

WHEN LEGAL PROCEDURALISM CONFUSES THE VALUES OF LEADERSHIP: 'OFFICIAL' AND 'UNOFFICIAL' LAW IN A TLINGIT COMMUNITY

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Introduction

Social systems are fundamentally political in character, so they are always vulnerable to those forces that are excluded in the process of political formation (Laclau 1990: 31-36). Such is the case in a community that I will call Keex' Kwaan, Alaska. Keex' Kwaan is a predominantly Native Tlingit community, where the political formations of a tribal corporation, an incorporated city and a tribal government were modeled after Euro-American law and business standards. Under Euro-American procedural models of decision-making, the Tlingit 'unofficial' law priorities of community consensus were systematically weakened and even excluded. One result is a sense of mistrust and pessimism in Keex' Kwaan toward local leadership and governing entities. This sense of political negativity is a major hurdle for local problem-solving during a time of increasing economic crisis. Based on ethnographic fieldwork, this paper addresses the circumstances through which Euro-American legal processes have been superimposed on Tlingit social resources for managing conflict and the 'unofficial' laws of leadership in the village. Local tension results from trying to live within incompatible values. Another consequence is a division of leadership, restricting the ability of the city, the tribe and the tribal corporation to cooperate. Over time, division of leadership without community-wide consensus building has contributed to intrinsic skepticism of most representatives elected or hired into leadership positions.

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A basic proposition in discourse theory is that antagonisms, such as those in Keex’ Kwaan, show the points where identity is no longer fixed in a specific system, but contested by forces that stand outside, or at the very limit, of that order (Norval 1997). Another similar premise of discourse theory is that antagonisms reveal limit points in society through which social meaning is contested and which cannot be stabilized without change (Howarth and Stavrakakis 2000: 9). In Keex’ Kwaan, ‘unofficial’ Tlingit law has been contested by outside forces for at least 15 decades, but contestation has accelerated in the past three decades. In the first part of the 20th century Euro-American legal procedures, such as elections and Roberts Rules of Order, were a minimal part of people’s daily lives. Examples included city government business or the Alaska Native Brotherhood and Sisterhood. In the 1970s and 1980s, when Keex’ Kwaan Tlingits became shareholders in a corporation that had jurisdiction over Keex’ Kwaan Tribal Land, participation in Euro-American legal procedures affected everyone in the community more deeply. By the later part of the 1980s some groups began to openly question outside legal and economic forces and values. In the 1990s and now in 2005, revitalization of Tlingit laws and values grows stronger. ‘Unofficial’ Tlingit laws ‘stand outside or at the very limit’ of the state and US federal legal complex, but they continue to be important in day to day local interpersonal relationships.

In Keex’ Kwaan, antagonisms and tensions over power and leadership decidedly do reveal the limit points through which social meaning is contested. Law-making through boards and councils - made up of people elected to represent the electorate - is a legislative process that is performed in problematic contrast to ‘unofficial’ values such as family loyalty, reciprocity and elder leadership. Official public meetings that are overseen by a group of elected representatives fail to provide an adequate forum for the ‘unofficial’ value of community-wide consensus building: reorganization of Keex’ Kwaan law-making through boards and councils could be considered a type of coercive assimilation. Gaventa (1982) discussed one dimension of coercive social power called ‘process power’. Process power “shapes the playing field” (Docherty 2004: 865). For this paper I extend the concept of coercive process power to include the Euro-American legal standards through which all United States’ incorporated cities and business corporations must conduct their legal functions. I include in my description of coercive process power the US legal standards through which participants are included or excluded from boards and councils based upon appointments and elections. Some legislators work under the assumption that such formal, bureaucratic proceduralism is unavoidable within the contemporary US because the country as a whole lacks a dominant identity. For Keex’ Kwaan Tlingits, however, Euro-American proceduralism contributes to

a current economic crisis and local political polarization that makes economic problem-solving difficult. In the case of Keex' Kwaan, the legal procedures of decision-making through boards and councils, which has been imposed through relatively inflexible Euro-American principles of incorporation, can be seen as a type of 'process power'.

