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Northern Eskimo Law Ways and Their Relationships to Contemporary Problems of "Bush Justice"

Some Preliminary Observations on Structure and Function

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NORTHERN ESKIMO LAW WAYS AND THEIR RELATIONSHIP TO CONTEMPORARY PROBLEMS OF "BUSH JUSTICE"

Some Preliminary Observations on Structure and Function

by

Arthur E. Hippler

and

Stephen Conn

This paper is dedicated to the late Chief Justice of the Alaska State Supreme Court George F. Boney who was most instrumental in promoting reform in Alaska's system of bush justice.

PREFACE

This paper is the second of an ISEGR series directed at problems of justice in Alaska's isolated villages. It identifies and analyzes northern Eskimo attitudes toward conflict resolution and social order in an effort to determine where these cultural traditions and behavioral norms conflict or work in harmony with Western legal institutions.

This effort is a direct outgrowth of the 1970 Bush Justice Conference held at Alyeska under the sponsorship of the Alaska Judicial Council. The conference, a culmination of the long-standing concern of Alaska's legal community over the difficult problems of improving justice in rural areas, brought together judges, attorneys, village council members, rural magistrates, and others to determine what issues were involved and what actions should be taken. Some of the reform needs were readily indentifiable and could be undertaken by experienced legal personnel. These resulted in such developments as: the village constable training program (recently initiated by the State Department of Public Safety); a magistrate advisory committee to suggest reforms in the magistrate's duties; improved education for bush magistrates; new physical facilities for bush justice in Native villages; and continued expansion of the Alaska public defenders and Alaska legal services to rural areas.

In other areas, however, the courses of action for reform were not so readily discernible. One of these was administration of justice in a cross-cultural context. In this particular area, Alyeska conference participants recommended that university researchers should help clarify critical social problems and undertake studies to provide greater understanding and information on cultural attitudes toward law, social control, and dispute resolution. In this

paper, the authors set forth their perception of the situation and provide analyses that may assist in further resolving the problems of bush justice.

In the next phase of their work, the authors in cooperation with the State Supreme Court and Alaska Eskimo villagers have, under a National Science Foundation Grant, begun an innovative experiment to develop alternative procedures for conflict management in Eskimo villages. If successful, these procedures could allow the incorporation of the socially beneficial activities of village councils into the legal system, as applicable to rural regions of the state.

The authors and the institute express their special gratitude to the village people, the magistrates, and all others who have made this study possible.

Victor Fischer
Director, ISEGR
July 1973

INTRODUCTION

In the first paper of this series (Hippler and Conn, 1972), we suggested the theoretical and behavioral bases of precontact social control in Alaska Athabascan tribes. We also pointed out some disjunctions between the aboriginal theory and practice and those of the contemporary American legal system. An extensive literature concerning subarctic Athabascans has disputed the presence of significant social control mechanisms or "law" for northeastern Athabascans (Canadians). However, it is generally agreed that northwestern Athabascans (Alaskans) had developed a more sophisticated and complex social organization, as described in our analysis of Athabascan law ways,[1] so that it is indeed possible to discuss a structured Athabascan law system.[2]

Although ethnographers and other early observers almost universally agree that formal mechanisms of social control (except for central Canada's drum dance) were absent in aboriginal Eskimo groups,[3] the situation for Eskimos is generally more complicated. It is more complicated for two reasons. First, there are distinct differences between northern Alaska Eskimos, Eskimos of the

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[1]We are currently preparing an overview of this and other aspects of subarctic Athabascan life. The best present sources for such information are McKennan (1969), Bowes (1964), Rich (1938), Honigmann (1963), and MacNeish (1956).

[2]We define "formal law" to describe (1) a clearly discernible system of rights and wrongs, duties, and obligations with (2) the intent of universal application and a prescribed method of enforcement and (3) procedures for adjudication of disputes.

[3]See Hoebel, 1941, 1954, 1963; Van den Steenhoven, 1959; Graburn, 1968, 1969; and Spencer, 1959; though Pospisil, 1964, 1971, disagrees. Pospisil's disagreement will be discussed.

southwestern region (See Lantis, 1938, 1946, 1947, and 1959), and the Siberian Eskimos of St. Lawrence Island (see Hughes, 1966). For this reason, we are limiting our present comments to northern Eskimos.[4] Second, the absence of formal legal systems needs to be explained if we are to understand how northern Eskimo society survived.

Briefly, we shall show that the absence of a formal system of social control, or "law," in aboriginal times flowed from other aspects of Eskimo personality and culture. Further, through subtly intervening authorities, forms of interaction did develop which, although never formalized, at least made group activity possible. The values underlying these interactions colored and still color Eskimo expectations both toward authority and toward other persons with whom conflict was possible.

These basic values in Eskimo life, internalized as aspects of the personality, develop from the child's socialization experience. They govern expectations for adult interpersonal behavior and, in turn, lead to certain kinds of social organizations in aboriginal Eskimo communities. Despite many changes in Eskimo life in the last 80 years, including at least two significant changes in the structure of Eskimo legal processes, the personality bases of Eskimo behavior and hence expectations governing social interaction have remained relatively constant.[5]

This paper first describes the personality bases that contribute to Eskimo attitudes toward conflict and its resolution. It describes the effect of these attitudes on his aboriginal society (its norms and forms of redress) and his society's capacity to resolve conflicts on behalf of its members. The paper analyzes the influence of Anglo-American agents of change on that capacity and, especially, the legal system and procedures that developed in

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[4]See Hippler (1970) for an annotated bibliography of source materials concerning northern Eskimos.

[5]Lubart (1971) in his work among Canadian Eskimos points out in some detail the great conservative tendencies he has observed in socialization practices.

the post-contact use of the village council to resolve disputes. Finally, it describes the formal intervention of state law through the magisterial system and its interaction with Eskimo law ways that the village council encouraged.

Further, a comparison of the village councils and magistrate courts points out the apparent success of the councils because of their unique fit with Eskimo values and expectations. Finally, shortcomings of the current magistrate system are analyzed with suggestions for policy adaptations.

Habitat of the North Alaska Eskimo

Ethnographers have defined the north Alaska Eskimo to include two categories of Inupik speaking peoples. The first inhabited the Arctic Ocean, Chukchi Sea, and Bering Sea littorals from the Alaska-Canada border to Shaktolik in Norton Sound. Most of these groups were Tauremiut (sea mammal hunters). The second are the Nunamiut (caribou hunters) who lived further inland along the Kobuk, Noatak, and Colville rivers and in the mountains of the Brooks Range. All of these groups were hunters and gatherers and depended almost entirely on the proceeds of the chase for their existence.[6]

Because of the greater number of available prey species along the seacoast than in the interior, Eskimos along the littoral could

[6]This distinction of Tauremiut and Nunamiut, though widely used in the literature on Eskimos, is nonetheless somewhat arbitrary. Inland people did occasionally come to the coastal regions to hunt sea mammals. In fact, as Spencer (1959), Milan (1964), Rodahl (1963), and others have noted, some, if not most, of the present inhabitants of the north coast of Alaska are descendants of Nunamiut who moved to the coast after the disease-induced dissemination of the Tauremiut following white contact. In the past, Tauremiut also traveled inland in search of caribou.

live in large communities, perhaps as many as 200 or 300 inhabitants.[7]

Given the size of these communities, some effective form of social organization had to operate. This was essential not only to permit such groups to form but to hold them together and to provide the basis for the communal hunting of large land and sea mammals.

Social Structure and Organization

Northern Eskimo communities had very little formal social organization beyond kin groupings. No chieftains, no councils as such, and no established intervening judicial authorities apparently existed. Recognition of this is essential and critical to understanding aboriginal Eskimo attitudes toward interpersonal conflict. The basis of what social organization existed was the nuclear family, extended through bilateral kinship[8] and fictive kinship ties to an ever-widening range of people. As Heinrich (1955, 1960) noted, each individual was surrounded by a close network of kinfolk with whom he had clearly defined and unavoidable relationships. Outside of this narrow range, the Eskimo had a circle of known relatives of some distance with whom he could arbitrarily select desired relationships. Beyond that was the "other" group which included everyone else. But even with this "other" group, one could establish fictive kinship ties through wife exchange and other mechanisms.

A bilateral kinship system such as the northern Eskimos had does not prescribe relationships so severely as a unilateral one.

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[7]Early literature is unclear on these sizes. Much larger and much smaller figures have been suggested (Murdoch, 1892; Beechey, 1831; and Nelson, 1899). Our designations of group size are compromise figures.

[8]Bilateral kinship is the kind presently used in the United States in which relatives are counted on both the mother's and father's sides.

Instead of creating many ties with many people (which can and may assist in the development of corporate structures), the Eskimo response to their kinship organization tended to result in a series of mutually exclusive relationships consisting of an individual and his nuclear family, and ultimately of the individual alone. In effect, though he was related to nearly everyone nearby, he could and often did act as though he were related to no one, and in fact tended to stand entirely alone. This lack of close ties was not, however, solely a function of the kinship system *per se* but also of basic Eskimo attitudes. The Eskimo personality predisposed the individual toward diffuseness of ties.

Eskimo attitudes toward other persons created a social milieu in which generally the nature of one's person-to-person relationship rather than prescribed behavior determined one's interaction with others.[9] Nor would he interfere with others. No one had overall control in Eskimo society. There were no permanently designated leaders.

Given the absence of a formal system for social control and a very limited social structure, we believe that the explanation for the northern Eskimo's ability to maintain large social groups lies in Eskimo personality organization.

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[9]Graburn (1969) makes this point for Canadian Eskimos as well.

Personality[10]

We believe that the absence of Eskimo law is largely a function of the personality system and value structure of Eskimo culture.[11]

Eskimo cultural personality may be described essentially as "oral optimistic fatalism."[12] That is, an early nurturant child rearing predisposes the child to optimistically view the universe as fundamentally giving and benign. This original personality core is

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[10]We have extrapolated personality characteristics of northern Eskimos from observed behavior, the ethnographic record, and contemporary psychiatric evaluations as well as test results of projective tests we have given—principally H.A. Murray's Apperception Test. While such analyses reflect the dynamics present in contemporary Eskimo society, we have also inferred from them in reconstructing aboriginal personality characteristics. Two recent symposiums of the American Psychoanalytic Association on cross-cultural use of psychoanalytic theory in anthropological field work (December, 1971 and December, 1972) show general consensus on the formulations we are using by a number of observers of Eskimos.

[11]It is probably true that ultimately ecological relationships are important determinants of personality and possibly social structure. However, they are out of the scope of this paper. Nevertheless, we note that it is not *a priori* necessary that isolated hunting and gathering groups have no formal social organization or law ways. Athabascan Indians in perhaps even more extreme circumstances did develop formal legal systems (Hippler and Conn, 1972). These systems, and other aspects of Athabascan culture, appear to reflect Athabascan personality dimensions (Hippler, 1973; Hippler, Boyer and Boyer, 1973).

[12]We are aware of Wallace's strictures (1952) concerning the use of modal personality. It is true that all cultures contain multi-modal personality types. We have nonetheless found the modal personality approach useful both as a descriptive and theoretical device for such studies as this. The behavioral pressure of a cultural system in a relatively homogeneous group tends to mold even divergent personality types toward similar behaviors. It is not difficult to point out "group" personalities (DeVos and Hippler, 1969). Thus by "cultural personality" we mean that integrated whole of unconscious concerns, interests, defenses, and coping mechanisms which characterize the members of a group. It is a behavioral organization scheme which acts as a centripetal force on individual psychodynamic divergence.

altered by other aspects of socialization which create a feeling in the child that in spite of its essential benevolence, the universe and most especially the people in it are unpredictable at times. The child learns defenses which cause him to shrug off or ignore the rage he feels at unpredictable intrusions into his own autonomy, or he learns to overtly deny, with a smile, that anything is wrong at all, since he cannot control the universe. This "fatalism" parallels certain "fatalistic" aspects of the mythology as well (Jenness, 1924).

