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The Problem of Justice

Tradition and Law in the Coast Salish World

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Upper Skagit Justice

A Historical Narrative

In this chapter I consider in detail how justice practices changed in a single community, Upper Skagit, over a century and a half. During the period from the middle of the nineteenth century to the start of the twenty-first, Upper Skagit people lost control of much of their territory and the regulation of community life. Community members developed ways to respond under new sorts of leaders, especially those skilled in interacting with the mainstream society, and to act on legal traditions in new ways. This has not been achieved without difficulty, and Upper Skagit people have been forced to address fundamental questions about the nature of the community and where they wish to head as a group, particularly in light of the vastly increased diversity. Among the key issues have been defining what the relationship between individuals, families, and the tribe should be, and the Upper Skagit tribe has chosen a somewhat different route than some of the Puget Salish tribes. Part of the effort to reconfigure their justice practices after the establishment of their current legal system in the 1970s has been a study of prior justice conducted by the Northwest Intertribal Court System (NICS).

Ancestors of the present-day Upper Skagit people were no doubt aware of the arrival of Captain George Vancouver of the British Navy when he dispatched longboats to examine indigenous villages on Whidbey Island in Puget Sound in 1792. This visit had little direct effect on the upriver members of the community, however, and the first permanent white settlement on the Skagit River drainage was not established until 1850, although nearby Fort Langley (1827) and Fort Victoria (1843) were created earlier. The controversy between the United States and Great Britain over possession of the Northwest slowed down white settlement in the Skagit Valley until the United States gained clear title in 1846, and the Oregon Territory was established in 1849. In 1853 Washington became a separate territory, and Congress allocated funds to negotiate

treaties with the indigenous communities of the new territory, in the hopes of quickly opening the area to settlement (Roberts 1975:184). The most influential of the Upper Skagit leaders, Slabebtkud, would not sign the Point Elliot Treaty in 1855, but he allowed his subordinates to do so, and two of them are signatories. Congress ratified the treaty in 1859, and reservations were created in the 1870s. Yet, there was less direct disruption of Upper Skagit life than for most other local tribes until after 1875, when settlers moved into the area (Snyder 1964:vi). Few Upper Skagit people were drawn into the fur trade, nor were they involved in the so-called Washington state Indian Wars of 1855–59. There were significant results of indirect contact, however, in the period before 1875. Although the effects of epidemics were likely greater in saltwater areas than upriver, there is evidence of epidemics in larger Upper Skagit upriver villages as well as saltwater locations. Further, increased raiding and slaving by other indigenous groups, especially from the British Columbia coast, led to increased contacts between indigenous groups for defensive purposes and favored consolidation under a powerful leader. A third effect of indirect contact was the "growth of class distinctions" (Collins 1950:331). New sources of wealth eventually filtered into the system and facilitated status acquisition by potlatches (336).

The upper Skagit Valley experienced a short-lived gold rush after 1858, and miners traveled a trail along the Skagit River to gold fields, some heading into British Columbia (Collins 1974b:38). A naturally occurring, two-mile-long logjam at the site of the present-day town of Mount Vernon discouraged settlement along the Skagit River, although one settler arrived in 1867 at what is now the town of Hamilton. The logjam was removed by dynamite in 1878, but shortly before this, in 1876, several young men attempted to move into the upper reaches of the Skagit Valley and were rebuffed by armed Upper Skagit people (*Illustrated History* 1906:472), as were early surveyors to the region. Sometime after 1886 the Upper Skagit people protested these incursions on their lands. Collins observes that the protest was touched off by the apprehension by white authorities of a suspect in the murder of an Upper Skagit person (1974b:40–41). The Upper Skagit people believed they should deal with the murder, and this episode suggests that even at this late date, the relatively isolated indigenous people living on the upper stretches of the Skagit River believed that authority over justice remained in their hands.