Public council and board meetings are the standard legal Euro-American solution to constituent participation. In Keex' Kwaan a different kind of community meeting would augment local empowerment. A state and federal encouragement of legal pluralism within decision-making procedures would assist Keex' Kwaan in formation of cooperative and consensual leadership. Changes in public decision-making processes could be a means to build respect for leadership into Keex' Kwaan's political situation. Without respect for leadership, the community lacks collective power for finding social and economic solutions.

The Circumstances and History of Keex' Kwaan

To begin, Keex' Kwaan is a tribal Tlingit village. Most of Keex' Kwaan's surroundings are national forest land, part of the Tongass National Forest. The population, until recently, was approximately 650 people. Since December 2003 at least 200 people have moved to seek employment. More are planning to leave if they can find jobs elsewhere and accumulate enough money to move. Keex' Kwaan's fish processing plant closed in 2004, partly because of the low price which wild fish commands now that farmed Atlantic salmon dominates the world market. The same year, 2004, marked the end of logging in Keex' Kwaan and the Keex' Kwaan Tribal Corporation is negotiating possible bankruptcy, or what is called 'financial reorganization'. In the summer months of 2004 I noted a greater emphasis on subsistence fishing, hunting and berry picking, reminiscent of times past.

Until the 1970s Keex' Kwaan people relied heavily on traditional and customary fishing, hunting and berry picking. Many worked at commercial fishing and processing. Changes in the emphasis on and availability of traditional and customary foods and changes in economic priorities are connected to the enactment of various state and federal laws, including the 1971 Alaska Native Claims Settlement Act (ANCSA). Instead of designating land within an Indian reservation system, the act required Keex' Kwaan Tlingits to form the Keex' Kwaan Tribal Corporation (not its real name) under the legal umbrella of a regional corporation.

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Native corporations were required to make a profit from the lands allotted through the settlement. Through ANCSA corporation management, the land around Keex’ Kwaan has been logged so extensively that the only trees left to cut are protecting one third of the community watershed. (In 2005 a desperate city council voted to allow additional logging in the watershed.) Much of the profit that resulted from logging was distributed to native shareholders. Much of the money was lost through poor management and internal and external corruption, according to local narrative. I was informed that fewer than 40% of voting corporate shareholders live in Keex’ Kwaan.

Donald Mitchell (1997) wrote that ANCSA was a move that the US Congress made to economically assimilate Alaska Natives and, inadvertently, to weaken their traditional cultures. To inquire whether ANCSA was good or bad is to ask whether or not economic assimilation through corporations benefited Alaska Natives in ways that exceeded the cost of cultural disruptions.

For people in Keex’ Kwaan, ANCSA is a factor in increasing polarization between those who are working to re-vitalize traditional community and environmental values and those who feel that environmentally concerned individuals are to blame for the loss of resource extraction jobs. People whose cash-economy livelihoods came from logging are concerned about the loss of forest extraction jobs, not just on tribal lands but in the Tongass National Forest in general. For their part, those concerned about older Tlingit values tell the following story.

In the 1980s the local and regional ANCSA corporations distributed dividends to their shareholders from the profits they made from logging and other enterprises. Paradoxically, as corporation checks for thousands of dollars began to appear in people’s mailboxes, the suicide rate in Keex’ Kwaan grew to be the highest in the nation. Social program experts came to help with the increasing drug, violence and suicide problems. Economic experts came to help the tribal corporation remain lucrative. The experts came and went and little changed. Local groups decided they needed to take action themselves. They needed to use their sovereign powers as a tribe to re-vitalize the traditional values of community, reciprocity and environmental responsibility. A group of people began to practice and implement their rights as an Indian Reorganization Act (IRA) tribe. Their tribal organization is the Organized Village of Keex’ Kwaan (OVK, not its real name). Today OVK writes its own grants and administers, for Keex’ Kwaan, the federal monies allotted to the tribe for social services, housing and health care. OVK is separate from the ANCSA Keex’ Kwaan Tribal Corporation.

