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Summary

Yup'ik and Inupiat villages in Alaska (the territory and the state) experienced a process of legal socialization that was strongly influenced by serious constraints in the allocation of resources. These constraints resulted in legal socialization into what was in essence a second legal state system and provided an opportunity for cultural autonomy by Eskimo villages, even though this *de facto* situation did not recognize these groups as sovereign tribes. The actual implementation of a single full-blown legal system in village Alaska in the mid-1970s has resulted in a loss of control and serious efforts by Alaska villages to reinstitute village law ways as tribal legal process.

THE INTERRELATIONSHIP BETWEEN ALASKA STATE LAW AND THE SOCIAL SYSTEMS OF MODERN ESKIMO VILLAGES IN ALASKA: HISTORY, PRESENT AND FUTURE CONSIDERATIONS

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ABSTRACT

Yupik and Inupiat villages in Alaska (the territory and the state) experienced a process of legal socialization that was strongly influenced by serious constraints in the allocation of resources. These constraints resulted in legal socialization into what was in essence a second legal state system and provided an opportunity for cultural autonomy by Eskimo villages even though this de facto situation did not recognize these groups as sovereign tribes. The actual implantation of a single full-blown legal system in village Alaska in the mid-1970's has resulted in a loss of control and serious efforts by Alaska villages to reinstitute village law ways as tribal legal process.

This paper will examine the historical, present and future interrelationship between Western law and social systems of Eskimo villages in Alaska.

The historical analysis will encompass the period prior to statehood when a variety of military and civilian authorities introduced Western law into Alaska Inupiat and Yupik communities.

The present for these same purposes will encompass two periods, that of the early statehood period, 1959-1970, and that of the oil boom and land claims era, 1971-1982. Clues to the future relationship begin to emerge in 1982 and thereafter.

Eskimo Villages in Alaska - Communities of Resilience and Change

Who are the Eskimos?

Alaska's Native population, 16 percent of the total in 1980 (U.S., Interior, 1984:E-5) includes 7,338 Inupiat, 17,474 Yupik and 5,174 Siberian Eskimos among its indigenous population of 64,103 Indians, Aleut and Eskimos (1984:E-7). With few exceptions these Eskimo populations continue to live on village sites of long archeological duration, set close to land and water resources that remain critical components of village economy. In fact, thirty-five percent of Alaska Natives report that half or more of their food continues to come from subsistence resources (ISER, 1984:9).

Residence in small, medium and large villages occurs among between 95 and 99 percent of Alaska Eskimos (U.S., Interior, 1984:E-7). However, in two western and northern Inupiat regions,

Native towns of 2,000 plus persons have attracted 38 percent (Kotzebue) and 53 percent (Barrow) of the resident Native population. Thus, while net outmigration from villages to urban cities has been more than offset by high birth rates, internal migration within the discrete regions of Alaska continues to be noticeable and important.

Average villages number from 300 to 700 persons, more than half of whom are children.

The Early Period

Inupiat and Yupik villages in Alaska have different historical patterns of development both socially and legally (see Case, 1984:353-60). This paper wil focus on certain common factors in the development of relationship between these groupings and agents of Western law.

As stated, both groups were and are heavily dependent upon hunting, fishing and gathering of other wild resources. Villages were, then, with few exceptions, not places to which Alaska Natives were removed to replace subsistence activity with government rations, but rather staging areas for such activities. Villages were the places, then, where semiautonomous family groups came together and rubbed elbows. Historically and in the present day, family groupings determine residence patterns in most villages.

The literature of legal anthropology often serves up Eskimo peoples as primary cultural examples of peoples without law, living in states of primitive anarchy (see Hoebel, 1954 and

Pospisil, 1964). The focus for these scholars and their apparent litmus test has been the existence of extra-familial institutions and figures (e.g., leaders) capable of settling public disputes with secular sanctions and at the same time articulating rules which will guide future relationships within the larger society. In this search for what is effectively supra-political structures, more subtle deinstitutionalized forms of law ways have been overlooked.

If one examines the legal development of peoples such as the Eskimo whose structure of political organization and leadership was often temporal from the perspective of legal socialization, a more valuable and instructive assessment of village law and its association with Western law emerges.

Socialization has been defined as a "developmental process through which persons acquire societal orientations and behavior patterns" (Tapp, 1970 quoted in Friedman, 1977:69).

According to June Tapp and Felice Levine, legal socialization:

> delineates that aspect of the socialization process dealing with the expression of legal beliefs and behaviors, the internalization of "rule" norms, the conditions obtaining legal compliance, and the learning of deviant and compliant modes. It focuses on the development of individual standards for making sociolegal judgments and for using the legal network for resolving conflicts, pressing claims, and settling disputes. Covering the "positive" and "negative" sides of learning, specifically for the institution of law and generally for all human rule systems with authoritative validity, legal socialization considers both the processes and products of reasoning about "legal" norms. Whether "law," "norm," or "rule" is used, each conveys some obligation and expectation of compliance; but none

precludes the possibility of disobedience. (1977:85)

It is evident then that even nonjural processes are capable of instilling in members of a cultural group both a normative focus and predispostions regarding the appropriate ways to avoid or engage other persons when conflicts (or potential conflicts) emerge in group living.