Soon after the subsequent murder trial, a white surveyor attempting to establish boundaries was ordered to leave by Upper Skagit people, who proceeded to smash the surveyor's compass when he did not comply (Collins 1974b:40–41). The Upper Skagit people then warned all settlers to leave the area or be harmed. White settlers moved down the river and held a parlay at a ranch, calling for five unarmed Upper Skagits to meet with them. More than one hundred canoes of people eventually showed up at the ranch, and the indigenous people protested the seizure of their lands, saying that they had not signed a treaty nor received money for the lands. No agreement was reached between the groups, and the Upper Skagit people left the ranch and camped nearby. One settler, however, wired the military, and a company of soldiers was sent to the ranch from Tacoma, to the south. Conflicting accounts obscure what happened next, but eventually the soldiers, under Colonel Simmons, and the Upper Skagits held council. Colonel Simmons suggested the Upper Skagit people contact the Department of Justice for assistance, and the Upper Skagits agreed not to harm the settlers. Some Upper Skagit people moved even farther up the river valley, away from white settlers and influences. Later, five Upper Skagit leaders asked territorial judge Roger S. Green for assistance in the problem of encroachments on their land. He responded by asking them to apply to Congress concerning their problems (42).

By the 1890s some Upper Skagit individuals obtained allotments under the federal Homestead and Allotment Act of 1862 and the Indian Homestead Act of 1884. However, some failed to fulfill the terms under the acts for acquiring the land and were removed in favor of settlers. In 1907 and 1909 Upper Skagits were granted allotments on the Suiattle River, a tributary of the Skagit River (Boxberger 1987:9). The Upper Skagit people believed that they would be given a reservation there, and traditional longhouses were constructed and land cleared. The effect of this activity was to further increase isolation from the settler population, and as of 1921 it was reported that no Upper Skagit children were in school (B. Miller 1989b). But by 1917 many allotments in the Suiattle area were cancelled, and thereafter the Upper Skagit people were forced to disperse and move into regular contact with the mainstream society. Further, they effectively lost the ability to continue traditional land use patterns.

As Upper Skagit families moved out of the upper reaches of the

Suiattle River and into nearby towns such as Concrete, men found employment in the booming logging industry, and families participated in seasonal hop and berry picking. Others were forced to move out of the valley altogether in search of work. However, new developments helped in the effort to maintain cohesion during this difficult period. One development was the establishment the Indian Shaker Church among the Upper Skagit people; this indigenous religion was founded near Olympia, Washington, at the end of the nineteenth century. Shakerism is Christian in orientation and consequently was tolerated by Indian agents of the period who had banned Syowen, or Spirit Dancing, on reservations (the Upper Skagit people, though, had no reservation at the time and were not compelled to stop the practice). A Shaker Church was constructed in Concrete in 1926 and became the central meeting place for tribal events until the construction of the tribal center in Sedro-Woolley in 1981. The long-term effort to force the government to pay compensation for the cession of land under the terms of the Point Elliot Treaty was a second issue prompting tribal cohesion. In 1915, tribal members gathered at Concrete under Chief Campbell to organize their attempt to obtain a settlement. A tribal council structure, with a chief and subchiefs who were headmen from the traditional villages, was created to help carry out this task (Sampson 1972:24). The land compensation issue came to take on great symbolic significance and became a preoccupation of tribal leaders until the issue was resolved in the 1960s. Regular social events, such as salmon bakes open to the public, were conducted over many years to raise money to employ counsel to wage a legal fight for compensation.

The Upper Skagit tribe sought relief in a suit brought by several tribes in 1926 (*Duwamish et al. v the United States* 79 C Cls. 530). Another suit in 1951 (Docket 92), under the Indian Claims Commission, sought compensation for 1,769,804 acres. The petition was amended in 1958 (Ruby and Brown 1986:253). In 1968 the federal government settled the longstanding suit, awarding the tribe $385,471.42, or $271 per capita. The pitiful settlement, based on land values of the 1850s and with deductions for government expenses incurred on behalf of the Upper Skagit tribe, was the cause of great dismay. Some were frustrated by the dispersal of funds to people who claimed tribal membership under descent from the 1942 baseline roll but who had no other involvement in tribal affairs. One Upper Skagit recalled the pain of having money "sent

to Germany!" In fact, the settlement of the land compensation issue precipitated a crisis because of the compounding effect of handling other serious issues at the same moment. Some felt that the settlement could be derailed if the tribe pushed for federal recognition or fishing rights. These members argued that individual cash settlements should be allocated and the formal tribal organization, originally created for the purpose of bringing suit, be disbanded. In effect, the tribe would cease to exist as a recognizable entity. This position was outvoted in a tribal referendum, and the leadership geared up for the even greater battles for fishing rights and federal recognition. Ultimately, both issues were tied together by a landmark court ruling in 1974.