In 1993, the Clinton administration conferred on many Alaska tribes a sovereignty through which they would have ‘government to government’ relations with the US government. This action further empowered the local tribe in Keex’ Kwaan to write grants and receive direct federal funding for the benefit of Keex’ Kwaan natives. In 2003-2004 Senator Ted Stevens, R. Alaska, and others worked to rescind the status of Alaska tribes and to regionalize tribal health care, housing, courts, justice services and other programs for tribes. Stevens gave as his reasons administrative costs, efficiency, compliance, accountability, inequitable distribution of competitive grants and the problem of small or relocated tribes (Harrison 2003).

A third governing entity in Keex’ Kwaan is the incorporated City of Keex’ Kwaan. The city is responsible for Keex’ Kwaan public works and local police services. Its main source of revenue is the community liquor store. Keex’ Kwaan, in 1912, was the first Tlingit community to incorporate as a city. At that time the elders formally made the decision to abandon their Tlingit ways and join the ‘white man’s’ governing system and world (Johnson 2001). The narrative about the 1912 decision was told to me often in Keex’ Kwaan, but most often with a sense of regret. Traditionally, strict formal laws governed the relations between clans, but formal laws did not apply to the decision-making and internal affairs between individuals and houses (Worl 1998: 226). Everyday human relations and leadership, and the choosing of leaders as representatives in clan affairs were governed through ‘unofficial’ laws and values. After the US Navy bombed Keex’ Kwaan villages in 1859, and after incorporation as a city, the formal clan laws fell away in Keex’ Kwaan. ‘Unofficial’ laws have endured and are still evident in day-to-day relationships and special events.

Current Political Conditions and ‘Unofficial’ Laws in Keex’ Kwaan

Throughout my fieldwork experience I have heard about and observed the ‘spinning wheels’ of leadership in the tribal corporation and the city government. Because the goals and purposes of the IRA tribe, the tribal corporation and the city are felt to be philosophically opposed, and because of family and clan loyalties that I will describe later in the paper, the three governing entities have resisted meeting and working together. Social and economic issues are decided separately within boards and councils rather than jointly in ways that take into consideration the interrelationship of local concerns. This polarization of leadership exemplifies the

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juxtaposition between Tlingit laws and 'official' laws and the legal entities formed around 'official' laws.

Based on fieldwork in Keex' Kwaan, I can identify several traditional values that are manifest in present day Keex' Kwaan 'unofficial' or community laws. I will discuss four and how they conflict with legal and economic expectations that originated outside of Keex' Kwaan. Formal and 'official' Euro-American laws have failed to transform Keex' Kwaan and many other native villages into fully economically 'assimilated' communities. I will describe some of the reactions of state and federal legislators to assimilation failures.

Presently Keex' Kwaan and some other tribes find solutions to many social problems through autonomy and a philosophy of 'self-determination'. Economic problems, entwined with other social problems, are more difficult to solve locally, partly because of the philosophical differences between ANCSA corporations which have jurisdiction over tribal lands, and other local groups. In the mean time, state lawmakers periodically propose that local governing forces be consolidated regionally. Federal legislators campaign for regionalization of tribal social programs. Consolidation and regionalization are likely to further disempower local leadership and increasingly disengage the decision-making process from 'unofficial' laws and values. The points I make in this paper show why creating new elected positions on regional boards and councils would constrict autonomy and 'self-determination' and further divide community leadership. Local, 'bottom up' cooperative problem-solving would likely become even more difficult than it is now.

Two sets of recent conversations in Keex' Kwaan exemplify how Tlingit laws influence leadership and cooperation issues. During the Dog Salmon Festival in July 2004 an elder pointed out a 'real' Tlingit chief among the dancers from Juneau. I asked him if anyone in Keex' Kwaan is considered a 'real' chief. He told me 'no,' but there are 'pretenders'. He said that when Keex' Kwaan people decided to give up their Tlingit ways in 1912, they gave up having chiefs. In other conversations he described the attributes of a Tlingit chief. First the chief needed to take care of and repair his house every year and there should be smoke coming out of his chimney. Second, his job was to respect the will of the people with humility and not for personal gain.