The search for law, then, among groups less dependent on institutionalized law draws one down pathways that are often those not taken by political and legal anthropologists. Child rearing, for example, has attributes of legal socialization among its many purposes (Briggs, 1970; Conn and Hippler, 1973a). So does the etiquette of hunting sessions and other rituals normally viewed as nonlegal by Western eyes (Chance, 1966 and Graburn and Strong, 1973).

Eskimo law ways had at its core nonconfrontational, individualized underpinnings. In small groups individuals learned to read subtle cues in personal behavior (see Conn and Hippler, 1973b). Right behavior was taught through observation and through ritualistic lectures in men's houses in both Yupik and Inupiat society. Right behavior was strongly associated with appropriate readings of other known individuals, their patterns of relationships and dealings. Appropriate reactions or nonreactions to breaches of etiquette were selected accordingly. Persons who did not act normally (that is, persons who gave off inappropriate cues) were considered not only deviant, but also crazy and dangerous. Security lay less in the capacity to call

into play a form of formal legal intervention than in a well-developed capacity to read the meaning of another person's behavior in time to avoid danger by nonconfrontation or to react to danger preemptively.

For Eskimo society, then, strangers represented special threats. One did not know their motivations, formed as they were out of unknown alliances and, perhaps, obligations to undertake revenge (Spencer, 1959). Harmony within the group was formed by tensions in equapose, strengths and obligations in relative balance, and above all, knowledge of strengths and weaknesses widely shared among co-resident factions.

Within a reference frame of a typical face-to-face society, gossip, ostracism and avoidance, all mainstays of classic social control, formed effective public remedies for deviance so long as the deviator was a person whose personal alliances and strength were not overpowering. In such a situation, a bully (like a stranger) could cause ripples of unrest that ended only with removal of the offender or withdrawal of the persons offended.

Western Legal Socialization: Early Agents of Change

Intervention by agents of governmental authority varied among Alaska regions.[1] However, patterns of change in the Yukon-Kuskokwim area and on the Northern and Western coasts of Alaska show significant similarities (Oswalt, 1967).

In Inupiat Alaska, villages experienced, by the late 19th century, the beginning of a trait which could be said to be the hallmark of Western law for small settlements, seasonal and

sporadic intervention by agents of American criminal law who sought and discovered law violators served up by non-Natives or by village councils (Murton, 1965). Once discovered, these violators were removed from the community for lengthy periods and, often, forever. The Coast Guard cutters were an early expression of this phenomenon, fixated as they were with control of guns and liquor (Healy, 1889). Territorial marshalls and agents for the suppression of liquor among the Indians were later examples; state troopers were but a final example of the same form of Western law.

Yupik villages experienced this same process although in slower stages, prompted not by whaling but by early gold strikes and the missionary process.

This pattern of authoritative intervention from outside the community was coupled with efforts by teachers and missionaries on the scene to institutionalize law (Jenness, 1962). The result of this effort was the first Eskimo legal institution, the village council.

For these Western law figures, councils appeared to be less law-givers than intermediaries drawn together as a coalition of principal groups within the community. In some Yupik villages at an earlier time, the Russians had recruited traditional leaders as the Tsar's representatives (Case, 1984:359). Whether because of epidemics which shattered older groupings among Yupik, or because of more accurate perceptions that leaders among Eskimos were effectively leaders among equals, the council format was

introduced as a device to reorder Eskimo village societies to the needs of education and missionary programs. Early rules of these institutions were so loaded with matters of practical importance to teachers and missionaries, especially concerns of the school, that some commentators have dismissed village councils as little more than colonial instruments (Milan, 1964).

However, a close perusal of council records of more than fifty years duration suggests that these bodies were sufficiently flexible to allow participants to draw on their own approaches to problem disposition in ways that were not disruptive of earlier forms of social control (Ulgunik, 1946-70).

In other papers, I have described council process in some detail (Conn, 1975; Conn and Hippler, 1973b, 1974b, 1975). However, suffice it to say here that social control over minor problems was given a point of denouement that had previously existed only in the men's house and in smaller group settings. Within the council a group consensus could be formed and those persons with whom other forms of social control had not succeeded could be confronted with their deviance and allowed to confess and be reintegrated into the society.

Eskimo councils worked as transitional institutions for both Western agents of authority and indigenous peoples while other neocolonial Indian courts remained the fixtures of those who imposed them (Conn and Hippler, 1974b). That they were successfully grafted onto the developing legal socialization of Eskimos is best evidenced by their continuing viability even in later

years when overt support for councils dropped away and government policy shifted focus to Western courts and police.

The success of councils seems to have stemmed in part from their coherent integration with political patterns of old and new settlements. Little or no attempt was made by agents of change to stack families and clans into leadership and follower roles. The traditional process of dispute adjustment, one that was distinctly nonadversarial and that allowed for redemption without punishment was another feature of council justice: it allowed for appropriate responses by both deviant and those who commented on deviance as representatives of the community (Conn and Hippler, 1975). The parlance of council justice was often that of Western courts. Ordinances were described and punishments were set. But, as often as not, the process of council justice was not carried through to punishment unless such punishment could be understood as entirely justified by preexistent social relationships (e.g., when elders punished young people or when insiders instructed persons with limited connections to the community). This council procedure with its emphasis on confession and contrition also reflected the less than legal socialization of missionaries who sought contrition from sinners.

Finally, and most importantly, the shadow of another system fell over councils from their inception and backstopped councils in areas where their own restrained approach may not have sufficed.

