

“A Resource Most Vital”: Legal Interventions in Native Child Welfare

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Abstract

Northern indigenous communities have experienced a history of increasing nation-state legal intervention. Formal, imposed institutions and procedures now regulate matters formerly handled locally and with reference to local social and cultural patterns. While the trend towards formalization and legalization has intensified, however, so have efforts to retain or reinstitute local control, including the establishment or institutionalization of tribal courts. Yet, the extent of tribal court jurisdictional powers remains vague, confusing an already complicated legal relationship between Alaska Native villages and the State of Alaska. The struggle over child welfare in Native Alaska pertains to political authority, relations of governance, and prevailing normative values. Thus, child welfare decisions have important implications for the recognition or denial of other forms of local control in relation to state and federal levels of governance.

This paper outlines significant legislation and recent changes in state and federal law related to the resolution of child welfare proceedings. As we consider this legal context, we will analyze the ways in which tribes negotiate their relationship with the state of Alaska, with specific attention to issues of increasing legal intervention and its impact on center-periphery relations of governance.

Introduction

Northern indigenous communities have experienced a history of increasing nation-state legal intervention. Child welfare concerns form one critical arena for the shifting relationships between local principles of social ordering and state forms of social control.¹ The struggle over child welfare in Native Alaska, however, is not simply about standards of care for children. Rather, child welfare pertains to political authority, relations of governance, and prevailing normative values. Thus, child welfare decisions have important implications for the recognition or denial of other forms of local control in relation to state and federal levels of governance.

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The penetration of law into the domestic sphere increasingly characterizes local-state relationships world-wide (Lazarus-Black, 1994; Comaroff, 1997). This is certainly the case with child protection in the United States, where the courts were already responsible in child welfare proceedings for removing children from harmful situations. In the 1980s, Congress further charged courts with the rehabilitation and reform of troubled families (Alaska Judicial Council, 1996, p. 15). While the trend towards formalization and legalization has intensified, however, so have efforts to retain or re-institute local control, including the establishment or institutionalization of tribal courts. Tribal courts, or tribal councils acting as courts, constitute one decision-making body of Alaska Native villages, often acting as the primary voice for each community in its efforts to maintain local control.³ However, the extent of tribal court jurisdictional powers has not been definitively clarified, confusing an already complicated legal relationship between Alaska Native villages and the State of Alaska.

Native children comprise 56 percent of all children in state custody, but only 22 percent of the entire population in Alaska is Native (Division of Family and Youth Services, pers. comm., 2000). This disproportionate number of Native children in state custody has attracted the attention of Alaska Native people and legal advocates as a contemporary analogy to the national historical patterns of removing children from their communities in a climate of cultural assimilation (Metteer, 1997; cf. Hudson, 1997). While there has been extensive research on subsistence issues and land claims as cultural assertions of and arguments for sovereignty in the North (Brody, 1997; Hensel, 1996), turning our attention to child welfare proceedings reveals another level of cultural assertion in maintaining local control over the physical future of Native communities (see Comaroff, 1997). The complexity of governance relationships is particularly apparent in child-welfare decision-making, which in Alaska involves the cooperation of and communication between tribal governments, regional Alaska Native corporations, State of Alaska agencies and federal legislation.

On a practical level, the efficacy of this system is challenged by the jurisdictional conflicts between the state and tribes. This is compounded by chronic, documented problems that plague the state's efforts to meet the mandates of legislation directed specifically at the resolution of cases involving Native children (Rieger, 1994). While state agencies have acknowledged the existence of problems in Native child welfare proceedings, proposed remedies thus far have focused more on facilitating procedures than addressing the intercultural and political issues raised by child welfare provisions. On a more theoretical level, Native child welfare issues in Alaska raise questions regarding relations of governance between local communities and the state administration.

First, there are concerns raised by concurrent legal systems—the tribes and the state of Alaska—in the protection of Native children. Second are questions of the role and impact of child welfare legislation in the context of increasing legal intervention. This paper outlines significant legislation and recent changes in Alaskan law related to the resolution of child welfare proceedings. As we consider this legal context, we will analyze the ways in which tribes negotiate their relationship with the state, with specific attention to issues of increasing legal intervention and its impact on center-periphery relations of governance.