With such a personality structure, the individual Eskimo was generally confident about his ability to handle the physical universe, though he was far less secure in the world of persons. When frustrated by someone else, he either ignored the frustrating agent (denial), attacked it (rage), helplessly accepted it (passivity), or fled (retreat); he had no adjudicative alternatives. His preferred modes were to ignore the source of frustration or to flee. These actions reflect the psychic defenses of denial and retreat which are the core of Eskimo responses to interpersonal conflict. We believe that child socialization practices were the actual genesis of the psychic defenses and hence attitudes underlying the behavior. Eskimo socialization was quite distinct.

Childhood Socialization

Many authors have commented on the extreme leniency of Eskimo child rearing (Pettit, 1956; Simpson, 1875; Chance, 1966; Heinrich, 1955; Fejes, 1966; Gubser, 1965; M. Spencer, 1954; and Parker, 1962).[13] Throughout childhood, Eskimo children characteristically had full access to their immediate environment and their exploratory urges were rarely stifled. Just as important, however, to the development of the child's personality was the

[13]Other sources which we have used for ethnographic reconstruction include Jenness (1924) concerning mythology, Wilson (1958) concerning taboos and socialization, Boas (1899) concerning property rights, Garber (1935) concerning sex and marriage, Hrdlicka (1936) on fertility and infant mortality, Jenness (1953) on numerous issues, and Rasmussen (1952) on various aspects of supernatural belief.

close skin-to-skin contact of mother and child which was nearly continuous from birth to about one year of age. The security and warmth in mother's parka hood and access to the breast whenever it desired optimized the child's sense of psychic security and well-being. This prolonged, intense closeness combined with a permissive noncensorious parental attitude led to the development of a secure, optimistic, and confident individual who was fully capable of using the executive capacities of his ego and who had a strong sense of self-worth. However, this very closeness developed expectations which were dramatically frustrated by other aspects of socialization. These frustrated expectations then acted to produce certain potentially disadvantageous attitudes in the individual.

During the crucial period of life around 7 to 10 months when most children are beginning to differentiate between self and other, the Eskimo child's self-other differentiation was made more difficult by his intense, protracted (but otherwise benevolent) closeness to the mother. Most children develop a sense of depression at this period in their lives, at least temporarily, through their anxious recognition that mother and the self are not one, and that at times what the infant perceives as the "good mother" (present and nurturant) can give way to the perceived "bad mother" (absent and non-nurturant). This is not a pathological but a normal human emotional development (Freud, 1923; Klein, 1932). Properly resolved, it sets the basis for the adult's ability to consider other human beings as autonomous agents whose existences are separate from his own.

Failure to make this distinction adequately can lead the individual to a lifelong feeling of mystical connection with all things—the so-called "oceanic" experience. However, since the individual identifies himself as the center of and coterminous with the universe, he tends to be somewhat egocentric and naturally disinterested in others as autonomous agents except insofar as their actions affect him.

In reality, this extreme case could not be and was not true of all Eskimos at all times. Nevertheless, it was a pervasive tendency which did color interpersonal relations in Eskimo society.

This potentially egocentric organization is reflected in the mythology in which all things are seen somehow as part of each other in a mystical sense (Rasmussen, 1952; Lucier, 1954, 1958). But this very global attitude, though stemming from an egocentric notion, was modified and acted as a positive social means of correcting selfishness since it assumed all things, human and animal, natural and supernatural are interconnected and one disturbed them at one's peril.

Although the notion that one is the center of the universe, incorporating all else, human and nonhuman, sometimes led the individual to purely instrumental relationships with others, he unconsciously rationalized these relationships to bring them into harmony with both society and his ego. That is, the individual tended to assume that when the self acted in accordance with egocentric attitudes, it was really expressing a socially positive value rather than a selfish one, since unconsciously the self and others were believed to be coterminous. However, a conscious recognition that they were not coterminous, in conjunction with egocentric notions, led the Eskimo to avoid intruding on others for fear of eliciting rage in them by disturbing their own egocentric universes. As we shall note below, it was not only this oceanic emotional organization whose disturbance could lead to rage which then had to be socialized against. Part of the actual socialization tactics of Eskimo child rearing was an inconsistent form of teasing. The rages elicited by this teasing and the learned suppression of those rages were crucial for development of Eskimo patterns of avoidance and suppression which became evident in later life. This set of attitudes was positively supported culturally by the Eskimo norm of noninterference in other's lives.

Cooperation and Sharing

Eskimo society, supported by its mythical and religious systems, positively sanctioned such pragmatic and realistic values as cooperation and sharing with others. In addition to serving such reality functions as communal hunting and food sharing, cooperation and sharing were supported unconsciously by the identification which one felt with all others and paradoxically by

the purely instrumental feelings one had toward others in gaining one's own ends.

These basic attitudes were modified as they must be by the vicissitudes in individual emotional development sequences (which we shall not attempt to detail here), reality concerns, and other aspects of personal maturation. The sum total of these experiences not only contributed to the development of a strong personal security system and confidence in dealing with the physical universe but also added to the tendency to cope with interpersonal frustration by avoidance or explosive violence.[14] The avoidance tendency, a form of defensive denial, is evidenced by the legendary good humor of the Eskimos, which, as Heinrich (1955) notes, creatively hid the great aggressiveness and repressed desires that easily exploded into violence under the influence of alcohol.[15]

Other Socialization Patterns—Sanctions Against Violence

Since a society made up of totally ego-centered individuals could not function, Eskimos had to develop other socialization patterns to create the cooperative kind of Eskimo society that existed and whose values were reflected in the mythology. Though Eskimo child rearing is and was generally lenient, it has developed strong prohibitive sanctions. The strongest are sanctions against interpersonal violence.[16] Eskimos did and still do assume that the child has no reasoning power to begin with and hence is at the

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[14]We are preparing a fuller discussion of Eskimo culture and personality for publication at a later date. The above remarks should be seen as a brief skeleton, adequate for a discussion of law ways, but by no means a thorough analysis of Eskimo personality.

[15]Preston (1964), in analyzing Rorschach results of northern Eskimos, notes the high level of form dominance, usually associated with emotional inadequacy or inaccessibility and which we interpret as control over affect.

[16]Although many other Eskimo socialization practices are important, emphasis on nonviolence is crucial for the purposes of our paper, and we will deal with others only in passing.

mercy of his instinctual drives. Every effort was bent to build his potential for reasoning power, however, and in the process he was taught nonviolence toward others and respect for parental authority. This was done indirectly by example, since an individual did not interfere actively with a child anymore than he would with an adult.[17] For example, one adult might say to another within the hearing of a misbehaving child that "one believes that a good person wouldn't break furniture."

The sophisticated unconscious recognition that Eskimos had concerning their enculturated difficulty to deal with aggression in others caused them to stress nonaggressive attitudes in child rearing, because they recognized the need to obviate the anger that so easily flows from infringements on the global egocentric personality and its touchiness about outside interference which was created by the early childhood patterns.

Elicitation of Rage and its Control

The Eskimo adult's sense of the unpredictability of the human universe (whose genesis we discuss below) and great caution in interpersonal relations contrasted sharply with the security with which Eskimos dealt with the physical environment. In part, as we have suggested, this stemmed from the self-contained view which Eskimos derived from the early satisfying child socialization which, however, also made it difficult for him to withstand frustration since his every early wish was satisfied and later ones were inconsistently dealt with. The rage he felt at frustration he came to recognize in others and thus tried to avoid eliciting these feelings in others by circumspect behavior. This sense of caution in dealing with others, we believe, was also enhanced by the subtle manipulation of the child's mood by the mother (Freeman, Foulks, and Freeman, 1972). That is, Eskimo mothers tend not to like fussy infants. When an infant starts to cry the mother will either use the breast to pacify him or, by

[17] Briggs (1970a, 1970b) also found these characteristics present in central Canadian Eskimo child rearing.

stiffening her body or by some other nonverbal signal, let the child know she is displeased with his behavior. Generally, the latter precedes the former. This is of crucial importance. The infant, because of its immature emotional and intellectual state, interprets anger from the mother as a threat to withdraw nurturance.

The infant comes, therefore, to respond to subtle maternal cues for its behavior, and finally comes to generalize the idea that all of its behavior is determined by subtle expressions of approbation or disapprobation which come from objects outside the self. Thus, on the one hand the child is overtly signalled that it may do anything it pleases. Covertly, however, it is told that it must conform continually to others. This entire process was furthered by both sporadic teasing after about two years of age by adults, and by an intense jealousy on the part of older brothers and sisters.

At times, the child would be teased by adults for its desire for the breast. Such teasing, probably motivated by unconscious jealousy, was initiated precipitously and carried out and concluded in what must have appeared to the infant an arbitrary and inexplicable manner, as the ordinarily pleasant and supportive adults around him would suddenly become unpleasant and nonsupportive. Of course, the mother or other adults involved would not see such teasing as cruel. The child soon learned that his crying and complaining about such teasing availed him little and indeed increased his tormentor's activity. He then learned to withdraw internally in the face of teasing and become more stoic when faced with these unassailable aggressors. Throughout the teasing, the child learned that his actions were and must be limited by his fear of the loss of the maternal introject (that aspect of the mother which the child comes to internalize as part of himself) and that other peoples' attitudes, inexplicable or not, limited his autonomy. This created a repressed rage at the intrusion upon his own autonomy.

Displacement of Aggression

In later years, when the child himself is displaced by a new infant, his normal jealous and aggressive attitudes toward the

infant are kept in check by the strong socialization against aggression so that he learned again to avoid the conflicts he felt. Part of this powerful sanction against interpersonal aggression consists of adult strictures to the child to simply suppress aggressive feelings. Since suppression is rarely adequate, the child learns to displace aggression onto animals, especially dogs, birds, and mice. As an adult he learns to utilize his aggression in the pursuit of game, which is clearly of overwhelming social utility. Briggs (1970a, 1970b) has also observed similar behavior among the central Canadian Eskimos.

Displacing aggression, then, is how Eskimos creatively dealt with strong aggressive urges. That is, the child learns to suppress interpersonal aggression and to redirect it into acceptable channels as a child and socially useful ones as an adult. At times, however, for certain individuals these controls over aggression were not completely adequate. This occurred when a local "bully" was produced who provided special problems for the community which we shall discuss below.

This kind of personality structure embedded in the cultural value system of Eskimos created two behavior characteristics of significance for social control:

- Individuals tended to do what they wanted to the extent they could without eliciting violent retaliation from others.

- Individuals also learned to avoid relationships where they might be drawn into conflict, unless they could be certain victors in such a conflict.

Since the first characteristic predisposed people toward egocentric actions and the second tended to reduce the possibility for communal activity, which was nonetheless necessary, conflict inevitably resulted.

Further, the social climate was adverse to the development of intervening legal authorities, since people strove to avoid being

placed in roles where they had to interfere overtly in other's lives or have others interfere in their lives.

The next section describes the actual operation of these attitudes in Eskimo aboriginal society as it dealt with conflict—the manner in which Eskimos creatively integrated these conflicting attitudes into workable societal arrangements.

THE GENESIS OF ESKIMO LAW WAYS IN ABORIGINAL CONFLICT RESOLUTION[18]

In view of Eskimo attitudes toward conflict resolution from aboriginal times to the present day, it is useful to locate them within the context of a universal definition of legal systems that has been devised by Leopold Pospisil, an authority in law and anthropology (1964, 1971, 1972).

Pospisil suggests that legal systems within any society have the following components:

- Authorities existing within groups or subgroups of the society. (There may be either multiple interdependent levels of law within a society or multiple independent legal systems within any society.)

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[18]Information concerning Eskimo law ways was derived from analysis of ethnographic information including such authors as R. Spencer (1959); Boas (1899); Garber (1935); Chance (1966); Murdoch (1892); and others. Such information was added to informants' statements collected from individuals from 13 northern Eskimo communities and specific community information from the two largest northern Alaska Eskimo villages. Information concerning post-contact law ways and present day law ways was collected from informants from five northern Alaska Eskimo villages, written documents from two villages, U.S. commissioners' statements, and statements from judicial and law enforcement personnel who had served in this area, as well as from individual comments from anthropologists who have worked in this area (Fred Milan and Edwin Hall). The analysis of this information is, however, our own responsibility.