Chief, of course, is a Euro-American term with all its implied meanings. Even before 1912 there were no chiefs. "There were just men put forward by the clan to

represent them and, by consensus put forward by the village, to represent them for a specific doing.” There were specialists in every area of life from planting to warriors to medicines, and there were specialists for every community gathering. (Jackson 2005)

Several older people in Keex’ Kwaan remember how leadership was practiced after 1912, when they were children. One woman described how people often solved community problems by calling a community meeting. Everyone in the village was invited and most people came and participated, she said. Family representatives had the opportunity to express how they saw issues and what they thought should be done. The respected elders/leaders made the final decisions, but their decisions were based upon community consensus and the will of the people. The elders’ decisions were followed because within family groups and clans young people were educated to respect their elders.

Although Keex’ Kwaan renounced its Tlingit ways in 1912, a study of the village shows that a decision to give up traditional laws does not make ‘unofficial’ laws disappear. They remain a part of behavioral expectations and they influence the ability of ANCSA corporation, tribal and city leaders to adhere to ‘official’ laws that are in conflict with local values.

Four Tlingit laws are considered in this paper:

- 1) The inter-relationship of respect for elders as leaders, belief in the importance of the will of the people, and belief in the importance of decision-making through consensus.
- 2) The importance of family loyalty, sharing, ‘pride,’ and particular reciprocity responsibilities between families, and, at special times, between clans and moieties.
- 3) The practice of helping those in need and assisting those who have experienced losses.
- 4) The values of respect for animals, plants, the earth and especially for traditional and customary foods. Such values are ideologically interwoven with the values of taking only what is needed from the environment and thanking the creatures, plants and landforms for their help and offerings.

The four ‘unofficial’ laws summarized here are ideals that people follow in varying degrees. Because remnants of these laws continue to influence Keex’ Kwaan people, their lives are partially situated in the ideals of older resource distribution

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practices and social relationship expectations. Such Tlingit ideals and practices are often in contrast to the practices and expectations of the state and federal legislative, regulatory and enforcement system inherent in corporate businesses and government agencies.

As stated before, one result of living within and between local, Tlingit ideals and Euro-American capitalist ideals is that local leadership has been weakened. Community-wide meetings, where respected leaders/elders listened to everyone voice their concerns and ideas, rarely if ever occur now. Most community-wide gatherings now are funeral dinners, what are called 40-day dinners, and pay back dinners. Funeral dinners are well attended and their adherence to Tlingit protocol and the commonly understood distribution of labor between families, clans and moieties demonstrates that Keex’ Kwaan people have maintained the organizational networks for consensual decision-making.

Presently political decisions are made through the elected officials of boards and councils in the tribe, the corporation and the city. Typically people are highly critical of those who serve on boards, councils and committees. The council and board members’ motivations and rights to make decisions are questioned on a daily basis. People say that the representatives are almost always elected because they have big families who vote for them out of loyalty. Some people say that one large family runs the corporation, the city and the tribe. Others point out that a different large family runs each entity, but that they are intermarried. Leadership through respected elders still seems to be the decision-making ideal, even though such leadership is not officially practiced. Older people, as youngsters, were taught in living history the importance of respecting elders as leaders. Young people still learn the importance of respecting their elders. In the past, the respected leaders were elders who demonstrated through life that they were trustworthy, humble, good listeners, respectful to others, and generous with what they had. Now, in contrast, village people perceive that the elected leadership of their corporation and government entities is based upon familial loyalties and nepotism. Only a few elected leaders are considered elders in the Tlingit law sense.

The situation in Keex’ Kwaan brings to mind Witteveen’s (1999) observation that legislation is like a symphony. Just as there is a division of labor in a symphony between the musicians and the conductor, so also there is a division of labor in legislation between the lawmakers and the constituents.