Agents of education, the Coast Guard, the military and

finally secular territorial law focused their attention on violent behavior, serious offenses by and against non-Natives and, above all, the complex issue of drinking and violence related to drinking (Conn, 1980). These matters were served up to Western law interveners; these serious offenders were removed for punishment in distant courts.

Western law was introduced to Inupiat and Yupik villages with a distinct and limited focus. Drinking and drinking behavior was viewed as the primary source of trouble among indigenous peoples. Other apsects of law - its civil side, for example - were hardly apparent in Eskimo villages until the 1970s. Western law as it arrived in Eskimo villages and when it arrived was about the suppression, use and sale of hootch and little else.

Further, whatever its ritualistic content, Western law served as a vehicle for removal of offenders. Whatever happened to offenders, they were removed for extended periods during which tempers could cool and feuds could be put to rest.

In another paper, I have argued that the impact of prohibitionary policy of Western law, the counterpoint to drunken behavior taught Alaska Natives by other non-Natives who drank around them, had a powerful negative influence on development of meaningful controls within the Eskimo groups (Conn, 1980). However, the point most relevant here is that Eskimos were taught by a steady stream of Western law agents that (1) drinking behavior could not be controlled by individual Eskimos or by Eskimo groups if it began and that (2) Western legal institutions were the pri-

mary actors in hootch (and later liquor) suppression.

What Western agents of law taught by word and by deed was confirmed by the inner logic of Eskimo law ways. Eskimos who drank became different persons. As such they were indifferent to social cues and seemingly immune from punishment for inappropriate behavior.

When non-Natives suggested that Eskimos who drank "did not know what they were doing," Natives were prepared to believe it so subtle and complex was their system of law ways (Conn, 1985b).

Councils functioned, then, within a halo of externally imposed Western law that kept hootch manufacture and consumption to a minimum and that removed violent, repeat offenders. As such councils were left with matters involving rational persons who could be counseled and advised to behave in ways which would not result in conflict. Councils often focused on embryonic conflicts, all but invisible to non-residents who had not monitored as closely interpersonal relationships.

With all of this emphasis on council process, one should never forget that most problems among Eskimos, both Yupik and Inupiat, remained outside of the domain of either village councils or Western law. Critical issues of resource sharing and wildlife management remained outside of this sphere as did most matters of intra-familial conflict. What village councils dealt with usually involved matters with the potential of being transformed into Western law violations at some point in their maturation. Whom councils dealt with was equally important. Persons

selected for council justice had failed to pick up cues communicated through other forms of social control. If they were not strangers to the village, they were at least persons who had social ties of less significance to the group.

Village councils emerged as vehicles to reinforce traditional social control and to act on legal matters not deemed suitable for official intervention. Councils bound social control and law together. But as their role became more legal and less bound to social control, this critical balance of legal cultures was lost in Eskimo villages.

Late Territorial and Early State Period

It is often forgotten how significant non-legal changes are to legal process. In the late territorial period and early statehood period changes in population and sources of economic development in towns brought to the fore the limits of a system of combined village and state justice which had worked effectively for many years.

In another paper, I describe critical meetings held between the Association of Village Council presidents and state officials in the early days of statehood (see Conn, 1982).

Village council presidents came together to share notes on ways to control an upsurge in liquor consumption from the emerging regional center of Bethel. They spoke of young men going to Bethel for wage earning jobs and drowning on the way home after initial encounters with Bethel bootleggers. They sought revalidation from federal and state representatives of

their commitment to suppress liquor use within their villages and council authority to act as fining and jailing courts when liquor appeared in their villages.

They were told that council justice was illegal and that Western intervention would be limited to liquor-related occurrences after they happened. As will be seen, they were promised police intervention if they employed rules similar to state statutes. But no other formal authorization of their authority was granted.

More than the legal status of councils had changed. Their source of assistance from Western police agents faded at the precise time when changing birth rates, migration patterns within the region (e.g., strangers within the village) and availability in Bethel of wages and liquor made the friendly isolation of villages a less dependable buffer against too many problems, especially too many problems that were liquor-related (Tussing and Arnold, 1969).

Further, the state of Alaska had a different legal agenda for bush Alaska. The new state had inherited a mandate from Congress that it provide exclusive criminal law jurisdiction (Case, 1984). The new state equated law enforcement with sovereignty. Its policymakers were less prepared than agents of territorial law to share power officially with Native groups. If the state's resources were insufficient to deal with problems in more than 200 geographically isolated villages, it was not prepared to say so. Policymakers assumed that as time progressed, its legal

mechanisms and its legal agents would be sufficient to cover the Alaska environment.

The Yupik village leaders who met in Bethel did not focus on their right to mete out law and order as an end to itself. Instead, they persistently focused upon development of a realistic working relationship between village law and agents of state law. Their attention was riveted upon problems of disintegrative violence and means appropriate to resolve them. They viewed state responsibility in liquor prohibition as central - that was the law's role after all (Conn, 1982). The Alaska and federal representatives focused upon what was authorized under state law and what was not authorized ignoring nearly completely the paucity of resources the state could focus on 57 Southwestern Alaska villages and 29,000 people scattered among them. Ignored also were legal expectations developed in more than a half century of legal occurrences.

The critical division between law as a symbol of authority and law as a means to anticipate and curb violence was to confuse every dialog between Eskimos and Alaskans from that time forward.