- Intention of these authorities to shape the prospective behavior of members of these subgroups through the *universal* application of norms articulated in the resolution of disputes within the subgroups.

- Creation through the resolution of disputes of *obligatios* (or that part of a legal decision that defines the rights of the entitled and the duties of the obligated parties).[19]

- Imposition of sanctions by the authorities on wrongdoers in their subgroups.

Pospisil's universal definition of law and the legal systems which generate it in traditional societies can be fruitfully applied to Eskimo society. In this application, the implications of aboriginal Eskimo attitudes to conflict through an interpersonal system of conflict avoidance are clarified.

Central to his definition of legal process is the accepted role for judicial authorities in any society. In aboriginal Eskimo society judicial authorities were not accepted because such authorities needed to isolate and recognize conflict situations in order to address them.

Pospisil recognizes that legal systems are not always autonomous. Nor, he concludes, must law emanate from a single central authority. A legal system is an attribute of a political structure of a society that can be described as a "configuration of analytically derived relationships of those *purposive activities* of individuals and groups of individuals which establish or maintain authority and determine its . . . *judicial functions*" (italics added).[20]

This implies that a society defines the role and functions of acceptable authority for resolving conflicts.

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[19]Pospisil, 1972, p. 22.

[20]Pospisil, 1959, p. 1.

The esteemed individual in Eskimo society was not the law giver and conflict resolver but rather the conflict avoider who did not judge the behavior of others.

Absent from northern Eskimo social dynamics was a desire to have third parties intervene overtly and settle conflicts. However, esteemed individuals were looked upon to use their power to blunt those attributes of necessary activities from which disputes might be generated. Eskimos held in esteem the man who was skilled in manipulating social relationships involving subsistence activities. For example, the managerial skill of the *umealik* and power derived from his ownership of property allowed him to articulate and apply rules of the hunt and provide a structural basis for specific communal activity.

The individual who offered his strength as an ally to another individual to stabilize a potential situation of imbalance between persons also provided some stability to potentially unstable social situations. These alliances were formulated not at the behest of group or social interests, but as a result of trade-offs or deals between individual Eskimos.

Not esteemed or tolerated was the intervening aggressor, who brought latent conflict to the surface or who intervened in situations where tenuous relationships had slipped over the edge into aggression and counter-aggression. Only those asocial persons who were entirely disinterested in shaping group behavior through universal articulation of norms or reintegration of disputants assumed the role of overt confrontationist in aboriginal Eskimo society. These individuals were not leaders or group authorities. They were the bullies. The bully could with impunity sweep aside the often tenuous coverings of potentially hostile relationships. The effect of his actions was to muddy the waters of community life and set into motion the responses and counter-responses that lead to flight or individual or group violence.

In short, it is the style of authority figures in northern Eskimo society that represents the point of divergence from a sound universal model for legal systems. Bringing things to a head

or laying one's cards on the table, which are the virtues of adversarial relationships and the Western structure of conflict resolution, was not the form of conflict resolution acceptable to Eskimo society. Eskimos did not seek out leaders who were interventionists; neither did leaders seek to intervene. Eskimos did respect members of their society who would successfully create frames of reference for amelioration of conflict-breeding situations.

The Bases of Eskimo Law in Aboriginal Norms and Sanctions

Although there were no Eskimo lawgivers or judges in aboriginal times, the social norms and sanctions, as well as compacts between offenders and offended individuals or groups remained discernible after the style of Eskimo justice changed and can still be inferred for aboriginal times.

Norms: Simply stated, most Eskimo behavioral norms derived from an attitude that predisposed the Eskimo to believe that one should never interfere in the life of another. This attitude stemmed from a strong feeling of individuality and the fear that interfering with someone else's individuality would lead to retaliatory violence. Flowing from this all-encompassing attitude were such normative beliefs as: one should not kill, steal, commit adultery, tell lies, or in any way intervene in another's life.

Running counter to these beliefs, however, was the implicit statement:[21] one should not do these things *unless he can get away with it.* One could in fact "get away with it," if one were stronger than others. These attitudes did not predispose Eskimos toward formal legal systems.

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[21] Supported by all our informants. We believe this modification of normative beliefs is consistent with other aspects of Eskimo personality.

Yet, a basic behavioral norm existed that seemed contradictory to the Eskimo's self-centeredness. Men were expected to share and cooperate with each other. A level of social altruism or at least enlightened self-interest seemed to coexist with the self-centeredness we have described. Eskimos were capable of sharing and cooperation despite this basic self-centeredness because, despite certain pathological attitudes, they were capable of reality testing in these areas and could consciously suppress conflict as well as repress it.

These apparently conflicting norms and attitudes, however, meant that only those individuals gifted at subtle techniques of interpersonal manipulation could organize group activities in Eskimo society. This had to be done in a manner that concealed one's authority and avoided conflict, as we shall discuss below.

Sanctions and Redress: Sanctions in Eskimo society were very limited since they were based on the noncoercive and conflict-avoiding value system and personality. The net effect was that a wide range of wrongs were ignored. Victims had no pacific means of redress. They feared retaliation against themselves if they tried violent redress. Like the child who withdrew in the face of teasing, the adult withdrew in the face of adversity. If the emotional pressure of simply accepting or ignoring abuse became too great, the individual could flee or kill his tormentor. Killing was common,[22] and since it set into motion vengeance by sons, feuds were interminable.[23]

Redress was therefore either mild to the point of nonexistence or it was extreme. It was rarely what could be termed a "legal redress," and sanctions therefore contributed little to remaking the balance between offender and offended. It is true that village gossip and social ostracism were sanctions used against

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[22]See Freuchen (1961) for a description of similar events among eastern Eskimos.

[23]Informants note this, though from the ethnographic record this was more common among Eskimos to the east of the Alaskan groups.

wrongdoers. But unless the offender were socially responsive enough to care what others thought, such sanctions meant little. That is, they only worked on those who wanted them to work.[24]

These nonphysical social sanctions such as gossip and ostracism were ordinarily limited as corrective measures (Eskimos avoid using the term "punishment") because of their diffuseness. No single person or group had the inclination or authority to direct the offender to remunerate the victim or to reform his conduct in specific ways. Thus, because the only punishment that generally existed was indirect and psychological, its "message" to the offender and to the victim was weak and unclear. Such psychological punishment as gossip and ostracism certainly may have provided sufficient correction for a wrongdoer who was concerned about the potentially violent repercussions of his act. However, it was not strong or effective enough to change the conduct of an offender who was intentionally or unintentionally asocial, that is, who did not attempt to pattern his behavior so as to avoid conflict. Additional societal punishments simply did not exist, partly because no perceived legitimate authority existed to impose punishments.

Failure to Develop Judicial Authorities

We believe that the northern Eskimos' reluctance to create intervening judicial authorities for dispute resolution and social control relates directly to the Eskimo personality and social structure. Eskimos vested critical importance in the individual and not in the lineage or the extended family as did the Athabascans.

The aboriginal Eskimo's secure competence in dealing with the physical world and his paradoxically fatalistic optimism about it coexisted with his cautious view of interpersonal relationships. Thus, while he viewed himself as more or less coterminous with

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[24]This limited range of sanctions and the heavy reliance on murder as a sanction is also very clearly described by Graburn (1968, 1969) for eastern Eskimos in Canada.

the universe, he developed patterns of avoidance, deference, indirection, and circumlocution in a careful attempt to prevent this expansiveness from clashing with identical expansive feelings in his neighbors. Any attempt to create corporate or hierarchical structures with real authority over others would fail in the face of these attitudes. As we shall note, it was the advent of unassailable outside authority which finally did create real authority structures (for example, the village councils) to intervene in conflict situations.

The Eskimo approach to conflict resolution was essentially devoid of legitimate judicial authority. Its norms were based on avoidance and noninterference and its sanctions were either nonexistent or extreme. Where social gossip failed to punish the offender, the offended party took the responsibility for redress. As we have noted above, options open to the offended party were to deny that he was wronged, retreat, or murder the offender.

Nonetheless, a type of regulated behavior did exist in Eskimo society as it does for all human communities. In the Eskimo society, however, in the absence of abstract religious,[25] concrete political, or judicial authorities, a pragmatic understanding of the results of one's actions determined one's behavior.

Pragmatism in Normative Behavior

The Eskimo's tendency to "do right" and not sanction wrongdoing did not come from an abstract moral code nor from a concern with formal legitimate external authorities. It was essentially based on an assumption of *lex talionis* (law of retaliation) supported by cosmological beliefs and a vast series of taboos. Supernatural beliefs of Eskimos stressed the wholeness and interrelatedness of all things. The living and the dead, the animate and the inanimate were not mutually exclusive categories. Wrong

[25] Shamanistic intervention also carried with it the weight of pragmatic power; it was not, strictly speaking, religious. Natural-supernatural distinctions were less defined in Eskimo culture than in many others.

acts and their punishments were connected magically as well as pragmatically. That is, wrongdoing magically created its own punishments (for example, taboo-breaking could cause one to lose hunting powers). This belief in a supernatural system of justice bears a striking resemblance to the kind of thinking prevalent in that stage in the child's emotional and cognitive development wherein he assumes that the table he hit has hurt his hand in talion punishment (immanent justice). So also did Eskimo religious beliefs assume that the universe would retaliate for taboo-breaking. The child's normal belief in this type of immanent justice was reinforced in adult life by an Eskimo's cultural belief in supernatural intervention through the shaman. This adult belief was modified pragmatically by a potential wrongdoer's realistic assessment of the personal damage he would incur either from the *angatqoq* (shaman) or from the would-be victims or their relatives. The *angatqoq*, supposedly in touch with the powers of the universe, would discover a wrongdoer's evil act by magic and might choose to punish him by magic unless he were dissuaded by gifts. Beyond this, unless the wrongdoer were physically more powerful than his victim, he also had to fear physical punishment from the victim.

Just as the wrongdoer had to deal constantly with the potential danger of his antisocial acts, the victim, also in absence of any true judicial authorities to which he might turn for redress, had to fear physical retaliation for any overt response he might make to redress his own injury.

One way wronged Eskimos avoided the potential violence which could arise in dealing with the wrongdoer was to label the act as something other than a crime. For example, while Eskimos appeared to use each other's goods with impunity, they did recognize theft as offensive and were often upset by someone who would "borrow" something without asking and then fail to return it. To avoid the conflicts that could occur over such incidents, these acts of theft were overtly defined as "borrowing." Even wife theft could be converted into "wife lending" if the offended husband chose not to voice a complaint or pursue the matter aggressively.

Besides this overt nonrecognition of theft, the high social value the Eskimos placed on sharing also functioned as a defense mechanism in dealing with wrongful acts. Many men (no doubt having fully internalized this defensive manuever so that they no longer saw it as a defense mechanism) made an effort to share all they had. Not only were such attitudes placatory, their existence neutralized many potential problems and sometimes even made certain acts appear virtuous that would otherwise have been seen as reprehensible. Sharing goods also had a clear survival value, and the sharer gained prestige by his sharing. On the other hand, people remembered those who took advantage of such social amenities and lost respect for them.

These basic Eskimo values concerning avoidance of conflict, then, acted as a social glue. They held persons together in social units whose contradictory values would not have otherwise allowed social coexistence.

Since no northern Eskimo authorities responded to wrongs done to individuals simply because they were members of a group, a man's security depended on his neighbor's unwillingness to interfere in his life. His individual ability to tie himself to stronger men by bonds of personal fealty enhanced his own ability to avoid aggression by bullies. Along with avoiding relationships that might result in conflict, the best way for an Eskimo to protect his life and property was to selectively create reciprocal obligations with stronger men in his own or other bands or villages. Many men exchanged wives or goods since these exchanges obligated the receiver and thereby offered a certain degree of protection against violence from him. However, such offerings did not always work.[26]

One implication of the nearly absent Eskimo law ways in combination with the Eskimo's personality and vague social ties was that unchecked violence was quite prevalent in traditional northern Eskimo society. Another implication was that there were

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[26]In some instances among eastern Eskimos as well as Alaska Eskimos, certain men simply killed others for their wives (Freuchen, 1961).

complex fragile webs of relationships between individuals—sometimes extending between villages and over hundreds of miles.