To achieve the minimum acceptable results, the authority of the conductor (law maker) must not be in doubt, and all the musicians (constituents) must have more or less the same notions of how to act as good musicians.

In Keex' Kwaan people may attempt to perform in at least two symphonies at the same time. The result of attempting to adhere to two political and social value systems is confusion and disillusionment. Village leadership authority is in doubt partly because few leaders are elders in the ideal sense and partly because local elected representatives make decisions without the consensus that comes from more traditional community meetings and communication processes. Community issues have been divided between the corporation, the city and the tribe. Most people on the island agree that ANCSA exacerbated local divisions. Several tribal and city representatives said that Keex' Kwaan could have been a place of community cooperation without the corporation. The ANCSA corporation became a wedge between them.

In August 2004 I began asking people which members of the community they would respect as leaders. Some people could name one or two, who tended to be elders. Some people were surprised at their own answers because they could not name anyone. They said that most of the people they respected had died. Where are the elders to replace the ones passed on, I asked? People have been asking that question themselves for as long as I have been in Keex' Kwaan. There are older people in the community, but most do not participate as teachers or leaders. People told me the older people are staying quiet for a number of reasons. First, they are of the generation that was sent off to boarding schools, or whose teachers in the village punished them for speaking in Tlingit. They learned to be ashamed of Tlingit ways of doing things. These parents and grandparents often wanted to protect their children from experiencing the same pain in school and refused to teach them about Tlingit culture and language. Many elders still see the end of Tlingit culture and language as a way to save their children and grandchildren from suffering. Second, many older people are of a generation that was caught up in alcohol, drug abuse, violence and other destructive forms of behavior. Many feel unworthy to be elders in the traditional sense. According to Tlingit law, an elder is a leader because he or she is a living example of Tlingit values.

As mentioned before, a few people aspire to be non-elected leaders. Their attempts at leadership are typically criticized, although their work is on the whole beneficial to Keex' Kwaan people. I asked why these leaders are often, but not always

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discussed without respect, and I was told, through stories, that they do not meet the behavioral criteria of a leader. People accuse such aspiring leaders of lacking humility. People assert that aspiring ‘chiefs’ are too concerned with their own notoriety. There is a sense that they often behave arrogantly and thus have lost the wisdom that their purpose is to serve. As one elder said, pride is important among Tlingit families, but there is a difference between ‘pride’ and being ‘proud’. One man wants to be ‘chief’ of his clan in order ‘to make decisions,’ but an elder told me that such a desire is not a characteristic of a good leader. True leaders follow the will of the people after people have had a chance to express and discuss their feelings and ideas.

Related to Keex’ Kwaan leadership disparity, other Tlingit laws often subvert and are subverted by the ‘official’ legal, decision-making standards of corporations and incorporation. They include the importance of family loyalty, sharing and ‘pride’. Families reportedly elect their own members onto city, tribal and ANCSA corporation boards and councils. When people are in city, corporate or tribal positions, they are accused of hiring family members as employees because of family loyalties. The importance of helping those in need and those who have experienced loss of a loved one, a boat, a house or a job is another local law. Ideally what has been shared will be shared again. These local, ‘unofficial’ laws make collecting public utility bills and enforcing ordinances difficult for the city. Some people may owe \$3,000 in water and sewer payments, but the city typically refrains from cutting their services out of respect for family and other relationships and out of humanistic respect for people’s losses. Few people pay for keeping their boats at the boat harbor, for example. If police officers are members of local families, they often find that family and neighbor relationships inhibit equitable law enforcement.

Other Tlingit laws concerning respect for animals, plants and especially subsistence foods are difficult to maintain within the constructs of Euro-American corporate and incorporated legal and organizational patterns. Many Keex’ Kwaan people say they still practice the rituals of thanks when they harvest salmon, trees and other resources. Related to the law of respect is the law that one should never take more than what one needs of a resource. This Tlingit law is one reason that many, but not all people in a predominantly Caucasian fishing community 45 air miles away often speak in critical tones about Keex’ Kwaan. In the context of traditional Tlingit values they judge as hypocritical the tribal corporation’s cutting of its entire forest holdings.