Tribal Courts and Child Welfare

For the purposes of this work, child welfare broadly refers to how the “best interests” of a child are understood, both formally and informally, and the processes of protecting those interests institutionally, through a combination of federal, state, and tribal actions. The “best interests” of a child is a term found in United States federal and state legal codes. It refers to children’s rights and subjective standards of care for abused, neglected, or maltreated children. Our discussion, however, includes aspects of child-related proceedings not necessarily recognized as part of child protection systems that define children as “in need of aid” (CINA cases),⁵ including custody battles, adoptions, and informal understandings of kinship and social ordering on the local level that play a part in decision-making. We do this, in part, because of the disjuncture between local and state constructions of a Native child’s best interests, a problem that we will discuss in greater detail below. However, it is important to note that CINA cases, as the basis of Alaska’s child protection system, typically include cases where the child’s emotional or physical health is threatened, therefore excluding such proceedings as custody or voluntary adoption.

To understand the procedural dimensions of child welfare implementation requires an accounting of the various actors, such as tribal courts, regional Native corporations, and state agencies, each of whom play significant, overlapping, and sometimes competing roles in the protection of Native children. Historically, the legal authority to govern child welfare has been located in the domain of the states. In Alaska, the state’s Division of Family and Youth Services (DFYS), together with the Office of the Attorney General (AG), have the primary responsibility for screening reports of harm, placing children in need of aid, and evaluating the continuance of protection, ending ultimately with permanent placement, whether with birth or adoptive parents.

CINA cases in Alaska are governed by a combination of federal and state laws. However, when the child is Native, the Indian Child Welfare Act (ICWA) also applies. ICWA is federal legislation that allows tribes to intervene at any

stage of state court proceedings involving their child members. For federal legislative purposes under the Act, “tribes” include both Alaska Native villages and Native corporations created by the Alaska Native Claims Settlement Act (ANCSA), when they represent or assist villages.⁵ In the interior of Alaska, and to a lesser degree, the other regions of the state, tribes are developing or re-instituting tribal courts as a mechanism for adjudicating child welfare claims and other civil issues. These Alaskan tribal courts and tribal councils take many different forms, resisting any singular characterization. In many Alaska Native villages, tribal councils, as the recognized governing body for the village, may hear child welfare cases. Most take one of two forms in Alaska: traditional councils or Indian Reorganization Act (IRA) councils. In other villages, tribal courts may be organized to hear these cases though the differences between these forms are inconsequential to their legal jurisdictional powers. However, whereas traditional council or IRA council members are responsible as well for general tribal business, tribal court members (often called judges) are solely responsible for addressing conflict. For both councils and courts, however, the full extent of their jurisdictional powers remains unclear, especially in the arena of child protection. The available definitions of judicial authority are incommensurate with one another and further subject to varied legal interpretations and degrees of recognition. Therefore, cases involving the protection of Native children may follow a variety of paths, depending on how and to whom possible neglect or abuse is reported, to what degree the state observes ICWA standards, and the willingness of particular tribes to become involved.

The possible avenues for the protection of Native children in Alaska can be difficult to traverse because of unsettled jurisdictional complications between the tribes and the state. Most recently, the Attorney General for the state of Alaska introduced the concept of “concurrent jurisdiction”—sharing the responsibility of addressing and resolving child welfare cases with tribes—to the child welfare protection system as a means to address these jurisdictional complications. How this concept translates into actual practice remains untested. Who will take the primary responsibility in cases? In which setting—tribal court or state court—will cases be heard? Will concurrent jurisdiction lead eventually to transfer of jurisdiction from state to tribal court, if the tribe requests it?

Notwithstanding these questions, most child welfare cases currently proceed either through the tribal or state system, or through a combination of both. Often tribal social workers or council members may learn of a situation where a child needs assistance, and report it to the tribal council or court. In these instances, the tribe then takes care of the matter without ever involving the state. Methods of tribal resolution, however, vary depending on the structure of the tribe’s child protection system. Regional corporations established

as a result of the land claims act often provide economic, legal, and social service assistance that structure child welfare protection systems for their member villages.