An individual might have a positive trading relationship with a man who was the mortal enemy of another friend without having one of these relationships necessarily disrupt the other. All relationships were strictly on the personal, individual level. In fact, men from one community could be at war with men from another community while others of the two communities peacefully traded. At the same time, some residents of either community might be feuding with others in their own community.[27]

What emerged, then, was a community life marred by sporadic and endemic violence sometimes rising to the level of war or at other times subsiding to a drawn-out feud. To the degree that it existed at all, social control rested on fear of supernatural or human retaliation. The man who felt unchallenged by such controls was essentially a free agent.

Social Control and Cooperative Activity

The Bully: The apparent anarchic condition of Eskimo life was ameliorated by individuals who exerted skillful influence within groups. On the other hand it was exacerbated by a few rare unsocialized and apparently unsocializable individuals who tended to bully others.

As noted, Eskimos tended to oppose anyone who attempted to be an interfering authority. At the same time, Eskimos refused to interfere in another's life. If they did accept another's leadership voluntarily it was only for limited purposes such as subsistence hunting or fishing. In other cases, they might accept someone's control unwillingly because of coercion or bribery. The apparent paradox of the "village bully" in a society of conflict-avoiding Eskimos is more tenable if we realize that bullies

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[27] Ernest Burch is currently documenting just such cases for the northwest region of Alaska (private communication).

exist in all societies. Furthermore, Eskimo socialization patterns tended to reinforce these bully-like attitudes in some persons. For instance, because the bully's neighbors tried to avoid conflict and because there existed no structural mechanisms for control, the bully quite often got his way. Nonetheless, bullies were rare enough to be considered aberrations within traditional northern Eskimo society. Bullying was an unacceptable social role. Eskimos tolerated a bully out of fear until he antagonized enough men to create a potent body of adversaries.

Quite often a group of outraged victims killed an impossible bully or a very dangerous *angatqoq*—often the same person. (*Atangarok*, the shaman from Point Hope, is an excellent example [Spencer, 1959].) Such acts did not imply centralized executive and judicial considerations of innocence or guilt. Rather, group violence against a person who had become intolerable was the *sum* of individual feelings when no individual maneuver or alliance could satisfactorily avoid his antisocial conduct. Before a group of Eskimos took such action, the violent acts of an individual (be it murder, wife stealing, or theft) would have covered a range wide enough to affect nearly all members of the group. The most common victims of this group violence were, notably, multiple recidivist murderers[28]

The Umealik: Although the *umealik* also had the ability to get others to do his will, he should not be confused with the bully. The *umealik* was the rich man in northern Eskimo society—a boat owner or hunt organizer. He usually held his position by virtue of his wealth and general competence.[29] But, despite his recognized economic position, the *umealik* was not an authority figure of aboriginal law ways. All informants, with no exception, have stressed that the *umealik's* power to lead men and to manage work relationships ended when he stepped from the boat onto the shore. While the *umealik* was in charge of the division of a whale taken by his crew, he did so according to well-known and agreed

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[28]Freuchen (1961) makes this point clearly for eastern Eskimos as well.

[29]For example, the north coast *umealik* provided the whale boat provisions and necessary gear for sea mammal hunting.

upon procedures. He would not act arbitrarily or with undue assertiveness for fear of losing his crew and thus his position—the basis for his prestige.

The *umealik's* crew, many of whom were his relatives since fealty could more easily be expected from relatives, usually had to be cajoled (especially if they were unusually competent) and bribed with goods to stay with the *umealik*. In rare instances, an *umealik* might attempt to physically dominate other men, but this rarely happened since it was essentially counterproductive. If a *umealik* did attempt to dominate others, he would likely be killed or at least his crew members would move too far away from him to be dominated.[30]

Qualities of the Eskimo Leader: Faced with these difficulties, how did Eskimo communities meet their needs for cooperative activity and avoidance of violence? In essence, men acted in concert with "no one being boss."[31] If a man wished to initiate activities which demanded the assistance of his peers, he would raise the question indirectly, never forcing a yes or no answer and never placing someone in the difficult position of refusing. In so doing, he also

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[30]Pospisil argues from his own field work among the small Nunamiut band of Anaktuvuk Pass that the *umealik*, the hunting leader or whaling captain, resolved disputes between members of his faction or band though not as a bully. He argues that this leader in dispute resolution has been overlooked by ethnographers for other Eskimo groups, because the basis of his leadership is his economic skills and because his jurisdiction is limited to persons with whom he has specific familial and economic ties. This does not square, he concludes, with the predisposition of ethnographers to seek a single central authority that dispenses justice for the entire society. Gubser (1965) goes even further, calling the *umealik* (incongruously) a plaintiff.

Though we accept Pospisil's frame of reference, our field work among the northern Eskimo does not support his conclusion concerning the *umealik*, and most assuredly does not support Gubser's conclusion of the *umealik* as interventionist, petitioner, or complainant.

[31]*Umealiks* in later years did often sit as members of the village council. However, Milan reports that when the president of one Eskimo village council called himself an *umealik*, other Eskimos scoffed at the analogy. The authority of *umealiks* and councilmen was differently defined. See Milan (1964), p. 42.

saved himself from a disappointing negative response. By a series of subtle and indirect references he would communicate to certain individuals that a proposed cooperative event was forthcoming. If he did this subtly enough, no one would ever have to openly admit that he even knew what was being suggested.

Moreover, the man proposing the cooperative event was never forced to acknowledge that the planned undertaking was or was not really his own idea. The man who was competent in the task to be undertaken and skilled in this type of communication often became a leader because he could indicate what must be done so indirectly that no one need ever be offended.

Thus, while dangerously low levels of social control accurately describe that aspect of traditional Eskimo life relating to "law" the necessary *work* of the social group was accomplished through careful and deliberate subtlety. We believe these two facets of Eskimo life are partly responsible for the apparently contradictory impressions observers have had of Eskimos: on the one hand, smiling and cooperative—on the other, violent, aggressive, and demanding. Both impressions are true.

ABORIGINAL ESKIMO CONFLICT RESOLUTION: AN OVERVIEW

Because there were no legitimate interventionist authorities whom the victim could petition to treat violations of socially accepted norms, redress against violators of norms was unpredictable. A victim of a conflict might flee or respond violently to an injury on his own behalf, or someone personally allied to him might so respond. The response would be more a product of his personal preparation for aggression (or lack of it) than any structural response of his group or subgroup on behalf of legal norms. Thus, remaking of relationships and obligations that did occur took place because both disputants desired that it take place. The emphasis was upon conciliation for reasons of self-interest rather than resorting to extremes of flight or personal violence. No middle way was prepared by authority figures. The

task of leaders in these early days was only to point out necessary relationships for self-interest and then to step aside, but even this action was limited to hunting or subsistence activities.

Conflict avoidance as a means and as an end had clear implications for the structure of Eskimo conflict resolution in the early days. To the extent that a party to a dispute or potential dispute could depend on some predictable alliance and its response to aggression on his behalf, he could style his relationships to encompass risks that might indeed generate overt conflict. What intervention meant was that a compact between disputants could be forged in order to balance the relationship. The *sanction* and *obligatio*[32] were dynamic elements of that compact.

Although it seems apparent that the style of socially sophisticated leaders such as the umealik was that of conciliator, it cannot be said that a process of conciliation occurred as a procedural core of aboriginal Eskimo law ways. These early leader-managers stopped short of the act of intervention and interest definition (or conflict articulation) which were the necessary prerequisites to an induced process of conciliation upon which disputants could depend.

The evolution of the authority figure from near passive manager of conflict to interventionist and overt conciliator can be viewed as the major shift in Eskimo justice from the aboriginal times to the council period (beginning in the early 1900's). Pospisil's model suggests that authority figures and their capacity to act are the turning point upon which structural justice rather than *ad hoc* adherence to group ethics resides, as these authorities seek out and treat individual conflicts. This view is supported by the evolution of Eskimo justice. Crucial to our analysis of the transition will be our description of the societal relationships that prompted this change. It is clear that these changes were not in guiding principles or in attitudes toward legal process. Conflict avoidance in style as well as in goal remained the inherent attribute of Eskimo justice. Delineation of conflict remained

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[32]See page 15 for definition.

subdued: the emphasis in Eskimo jurisprudence remained on identification of mutual interests between offender and offended faction, group, or community. Conciliation, in short, predominated and continues to mark the style of Eskimo justice.

In sum, the Eskimos' precontact system of dispute solving stressed individual responsibility for obtaining redress and did not support formal coercive authority. This value system made it nearly impossible for a single leader to initiate social control. When a bully tried to impose his will, he generated antagonism and resistance; if he persisted, he would finally be put down.

This structural pattern has changed two times within the last 70 years; first, with the advent of missionaries and "white laws" in the person of the U.S. Commissioner, and, more recently, with the advent of the state trooper and local magistrate. The first of these changes had more beneficial results for law in the villages than the second.

AMERICAN INTERVENTION AND ESKIMO LAW WAYS

American power in the form of military forces (whose concern was primarily to demonstrate America's powers by showing the flag) had a significant effect on Eskimo dispute resolution. In addition, American missionaries (whose goal, quite distinct from civil and military authority, was religious conversion) also had a clear effect upon the evolution of Eskimo capacity to resolve intragroup conflict.

The representatives of American law (soldiers, police authorities or judges) removed violent offenders to establish peace within Eskimo groups and to demonstrate their sovereignty over Eskimo people. Missionaries challenged the shaman's power to manipulate the universe. They offered formulas for eliciting pleasant rather than unpleasant responses from the universe—if one acted in particular ways.

From an Eskimo perspective, what occurred was the replacement of one set of powerful and relatively unchallengeable

figures with another. However, the difference lay in the predictable way their power could be manipulated to curb overt and known threats to group well-being.

Agents of American power offered, as bullies and shamans did not, reinforcement for a mechanism that allowed Eskimos to treat conflicts from a base of predictable and dependable strength. This mechanism allowed a process of dependable case disposition to flourish—the village council. The village council, reinforced by outside American power, intervened in conflicts. However, it resolved them by employing the traditional process of indirection and by enforcing traditional norms.

Missionaries and the Shaman

Missionaries in their religious role aggressively challenged the only truly dangerous social position in northern Eskimo society—that held by the *angatqoq* (shaman).

In traditional times, the *angatqoq* was considered a supernaturally powerful person and, as such, was viewed with ambivalence. While Eskimos believed he was capable of manipulating the supernatural environment to bring game or drive away evil spirits, they believed he was equally capable of inflicting damage. His actions seemed arbitrary and often their gifts would not always placate him. There was really no way around him except through another *angatqoq*, or if he became too dangerous, by killing him—a task fraught with both magical and physical danger.

Missionaries not only appeared to control a generally superior technology, but being backed up by soldiers or police they had no fear of a shaman's magical or physical powers. Therefore, Eskimos assumed that missionaries also possessed great magical powers. Furthermore, missionaries were willing to ensure a peaceful afterlife—previously an uncertainty for Eskimos. And, at the simple price of obeying a small number of new taboos, missionaries provided them with the authority to abandon a whole host of other often troublesome taboos. Pragmatically, converting

was the best thing to do. And, in the face of such strong competition, large numbers of shamans simply quit practicing.[33]

American Law and Murderers

American authority, in the form of the Coast Guard cutter *Bear* and other vessels, as well as U.S. commissioners, provided a means to control the endemic murder, feuding, and the bully. Most importantly, this could be accomplished without any single Eskimo being responsible for it. Eskimos adapted very rapidly to this new phenomenon. Given the opportunity to use outside authority to enforce the Eskimo's preferred but often violated norm of nonviolence, they abandoned murder almost completely.[34] Furthermore, the introduction of the village council system allowed Eskimos to institutionalize their own approach to social control.

THE VILLAGE COUNCIL

The particular origin of the village council as an organizational form of local government in northern Eskimo villages is not clear. It may have originated in and evolved from the Native church council of elders, or it may have been created by the federal Indian bureaucracy, the U.S. commissioners, the missionaries, or any combination of these. But whatever its origin, the village council came into being around the turn of this century, and modified by various Eskimo communities, it acted as a judicial entity in a uniquely Eskimo way. From 1900 to the early 1960's (the period which we consider to be a high plateau in the history of village Eskimo justice), the councils demonstrated a

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[33]Van Stone (1958, 1962) notes these developments, which parallel our own informants' comments from other northern Alaska Eskimo communities.

