

Corrections in the Village - Traditional Techniques
by

243

Stephen Conn, BASICS Project Director, and
Arthur Hippler, Associate Professor of Anthropology

Paper specially prepared for the BASICS Project, Alaska Bar Association

The Kashim as a Starting Place

The traditional meeting place for Alaska Eskimos was the Kashim in pre-contact times, the men's house. Whithin this structure more than sleeping and social frivolity took place. Young people and old were counseled by elders. Veiled warnings were conveyed through those gathered regarding inappropriate conduct that could result in more forceful conduct. Underlying all of this social activity was a recognition that there was no end to a conflict. Any harsh words or violent act sent out waves of retribution and counter retribution which could extend even to relatives beyond the settlement. The social exchange within the Kashim was, at least in part, a form of social jurisprudence directed at alternative solutions to conflict.

School teachers and missionaries introduced "New England Democracy" to Eskimo villages in Alaska at the same time they were working to destroy the Kashim as the traditional social institution. What these reformers did not perceive was that within the walls of the Kashim techniques of social control were practiced which would find their way into council process because they were the techniques of members of that society.

Informants recall that young children were lectured en masse when one or several engaged in misconduct. Elders, later denominated as chiefs, would engage in a counseling function when disputes arose. This counseling was not overly punitive. However, the advice of elders, who were selected not because of familial status but because of prestige garnered as hunters and fishermen, was accorded great respect.

"Besides being a community center in which fetes and dances were held and guests were entertained, it was the seat of government, the juvenile as well as supreme court, the source of news, the bachelor's club and the school of law and industry. . . .

"If boys were unruly, disrespectful or antagonistic, its venerable body took it into their hands to correct the offenders. The culprits would be placed in the center of the group, and the lecture they would receive from all sides approximated the "third degree" in severity, for it would be kept up until the guilty ones turned red and hung their heads in shame or broke down and wept. This punishment was usually sufficient. It was meted out to boys, girls, men and women alike. If the drilling had no effect the offender might be banished from the village and should the crime be of sufficient gravity, the death penalty would be pronounced!"

From Keithan and Borah, An Outpost of Civilization in the Arctic, Travel Magazine August, 1927 12, at 14. (no volume no.).

In the council the techniques of dispute resolution did not change, even though the verbiage and symbols of authority were somewhat different. The authoritative word of the church or of the official of the state was employed to reinforce council directives. However, the process of fact gathering and truth seeking 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 along with generations were dealt with in council deliberation. However, when individuals were dealt with, the council usually sought only a minimal demonstration of contrition beyond an admission of wrong. The persistent theme of council records which deal intimately with abortions, adultery, sexual relations of young and old, as well as gambling, property disputes, and other matters was to communicate public knowledge of the matter to the offender. That knowledge was permanent and carried over to other disputes brought to the council involving the same offenders. 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 brought into its orbit and often served to reinforce council authority. However, rarely did these agents override the council.

Rule Making, Rule Enforcing, and Conciliation

The explicit mandate passed to village councils by government agents 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. At the same time the councils made

villagers responsive to school procedures (e.g., association of juveniles and adults on the playground, school attendance, parental contribution to hot lunch programs, bringing ice for water, etc.), ecclesiastic teaching (e.g., no dogs near the ice used for drinking water, all dogs over six months will be chained). Pressure from the church and government also resulted in council inquiries into the paternity of children born out of wedlock. These investigations resulted in promises to make support payments monitored by the council or occasionally in forced marriages.

It would be mistake, however, to view the council as merely mandarin agent or a puppet for other authorities. In general, the council was quick to articulate a rule 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 they were not favored they were ignored. Finally, penalties were limited and were themselves reviewed, revised or ignored, as particular situations arose.

Even when later troopers, district attorneys, and others reinforced rules, they were careful to leave application of remedies to people within the village.

A remarkable exception occurred in an isolated Athabascan village near Fairbanks in the 1940's. There the village teacher attempted without success for more than a year to

encourage the council to adopt as village laws stiff modern laws and stiff penalties. 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 Nader's Zapotec village, the style of dispute resolution 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 resolution credible and acceptable to villagers.

Council Techniques

Scolding and Probation -

Although formal probation was never used, remedies typically included lectures which focused on future conduct and also set present disputes in the context of present 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 man before the council, viewed as a person who was expected - and who himself expected - to live in the village according to the norms of village life.

Female disputants and witnesses were often quizzed privately by female members, and their stories were reported back to the whole council.