Several seminal cases from the Athabascan Interior of Alaska offer useful examples of the range of procedures and approaches followed by villages throughout the state. In the Interior, villages work to varying degrees with the family services department of their regional corporation, Tanana Chiefs Conference (TCC), to develop tribal court structures and procedures, and to initiate foster care provisions and adoptions. For example, the village of Tanana, a Koyukon Athabascan village of approximately 350 people located on the confluence of the Yukon and Koyukon Rivers approximately 300 air miles west of Fairbanks in the Tanana Flats area, formalized an active tribal court in 1983. The tribal council and court of Tanana maintain minimal ties with TCC, primarily enlisting TCC in an advocacy role, while preferring to pursue ICWA interventions on their own. The tribal court handles child welfare cases through its own trained ICWA social worker, tribal counselors, and tribal court judges. These individuals are members of the community who reside in the village although they sometimes work in conjunction with outside legal specialists. Other communities, such as Minto, connected to Fairbanks by the road system, work in closer conjunction with TCC, employing a Tribal Family and Youth Services Specialist (TFYS) under TCC's supervision.

Inquiries made by state or tribal social workers following initial reports of harm to a child are the first step in a child protection system. Parents, relatives, neighbors, or other concerned individuals will usually make this report to either the DFYS, or the tribe, or both. If the report is made to the DFYS (or another state actor, such as a police officer), a social worker will screen and investigate the report to establish whether or not to invoke emergency custody, thereby immediately removing a child based on the evidence and alleged type of abuse (Alaska Judicial Council, 1999). Federal legislation mandates that if emergency custody is necessary, the DFYS must notify the tribe immediately if the child lives in the village, or within twenty-four hours if the child lives outside of the village.

ICWA cases begin if the DFYS files a petition for adjudication in state court to seek state protection of a child. Copies of this petition must be provided to involved parties, including the tribe. Within forty-eight hours after a petition is filed, a temporary custody hearing is held to establish the facts of the case, identify and define the roles of involved parties, and determine who should have temporary legal custody. If the child is placed in foster care, ICWA sets out preferences for placement, descending in order from placement with extended family members, in a tribally licensed foster home, in another Indian family, or finally in an institution selected or approved by the tribe. Additionally, the law requires that the child be placed in reasonable proximity to

the child's home.⁶ If the court has good cause, however, they may not follow this order of preference.

Changes in Child Welfare Law and Their Implications for Tribes

A review of legislation concerning child welfare demonstrates not only a trend towards increasing formalization and legal intervention but also the instability of the intervention itself. Until very recently, Alaskan courts maintained a historical opposition to the existence of tribes in Alaska.⁷ A fundamental concern with the state practices of rejecting tribal authority and tribal court decisions, and hence removing these decisions from local spaces, is that the state effectively sets parameters on the cultural existence of many Native children (see Wee, 1995). Although this general conflict exists, tribes and the state do work together on various levels in child welfare decisions. As we have seen, tribal courts do operate on behalf of their children, either through their own systems or by becoming a party⁸ in state court proceedings. However, the tension between the state and tribal court system often leaves children caught in a political system that transcends their individual situations. There are several defining cases and pieces of legislation that reveal the complicated contours of Alaska's child welfare system, the consequences of which are still being played out in the relationship between Alaska Native villages and the state of Alaska.

The Indian Child Welfare Act (ICWA), passed by Congress in 1978, allows tribes to intervene in state court proceedings involving their child members. Recognizing the importance of Indian children to the continued existence of tribes, the Act adds another dimension to the structure of protective services for Native children:

... it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal and placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture⁹

Native American tribes all over the United States continue to endure the effects of a mass removal of Indian children from their communities as the result of various historical governmental policies primarily aimed at assimilation and the eventual solution to the "Indian problem" (Goldberg-Ambrose, 1994; Metteer, 1997). The Association of American Indian Affairs found that on the national level, by 1974, approximately 25-35 percent of all Indian children were separated from their families and placed in foster homes, adoptive homes, or institutions.¹⁰ Intended to enhance Native control over the custody of Native children by conferring decision-making authority on tribal courts and councils (Ambrose-Goldberg, 1994; Metteer, 1997), the ICWA legislation created a dual system of ensuring the welfare of Native children. At the same

time, it attempted to balance the cultural value of placing Indian children in Indian homes with standardized legal definitions and assurances of the welfare of children, although these two components are not always congruent.

Much of the ICWA implementation in the state of Alaska is dominated by the findings in a case involving the Interior Athabascan village of Nenana, *Native Village of Nenana v. State, Department of Health & Social Services*.¹¹ At issue in *Nenana* is the transfer of Native child welfare cases from state superior court to the appropriate tribal court. In 1986, the state in *Nenana* case denied tribal courts the ability to transfer child welfare cases to their own courts as defined by ICWA. This case, then, defined the limits by denying transfer of tribal jurisdiction in cases involving Native children.