[34]Until the last few years, the number of murders, so far as we can determine in northern Alaska, has been extremely low. This situation appears to be changing dramatically since 1970 (a trend which we feel directly reflects loss of the council system).

capacity for solving local disputes that has not existed before, or since, this period.

The council was an organizational embodiment of an interventionist approach to conflict resolution. Its broad mandate was to take care of village problems. Within the impersonal organizational frame allowed by the council, an Eskimo could define and resolve conflicts by employing systematically traditional approaches to conflict resolution. *Thus, the council added to Eskimo procedures of dispute resolution the authoritative element of intervention into other people's affairs that had been absent.* Council members, however, were not required to individually play the role of aggressive interventionists in a conflict. Such a role would have been intolerable both to the council member and to those involved in the conflict.

In traditional precontact communities, no one man or formal group had acted as arbiter of social control. By contrast, the village council could and did resolve disputes; it did so in consideration of the wrongdoer's character and with a view toward reintegrating him into the group. It could do this for two reasons. First, it acted with full backing of a seemingly omnipotent outside authority. Second, no single Eskimo had to take individual responsibility for this overt intervention.

The council was a substitute in the village for the external law from which it derived its authority. Rather than sitting as a panel of judges and deciding cases on the basis of external law, it acted as a body from the village who expressed the community's interests in specific legal cases and a wide range of other matters.

Because council members shared responsibility, the council system permitted the traditional Eskimo values of individual noninterference to be upheld and reinforced in the process of resolving specific disputes. This allowed a system of Eskimo law ways to be institutionalized for the first time, despite the Eskimos' continuing negative attitudes toward overt authority, which included an intense dislike of one man interfering with another. The council sat as an Eskimo *group*. This was the key to its success.

The council provided a forum in which those individuals naturally gifted at social manipulation could exercise their talents and indeed could develop techniques of social control which were essentially Eskimo. It also freed the Eskimo community from the continual concern with murder—the major problem.

Anyone who attempted to violently retaliate against the council for removing or chastising an offender would himself be quickly removed by outside authority. Clearly, violent retaliation against outside authority such as the police or military forces was impossible. The council was free to proceed because by the comparatively simple act of notifying an outside authority, it could cause a violent offender to be removed from the village, with no individual Eskimo taking responsibility or personally intervening. Then, with traditional Eskimo pragmatism, now based on the certainty of outside force, which was nonetheless not present in the community, Eskimos could seek methods of social control other than violence.[35]

The outside authority deferred to the council on nonviolent matters. This deference encouraged the council to broaden the range of its jurisdiction over nonviolent disputes in the village. In the process of broadening its authority, the council continued to apply essentially Eskimo techniques and sanctions, although sometimes these techniques and sanctions were similar to territorial and later state law.

Council Procedures

In essence, an Eskimo legal institution came into being for the first time during the council period and developed under the umbrella of outside authority.

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[35]The reader should not infer from our interpretation of the use of outside white power for developing internal Eskimo legal processes that this removal of power from Eskimo hands was an entirely positive political or social act. Our remarks are directed to the narrow subject of the potential for conflict resolution among Eskimos through time as it was influenced by that society's encounter with the agents of white society.

Individuals usually did not present their complaints in open session to initiate the proceedings. Instead, they privately communicated their grievances to individual council members. This reflected the old Eskimo pattern of nonconfrontation and indirection. Once it had received a complaint, the council also dealt with the issue in a circuitous fashion. It would state that "there has been talk about such and such a matter that involves A (the alleged wrongdoer) and the property of B (the probable complainant) and we should hear more about it." It would then proceed to call one at a time Complainant B, other witnesses or people who might have facts, and finally alleged Wrongdoer A. It did not encourage confrontation between A and B. However, all statements of Complainant B and other participants were read to the accused, Wrongdoer A (as well as other persons who might be left to testify). Questions to A and A's responses were also very circuitous as council members waited for either a confession from the accused offender or for others to relate information as it flowed from a more general discussion.

The Eskimo View of Confession

From aboriginal times, the Eskimo considered confession a good thing.[36] This was because the Eskimo's own good opinion of himself, as well as what he had learned to expect from his society, led him to believe he could confess almost anything without causing shock or receiving censure. These expectations for the most part arose from the fact that Eskimo society was essentially noncensorious. Therefore, confession had as much of an aspect of news-bringing as it did alleviation of guilt.

Such social acceptance of a confessed wrong encouraged Eskimo honesty and made it easy for a wrongdoer to accept responsibility for an act. This in turn permitted re-establishment of social harmony. The council tended to operate in conformance

[36]This does not include those confessions obtained by a shaman in spirit invocation trances.

with these traditional Eskimo ways of encouraging confession without censure.

The Eskimo Marshall

Perhaps the one truly new position established in Eskimo society during the council period was that of the Eskimo marshall. Eskimos had never had policemen. We cannot be sure how Eskimos actually viewed the marshall, but informants' accounts of his behavior and attitudes are instructive.

Village marshalls were more limited in authority than U.S. policemen. Primarily, their duties were restricted to bringing individuals before the council and making limited fact-finding investigations. Review of these facts and preliminary conclusions of guilt or innocence was left to the council.[37]

The Council and its Source of Power

Eskimos viewed the council's relationship to an outside power with mixed feelings. On one hand, they wanted the outside authority to reinforce the council's position of power within the community. On the other hand, they feared that this outside power source would undercut the council's influence and intervene directly into the internal disputes of the community.

While the council borrowed power from outsiders and their agents, it did not borrow law from them. In one documented

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[37]Statistics on case disposition compiled by graduates of the village constable training program suggest that at present (of councils, magistrates, and village policemen) village policemen informally dispose of an increasingly large number of village complaints. This means that the role of village policemen has now shifted to one that is similar to police in other places and, in absence of hearings by either council or magistrate is emerging as final judicial authority in the resolution of village misdemeanors. (See Dick North, "Bush Justice at Work," *Kuskoquim Kronicle*, p. 11.)

account of a district attorney's visit to an arctic village council, the official asked the council members what questions they had about law. The council, according to its own records, had heard matters which ranged under U.S. law from theft to child molestation and divorce, but in the presence of the D.A. the council chose not only to present far less potent matters, but it avoided naming even the most minor offenders.

Excerpt
March 29, 1946

> The D.A. addressed the council and told them that if there is anything the council would like to know concerning order and law in this village, now is the time to ask for advice and he said he'll be glad to help them. [The council] president said some people never cared to clean their houses in spring time and furthermore they don't even pay the fine the council makes out to them. "Who are they?" the D.A. asked. "If they are here we will make them pay." Since they are not listed they were not called.

While seemingly complying with the request that they ask him his advice on legal matters, the council avoided those questions which concerned it most. Moreover, in the relatively minor problems that they did bring up, all Eskimos *knew* who the offenders were; and in their way of seeing things, that was punishment enough. They wanted the D.A. to state that the council had the right to collect fines for such offenses. It succeeded in its ploy without openly defining anyone as delinquent. In such a manner the council seems to have acted both as a device for public order and as a buttress against that power it relied upon for its authority. The problem of dealing with those agents of unquestioned outside power paralleled the aboriginal Eskimo problem of how to exist with bullies and shamans who could not be controlled.

Given the opportunity to maintain social order without necessity of murder, the council responded quickly, and carefully staked out a broad area of control which extended into nearly all community affairs. For example, the council, as one council did, might maneuver school employees into a position of indebtedness

that was favorable to the council. This type of maneuvering allowed the council to use the power of school employees which could not be formally delegated to any person or group in the community. It would hear school questions that involved the community in such mundane matters as student conduct or parents' responsibilities to assure school attendance, provide ice, and assist in preparing meals. These hearings occurred regularly, often with no particular desired effect, but had the important function of keeping the council's hand in school affairs. When possible, the council threatened to expel a student from school in order to demonstrate its derived power from the school bureaucracy. Thus, the council used this threat as an overall sanction against youthful misconduct whether the misconduct related to school or not. As the agent of the school teacher or, in other cases, of the U.S. marshall, the council derived power and influence which it could turn skillfully even against the sources of its power.

When offenders were church members and the church in a particular village had its own council of elders, the council would refer matters of misconduct to the church, or allow the local preacher to lecture offenders at the end of its hearing. It never fully integrated the standards of conduct required by the church into its own rules, but neither did it directly challenge them. Instead, in typical Eskimo fashion, the council avoided confrontation and threat to its own authority from this independent church authority by more or less incorporating the church into its own functions. It permitted the church council to act under village council auspices as a subsidiary legal forum in certain matters, generally in airing disputes which involved the shared beliefs and interests of the village church members.[38]

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[38] A school teacher who served as a lay preacher in one Eskimo village during the mid-1920's wrote that her sermon on laziness was vigorously translated (as she later learned) for the benefit of one member of the audience who owed the Native store several foxskins and another who owed his wife one foxskin for two bleached sealskins. The Eskimo interpreter spoke "through" her sermon at the offenders, who acted immediately to make amends (Richards, 1949, p. 165).

Although the council relied on power derived from Anglo-Americans, its conception of justice and the means to obtain it differed from the Anglo-American legal processes. Nonetheless, given enough time, it usually succeeded in reducing wrongdoing, imposing public sanction against wrongdoers, and correcting conduct, ordinarily by public confession or agreement to mend one's way.[39]

The following case illustrates the operation of a village council in its mature period. It comes from the unedited original records of a northern Alaska village:

April 5, 1964

> The President of the Council asked P to tell the Village Council about the tin of Cavalier cigarettes that he have left behind and was gone. He went back for them but he only saw the place where he left it. He suspect that B had took it. The President told the Marshall to get A for further information to find out who really took the tin of Cavalier cigarettes.
>
> A is brought in. To ask him if he has any idea who took the cigarettes. A say that B was fishing alone where P left his cigarettes. He said that A and his wife were fishing closer to the village. A is dismissed and the next to be invited is B. P (a marshall as well as the complainant) is sent to get B. B is invited. *The President ask him if he ever find anything that he could use. He ask him if he ever see P. He ask him if he knew where P had made a hole* (in the ice) *and also ask him if he ever see Cavalier cigarettes* (italics added).
>
> B said that he never say anything. He also said that he won't tell a lie. B said that he goes fishing this year but never find cigarettes in holes. He said that he don't know or remember when he finds a cigarette.
>
> Some councilman had talk to him to tell the truth. That if he only tell truth he could do better. B said that he would tell the

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[39]The authors are presently preparing a casebook of problem cases heard in Eskimo village councils. Materials for the book are drawn from village council records, upon which this summary analysis is based.

truth if he had taken the Cavalier cigarettes. B said that he was asked *if he ever saw anything*. He said that he never saw anything. He said that he would return them to P if he finds them.

B tried to go out but was put back to his place. He tried to fight his way out. But the Councilman tried to talk him out of it. The Councilman said to B if he never take or steal the Cavalier cigarettes that is all right, which of course B said that he never take the Cavalier cigarettes.

B is dismissed on his case since he was telling the Councilman that he never saw or take the Cavalier cigarettes. The Village Councilman agreed to meet again (to) talk about this case again. The village council dismissed their meeting at 12:00 midnight with X (a councilman) to get more information about B's case.

(The Next Meeting)

April 15, 1954

The purpose of this meeting is about B's case: X was invited for further information, whether B really took the tin of Cavalier. X says that he doesn't really know if B took the tin of Cavalier. So the Village Council talks this B's case over. President of the Village Council ask the council what they think about this case. The village council decided to have B for the last time. Ask him if he have been to R (the preacher) to straighten out this case. N is asked to get B. N come back without B. B said that he won't be invited for Council. The Council say that it won't be helped if he don't want to come so the Council leave it up to the session of the Presbyterian Church.

Before the hearing, Complainant P told the president of his suspicion (that B took the cigarettes—an idea he had probably gotten from A). A, in his statement to the council, linked B to the scene of the theft. The victim did not directly complain to the wrongdoer, and thereby avoided direct confrontation.