The struggle for fishing rights among Puget Salish peoples has a long, complex history. In 1890 the state of Washington began to regulate the salmon fisheries in order to aid the new industrial fishery. Then, in 1897, the state began to restrict off-reservation fishing (Boxberger 1989), and the Upper Skagit people, who had no reservation, began to loose their ability to make a living by fishing. Officials of the Department of Game and Fisheries sometimes ignored the limited subsistence fishing efforts by Upper Skagit people, but contemporary elders recall difficulties attempting to fish in the 1920s through 1960s. In the 1950s and 1960s Washington State began to actively prosecute indigenous fishing because of the demands made by the industrial fishing fleet on a declining resource. Several Upper Skagit fishermen who openly fished in order to publically challenge the restrictions were arrested and incarcerated for terms of up to ninety days (*Concrete Herald*, 5 January 1963; *Skagit Valley Herald*, 28 July 1962). Life became hard with the loss of lands, fishing areas, and gathering sites and with the diminishment of the remaining resources. But in 1974, U.S. district judge George Boldt, presiding in the case of U.S. *v. State of Washington* (384 F. Supp. 312 W.D. Washington 1974), made the surprise ruling that treaty Indians of western Washington were entitled to roughly 50 percent of the harvestable salmon and steelhead. This ruling was subsequently upheld in the Ninth Circuit Court of Appeals, and the U.S. Supreme Court refused to hear an appeal. The 50 percent share was to be divided between the federally acknowledged tribes. In the process of clarifying which were the acknowledged treaty tribes, the Upper Skagits successfully pressed a claim for acknowledgment as a federally recognized tribe. This claim succeeded because of a congressional

appropriation in 1913 to the Upper Skagit tribe for the purchase of a cemetery, an act held to constitute proof of congressional recognition of the tribe.

In the banner year of 1974, then, the tribe received both federal recognition and fishing rights. With these changes came urgent needs: a new tribal constitution and political system, fisheries regulation and management, and a way to accommodate all of the tribal members who returned to the valley to take up fishing. The present governing body, the Upper Skagik Tribal Council, the constitution, and the bylaws were created under the terms of the Indian Reorganization Act of 1934 and were approved by the secretary of the interior on 4 December 1974. The council has seven members with staggered three-year terms so that annually two to five new members are elected. The whole electorate elects a chair and vice-chair from among council members.

Subsequently, the tribe has achieved other landmarks, including the creation of a reservation. Between 1977 and 1982 the tribe received several federal grants to purchase a twenty-four-acre parcel and a seventy-four-acre reservation. Both were taken into trust status by the federal government despite ferocious opposition by Skagit County officials who attempted to bring suit against the federal government. In 1982, the tribe received a federal grant from the Department of Housing and Urban Development, HUD, which was used to build their tribal center and, later, fifty housing units. Meanwhile, leaders developed the infrastructure necessary for governance. This included the establishment of the tribal court system and, in 1976, a system of fisheries management (the Skagit Systems Cooperative), which they created jointly with the Swinomish and Sauk-Suiattle tribes. The Upper Skagit tribe also joined the Northwest Washington Service Unit of the Indian Health Service and began providing medical care to tribal members on their own reservation. The tribe established Cascade Inter-tribal Housing Authority (CITHA), a housing administration to plan and administer the new reservation housing, together with the Sauk-Suiattle and Stillaguamish tribes.

The most spectacular development of recent years has been the creation of a $26 million "destination gaming" facility, originally operated for the tribe by a high-visibility national gaming corporation. Disputes about details of the operation led the tribe to cancel the contract and assume the operation of the facility themselves. The tribe, whose members had come to be dependent on the mainstream community for employ-

ment by virtue of the erosion of control over their abundant resources, suddenly reversed this relationship and became one of the largest employers in the county. A hotel, constructed next to the gaming complex, opened in 2001 and will likely enhance the tribal economic situation. Other tribal efforts at economic self-sufficiency included the creation of the Tribal Enterprises project with two divisions. Timberline Services was established in 1985 to provide fire-fighting crews, tree planting, slash burning, and other income-generating operations, and the second division, also established in 1985, was a woodshop to produce replica Northwest Coast Indian bentwood boxes for the retail market.