The court's finding that tribes do not have the ability to transfer jurisdiction in such cases without petitioning the Secretary of the Interior to reassume jurisdiction over Native child welfare proceedings, hinged on the Alaska Superior Court's interpretation of Public Law 280, a federal statute passed in 1953 that granted Alaska, among other states, jurisdiction over all civil and criminal matters in Indian country.¹² The Superior Court held that state jurisdiction over civil matters in Indian country is exclusive, not concurrent, and thus cannot be shared with tribal courts. By not recognizing tribal courts as an appropriate forum for these cases, the *Nenana* ruling effectively denies tribal courts in Alaska a set of rights that ICWA was passed to recognize. It does not, however, interfere with a tribe's right to intervene in state court on behalf of a tribal member in child welfare proceedings as laid out by ICWA. It also does not affect a tribe's ability to take custody of a child in need of aid and process the case through their own tribal court or other decision-making body, such as a tribal council. In the latter situation, tribes take care of their own matters internally; the case does not necessarily ever come to the attention of the state. However, this leaves a situation where two separate legal systems, one state and one tribal, operate on behalf of Native children in Alaska.

The problems posed by operating concurrent legal systems in the protection of Native children are not limited to jurisdictional issues, but also concern the conflict between indigenous legal principles and state/federal laws. An example from southwest Alaskan Yup'ik communities shows that the issue of adoption and termination shows up in other child-related policy, highlighting conceptions of appropriate resolution and family forms that are culturally central. Changes in child support policy in Alaska in 1985 have focused attention on the adoption of Native children. Cultural adoptions, a prevalent form of adoption in the Yup'ik area (defined by Morrow and Pete as those adoptions that are customary but not recorded by the state or by a recognized Native governing body), do not terminate parental rights, unlike legally sanctioned adoptions in state courts.¹³ As a result, problems arose when cultural

adoptive parents applied for assistance under the Aid to Families with Dependent Children (AFDC) subsidy program, which operates under western legal tenets requiring parental termination as part of a legal adoption. Auditors for the subsidy program noted that there were cases where parental rights were not terminated, and directed the state to demonstrate termination of parental rights in such cases or pursue payment of child support by the birth parents. In choosing to pursue payment, the state obligated Alaska Native parents to sometimes many years of back child support in situations where cultural standards of adoption had been followed.

A class action suit in 1988 fighting this new policy that affected the recognition of cultural adoptions, highlighted significant distinctions between state and tribal actions and crystallized some of the effects of increasing legal intervention by the state on Yup'ik communities. The Dan-Conlon case involved an adoptive mother (the child's grandmother) who, in applying for AFDC assistance, documented the birth parent as simply absent.¹⁴ According to the cultural understandings of the adoption, parental rights had not been terminated by the birth mother although the adoptive parent was locally recognized as responsible for the child's financial support. This action obligated the birth mother to nine years of retroactive child support under the revised child support policies in Alaska.

Partly at issue in this case was the interpretation of ICWA. Adoption under ICWA, as well as placement, is to reflect the unique cultural values of tribes, a mandate which seems inconsistent with state actions in this case. State courts have been very inconsistent in the recognition and regulation of cultural and tribal court adoptions. The findings of the Revenue Hearing Examiner for the Dan-Conlon case note that while the judicial decision upholds the law, it does not produce an equitable result because of the cultural issues at stake in the practice of Yup'ik cultural adoption.

Though the Alaska Superior Court consistently ruled against the recognition of cultural adoptions in the Dan-Conlon case, the complications attending this case spurred the Alaska Department of Health and Social Services to adopt regulations in 1990 to issue new birth certificates for children adopted under tribal custom. Though this action represented a significant step towards recognizing cultural adoptions, it also represents the increasing, and often unwelcome, legal intervention of the state into Native communities. Further, it reveals a noticeable lack of comity between state and tribal legal entities, a problem long recognized by Native communities in Alaska and a recent focus of an ICWA conference hosted by TCC and attended by parties generally involved in ICWA cases, including tribes, social workers, Assistant Attorneys General, Guardians Ad Litem, and private attorneys.