Keex' Kwaan narratives express concern about such contradictions. Villagers emphasize expectations that Tlingit people will practice local and traditional Tlingit laws concerning the environment, family and other relationships. At the same time people feel that they should be successful within the Euro-American corporate, economic, and legal complex. Outside narratives express the same expectations. Keex' Kwaan people feel a sense of embarrassment and loss because their ANCSA corporation failed within both Tlingit law and 'official' law parameters.

Prioritizing autonomy and self-governance, OVK, the IRA tribe, is closer than other Keex' Kwaan governing entities to accomplishing a philosophical and decision-making fit between Tlingit law expectations and the requirements of working within the state/federal legislative and economic legal system. The OVK staff successfully administers grants. It recently received an award from the Kennedy School of Government, Harvard University for its Circle Peacemaking efforts in suicide prevention, interventions for alcoholism and drug abuse, domestic violence, personal and cultural traumas, and restorative justice work. Through the Organized Village Circle Peacemaking, people have revived and practice Tlingit consensus-building. Keex' Kwaan has initiated a justice system that increasingly involves community members in identification and healing of problems. The tribe created a safe place for young people to gather and has been instrumental in restoring cultural pride and in teaching cultural values. As stated before, its successes may be recognized locally, but its leaders are often criticized. Local, 'unofficial' laws concerning elders, leadership, family, loyalty and 'pride' are some of the reasons that local people discuss with non-respect current and past tribal leadership. The village continues to experience high levels of unemployment, poverty and drug and alcohol abuse. Such problems are more difficult to solve with the legal and philosophical separation of tribe from city from ANCSA corporation.

When opportunities for cooperation present themselves, 'official' legal rules and laws often subvert attempts to solve problems through 'unofficial' local Tlingit laws. For example, the city has jurisdiction over the community fish hatchery. The tribal corporation owes the hatchery a substantial sum of money. The corporation is in the midst of possible bankruptcy (or 'financial reorganization'), so the mayor devised a plan to help the city and the corporation work together to prevent animosity and a lawsuit. A few years ago the mayor devised a similar and successful plan to help the city out of impending 'bankruptcy'. However, in the case of the corporation the lawyer representing the hatchery and the city told the mayor publicly that his suggestions, while they may have been good solutions,

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compromised the city’s legal position. The mayor was told that he should have stayed quiet. In effect, the city could only come out ahead if it maintained a victim/perpetrator relationship with the tribal corporation. While the lawyer was probably correct, the example shows that ‘official’ legal processes often increase polarization between local governing entities, inhibit cooperative leadership, and intensify local mistrust of village leadership.

Bourdieu (1991: 250) theorized that when the political field is increasingly professionalized and when only a few people have power to speak on behalf of other groups, then leadership generates a culture of political practices from which ordinary people are excluded. Within such political systems certain types of knowledge are taken for granted. Certain subjects are never discussed and certain questions are never raised or answered. Ideally, within ‘unofficial’ Keex’ Kwaan laws, people might have solved legal problems through internal conversations between families and clans. They might have participated in community-wide meetings where respected leaders listened and made decisions based upon the will of the people.

Now Keex’ Kwaan is in economic crisis, and while the tribe and the city attempt to communicate, community wide meetings in the Tlingit law sense had yet to be organized by the time this paper was written. Jurisdiction over a community-wide meeting is problematic considering the competitiveness between the families that run the three governing entities and ‘official’ legal separation between the tribe, the corporation and the city. The tribal corporation, which controls most of Keex’ Kwaan land, is uncommunicative. Its shareholders are uninformed about the reasons and circumstances of possible bankruptcy or “financial reorganization”. The corporation’s silence is an element of Euro-American legal practices, but it excludes community participation and problem solving.