Political Leadership and Law

After several decades of contact with Europeans and Americans in the nineteenth century, the Upper Skagit tribe developed new concepts of political organization, leadership, and law. A mid-nineteenth-century Skagit innovator, Slabebtkud, described earlier in the chapter (and spelled variously), organized loosely affiliated villages and imposed a new form of rule based on coercion. He established a system of subchiefs who enforced new, Christian-influenced concepts through the threat of incarceration in stocks (Collins 1974a). He also established a new system of hereditary chiefs that persists in the same line into the twenty-first century.

Snyder reports, concerning this prophet's justice practices:

> Capital punishment for murder provides a less-satisfactory revenge than does blood revenge partly because of its depersonalization. And with this it is tacit that the offense is one against society as well as against particular persons and is a matter of public rather than private responsibility. But such a principle was probably utterly foreign to pre-contact Skagits. It would have made little sense in a reciprocal system wherein acts never concerned society at large (because society did not exist in the abstract) but only those who were personally affected by them, and wherein those persons who were intimately associated with the doer were held jointly responsible for his deeds. (1964:399–400)

These changes in procedures and concepts have been attributed to the influence of Catholic missionaries in the early nineteenth century (Collins 1974a). Snyder notes that "One informant maybe rightfully

claimed that peaceful settlements came in with Catholicism and with the Western legal tactics brought to the salt-water bands in the early nineteenth century" (1964:395). However, it may also be true that the rapid innovation of political styles and processes emerged from within a stock of culturally sanctioned practices within the political ideology. Although the ethnographic record emphasizes the role of "quiet" statesman-like leaders who employed the tools of indirection and example rather than coercion, the likelihood is that capable people could appeal to a broader range of options. Certainly, the model of warrior leaders already existed, and several people with warrior spirit power quickly emerged as powerful intermediaries in Puget Sound as the demands of leadership continued to change in the nineteenth and twentieth centuries.

Later, the U.S. Bureau of Indian Affairs (BIA) authorized the creation of Courts of Indian Offenses (CFR courts) in 1883 for reservation people in order to fill a perceived leadership void following an apparent decline in traditional authority. The BIA hoped to diminish the residual authority of traditional chiefs (Johnson and Paschal 1991). It exercised great authority over this court system, selecting the police and judges and promulgating the rules and procedures. These courts were charged with enforcing the Code of Federal Regulations, designed to assimilate Indians, and hence were known as CFR courts (O'Brien 1989:203). BIA authority over this court system was diminished with the Indian Reorganization Act of 1934. Tribes were encouraged to establish governments and court systems modeled on those of the dominant society, although the BIA is said to have simply imposed its own bylaws on "tribes . . . ill-prepared for self-government" (Burnett 1972:565). Later, there was little money available for tribal legal systems during the termination period of the 1950s when federal policy was aimed at ending the trust relationship between tribes and the federal government (Johnson and Pascal 1991:3).

In the 1970s federal policy again produced contradictory effects on Indian courts. The new federal policy of encouraging tribal self-determination was accompanied by efforts of tribes with independent courts and those within the BIA system to rewrite their codes for their own ends. However, the Indian Civil Rights Act of 1968 imposed most of the federal Bill of Rights on tribes, thereby reducing self-governance and imposing new requirements on tribal courts. For example, it became unlawful for a tribal government to enact a law that imposes punishment

without a jury trial (Johnson and Paschal 1991:3). The passage of the Self-Determination Act of 1976 required that further regulations be adopted. In some cases, specific provisions must be contained in tribal law so that jurisdiction may be obtained (such as provisions for the detention of criminals and specific provisions for recourse under the law) or so that funding requirements be fulfilled. Today tribal courts, CFR courts, and traditional dispute settlement institutions all still exist in Indian country.