In 1997, the federal Adoption and Safe Families Act again shifted how state and tribes work together on Native child issues, specifically with regards

to finding appropriate solutions for placement and adoption, if need be. Specifically, this Act significantly restricts the ability of the DFYS to pursue reunification of the child with his or her parents by shortening the time limits parents are granted to resolve the issues that led to the removal of their children. The Act reflects a shift in the definition of the “best interests” of a child from family reunification to permanency in placement for the child. According to one judge in the Fourth Judicial District, the difficulties of “. . . planning for termination [of parental rights] at the same time you are trying to reunify the family” already creates a disjuncture in the way social workers must deal with these cases, especially since substance abuse, usually present in such cases, takes a long time to heal (Closuit, pers. comm., 2000). The actual impacts of this shift on tribes and children remain unclear because of a backlog in cases due to the shortened timeline for parents to resolve their conflicts.

Shortened timelines for permanency placements, usually in the form of adoptions under the state system, exacerbate an additional existing cultural dilemma for tribes when they intervene in state cases regarding their children. The competing definitions of a child’s “best interests” dictate the methods used in protecting children. Despite regulations, which dictate preference of placement for Native children in their home communities, if possible, data for DFYS levels of compliance in placements under ICWA are inconsistent. There exist tensions between placing a child in the community or with relatives and removing him or her from the abusive situation and hence out of the community. The reasons for this vary, from differences in the way compliant placements are defined, to a lack of appropriate state approved Native foster homes (Alaska Judicial Council, 1996). In contrast, tribal priorities lean towards placements that protect kinship ties and ties to the community, as a means to maintain cultural connections. Native children adopted through the state system are generally severed from their natal families through the termination of parental rights, a concept eschewed by tribal courts if at all possible.

Most recently, in 1999, *Baker v. John* represents the first time the Alaska Supreme Court recognized Alaskan tribal court actions.¹⁵ Briefly, this case was first heard as a custody hearing between two parents from different Interior villages by the Northway tribal court. The Northway tribal court conducted the custody hearing with the permission of the non-Northway parent. When the court granted custody of the two children to the non-Northway parent, the Northway parent took the case to the Superior Court in Fairbanks. The Superior Court heard the case even though there was an existing tribal court order, granting custody to the father from Northway. The mother appealed the case to the Alaska Supreme Court. The Supreme Court found in her favor, relying on the argument that the Superior Court should have recognized the tribal court’s original order granting custody to the non-Northway mother.

Baker v. John does not actually involve ICWA, since the case is about the custody of two children of Alaska Native parents from different Interior villages. Custody battles are explicitly excluded by ICWA; therefore, the Supreme Court's recognition of tribal court actions does not extend to transfer of jurisdiction of child welfare cases from state to tribal venues. However, what has often been described as the schizophrenic attitude of the state's recognition of tribal governing bodies makes this case an issue because of the court's inconsistency on the question of the validity of tribal courts to ensure the welfare of Native children. While from a legal perspective, then, these are different types of cases, from a local perspective it simply appears that the state handles child welfare cases inconsistently. The inconsistency with which the state recognizes tribal forums also creates confusion and uncertainty about the legal status of tribal courts. This confusion is exacerbated by the state imposition of distinctions between different cases having to do with the welfare of Native children. For example, many tribes are equally concerned about ensuring the welfare of their member children through the appropriate resolution to both custody and neglect or abuse issues. And while tribes often understand these as linked problems, the state courts treat them under separate laws.

The cases discussed above show that increasing legalization creates rigid categorical distinctions that newly define types of child welfare proceedings and appropriate forums for resolution. For example, the *Baker v. John* case draws distinctions between CINA cases and custody cases, though each involves the welfare of Native children in different venues. Tribal courts or councils generally handle both types of cases when they are able to maintain local control; however, the state court system only recognizes tribal courts to hear custody cases, even though tribal courts regularly deal with CINA cases in their own communities. The state legal system makes a distinction between tribes and tribal courts in terms of their decision-making authority, though communities themselves do not always distinguish these bodies in the same ways. Tribal councils generally facilitate tribal courts. That is, tribal court duties are usually an extension of tribal council responsibilities and the entities often have overlapping membership, making both bodies locally powerful. Even where tribes do maintain local control over certain decisions having to do with child welfare—tribal adoptions, for example—the official notice of these actions must come from the tribal governing body, usually the council, rather than the tribal court, whose actions are not recognized by state authorities. This highlights a disjuncture between legal recognition and local recognition of authority where the local effect of decision-making is not legally recognized by external authorities such as state courts. Thus, legalization defines child welfare problems and cases with reference to who may handle them and how they are to be legally resolved.