Critical Factors in the Oil Boom and Land Claims Era and Their Bearing Upon the Relationship Between Social Structure and Law

No period of time has seen as many external and internal forces at work on Alaska village life than the decade-and-a-half of the present era. What follows is not taken to be a comprehensive assessment. Rather, those matters selected are chosen because (with the wisdom of hindsight) they are clearly forces

which have affected and will affect the relationship between law and the social system of villages for decades to come.

A. The Younger Population Emerges as a Social Force

In the culmination of a trend beginning in the 1950s and 1960s, infant mortality dropped 29 percent between 1970 and 1980 (ISER, 1984:4). The Indian Health Service's campaign to eradicate tuberculosis, influenza and other respiratory diseases also bore fruit. The net result (along with outmigration by some employable younger adults) has been to make of village adults a minority group wedged between larger populations of young and old. Accidents, suicides and homicide replaced infectious diseases as the leading causes of death (Kraus, 1977).

The youthful population in Alaska villages became over the decade of the 1970s a year round population. In what was the first of several political initiatives within the state political system, Alaska Natives pressed for and received high school systems in smaller villages. No longer would young people who desired secondary school education leave the village for a regional town or distant city. Now 92 new high schools appeared in villages, managed by regional school boards based in the towns (Parry, 1983).

B. The Emergence of Town-Based Government and Quasi-Governmental Corporations

Towns which had served as regional centers for limited federal health and social services emerged in the decade as the staging points for state services of every kind, including state

law services. The town-village relationship became more significant than the relationship between distant urban centers and the bush when delivery of services and matters of local government were concerned. On the North Slope, an organized borough government, fueled with tax revenues from oil exploration, displaced the state with a regional government that provided police and health and welfare services unlike any experienced by the seven villages in years previously (McBeath and Morehouse, 1980). The state was induced to provide a superior court judge, district attorney and public defender to the town and region by the upsurge in law enforcement and consequential rise in recorded criminal law violations.

In the nearby Western NANA region with its ten villages, the town of Kotzebue emerged as a regional center without the delineation of an organized borough. In this town, as in Dillingham, Nome and Bethel in other regions, nonprofit corporations emerged as quasigovernmental institutions. These entities, the forerunners of for-profit corporations which had been defined in the land claims process, now drew upon Congressional legislative authority and state political clout generated by land claims to take over authority for management of many federal and state programs.

Educated Natives, especially females, found work in town-based bureaucracies. Thirty-nine percent of rural Natives worked in local or state government by 1980, up 17 percent in a decade (ISER, 1984:9). So also did non-Natives. Their numbers in rural Alaska increased by 64 percent while Natives increased by 18 per-

cent (U.S., Interior, 1984:IV-10). More significantly, the numbers of non-Natives versus Natives in rural Alaska changed from 50,900 to 39,000 in 1970 to 81,000 to 46,000 in 1980 (Id.)

Non-Natives were the primary recipients of state jobs in the bush and even of jobs in Native corporations. As law services and other services increased, so did permanent or at least semi-permanent non-Native presence in both towns and villages. The developed sense that non-Natives were effectively "taking over" coupled with a perception that leading families of Alaska Natives had assumed positions of power in town-based governments and regional corporations, laid the basis for the changes in village political process which will certainly determine the relationship between local law and village life in the next decade.

C. Emergence of Controls Upon Hunting and Fishing

At least as significant as the failure of criminal law agents to intervene when needed was the apparent implantation of legal controls on hunting and fishing. Northern and Western Inupiat who had hunted caribou year round above the Yukon River now discovered that fish and game controls would be imposed upon them in the name of conservation. Laws which had lain unenforced on the books were now enforced to protect migratory waterfowl and sea mammals.

When Alaska Federation of Native-sponsored teams surveyed villages on bush justice problems in the mid-1970s, they discovered more complaints about fish and wildlife enforcement than about treatment of Native crime and criminal law defendants (see

McKenzie, 1976).

It appeared to village people that state and federal law showed more concern for fish and animal life than for village people.

The Process of Legal Change During the Claims Settlement Decade

The decade of the land claims settlement began with what could be described as a commonly shared perception by villagers and policymakers that bush or rural Alaska was ill-served by the state legal process.

Three "bush justice" conferences were held in the decade. Although each one was dominated by a different constituency (the first, high policymakers and academics, the second, villagers and legal services attorneys and the third, line bureaucrats), there was a remarkable consistency in the resolutions which flowed from each session.

First and foremost were expressions of felt neglect. At no time in the state's history had reliable legal services been available to small villages. Villagers complained less about the quality of services delivered than of the failure to provide them (Alaska Judicial Council, 1970).

As I have discussed in other papers, federal law enforcement assistance appropriations and later state appropriations tended to increase the power of highly centralized state bureaucracies. Town-based teams of judges, prosecutors and defense attorneys

(with corrections officers) brought a rapid increase in criminal justice activity into nearly every region (Conn, 1985a).

At the village level, however, every extension of state service brought increased levels of disempowerment and frustration. What had been a notable characteristic of the decades prior to statehood and the first decade thereafter - derivative power lent to small villages to carry out dispute settlement and social control - now evaporated as state service implanted itself in the towns. The state legal apparatus developed "eyes and ears" in the villages by hiring "parapolice" and "parajudges" whose primary function was to hold the scene for town-based professionals and to report law violations by village councils who sought to take the law into their own hands (Conn, 1984). The extra-legal activity of village councils which had been the mainstay of both village and state legal authority in an earlier time now was suppressed unless it could be cast as a form of diversion from state legal authority and controlled in that context.