Where the church was powerful and disputants were church members, the cases were referred to the board of elders. However, the council was prepared to deal with pastors who engaged in misconduct.

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.

Real harm or the potential for real harm 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 and not sexual activity per se was viewed as serious and the note passer was chastised.

The council was always prepared to narrow its inquiry if it felt that it wished to defer from deep inquiries. 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 attuned to the symbols and trappings of potential violence which had not occurred. It often reacted in anticipation of violence to cues that only the council recognized. This same attitude marked the later response to cases brought to and disposed of by the conciliation board developed by the authors and discussed below.

In short, the quest of the council was for temporary harmony rather than for 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 figures into modern law enforcement in the village as it is viewed by consumers of law.

For example, in an Eskimo village today, persons who commit violent acts while intoxicated are viewed as 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 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 had several causes. 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 to the near present, police effectively enjoyed the autonomy of prosecutors and resolved many conflicts on the spot.

During this early 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. Councils were not merely agents of punishment. Although councils' 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, involving

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 police justice. 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 violence.

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. On their part, police would often refer private complaints which came directly to them back to the councils for first attempts 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, they clearly diminished the council's credibility in the village as a forum for dispute settlement.

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 extralegality which colored law enforcement from Alaska's purchase 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 action 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 50 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 justice did not take. These village rules were disseminated by other prosecutors and police.

In the late 1960's villagers were pressured to sacrifice their own needs for case disposition for seemingly more modern notions of justice. VISTA volunteers in villages began to question

what appeared to them to be summary justice meted out by councils and troopers. They aided some villages in reformulation of their village ordinances. While their conception of the working justice process was marked by some unrealistic ideas of due process and Warren Court remedies, in terms of the capacity of the state at that time to provide complete justice processes to rural Alaska, as well as a naive Western lay belief in the force of written rules, this impact was nonetheless educational. To the chagrin of some "old time" troopers, VISTA volunteers introduced a somewhat different expectation and a different portrait of the legal process to villagers who had experienced only the system's punitive arm.

While some villages had U.S. commissioners with some judicial powers, few villagers had experienced or observed full-scale judicial proceedings in an adversary hearing. Jury duty usually occurred only when inquests were held by commissioners and later by state judges. Few villages had jails that were equipped to serve as more than holding facilities. When in the late 1960's village councils were confronted with a paid Native member of their village who was selected as a judge and wearer of the black robe, they began to refer complaints to him. However, state magistrates who were untrained did not feel comfortable or sufficiently autonomous to resolve cases in an informal as well as formal manner. They could not offer the remedies sought by people who brought private disputes to the council for conciliation.

On a different level, villages began to seek advice regarding their ordinances from state agencies which held themselves out as legal advisors. The Rural and Local Affairs agency of the state received village ordinances with extraordinary constitutional violations and filed them away. The advice offered by the agency even to the present, suggested that councils could enforce the village ordinances. However, this kind of legal misinformation was less conducive to council justice than in previous years because councils were at the same time learning about law, especially about corporate law, as they fought to achieve a land claims settlement and to implement it.

Today, where village councils continue to resolve disputes without magistrates, their function has become more police-like and less deliberative. For example, the local police officer in the Eskimo village of Napakiak is also a village council member. He reports having jailed more than 100 persons, particularly those who come up river from Bethel in an intoxicated condition. He has informally discussed a gradation of fines that he imposes for first and second offenses and has been supported by the prosecutor who now serves Bethel as well as the troopers.

The introduction of a prosecutor into Bethel on a regular basis in 1973 has narrowed the autonomy of the troopers. As new troopers take bush positions they are more inclined to act as investigators and to remove offenders to be dealt with in urban courts than their predecessors. The old-line troopers have little

autonomy even within the police hierarchy because bush positions are dead-end positions for troopers who desire to rise in the ranks of police.

The Native Land Claims Settlement Act offers surface jurisdiction to villages that are incorporated as second-class cities under state law. This is a concrete inducement for redefinition of the council from an internal body, engaged exclusively with problems that emerge within the village to be resolved there, to a governmental body engaged substantially with outside bureaucracies and their agents. The land claims provision continues a modern progression of councils from courts to governmental bodies. Even prior to land claims, observers noted that older Natives with a traditional outlook who could communicate well with villagers were being replaced with younger villagers who could communicate well with government and private program representatives - in short with the outside world. What emerged were shadow governments of traditional leadership which were consulted by the modern types on the council. However, these persons with a more traditional orientation did not take with them the function of dispute resolution.