When the old Eskimo way of indirect questioning failed to elicit the expected confession, the council shifted its attention to the problem of B's attitudes and his refusal to tell the truth. It attempted to elicit contrition by stressing the Eskimo value of truthfulness, rather than expressing concern over the alleged theft.

B's reaction to flee was natural when the council applied direct pressure on him. His dismissal was also necessary, since without contrition and appeasement through confession on his part, the council could not act since it was interested more in eliciting guilty feelings than in proving guilt based on evidence which was absent in any event. It then referred the case to the church in the hope that under pressure of the preacher, in the presence of his peers, B would reconsider his attitude toward the truth. To some extent, this maneuver also reflected the old Eskimo belief that supernatural *(angatqoq)* intervention could be used to find the truth.

Five months later, B was caught in the act of stealing cigarettes. The record notes: "B was telling that was the first time he ever steal anything from them. But B was caught before on stealing from other people."

The wrongdoer was shamed, told to return the stolen goods, and restored to the community.

This example of council operation illustrates three important points:

- Eskimo society had progressed from having no formal law to formal law. In aboriginal times the victim of such a theft would have no instrument of recourse except himself. He might have either dismissed the act as "borrowing" and avoided trouble, or if he were physically powerful enough, retaliated by borrowing a similar item from the thief. By council times, however, the thief could be confronted by a commonly recognized Eskimo authority.

- Although a council intruded into an Eskimo's private world, it did so gingerly and indirectly, in typical Eskimo fashion.

- The council resolved an issue simply by exposing the truth. This could not likely have been accomplished by outside authority.

Also quite significant was the council's goal of pressuring the accused to acknowledge his guilt in order that he might feel contrition. This sought-after condition is best understood as the necessary "state of grace" in the Eskimo process of resocializing wrongdoers. Eskimos viewed a wrongdoer's failure to give way and be contrite under the pressure of social disapproval as one of the more serious aspects of the wrongful act. They knew that lack of contrition could result in the kind of violent interpersonal conflicts that had characterized aboriginal Eskimo society. Thus, they saw contrition as the necessary forerunner of rehabilitation, and as far more important than the effects of the crime itself.[40]

If the council succeeded in making the wrongdoer feel sorry for what he had done, it would then tell him how he must behave in the future to make up for his crime. The wrongdoer would then be expected to impose these behavior limits on himself.

If an offender was delinquent in paying a fine, the council would recall him. One such recall was generally sufficient.

Sometimes before it suspended a sentence, the council would impose conditions on an offender's future conduct. For example, individuals could be advised against associating with "bad types" in the village.

Although the employment of fines and suspended sentences had a clear Western legal flavor, the rationale for their use was related to Eskimo attitudes toward treatment of wrongdoers. Sanctions were usually reintegrative. Fines paid to the community or to its members were literally reimbursements and not symbolic. Sanctions were not employed for abstract rule-breaking or for abstract good. They flowed naturally from the persuasive council sessions that used rules as guides for harmonious social conduct.

The ancient but previously weak sanction of public opinion became truly powerful when organized and directed by the council. For example, the council often imposed such

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[40]The council's jurisdiction was generally restricted to nonviolent crime.

psychological sanctions as requiring a wrongdoer to make a public apology. Council members would lecture malefactors during prolonged meetings in which the public was invited to discuss an accused individual's entire behavior within his family or within the village. The extent to which facts concerning even one's sexual life or mental state could be bared was virtually limitless in this forum. When a young woman was involved, female council members would question her privately, and then report back to the council in order that the information might be recorded in council records. Such sanctions were expectably powerful.

As the range of sanctions was broadened, so was the articulation of norms to govern group conduct formalized and given new focus by the council.

Norms and Sanctions

The rules of conduct formalized and employed by the village council were based on traditional standards of Eskimo behavior that extended far back into aboriginal times. As previously stated, however, employment of these norms had been either weak, uneven, or nonexistent. Then, when the village council came into being, there appeared for the first time the possibility of even-handed enforcement.

This new-found ability to authoritatively wield power did not, as an Anglo-American might expect, lead council members to use their power in a heavy-handed or overbearing way; instead, they used their power in a careful, often indirect, manner that reflected the old Eskimo ways of minimal interference with others.

The council formalized the old Eskimo notion that theft was taboo and required that violators remunerate their victims. Other types of antisocial actions against individuals could also result in wrongdoers being required to remunerate the victims (although sanctions could be stronger if the wrongdoer were an incorrigible repeater). One such example of formalized remuneration required of a wrongdoer would be child support payments to children born

to a single woman or to a married woman by a man other than her husband.

In many cases, these formalized rules did not directly reflect U.S. territorial law, but instead were expressions of Eskimo attitudes toward their own intragroup behavior. Following is an example from a northern Alaska council record:

Excerpt from a Council Record Book

June 18, 1955

> The purpose of this meeting is about the case of K having sexual intercourse with two teenage girls, P and H. The village council decided to invite the two girls. P and H confess that they have been having intercourse many times with old man K. P say that K always give P cigarettes, stockings, and candy. P and H dismissed.
>
> The village council decided to invite K. K invited before the council and was asked by the President to talk to the village council. K say that he don't remember how many times he have intercourse with these girls; he says that he have intercourse most with H. K say that he tells the truth of his past experiences on this morality. K dismissed, with prayers offered as requested by K.[41]

The inquiry into this sexual activity was only partly an interest in malefaction. Essentially, the council wanted to know if there was anything about the situation they should take seriously. Obviously there was not. Nothing dangerous had taken place. Behavior that was likely to catalyze a violent confrontation was much more serious to the council than behavior that simply violated religious, territorial, or state law. On the other hand, sending of messages between young girls and married men was seen as serious, not because of its sexual connotation, but because

[41] Milan (1964) reports that K was later sentenced to 6 months in the Nome jail for breaking of a U.S. law dealing with contributing to the delinquency of a minor. Council records and correspondence do not indicate that the council notified outside authorities. It appears that either the parents of the girls or a white teacher or missionary notified the marshall.

of its potential for jealous violence including suicide and murder. Eskimos also considered gambling to be serious since it posed a potential challenge to extant property relationships, which could result in a violent response by the loser.

When, for example, a married woman had a child by another married man, (as occurred in one northern Eskimo community), the council saw the problem as primarily economic. By suggesting the suspected father provide support to the woman's family for his child, the council avoided alluding to legal presumptions of paternity or applying criminal sanctions for adultery.

In another area, the council saw "crazy behavior," such as that caused by drinking, to be a more serious matter than casual lovemaking between young people. Such a view came from centuries of Eskimo experience accumulated from living together in small groups in a unique environment. Such experience had led the Eskimos to develop the subtle skills required to maintain harmonious interpersonal relationships.

Clearly, the ancient pragmatic basis of Eskimo law reasserted itself in the council's operations. Though council deliberations often lacked specific procedures for due process and enunciation of individual rights, the intended results of these Anglo-American procedural safeguards, such as balanced justice and acceptable social order and harmony, seem to have been attained remarkably often.

Summary of Village Council System

A comparison of the Eskimo council system with the coexisting Western legal system that served other Alaskans (through U.S. marshalls, commissioners, and later, state law officers), shows both similarities and differences. The Eskimo legal system, as opposed to the Western system, was designed to avoid conflict rather than to define it, though both systems strove to resolve conflict. Legal norms in both systems were designed to define means of avoiding conflict. However, the lenient treatment

by the village council of acts that would have been severely prosecuted in territorial or state courts reflected a different point of emphasis in Eskimo justice from that which existed in Western justice. Retribution was not at the forefront of Eskimo law ways. The council's initiative in investigation of a case was perceived as the preliminary and often only *necessary* corrective action when the goal was reintegration of offenders. Western justice in its approach highlighted the conflict between adversaries and the offender's conflict with accepted societal norms. Yet in the Eskimo system of justice, case disposition was directed by no greater abstraction than getting along with other villagers. Wrongdoers who could not accept the council's conciliatory approach were sent away to be dealt with by the Western legal system.[42]

A case before the territorial judge might be Alaska vs. Jones. A case before the council would be better described as Jones and his fellow villagers, talking.

THE CONTEMPORARY PERIOD: THE MAGISTRATE SYSTEM

Gradually, over the last ten years, the State of Alaska has introduced the local Eskimo magistrate and the Eskimo village constable into northern Eskimo villages as a permanent fixture of the unified state legal system. By the middle of the 1960's, for all practical purposes, the magistrate system had largely supplanted the village council system among the northern Eskimos as a forum for dispute resolution. This represented a significant break with the structured legal system that had evolved since the early 1900's in the form of the village council and its forum.

The State Magistrate

Magistrates are lay judges of limited jurisdiction, appointed by the presiding judge of the superior court in each judicial

[42]In villages where there are no magistrates and where councils still act as judicial bodies, this remains an underlying theme of bush justice.

district. Each has the power to judge cases arising from violation of village ordinances passed by the village council. He can also sentenc defendants who plead guilty to state misdemeanors or hear state misdemeanor cases when the defendant consents. Finally, he has the jurisdiction to hold a preliminary hearing to see if an arrested person should be bound over to superior court on a felony charge and to see if the state can show probable cause from admissible evidence.

His civil jurisdiction is limited to smaller claims of $1,000 in damages or in property loss. The magistrate also performs such various administrative duties as coroner, record keeper of vital statistics, notary public, performer of marriage, and custodian of the property of deceased persons.

Eskimo View of the Magistrate— The Single Authority Figure

When he puts on the robe of a state magistrate, a single member of the village takes up the symbols of outside law to sit in independent judgment of his peers. The corporate shell of the council that gave council members a screen behind which to proceed with calculated indirection has been removed, thereby exposing the direct actions of a single individual. To the Eskimo, interference from such an individual is intolerable if it occurs independently of a corporate structure. He can only tolerate interference when it is seemingly nondirected, as it was in the context of the council forum.

This feeling against a single authority sometimes causes hostility to be directed specifically at the magistrate. In one crowded courtroom in northern Alaska, for example, a man spoke from the rear of the court in Eskimo to the judge, causing the magistrate to dismiss the case immediately. When the state trooper who was present asked in English what had occurred, the magistrate said that the speaker was the defendant's brother and had threatened the magistrate if he proceeded with the case. No such threat would likely have been made to or acknowledged by the council.

Though such a reaction to the magistrate is rare, its implications are important. The magistrate stands out as a single, one-man authority whose actions can directly interfere with an individual's private world. In carrying out his official actions, the magistrate stands alone. He cannot diffuse his singular authority among the members of a council. Thus, because it presents a single human target for affected wrongdoers to retaliate against, the magistrate system creates continual potential for conflict.

The Eskimos deal with this potential for conflict by avoiding the formalities required by the magistrate system, which in turn renders the system less effective. Even the magistrates often attempt to avoid their formal roles, although with little success.

The Eskimo Magistrate's Interpretation of his Role

Eskimo magistrates have partially reinterpreted the role of magistrate. The effect of this reinterpretation has not been to enhance the magistrate's court as a forum for dispute resolution. It is neither an able court nor an able substitute for a council.

Eskimo magistrates and Eskimo defendants rarely distinguish between evidentiary guilt and guilty feelings. In fact, Eskimo defendants generally do not request counsel because of this tendency. The failure to make this distinction is not caused by a lack of training on the part of the magistrate nor of incapacity for analytic thinking on the part of either the magistrate or defendant. In pre-magistrate times, an Eskimo's tendency to confess had the practical purpose of mending disrupted social relations and worked as a positive social tool.

As the statistics on guilty pleas and rates of conviction from one northern Eskimo magistrate court indicate (see Table 1), the aggregate effect is that an arrested Eskimo is a convicted Eskimo.

