, police effectively enjoyed prosecutorial discretion and resolved many conflicts on the spot.

During this period from 1900 to the late 1960's the ties between village councils and police did not greatly influence the substance of village justice. Except in extreme situations, the police generally permitted the council to administer local justice.

The Council as a Forum for Dispute Resolution

Councils were not merely agents of punishment. Although council records indicate that fines in furs, coal, or other commodities or in money were sometimes imposed, there was a considerable amount of time spent on investigation of the underlying ramifications of conflict. This investigation, which involved the taking of testimony from all sides and a process of hearing out all matters of relevance from all who volunteered or were invited to attend council meetings made the council process a thing apart from justice constrained by evidentiary considerations. It took the council into the personalized arena of dispute settlement that was attuned to

the traditional Eskimo concepts of conflict avoidance and demonstrated contrition as a prelude to conciliation.

The council format was not adversarial. Where conflicts were severe, parties were brought into the council meeting independently and were read testimony of previous witnesses and allowed to comment. The thrust of the council action was not the result achieved but the process that reached the result, i.e. the interim advice offered disputants, the interim apologies tendered as well as the range of persons brought into the hearing process. Much of this flavor of council proceedings was never communicated to outsiders. Council records were private. The mere fact that in Western terms there had been some symbolic result, such as the imposition of a fine, was satisfactory to maintain the relationships between councils and the police. But from the viewpoint of the council, the imposition of punishment was not nearly as important as the avoidance of future violence arising from the same dispute.

To purge themselves of the uncooperative or recalcitrant offender, councilmen had merely to call up the ultimate punitive authority of the territorial or state legal process by casting the offender's conduct in the terms of a Western criminal offense, notifying the police, and requesting his removal from the village. The letters to troopers detailed the act and also described concretely council efforts to resolve the situation. "And this is not the first time" were

the words of art found in nearly every letter from village authorities to the police viewed by the authors. For their part, police would often refer private complaints which came directly to them back to the councils for an initial attempt at resolution. When the police referred back cases which were inappropriate for the councils to resolve, especially cases fraught with violence committed by feared individuals, or when the police did not travel with sufficient predictability to villages when the councils solicited their help, the council's credibility in the village as a forum for dispute settlement was clearly diminished.

United States commissioners, territorial and state judges and prosecutors, and state and federal Alaska Native Service personnel provided support and implicit or even explicit endorsement of council justice. As a rule this support was less immediate than that of the police, since jurists and attorneys (with the exception of commissioners) traveled into the villages with even less frequency than did police. However, several attempts to shore up council justice on a broad scale were notable and successful until near recent days.

In the 1940's the law enforcement arm of the Alaska Native Service employed the Alaska version of the Indian Reorganization Act as a structure for village law enforcement. As the agent organized villages as IRA villages so that they could receive federal loans, he persuaded villagers that village rules as criminal laws were enforceable against village members. The Bureau of Indian Affairs also took a step which

was of questionable legality but consistent with the extra-legality which often colored Alaskan law enforcement when it distributed an "amended" version of state statutes which appeared to give the village councils power of criminal law making and criminal law enforcement. This distribution has continued to those villages who sought legal advice from the BIA until the present.

After statehood, agents of state law and state agencies reinforced council justice with various techniques which ranged from affirmative support to benign indifference. For example, the district attorney of the third judicial district, which encompasses Fairbanks and Southwestern Alaska, met with members of the Association of Village Council Presidents in 1963. He drafted a set of village rules for the fifty-plus unincorporated villages in the Yupik-speaking Eskimo region and promised that each could be recast as state law and enforced by police and courts if council authority was challenged in that case. These village rules were disseminated by other prosecutors and police.