Although the shared point of view among justice policymakers, Native consumers and academicians was that the system of Western law implanted in rural Alaska did not meet adequately basic needs of citizens within the realms of law enforcement and dispute settlement, constituencies had fundamentally different senses of the root causes of the problem and its appropriate solution.

Policymakers understood the problem as a failure of the Alaska village people to understand Western law and its operative premises. This failure was rooted in "cultural difference," most

especially the education Alaska Natives were presumed to have received in their own law ways, an education which had effectively miseducated them in Western legal terms.

A solution to the problems of law services posited by policy-makers and acted upon by academicians was to study traditional law ways and, drawing upon these studies, to reeducate Alaska Natives to Western law. Traditional law would be a basis for comparisons.

Such studies were accomplished (Conn and Hippler, 1973a). However, what they revealed was that traditional law ways had already been substantially influenced by interaction with agents of Western law. In fact, the purported clash between "traditional law ways" and "Western law" was at base a clash between a village legal process mutated and redesigned to fit the demands of earlier agents of Western law during a period of benign neglect of Native villages with a new definition of law services initiated by urban justice bureaucracies who had only recently discovered bush Alaska.

Thus conflicts over bush justice were not cultural conflicts except as they conveyed a conflict between two historical epochs of Alaska legal culture, an epoch of territorial and early statehood and an epoch of modernization fueled by oil wealth and a claims settlement.

The assumption of many town-based officials that village councils could carry out all matters of legal activity, drawing upon consensual authority only, had proven to be erroneous.

There was significant division between young and old over drinking behavior. Younger people had learned to question the legitimacy of village council authority.

In short, councils had seen their historical authority to act stretched beyond its limits and its credibility questioned and undercut both by young people and by outside agents of law who happened to observe it.

If this pattern of events had not caused councils to reject a central role in legal process, another change would have lead to the same result. The Alaska Native Claims Settlement Act favored villages who incorporated as second class cities with title to townships within the village core (Conn and Garber, 1981). At the same time, state revenue sharing and state appropriations favored villages who were transformed juridically into mini-cities. As a result the village council of yesteryear became the city council of the 1970s. Each day's mail plane brought letters from state and federal agencies and a workload which caused councils to look for someone else to handle the cat and dog problems of village conflict which had taken up winter evenings and days in years previously.

Finally, many villagers shared the belief of state officials that the best solution to their problems was total incorporation into and dependence upon the state legal process. Whether this meant placement of a state justice of the peace into the village to take over hearings or simply more frequent visitation of state judges to the village, legal process was not then identified with

something as illusive as tribal "sovereignty." It was simply an activity that the state was charged with accomplishing. It was the state's job to do.

When academicians wrote that justices of the peace in small villages did not handle problems in the way that councils did or that people expected, justice policymakers showed marked disinterest. After all, they concluded, what state judges did was correct and what councils did was illegal and incorrect.

Villagers also were unimpressed. Law was the state's business and it should spend money and energy sufficient to hire someone to do the job.

The earlier epoch, marked as it was by benign neglect of village Alaska, had also allowed Eskimo villages to use village councils as the focal point of institutionalized village social control. Those who decided to tolerate autonomy in matters of law by village councils had not been policymakers of justice agencies, but rather embattled field operatives in rural towns who simply could not take on caseloads of other than the most serious criminal law offenses.

The academicians who studied bush justice in the 1970s tended to embrace a pattern of continuing semi-autonomy in matters of village law (Conn, 1974a, 1975). They suggested that a formalized entity which handled disputes in a "council-like" fashion could probably anticipate and prevent many violent encounters through early intervention (Conn and Hippler, 1974b). They saw as the ideal form of law for modern villages a continuation of

the pragmatic working relationship between community law and town-based state personnel, with some rational division of authority struck between village and town, based on the problems to be addressed and the resources and approach best suited to deal with the problems. What this implied, however, was that each justice bureaucracy reconsider the law jobs and machinery to be offered to bush Alaska, redefining those roles and legal mechanisms to fit the consumer and not anticipating that consumers and their communities would adapt to fit the law jobs and machinery proffered.

The academicians point of view was not accepted by either justice policymakers or by villagers.

Village leaders in the 1970s were not committed to the principles of autonomy or even community control of law problems. What they had experienced in the name of community control was a process which had forced village councils to handle problems they believed should be left to outside authorities. Because of ineffective police intervention, even after repeated requests for assistance, councils had been transformed into courts that threatened fines and other sanctions that one and all knew were unenforceable and even illegal rather than deal with matters suitable to compromise (Conn, 1982).

This point of view which governed village ideas about law and the way it should be accomplished was itself a product of living with an ongoing relationship between village processes of social control and state processes. Without planning or intent, the

state had reconstructed a working relationship after statehood based upon the limited resources available in state hands. Its representatives, usually state troopers or, later, assistant district attorneys, developed and distributed "village rules" which could be imposed on two or three occasions in minor cases without first notifying the trooper. After several tries, the council was to call into play trooper intervention (Conn, Id.)