The Eskimo magistrate tends to accept these guilty pleas as knowledgeable and voluntary because he sees no difference between guilty feelings and technical legal guilt. Furthermore,

TABLE I

SUMMARY OF CASE DISPOSITION BEFORE AN ESKIMO MAGISTRATE COURT, 1964-70

Year	Guilty Pleas DIP*	Guilty Pleas Other	Conviction Rate**	Proportion of Total Convictions Suspended: All Offenses	DIP	Other than DIP	Other than DIP & transporting liquor
			(Percentage)				
1970	100.0	93.9	98.0	32.3	35.8	30.3	31.6
1969	99.0	92.3	95.4	60.0	60.0	59.2	63.1
1968	100.0	96.7	95.9	57.5	63.0	57.5	55.9
1967	98.2	91.4	94.2	41.9	40.0	43.2	45.8
1966	97.8	85.8	96.9	60.7	68.1	51.4	46.3
1965	99.0	93.0	100.0	29.0	27.2	31.3	40.3
1964	95.0	96.3	100.0	12.7	12.5	11.1	12.2

*Drunk in Public

**Conviction rates recorded in this Eskimo court reflect dismissals in preliminary hearings on serious state offenses where special effort was made by the magistrate to induce acceptance by the defendant of an attorney. Statistics on guilty pleas also include hearings of bootleggers who employed counsel and pleaded not guilty. Generally, pleas entered did not reflect the influence of plea bargaining between counsels for defendant and the state as would comparable statistics in an urban court.

	Number	Percent of total	Number DIP and Transporting Liquor	Percent of total
Recorded Offenses 1964-70	1,375		717*	
Not Guilty Pleas	54	3.9	7	.97
Court Dismissals	25	1.7	0	
Judged Not Guilty	15	1.0	0	

*Of these 717 offenses, 627 were DIP.

because the defendant generally does not request a defense counsel, there is no one to advise him on the consequences of a guilty plea or to distinguish for him between guilty feelings and evidentiary guilt. Additionally, there is no one to present this argument to the court. To the magistrate, therefore, a guilty plea entered in open court nearly always means that he must convict the defendant as charged with no need to view the evidence that supports the charge. The extremely low rate of case dismissals and not-guilty pleas (see Table 1) reflects this unfortunate tendency.

Faced with high rates of guilty pleas and resulting high rates of conviction, the magistrate feels he generally has only two remedies. After finding the defendant guilty, he can implement the maximum statutory sentence or he can suspend sentence. Generally unaware of the flexibility permitted him at this stage of the proceedings, he does not know that he is empowered to reduce charges or to measure sentences according to their suitable rehabilitative and deterrent effect in the individual case. Where the council procedures of the past strove to rehabilitate the offender and reintegrate him into the community, the magistrate, even in applying a suspension of sentence, merely warns the offender that the police "will be keeping their eyes on you" and implies that future offenses will be dealt with more harshly.

Even where the magistrate would like to suspend a sentence in order to soften the effect of (what he sees as) the nearly automatic process of conviction and punishment, he is faced with competing pressures not to suspend. The Eskimo magistrate recognizes that the community feels "something should be done" about the lawbreakers. He feels, however reluctantly, that his job given him by the court requires him to "do something." Further, he feels somewhat to blame for the once-effective village council falling into disuse. Finally, because of his ignorance of judicial flexibility, subtle and not so subtle pressures from state troopers pushing for maximum sentences have usually resulted in lower levels of suspended sentences than occur in urban courts (see Table 1).

Table 1 shows wide year-to-year variations in the rate of suspended sentences for a single community. This resulted in part,

we feel, because a state trooper stationed in this community had suggested to the magistrate and to the village policemen that not only were suspended sentences an inappropriate response to convictions, but that more offenders should be charged with and tried under state statutes instead of local ordinances. Since in most cases state laws carry heavier maximum sentences, this procedure resulted in many more serious sentences for minor offenders in the community. The magistrate was deeply concerned by this, not feeling it was quite just. Yet he felt powerless in the face of this pressure. Being somewhat ignorant of the corrective options available to him, he simply resigned his position.

This suggests even more strongly that the magistrates generally feel that they cannot act as buffers between the perceived arbitrariness of outside law and their own community needs. Many magistrates are also unwilling to act merely as an arm of the police force. Yet, they perceive the legal structure in which they are embedded as unmanipulatable. This view by frustrating their tendencies to avoid conflict and amelioratively handle social disorder, prevents them from using the traditional creativity that the council system so effectively used in dealing with such social problems. As a result, the magistrate, burdened with an authority that made him alien to Eskimo ways, feels powerless to discharge his authority in a way that is acceptable to his people.

Many magistrates in order to work with a system which they feel is not responsive to manipulation attempt to operate outside the formal structure to solve disputes. For example, some magistrates encourage the village policeman to treat the offender's case informally instead of filing a criminal complaint. He may be told to settle it on the spot or to arrest an individual *informally* and take him to the council as a preliminary step. The village policeman, faced with a burden as intolerable as the magistrate's, is likely to comply. He knows that when the magistrate treats the problem formally, arrests almost invariably result in conviction.

Plea Bargaining vs. Eskimo Informal Procedure

Informal attempts by Eskimo magistrates to avoid hearing cases might appear to be interpreted as a parallel development to the process of plea bargaining by legal practitioners in urban courts. There are, however, fundamental underlying differences.

Plea bargaining, it is true, is also informal. However, it comprises a series of specific considerations directly related to the specific alternatives offered by the formal judicial process. Plea bargaining (Casper, 1972; 92ff) takes place with pragmatic references to the statutory elements of the offense, as well as the likelihood of successful prosecution.

The prosecutor considers both the fruits of the police investigation and the likelihood that the evidence will be rebutted for factual deficiencies or for procedural irregularities incurred in acquiring it. The prosecutor also takes into account the importance of selectively prosecuting the given case or others in this offense category or the arrested individual by means of a public trial for a conviction upon the evidence presented. Conversely, the defense attorney decides to bargain or to go to trial according to his own analysis of the statute and relevant case law. He also evaluates his potential for success *in excluding or rebutting evidence on motions or in trial.*

Both the prosecutor and defense attorney decide whether to bargain or proceed to trial in light of their pending case loads. Furthermore, both consider the relative skill and commitment of their opponents to win at trial.

In short, these compromises or plea bargains are an integral and accepted part of the accusatorial system which demands of the practitioners a particularized evaluation and comprehension of the criminal justice procedure and the roles legal professionals play in the procedure. Thus, when an urban defendant "cops a plea," he considers the relative punishments that may be inflicted upon him if he stands trial with representation by counsel or if he pleads guilty to the offense as charged or to a lesser offense.

In contrast to this, the informal response of Eskimo participants stems from an *aggregate* avoidance of the system itself—of the laws, rules of evidence, and the litigious or combatant posture which in their entirety may be unintelligible or even distasteful to Eskimos. The Anglo-American approach has historically failed to resolve conflicts or to appropriately apply corrective sanctions in Eskimo society because it is this legal approach which is unacceptable to many Eskimo participants.

The prosecutor's or judge's calculation that a particular conviction is likely or useful according to the broad mandate of his job does not play a part in the Eskimo magistrate's decision to proceed informally or to refer a case to the village council. To the contrary, these informal decisions, which include a redefinition of magisterial procedure by the magistrate, are often characterized by legal professionals and by the magistrates themselves as an *open secret*, unacceptable if formally acknowledged. It is felt that such informal processes that do exist in the rural justice system must depend on the "wink" of the friendly district judge or magistrate supervisor. They are perceived by all participants as unsupported by calculations made in light of the formal choices of the justice system.

If the magistrate's informal attempt to ameliorate the effects of the justice system on village offenders, victims, or communities is challenged by a single legal professional privy to the arrangement, such as a technically trained and aggressive state trooper or village policeman, or the legal practitioner who may happen to be in the village, the magistrate capitulates. Nonetheless, many magistrates continue to hold the justice system at bay and reduce what they see as its adverse requirements. To do so, magistrates communicate with friendly professionals or with other magistrates highly esteemed by professionals in order to receive verbal support or help to remove this overly technical individual from their domain. In such an attempt, a magistrate looks for personal support of his position rather than for technical support of legal theory. In large part, this is because he does not realize that there is support within the extant legal system for his autonomous action as judge.

The net result of informal legal activity in rural villages that proceeds in lieu of formal procedure rather than as an attribute of formal procedure is that procedural rights of the defendant as well as rights to review lower court proceedings by higher courts are lost. Informal activity is not in fact an option to asserting one's rights and proceeding to trial.

The interplay between plea bargaining and litigation in urban justice does not have its counterpart in the interplay between informal avoidance and the adversarial system in the bush because the avoidance in the latter case is not a reasonable alternative to the detail and role of the legal system in the village community.

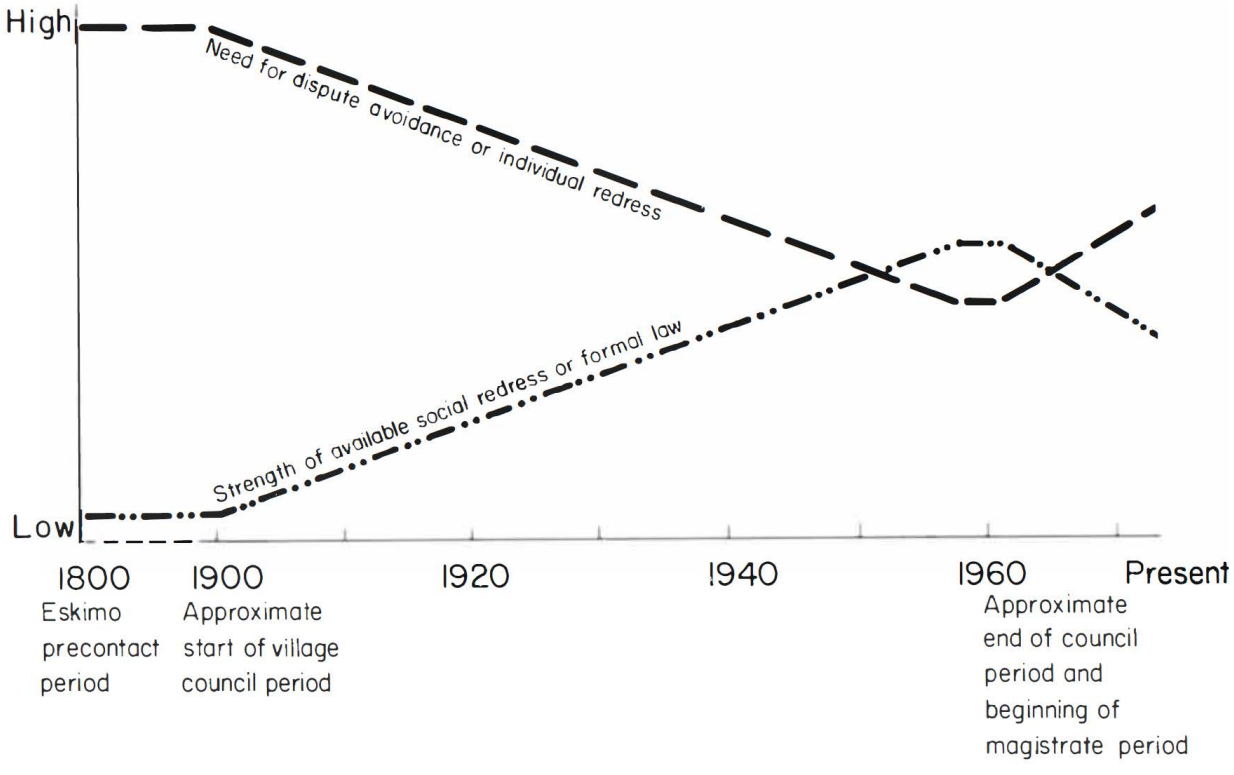
The Magistrate Court and the Village Council

Compared to the council, the magistrate forum is inadequate for northern Eskimos. Eskimos see the role of magistrate as a limited one and this view limits both the kinds of norms and the range of available sanctions that the magistrate may apply. The graph (see Figure 1) shows that the need to avoid disputes has increased and the strength of available redress has decreased, thereby illustrating the retrogressive effect of the magistrate's capacity to promulgate norms to guide community behavior.

The magistrate's court, as an Anglo-American institution, does not desire the defendant to convict himself through his testimony. The council, on the other hand, promoted the Eskimo virtue of confession. In fact, it considered the silent offender to be antisocial, deserving formal arrest and incarceration. Finally, the adversary system of the court demands a direct formal confrontation between antagonists that the procedure of the council was expressly designed to avoid.