Center-Periphery Relations in Context

The increasingly legal character of Native child welfare protection, in the form of new legislation and precedent-setting court cases, is aimed at facilitating procedures for protective services for Alaskan children. However, intercultural child welfare provisions and the cultural and political issues they raise suggest that child welfare negotiations often pit tribes and state agencies against one another in the very attempt to coordinate efforts between them. The reasons for this conflict derive from historical relations of governance associated with the geographical and conceptual distances between regional hubs such as Fairbanks or Anchorage and the outlying Native villages. The Alaskan situation is thus an instance of a more general process, not only familiar in the North, but in a global history of center-periphery relations in which law has been and continues to be an instrument of nation-state power and colonial domination that shapes local social settings (Comaroff & Comaroff, 1997; Stoler, 1997; Merry, 2000).

Historically, in the process of modernization, colonial governments employed legal processes to restructure various aspects of local social life, including land ownership practices, dispute resolution, and domestic configurations (Chanock, 1985; Fitzpatrick, 1987). The incorporation of Alaska first as a territory, then as one of the United States, included increasing legal intervention into the lives of the Native families already living on the land. Many of these interventions, such as shifts in educational policy and the introduction of social assistance programs, disrupted traditional family structures and the activities that supported them (Darnell, 1990).

The distant administration of laws and services concerning child welfare continues today in much of Alaska.¹⁶ Reports must be tracked from a regional hub with brief visits to a village, creating challenges for state social workers and village members alike in response time, follow-up, local cultural knowledge, and general trust. However, power relations in child welfare cases are not unidirectional, as is apparent in our earlier description of inconsistent implications of case law. Tribes constantly evaluate the possibilities of maintaining local control, while also working in relation to the state system through intervention in state CINA proceedings.

This leads us to a closer examination of the zone where center and periphery interact. In our view, any analysis of center-periphery relations in the North must attend to contrary local needs: to draw on resources external to the community or region while maintaining local control. Some attorneys involved in Native rights issues have argued that tribal governments should not be seen as somehow different from state governments in terms of their arenas of local control (Provost, pers. comm., 2000). Both governments receive the majority of their funding, especially for social services, from federal sources; however, the state has a privileged legitimacy in the maintenance of au-

thority and control. When the federal government distributes funds to tribes, it is seen as welfare or a “hand out,” characterized by a “wardship” status, while monies distributed to state governments are understood as standard budgetary disbursement. Child welfare proceedings offer a window into the complexity of local-state relationships.¹⁷ The process of addressing the problems, and even the framing of the problems itself is politically contested. At the same time, there is a substantial incentive for cooperation in the common recognition, at every level, of the need to protect children. In this respect, child welfare administration does not resemble a number of other issues that are currently contested in the interactions between urban centers and peripheral Alaska Native villages. For example, the battle over a priority for subsistence uses of fish and game in Alaska has resisted resolution partially because there is such disagreement over the essential nature of the problem.

Thus, child welfare proceedings are structured by a set of opportunities and constraints to address problems that are essentially recognized at all levels. However, the problems and potential methods of resolution are differently understood and defined by the various actors. As a result, opportunities for action variously lead to collaboration and cooperation, conflict and opposition, and/or the operation of essentially parallel mechanisms for dealing with child welfare. This happens because geographical distances between state and tribal court systems are compounded by conceptual differences between the State of Alaska and Alaska Native villages in the structures and procedures for resolving child welfare issues.

The informality of tribal courts or related decision-making bodies, for example, is one aspect of the fundamental paradox of legal process in the North. The delivery of justice for state governance relies on a formal, codified structure and a common law of universal and uniform applicability. A lack of familiarity with village politics and social structure makes the State reluctant to recognize tribal decisions. However, the relative informality that characterizes local-level processes (how and by whom decisions are made) is a strength for communities. Villages approach problems in ways that make sense locally because they draw on intimate knowledge of the parties. For example, tribal priorities may evaluate whether a child’s best interests would be met by removing the child to another village to live with relatives or keeping him or her in their home community with non-relatives. The options available to tribes are case specific, however most decisions rely on intimate knowledge of the potential choices not available to state agents who do not live in the villages and especially in the absence of a formal foster care system. Such decision-making processes can occur without bureaucratic confusion by involving only the necessary parties, unlike state proceedings that involve a myriad of professionals such as attorneys and other advocates.