This mutual responsibility for law in the villages allowed the state to concentrate on more serious matters, presumably allowing village councils to handle the lion's share of problems. Villagers were given the impression in meetings with state and federal offcials that this approach, though illegal, would pass muster on the village side. There, it was assumed, that village consent, backstopped by trooper authority, would convince villagers to abide by village law in most, if not all, cases. There was no allusion to a basis for village law, civil or criminal, in tribal authority even when villages could demonstrate that they had been organized as Indian tribes under the Federal Indian Reorganization Act (Case, 1984). Villages which did not seek much outside intervention were viewed as "progressive villages," those which took care of their own problems. The issue of how problems were resolved was not vital; limitations of demands upon town-based officials was considered most significant.

The working relationship between state and village legal process broke down almost as soon as it was crafted into place. The state could never live up to its responsibilities because the numbers and diversity of problems for which intervention was

demanded outran the state's resources. Village councils lost credibility when pressed to demonstrate that they could apply ultimate sanctions, like jail terms and fines, and not merely mediate and prevent trouble, they failed either to carry through or to draw into play a Western legal process which would carry through.

Youth, whose education in Western law, as urban law, began with VISTA volunteers who questioned council authority and continued through social sciences courses, movies and finally satellite TV, did not perceive that the counseling experienced before village councils was "law" as Americans understood it.

If so many other factors had not caused village law to erode, the magnitude of drinking problems, problems associated with town-based bootleggers and town-based wage opportunities, improving transportation and communication, made the business of law too generalized and frequent for a council whose only rock of support was its ability to draw upon village consent.

Village Natives looked for Native and non-Native figures to intervene and deal with their problems as paid state employees. Law became a job like any other and less directly a tribal or civic duty, a job with considerably less financial or social rewards than the negative social connotations ascribed to it and to those who took it up.

The State of Alaska, organized constitutionally, into highly centralized bureaucratic units for the delivery of policing, judging, lawyering and correction ran vertical lines into vil-

lages by means of para-police, para-judges and other aides when it was necessary to implant any representative of their bureaucracy (Conn, 1985b). Agency efforts concentrated on the building up of town-based systems in the regions.

Villages were perceived as places lacking physical and human resources sufficient to establish urban justice systems (see Second Magistrate Advisory Committee, 1978, 1979). Through professional education, and then through bureaucratic alignment and pay, efforts was made to focus the loyalty and identity of state magistrates and village police (through several programmatic permutations) on their parent agencies, the court or department of public safety, rather than upon their village and its government.

With this in mind, it may be easier to see how a village such as X on the North Slope and state justice planners could arrive at very much the same conclusion: that law was state law and no other law and that state law jobs were for state employees to accomplish.

X had carried forth a form of council justice for more than seventy years as its records could attest when a local personage was nominated to be magistrate in the early 1970s. From the first day of his employment, the council rejected further complaints made to it. Even when complainants returned to state that each did not want to file a written complaint or to put anyone in jail or have him fined, the council refused to handle matters arguing that the state employee should handle the job.

When few cases appeared on the magistrate's roster for

several years, the court system removed the post from X and dismissed the magistrate, retrieving its typewriter, law books and government forms.

Only after this occurred did the council, grudgingly return to the business of hearing disputes, requesting repeatedly that the magistrate post be returned (Conn, 1975).

The same village turned over its policy authority to a boroughwide police authority. For years it had complained about inadequate police service from a single trooper in Barrow. When the borough did not, at first, respond with its promised police service, juvenile vandalism and break-ins caused resident teachers to panic. The council merely referred teachers to the Borough Assembly.

Policing by the borough did finally come to the seven villages on the North Slope including X. Because this transformation of a Western law service was the only one accomplished by rural Natives, what occurred is instructive. It revealed something about the influence of deprivation. The North Slope Borough introduced areawide policing in a bush region without parallel in Alaska. Trooper-type officers, virtually all non-Native from out of state, were placed in two-man contingents in each village. A ten man plus unit began to patrol the 2,500 person town of Barrow (Conn and Boedeker, 1983).

Spiraling crime statistics and quantum leaps in protective custody apprehensions for drunken behavior would cause scholars to conclude later than social upheaval had come with oil reve-

nues (Klausner and Foulks, 1982). In fact, what occurred would occur in any small town or community assuming levels of policing take a quantum leap. The clearance rates for crimes reported (when tabulated) were such that nearly every reported crime resulted in an arrest (Moeller, 1979).

The North Slope villages moved from a period of historical underpolicing to overpolicing. Even then, village councils did not intervene to mediate or divert any of these arrests nor did they request to do so.

Policing in villages in the rest of the state was increased through training of village police and then through indirect hiring by the Department of Public Safety of Village Public Safety Officers. These VPSOs were paid through state appropriations to nonprofit Native corporations based in the towns, but were trained and directed by state troopers (Sellin, 1981).

Here, as with state magistrates and North Slope Borough police, control and guidance of law officers was said to be in the hands of town-based police and not in community hands. As village police were transformed into persons not merely trained but paid by the state, their role was narrowed from that of a typical American policeman in a small community who carries arms and makes arrests to that of unarmed agent of the trooper, prepared to hold the scene until troopers arrived to investigate and make arrests.

Throughout this transformation of bush justice in the 1970s, councils found not only that they were relieved of responsibility

for doing "law work," but that they were rarely consulted on matters of law in their communities. Troopers intervened when they decided to intervene. Legal figures came and went. Consultation with councils became ritualistic and pro forma if it occurred.