Because cases heard by the U.S. Commissioner and then the magistrate are almost exclusively criminal in nature, individuals do not consider the magistrate court an appropriate forum for weighing private or civil matters and will not bring them to the magistrate. As noted, no such distinction was made in cases that the council heard.

Figure 1
Increases and Decreases in Need for Dispute Avoidance and Strength of Available Social Redress, 1900 to Present



The shape of law in Eskimo villages has changed because the introduction of a formal court in the bush is a direct intervention of the Alaska legal process into village life. It has replaced the deference of white authorities to the council in the realm of law. While the council could develop law and proceed as it saw fit under a cloak of authority, the formal delegation of legal power to the magistrate is more restricted. His job is defined. His authority to apply law in judgment of other villagers cannot be delegated or concealed. Power had been delegated to the council informally without necessitating legal definitions and directives. Under the court system, however, power is couched in formal definitions and procedures that cannot be easily modified even when they do not fit with Eskimo needs or expectations, nor can they be made to fit.

A Summary of the Magistrate System

In summary, introduction of a formal Anglo-American court in the bush has changed the shape of law in Eskimo villages. It has replaced the once-effective village council, run by Eskimos and based on traditional Eskimo ways, with the magistrate's court, which attempts to solve disputes by applying Alaska state law. The change has been a step backward in bush justice, because the magistrate system simply does not have the flexibility, the authority, nor enough Eskimo trust to be effective in dealing with the Eskimos and their traditional ways. As a result, it has increased the Eskimo's need to avoid disputes while decreasing his means of redress.

The price of introducing the magistrate system in place of the council system has been a high one. It ended a particular historical opportunity to allow northern Eskimo communities to develop their own forums for formalizing Eskimo laws and sanctions to fit unique Eskimo needs.

IMPLICATIONS FOR BUSH JUSTICE

One could credibly argue that the Eskimo magistrates fail to make use of the full range of sanctions allowed by law and avoid hearing cases because they lack sufficient legal knowledge to function adequately as judges. However, as previously noted, the Eskimo judge faces a special problem in an Eskimo society. We believe this special problem could be alleviated by dividing the authority among several individuals in a council-type body. We feel this could be effective and still meet the standards of due process, with slight changes to the original council's method of operation.[43]

The "right to be heard" in a trial that weighs law and evidence presented by adversaries or their representatives is the keystone of the Anglo-American legal system. However, when this justice system is applied in an Eskimo village, each participant or potential participant (victim, constable, offender, and magistrate) guided by traditional Eskimo ways, has a natural tendency to avoid the adversarial relationships that are the essence of the accusatory system.

Eskimo complainants avoid reporting crimes because they find the nature of the adversary system abhorrent and do not want to be in it. In most cases, they find the role required of them in such a proceeding to be less attractive than the consequences of offenses committed against them. Defendants abdicate their roles as hedgehogs in the accusatorial system; they waive their right to plead not guilty, their right to remain silent, their right to retain counsel to present evidence or question evidence presented by the state. Eskimo magistrates fail to examine police conduct and village constables do not learn how to present evidence or make cases at trial. Finally, magistrates do not learn how to interpret law or to apply it to evidence presented by the state or the defendants.

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[43]Village council procedures according to the requirements of due process are beyond the scope of this paper.

Legal education alone is not the answer to the problems of Eskimo justice raised in this paper. Any approach to these problems that fails to consider the Eskimo's basic attitudes toward Anglo-American law is doomed to failure.

Northern Eskimo attitudes toward the accusatorial system of dispute resolution also differ from those of Athabascans (which we have noted elsewhere). Athabascan attitudes are shaped by learned or historical relationships to village authority and the power of the chief. These relationships have more parallels to court authority than do Eskimo notions. The Eskimo's conflict with the adversarial proceedings of Anglo-American jurisprudence is rooted deeply within the Eskimo personality; its basis lies in his learned responses to other individuals and to his own world.

The Question of Guilt

One can question on constitutional grounds whether a northern Eskimo can knowingly and voluntarily waive his right to be heard by admitting guilt without benefit of counsel and without the state first introducing proof of its allegations.[44] This

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[44]The right to a fair hearing that is not a "mockery and a farce" but a "genuine trial" has been the impelling rationale of decisions by the U.S. Supreme Court and Alaska State Supreme Court that affirmed the right to "effective representation" by counsel, absent knowing and intelligent waivers of defendant's rights. See *Powell* vs. *Alabama* 287 US 45, 77 L.Ed. 158 (1932); *Escobedo* vs. *Illinois* 387 US 478, 12 L.Ed. 2d 977 (1963); *Ingram* vs. *State* 450 P.2d 161 (Alaska 1969); and *Anderson* vs. *State* 438 P.2d 228 (Alaska 1968).

The Alaska court noted that a genuine trial is "where the government is put to its burden of proving guilt beyond a reasonable doubt in accordance with established principles of law and fundamental notions of fair play and substantive justice." *Dimmick vs. State* 473 P. 2d 616, 618 (Alaska 1970).

The Supreme Court has looked favorably at alternative legal roles where confronted with prisoners who were physically as well as intellectually removed from access to the prerequisites of a fair hearing. *Johnson* vs. *Avery* 393 US 483, L.Ed. 2d 718 (1969). Clearly the absence of trials in Alaskan villages represents a removal from the legal process that is as grave as that faced by members of any prison community.

question suggests that the Alaska justice system has a duty to impel a showing of proof by the state or municipality. To do so, it could refuse waivers entered for a defendant not represented by counsel or it could modify the present judicial structure to compensate for the Eskimo magistrate's disinclination to try cases by confrontation of offenders, victims, or officers of the court. If northern Eskimos are to feel that they can receive justice from the legal process, that process must include a rational means to weigh community norms of social control against rights guaranteed to all individual citizens.

It is neither possible nor beneficial to return to precouncil days nor to a legal system that is not incorporated into the state justice system. Among other dramatic changes, the monetary impact of the Native claims settlement and, for some villages, the influx of outsiders to work on the Alaska pipeline will demand both a professional grasp of state law and capable law enforcement if the village is to survive as a social entity.

What emerges, then, is the need to provide adequate judicial services, law enforcement, and correctional services through Native or non-Native personnel. The system offering services must have maximum *autonomy* within the guidelines of due process. Several other countries have redefined law enforcement, judicial, and correctional agencies to meet special cultural needs without, at the same time, creating ineffectual Mandarin forms.[45] It is possible for the Alaska justice system to make equally adequate adaptations.

[45] After a comparative study of Greenlander customs, the Danes added lay assessors to the courts and broadened the range of corrections available in the Danish code when it was applied in Greenland. (See Goldschmidt, 1956). Lay conciliation boards in Ceylon's villages have been instituted within the formal legal system to resolve many disputes that would burden higher courts. (Gooneskere and Metzger, 1971).

CONCLUSION

We conclude that embedded in the culture and personality of the northern Eskimo was a value system that led him to avoid conflicts by behaving nonaggressively. This set of values and their associated attitudes determined the existence or nonexistence of roles, behavioral norms, and sanctions used to resolve conflicts. Eskimo law ways were signals that communicated to the socially attuned Eskimo how he should modify his own behavior so that he could interact with the group without precipitating violent confrontation. In this light, where adversariality is built into the legal process, it is hard to reconcile this process with Eskimo expectations in behavior.

The present Alaska legal system fails to offer the Eskimo a means to weigh the merits of conflicting claims. The Eskimo tries to avoid the adversary procedure just as he attempts to avoid conflict. His attempts at conflict avoidance range from total inaction to individual or group violence toward an offender.

During the council period, a dispute-solving body was set up to avoid or conceal the imbalance in power between judge and judged. The council operated informally under power derived from the legal system but with the autonomy necessary to adapt its procedure to Eskimo behavior. The council's success in articulating and enforcing the law was defined by the Eskimo socialization that preceded it and not by Western legal norms and procedures. The council adapted Anglo-American law to Eskimo social life. The magistrate system has not.

Preliminary Suggestions for Reform

How can the state justice system provide a forum for conciliation among disputants?

Plea bargaining is in effect an extension of the adversary process that is conciliatory or compromise seeking. It relates to the detail of what may occur if the case proceeds to trial. In the

magistrate system, informal activity is not in response to this detail of, e.g., what evidence may or may not be produced, the jury's response, the likely sentence, but against participation in the uncontrollable legal system, to intervention by the magistrate *per se*.

Because the prosecutor and defense attorney are generally absent or not requested in village courts and, more importantly, because their roles and adversarial postures are already too far along the road to conflict production, we suggest that the legal system must provide a less adversarial realm of preliminary compromise, preliminary to the trial or procedures which weigh the issues of trial, innocence or guilt, and punishment.

We suggest that bush justice reforms will be accomplished best through broadening legal procedures to allow for an optional but formal integration of procedures best performed by the village council. Specifically, after arrests, a council-like body could determine which complaints might be best resolved informally and which should be sent to the magistrate for hearing.[46] If such a body decided that village justice would best be served by a conviction in magistrate's court, the odium presently associated with roles of the village police and village magistrate would be relieved. Furthermore, this would allow the present informal avenue for avoidance of the legal system to be incorporated as an optional and reviewable mechanism of the formal legal system.

As a second and independent matter, we suggest that village councils or council-like bodies be given an advisory role in sentencing and correctional matters. In a presentence hearing

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[46]This suggestion is for nothing more than a procedural device to give force to Alaska statutes that provide for compromise of misdemeanors by the injured party. See AS 12.45.120 and AS 12.45.130.

An alternative would be to encourage arbitration of disputes on the civil side of the court before a panel of villages rather than employment of the criminal justice process by the would-be complainant or victim.

(requested by the defendant), the council might introduce salient social facts that would supplement the magistrate's knowledge of the offender. This would allow the magistrate to sentence with an eye toward reintegrating the offender into the community as well as deterring similar offenses.

These suggestions are necessarily preliminary. Their basis in the reality of bush justice has been stated above. Their basis in case law and statute will be included in another study of this series along with other suggested reforms.

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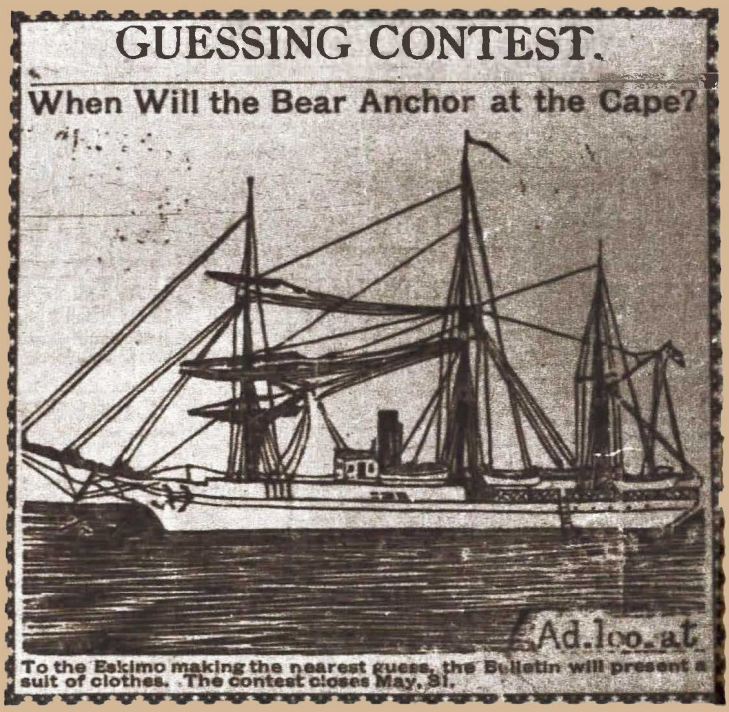

The Bear was typical of the sailing vessels which brought American officials, missionaries—and white man's law—to the north Alaskan Eskimos around the turn of the century.

Woodcut by Warren Adlooat (from *The Eskimo Bulletin,* May 1902, Vol. V, p. 4) 4-11/16 by 4-3/4 inches. University of Alaska Library, Archives and Manuscript Collection.