Conclusion: Assessment of Current Trends

The aim of this paper has been to outline how legal procedural law transforms Keex’ Kwaan relationships in ways that divide families, neighbors and purposes. The limitations of Euro-American legal processes have inhibited Keex’ Kwaan’s ability to achieve consensus building. Keex’ Kwaan’s situation demonstrates how ‘liberal law’ in the Euro-American tradition, is “tendentiously assimilationist” (Tie 1999: 201). Presently Alaska state and federal legislative logic presumes that legal procedural law, based upon representation through elected boards and councils, is

the best means for problem-solving and for resolving conflicts within all of its communities. Michael Walzer (1992) proposed that bureaucratic and legal proceduralism may be unavoidable within contemporary America because the nation-state lacks a dominant identity. In examining the Keex' Kwaan situation, Euro-American legal proceduralism has contributed to a loss of community and cultural identity. The Keex' Kwaan example demonstrates a need for legal process flexibility and pluralism and supports Warwick Tie's statement that within legal proceduralism "particular cultural identities ought to be recognized" (1999: 203). Formal procedural legal practices leave many Keex' Kwaan people out of the decision-making process.

A legal pluralism of decision-making processes could be successful in Keex' Kwaan. People demonstrate their capacity for working together and consensus-building through the growing influence of Circle Peacemaking and the community-wide cooperation evident in funeral dinners and other events. This capacity could be strengthened through stronger state and federal recognition of the value of legal pluralism within the legal processes that govern corporations and incorporated cities and tribes. Legal pluralism would involve increasing local legal autonomy and 'self-determination' so that Keex' Kwaan people could reconceptualize their legal decision-making processes in ways that strengthen local consensus and 'unofficial' local laws. Conversely, the diminution of autonomy and self-determination through regionalization of tribal services would counter day-to-day 'unofficial' law, knowledge and consensus-building efforts.

Instead of stressing cooperation from within, many state and federal legislators propose consolidation from without. Applicable to the situation is Weisbrod's statement that "the emphasis on the state is parallel to the historical tendency of American law toward centralization ... The master trend is 'to create one legal culture out of many; to reduce legal pluralism'" (Weisbrod 2002: 3, 4). Proposed legislation to require formation of borough governments in rural Alaska is an example. State laws require eventual state-wide borough formation, but it is important to note that such legislation occurred in the 1950s during a period when assimilation of Native Americans and others was considered a solution to their social and economic problems. Currently the state legislative focus on borough formation centers on regions that include more rural native villages than other southeast Alaska areas. Reasons given for proposed legislation include the 'necessity' to centralize local governments in order to facilitate more efficient taxation of resource extraction. Legislators who support centralization assert that

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taxation of resource extraction through boroughs will provide a better system for funding schools, roads and other services.

Other examples of attempts to further reduce local power through centralization include federal efforts toward regionalization of Alaska tribes. Senator Stevens stated in October 2003 that there are too many tribes in Alaska, and Alaska Native ‘sovereignty’ has become a threat to statehood. State and federal centralization and regionalization would effectively disempower the IRA tribe’s social program efforts and its autonomy to make decisions about how federal funds are spent. Grant writing and allocation of money would be done from an office in Juneau. The tribe would be sovereign in name, but would lose the power to situate decision-making within ‘unofficial’ local law.

Law, whether it is ‘official’ legal law or ‘unofficial’ local law, creates the conditions of culture (Weisbrod 2002: 2). Legal rules with a narrow focus are prioritized in the corporate, incorporated, legislative and enforcement style of government. Those who understand law as “a system of precise rules for assessing responsibility and reject as irrelevant everything that is not circumscribed within these rules” fare better in the corporate, legislative Euro-American legal system (Conley and O’Barr 1990: 58-59). Narrow rule orientation is more typical of people who work in the Euro-American public and business sphere, the sphere from which legal rules are most often created.

In contrast, most people from Keex’ Kwaan are oriented toward relationships, the stories behind stories, and the ‘unofficial’ day-to-day laws of community. Regionalizing tribal decision-making about justice and social programs would increase the divide between Keex’ Kwaan ‘local’ laws and ‘official’ laws. It would further divide leadership. Without strong, cooperative and respected leadership, Keex’ Kwaan’s ability to solve its own problems diminishes. Regionalization through borough governments would exacerbates a similar divide between community and leadership in Keex’ Kwaan.