Despite repeated requests by councils that they be informed when and on what conditions that released defendants would be returned to their home villages, officials in towns usually ignored councils when such decisions on release were made or when such information was communicated. Similarly, when it was suggested that councils be involved in sentencing, a corrections officer polled a council and had each member vote on preselected terms of years to which a defendant might be sentenced rather than obtaining from the council a more subjective assessment of the defendant's place within the village.

Councils were employed only when defense attorneys or prosecutors wanted to stress village opinion in the context of an individual case.

At the same time, justice professionals systematically warned their underlings (professional and paraprofessional) in towns and villages that village ordinances were illegal in content or in preparation, that village police departments were untrained and that village law systems were constitutionally suspect.

The Local Option Law and its Rationale

In 1980 rural legislators lobbied into state law legislation which allowed villages to vote on several forms of local alcohol regulation, among them an option which provided that a village

could prohibit the importation (though not the private and personal use) of alcohol (Lonner and Duff, 1983).

Villages viewed this local option as an exercise in local control, not unlike the authority each had enjoyed when in territorial days, each could outlaw the manufacture and possession of hootch under federal law.

What villagers discovered, however, was that this local option, a formalized grant of state authority, was narrow and circumscribed. Importers of liquor had to be caught with valid search warrants. Liquor slipped into town as before and did not make villages dry or give the village control over liquor use.

The reaction to this law is important for viewing the future of law in rural Alaska through the prism of legal socialization or living with the law as it has been experienced in nearly one hundred years of village associations with agents of Western law.

Frustration with the state system's inability to generate local controls on drinking and drinking behavior have caused villages to meet to discuss non-legal solutions and non-state solutions (Justice Center, 1985).

Native Alaska villages, including Inuit and Yupik villages, now appreciate the limits of service that can be provided by state agencies which are town-based. Not only drinking behavior, but also youth problems and drugs concern these villagers.

Juvenile Matters

In territorial days, U.S. Commissioners (local justices of the peace) sentenced youthful offenders to out-of-state institutions and took the position that juveniles should be housed at federal expense (Moeller, 1942:1-5) in Murton, 1968). There were no juvenile reformatories in the territory and no territorial funds employed to deal with Native delinquents. As a result, extra-legal council proceedings about juvenile behavior were supported by officials. However, after statehood came the transfer of juvenile matters to state superior courts where, it was thought, more "helping" resources existed. Unfortunately, superior courts were not located in rural places other than Nome until the mid-1970s when Kotzebue, Bethel and Barrow were added. The net result was that juvenile process reached the towns long after this authority had been lost to village councils and a youth problem had begun. At best, youth services officers reach very serious matters in small villages, leaving all other juvenile problems neglected. The Western system has ignored, then, the demographic bulge of youth in Eskimo and other Native villages while denying authority to councils or even state magistrates to act in anything other than emergencies (see Parry, 1983).

Eskimo juveniles and their elders have discovered, then, that the law affecting them has diminished in impact with the transfer from village justice to state authority.

The pervasive absence of village control over community concerns has begun to impress rural villagers. This concern relates

to many matters, not those of law only but also to schools now organized and guided by town-based regional education attendance areas and to other youth needs including recreation. Concern with state regulation of local subsistence activities after futile attempts to influence developmental decisions have also given rise to an increased demand for local authority.

Tribal Governments - The Next Step?

I think it critical to understand that Alaska Native villages did not consistently press for tribal legal autonomy as the relationships between villages and state law matured. If anything, they seemed acquiescent in the replacement of their own instruments for ordering by less effective but official state agencies.

Villages pressed for more control and autonomy through the local option law and more recently through tribal government because the villages discovered that the state was not true to its own ideology or legal commitment to serve all citizens. The court stopped placing magistrates into villages leaving about 130 with no local judicial officer to handle small criminal, civil or juvenile matters. The state police were satisfied in the end to place parapolice in small villages to "hold the scene." In pressing matters such as juvenile behavior, the state was prepared to place no youth services officers in small villages where nearly 30 percent of Alaska youth reside.

Out of frustration, then, villages have reconsidered their roles as arbiters of legal matters. This discontent has had several allies.

Since 1980 the numbers of young Native inmates in state jails has doubled from 16 to 34 percent (Alaska, Division of Corrections, 1984). The reasons are many. However, some inmates see ineffective village law as a primary reason for their own fate. These inmates now press for reforms of bush justice.

The deadlines in the claims settlement bill have set in motion initiatives aimed at protecting Native lands. One initiative has been to revitalize moribund tribal governments. Thus tribal sovereignty has become the rallying point for those who desire improved and village-based government services, those hostile to the regions and the state and those desirous of protecting land and resources from outside regulation, from taxation and from legal claims against Native corporations whose investments have soured, corporations that own the land in rural Alaska.

In 1982 village leaders from more than 70 communities formed the United Tribes of Alaska. Their touchstone was "tribal sovereignty," a concept long recognized as a core attribute of Indian government in American federal Indian law. It signifies a residue of governmental powers which any tribal government can exercise unless or until those powers are explicitly removed by Congress (Strickland, 1982). Sovereignty exists in the context of the political relationship between the federal government and tribes, those semi-dependent domestic nations, recognized by the American constitution and by caselaw as a "third order of government."