The tension between formal and informal processes in Alaska parallels the situations described in Drummond's (1997) recent work exploring the conflicts between circuit courts and healing circles in Nunavik. In her evaluation of these "legal sensibilities," Drummond notes,

The community is better equipped than the itinerant plane-load of Qallunaat [non-natives] to perceive the artificiality of the court's sense of propriety. Hence the fact that the fourteen year old girl would almost daily have to confront the man at whom she had pointed her finger is nowhere accommodated in the court's methodology. . . . In small Inuit communities, this kind of intimate knowledge is virtually inescapable. (Drummond, 1997, p. 107)

This intimacy is both a strength and challenge for the state and local communities.

The state legal regime does not contemplate this aspect of Native life and is too distant to be able to resolve problems in ways that benefit from local knowledge. Alaskan tribal courts and councils, on the other hand, made up of individuals who do maintain intimate knowledge of village life and history, can act as an alternative to the exportation of regionally based services that are often out of touch with local needs. The shortcoming, however, is that they are sometimes too close to the problem. At times, when village workers are compromised by their relationships to relatives or other close individuals who may be involved in a given case, they may choose to call on state authorities. Autonomy here does not necessarily mean handling one's own problems in entirety, but rather deciding the terms of local and non-local engagement in their resolution. But the desire to maintain general control over local decisions lies in tension with a preference to refer some cases, or aspects of cases, to more distant agents.¹⁸ In the end, however, it is these unresolved and competing aspects of negotiation with outside agents that characterize any center-periphery relationship.

Conclusion

Child welfare proceedings, in sum, occur in a contested space where law both enables and restricts local decision-making capabilities. The contradictory situation exists despite a legally sanctioned degree of local autonomy (i.e., the federal government, through ICWA, recognizes the right of tribes to intervene in child welfare proceedings, and the state in *John v. Baker* now recognizes tribal courts for the purposes of custody). However, increasing legalization remains a primary marker of governmentality in Alaska, and therefore has serious impacts on the recognition or non-recognition of local decision-making bodies, such as tribal courts, as an appropriate forum for decision-making. The negotiation of tribal-state relations through child welfare proceedings highlights and often exacerbates already incongruent relations bet-

ween tribes, DFYS, and the state court system, all of whom are actors in Native child welfare implementation.

Although contemporary state intervention is, therefore, not simply a monolithic, dominating attempt to suppress local participation, local communities do remain circumscribed in a history and a set of institutions that channel and limit the type and degree of their participation in decisions. The recognition of tribal courts for some purposes but not others in cases having to do with children fits within a history of conflicting and inconsistently applied legislation in various domains of Alaska Native life (see Morrow & Hensel, 1992). As a result, increasing legalization is often linked to increasing tribal mistrust of state actions.

The same mistrust, born of long-term colonial experience, is also at the root of Native desires for sovereignty, a fundamental issue in the relationship between northern communities and the state. Here, although the manifest issues center on particular child welfare cases, the entire negotiation of jurisdiction in such cases is a dialogue about legal-local relations in the wider sense. This brings us to a most significant point: Alaska Native child welfare is, in fact, fundamentally linked to sovereignty, and all of the contests to which sovereignty debates are heir.

These links between child welfare and tribal sovereignty are manifest in the ways that the laws are structured to recognize the futures of communities as Native communities and the importance of protecting children's cultural identities, both elements in the larger dialogue about sovereignty. Yet, tribal and state representatives alike resist framing Native child welfare issues in this context because they do not want their common investment in protecting child safety and welfare to be derailed in the context of differentially vested interests in the sovereignty debate.¹⁹

As a result, sovereignty issues implicitly frame the terms of interaction across the lines of center-periphery relations. Cases over the disposition of a specific child increasingly threaten to set precedents implicating the larger issue of tribal jurisdiction and authority. The lesson that emerges is that local-state relations form an influential backdrop in the resolution of even such personal, civil matters as child welfare. At the same time, child welfare has moved to the foreground of tribal politics. Where children are Native, children's welfare is never simply the issue.