Considering that Euro-American legal processes are an aspect of the leadership divisions in Keex’ Kwaan, how might local people be empowered if ‘unofficial’ Tlingit laws were more consciously recognized and included in the legal decision-making of the tribal corporation, the city council and the IRA tribal board? How might such community-sensitive practices allow for and encourage leadership cooperation between these three entities? With greater recognition of the value of ‘unofficial’ laws, could the three legal entities find ways to combine their decision-

making efforts through community-wide meetings? How might such processes acknowledge community consensus, family loyalty, leadership that includes respected elders, and Tlingit laws concerning respect for the environment? Ultimately, what could representatives of ‘official’ state and federal legal institutions learn about the systems they serve by letting go and encouraging Keex’ Kwaan to re-evaluate its legal practices? What might the ‘state’ and the ‘nation’ learn about the possibilities of legal pluralism by supporting Keex’ Kwaan in rebuilding respect for local leadership through engaging more closely with the day-to-day processes of ‘unofficial’ Tlingit law?

References

- BOURDIEU, Pierre
1991 *Language and Symbolic Power*. John B. Thompson (ed.). Cambridge, Mass.: Harvard University.
- CONLEY, John M. and William M. O’BARR
1990 *Rules Versus Relationships: The Ethnography of Legal Discourse*. Chicago: The University of Chicago Press.
- DOCHERTY, Jayne Seminare
2004 ‘Power in the social/political realm.’ *Marquette Law Review*. 87: 862-866.
- FERNANDEZ, James and Mary Taylor HUBER (eds.)
2001 ‘Introduction.’ In *Irony in Action: Anthropology, Practice, and the Moral Imagination*. Chicago: The University of Chicago Press.
- GAVENTA, John
1982 *Power and Powerlessness: Quiescence and Rebellion in an Appalachian Valley*. University of Illinois Press.
- HARRISON, Dale
2003 Transcript of two interviews with US Senator Ted Stevens on Alaska Public Radio News. Oct. 3.
- HOWARTH, David and Yannis STAVRAKAKIS
2000 ‘Introducing discourse theory and political analysis.’ Pp. 1-23 in David Howarth, Alletta J. Norval, and Yannis Stavrakakis (eds.), *Discourse theory and political analysis: Identities, hegemonies and social change*. Manchester and New York: Manchester University Press.

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- JACKSON, Dawn.
2002 Letter to the Ford Foundation Community Forestry Research Workshop.
Jackson, Mike
- JACKSON, Mike
2005 Correspondence with Kathryn Fulton. November.
- JOHNSON, Charles
2000 *Heritage: Keex 'Kwaan – A Conspectus*. OVK Archives. Kake, Alaska.
- LACLAU, E.
1989 *New Reflections on the Revolution of Our Time*. London: Verso.
- MITCHELL, Donald
1997 *Sold America: The Story of Alaska Natives and their Land, 1867-1959*.
Dartmouth College: University Press of New England.
- NORVAL, Aletta
1997 'Frontiers in question.' *Acta Philosophica*: 51-76.
- TIE, Warwick
1999 *Legal Pluralism: Toward a Multicultural Conception of Law*. Dartmouth:
Ashgate.
- WALZER, Michael
1992 *What it Means to be an American: Essays on the American Experience*.
New York: Marsilio.
- WEISBROD, Carol
2002 *Emblems of Pluralism: Cultural Differences and the State*. Princeton:
Princeton University Press.
- WITTEVEEN, Willem
1998 'Significant, symbolic and symphonic laws.' Pp. 27-70 in Hanneke van
Schooten (ed.), *Semiotics and Legislation: Jurisprudential, Institutional
and Sociological Perspectives*. Liverpool UK: Deborah Charles
Publications.
- WORL, Rosita
1999 *Tlingit At.oow: Tangible and Intangible Property*. Thesis. Cambridge:
Harvard University.