The scope of tribal governmental authority in Alaska is murky at this juncture, given the Alaska Native Claims Settlement Act's extinguishment of aboriginal land and hunting rights and that Act's refusal to set up reservations of land upon which tribes could govern (see Mintz, 1985). Yet Native leaders have taken Congress and its word at face value. They view ANCSA as a land settlement only and point to Pueblos in the American Southwest as examples of tribal communities which exist on other than lands held in trust by the federal government.

When interviewed recently, UTA chairman, Shelton Katchatag described how sovereignty could be used as a governmental tool by Alaska people. Said Katchatag:

> Under sovereignty, governments can regulate subsistence economies, they can provide what are now called social services (including education, health, police and court services), they can tax, set the policies and directions for any enterprise (commercial or otherwise) the people might choose to get into. The overall goal of a government is to provide for the security and physical safety of their members, guide an economic system whereby members can not only have all the comforts of life, liberty and the pursuit of happiness, but also feel that their work as a group is productive and not just for themselves but for their community. (Katchatag, 1985:C-1)

However, when asked for examples of current tribal governmental activity, Katachatag gave a single example of a youth court organized under the joint authority of the village of Sitka and the U.S. Congress by the terms of the Indian Child Welfare Act of 1978 (which designates villages named in ANCSA as tribes for purposes of the Act).

Tribal governments are measured in American court cases, not

only by doctrinal assessments of sovereignty, but also by their acts as tribal governments. Put another way, tribes have learned that unless they use tribal authority, they may not be accorded legal status as tribes even if they are theoretically entitled to it.

Alaska villages, with few exceptions, have allowed their tribal governmental roles to atrophy as city governments, regional governments and the state have taken over nearly every role of tribal government which Katchatag described.

The issue, then, for tribes in Alaska is twofold. First, should each press for autonomous standing, a third order of government, dependent neither on state or federal authority? If this posture is sought as "sovereignty" in the American legal framework, it implies freestanding governmental authority that is not dependent upon delegations of power from either the state or federal government. Second, whether power is delegated or not, over what realms of govermental activity should tribes assert jurisdiction?

Inupiat and Yupik villages in Alaska may not be at liberty to establish freestanding third orders of government. First, because given a federal court system that is aggressively hostile to expansive interpretations of tribal rights, the final decision on tribal sovereignty in Alaska may well be left to a political result within the halls of Congress, a result necessarily satisfactory to the state as well as the tribes. Second, tribes will necessarily move forward with little or no expectation that eco-

nomic windfalls will favor their development. In fact, the momentum behind many tribal movements is distinctly non-developmental, concerned as it seems with preservation of subsistence-based economies.

Village governments in Alaska appear, however, to be overly modest when examples of their past governmental experience are requested. In fact, by acting as traditional governments and as city governments, local communities have very complex and active records as governments within their domains.

Alaska Eskimos have adapted their own legal culture to that of Western law as they were taught it through a working relationship that developed in the 19th century. This is not to say that Eskimo legal culture is dead; it has evolved to meet the requirements of Western law.

As tribal governments are considered, it will be important to recognize this evolution and not to substitute federal Indian law doctrine for a pragmatic assessment of this phenomenon. Specifically, the separate sovereign status of Alaska Native tribes under federal Indian law should not require that, once established, Alaska Native tribes "revive custom" or retreat in time to a pre-contact system of law ways. In the case of Alaska Natives, institutionalization of their legal systems did not occur until contact with Western law. Certainly no one would advocate the deinstitutionalization of Eskimo law as a necessary attribute of modern tribal sovereignty. Instead, the process of pragmatic development of that legal system should continue as

before with an eye toward Eskimo legal expectations, Eskimo problems and appropriate legal machinery in small, rural villages.

Given the persistent influence of other legal authorities on villages' legal process over time, it is unlikely that villagers will seek more than a further refinement of their historical working relationship in delivery of governmental services. Although this may not please ideologues on either the state or village's side, it will comport with law and government as villagers have been educated to it. The end result will be based upon a pragmatic assessment of problems and the best means to divide authority for their resolution. It will imply a formal division of power long resisted by state and federal authorities. However, it is not likely to involve a substantial reintroduction of customary approaches to dispute adjustment unless both village and state leaders are sold on their practical viability in what both perceive as the modern world.

In short, both villages and the state have addressed matters of legal responsibility from a perspective which places high values on assimilation and pragmatism and not upon legal pluralism as more than a means to an end.

There is little on the horizon to suggest that this process of legal socialization will cause either tribes or the state to change course.

Tapp and Levine write of legal levels of legal socialization, drawing analogies from work by students of childhood education.

They suggest that persons should move from levels in which blind obedience to authority or compliance out of peer pressure give way to critical assessments of law and probing inquiries into the rational bases for laws. The latter dimension amounts to "legal literacy" (Tapp and Levine, 1974).

If one examines the interplay of Western law and village law among Eskimos there is little within the inner logic of the two to assist in developing legal literacy. Eskimo council justice lost its own logical basis as institutionalized social control as it became a tool of Western legal process. Western legal process appeared powerful but increasingly arbitrary and unreliable as its agents revealed their ignorance of their own system's earlier limited commitments to rural villagers.

What has driven a new generation of Eskimos to a posture of demanding legal control over their own destiny is not the rationality of what they have experienced but its irrationality.

Perhaps this is the only way that legal literacy - a desire to engage and manipulate the legal process - is achieved.

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