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Endnotes

1. Every society has developed mechanisms for retaining or restoring social order. These range from informal sanctions such as gossip and censure to various levels of authority including forums in which there is a recognized mediator, such as a court.
2. “Local” in this work refers to the Alaska Native villages in contrast to state of Alaska spaces of governance. We make this distinction because state discourses on Native issues often slip between Native and rural; this work, however, is expressly concerned with Native spaces, not simply rural ones.
3. Other structures also give voice to local control concerns, most notably regional corporations created as a result of the 1971 land claims in Alaska (see below), though tribal councils and courts remain the primary voice on the village level.
4. According to the Alaska Judicial Council, a child in need of aid (CINA) case is one in which a court has determined that a child has been maltreated by his or her parents. The court has the dual responsibility of rescuing the child from the abusive situation and helping to reform troubled families (Alaska Judicial Council, 1996).
5. In 1992, the Bureau of Indian Affairs (BIA) under the Department of the Interior in Washington, D.C. published a list of federally recognized tribes in the United States, including 226 Alaska Native villages.
6. At times, this requirement causes difficulty because primarily village-based families may reside temporarily in cities for various reasons. If DFYS removes children from their parents in these situations, DFYS social workers face the dilemma of placing these children near their parents in the city, or back in the village where they were raised, near or with relatives. Though this tension was often expressed by DFYS social workers, the Act does not provide clarification on this issue.
7. On September 29, 2000, Governor Tony Knowles declared that the official state policy would be to acknowledge and respect the governmental status of Alaska’s 227 federally recognized tribes. He did so without the support of the Alaskan Congressional delegation. The administrative order supersedes a 1991 order by then-Governor Hickel asserting the state was opposed to the existence of tribes in Alaska. The governor’s order represents a directive to state officials to work together in areas like delivery of state services in rural areas, fostering economic

development and addressing social problems (*Fairbanks Daily News-Miner*, September 30, 2000).

8. Becoming a party in a child welfare proceeding is referred to as “intervention” in ICWA. Here, intervention simply means becoming involved in a case; it does not always suggest lack of cooperation or conflict. Tribes intervene by registering their desire to do so with the court.
9. 25 U.S.C. 1901[3].
10. Indian Child Welfare Program, Hearings before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, 93d Cong. 14, 15 (1974).
11. 722 P.2d 219 (Alaska 1986).
12. While federal laws possess a priority over state laws, they are intended to accommodate a measure of state discretion. However, the state of Alaska’s interpretation of PL280 exceeds that of other PL280 states, creating a legal arrangement that does not comport well with the establishment of tribal authority in child welfare proceedings by the federal law.
13. According to Morrow and Pete (1996), a study of two contemporary Yup’ik communities suggested that “as many as 35% of a population of 300 people might be adopted. Of these, nearly one-third were grandparental adoptions and none were registered through formal legal proceedings. The existence of seven common terms referring to adoption in the Yup’ik language in itself suggests its frequency” (Morrow & Pete, 1996, p. 246).
14. No.3AE-87-06505 In the Matter of Georgianna Dan-Conlon and Other Similarly Situated Obligor.
15. Sup. Ct. No. 5174, September 8, 1999.
16. District and superior courts where cases are heard, and the state social workers who track children’s care through the Division of Family and Youth Services (DFYS), are all located in regional hubs of the state—Anchorage, Fairbanks, Bethel, and Juneau. In fact, the Northern Region of the DFYS located in Fairbanks is responsible for serving all of the villages from Bethel to Barrow, including the Interior, a jurisdiction that represents not only a vast geographical area, but also great cultural diversity.
17. The Supreme Court of the 1830s developed the legal theory of federal guardianship over Indian tribes in a set of cases dealing with the Cherokee Nation that was to define the government-to-government relationship between tribes and the nation. As “domestic, dependent nations,” Indian tribes became wards of the federal government (Deloria & Lytle, 1983, p. 25-40).
18. This is a challenge for communities throughout Alaska. It was, for example, a source of considerable stress for Interior village social workers, as was evident at a recent meeting (TCC ICWA Training, May 2000). Additionally, ongoing research in Southeast Alaska documents that region’s struggle between internal and external control over child welfare cases. Lisa Rieger, University of Alaska Justice Center, and Randy Francis Kandel are currently exploring one Southeast

community's reformulation of decision-making mechanisms to find a balance between state and local authority.

19. In our Interior interviews and Rieger's and Kandel's interviews in Southeast Alaska, tribal representatives expressed their understanding that child welfare concerned their rights to make decisions about the tribe's future through its children. However, they repeatedly refocused the conversation away from sovereignty and towards the practical protection of children.

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