The Northwest Intertribal Court System

The Northwest Intertribal Court System (NICS), a judicial services consortium of some fifteen tribes (the number fluctuates), was established in 1979 following the 1974 fishing litigation *U.S. v. Washington*, which held that the treaties of the mid–nineteenth century gave Indians of Washington State half the salmon catch in state waters. The ruling created a need for fish and game codes and a venue to adjudicate violations. The NICS court system has been of some interest to Canadians, and a commission of inquiry into aboriginal justice in Manitoba notes that the NICS provides "court services to . . . tribes in the Pacific northwest, whose populations range from 200 to 500 [sic] people and whose reservations are relatively small" (cited in Royal Commission 1996:191). The NICS-affiliated tribes were thought to be similar in size and population to many indigenous communities in Canada. Although the commission apparently failed to recognize that the NICS judges apply the code of each separate tribe when serving their community, it recommended: "In establishing Aboriginal justice systems, the Aboriginal people of Manitoba consider using a regional model patterned on the Northwest Intertribal Court System in the State of Washington" (196).

The NICS courts exercise general jurisdiction over tribal members, as limited by the tribal code and constitution and by federal law. In the case of Upper Skagit, for example, jurisdiction is exercised over civil, traffic, fisheries, and some elements of criminal domains over Indians and non-Indians. Upper Skagit has now left the consortium to act independently, but the origins of the tribal court lie within this system.

Each tribe has its own processes to compose laws. At Upper Skagit there are a number of means whereby law can be created. One route is through the work of the Law Committee, which consults with a

code writer in making recommendations to the tribal council. The council can then refine the language and vote to accept or reject the proposed legislation. It is particularly at the committee level that notions of folk law and practice are entertained most significantly. However, ordinarily the code writers are not indigenous, and frequently they are not community members, so the code writers face the difficult task of finding a way to fit the ideas emerging from the community and the Law Committee into the legal structure already in place. This process opens the possibility of miscommunication between committee and code writer.

Composed of elected representatives of the enrolled members, the tribal council can pass legislation on its own initiative or vote on suggestions coming directly from the membership or others. In some cases, tribal councils have created formal advisory boards to advise the code writers. Finally, the general membership of the tribe can instruct the council to prepare legislation by vote at the annual general membership meeting. Procedures of other tribes resemble those of Upper Skagit. There is, as of yet, limited development of case law (but see B. Miller 1997).

Court is convened on the Upper Skagit reservation once a month, or more often if needed, at the community center on the reservation near Sedro-Woolley, Washington. The court staff includes one part-time clerk and one part-time deputy prosecutor. Previously NICS provided the other personnel, most notably the judge, but now Upper Skagit contracts court officials. The source of the law is the tribal constitution, approved in 1974 and amended in 1977, and customary law. The tribal code may "codify or refer to customary practices. The sitting judge may also have discretion to consider and apply custom in individual cases" (Johnson and Paschal 1991:37). In fiscal year 1990, the Upper Skagit court, which serves 740 tribal members, heard 43 criminal cases and 15 civil cases. NICS data (which do not include Lummi, the largest of the tribes) give some measure of court activity. The data show that in 1990, the court heard 147 criminal cases (ranging from 8 to 43 per tribe, with a mean of 21) and 21 civil cases (with a range from 0 to 15; six of the seven tribes had no civil litigation) (data compiled from Johnson and Paschal 1991).

The formal court system is thought to be used as a last resort after a variety of informal mechanisms have been exhausted, especially in the

case of intrafamily disputes, and the "sorting-out" process applied. In one case, for example, the judge ordered a young married couple to "work out their problems" after a restraining order was brought against the husband at the suggestion of tribal Social Service staff. Interfamily disputes, public disorder, fishing violations, and vandalism are more likely to end up in court than intrafamily problems. For these reasons, the court hears more criminal cases than civil. There is so far a limited infrastructure of lawyers versed in tribal law to help bring civil action in the court. In addition, the prosecutors are frequently non-Indian and nonresident and must work with police reports, thereby making the application of nonjudicial remedies more difficult. Also, the presence of non-indigenous tribal police, who are not fully informed of community processes, produces a formal initial treatment of cases. Individual non-indigenous tribal police are sometimes described by community members as lacking in compassion and understanding of indigenous philosophy, and thereby unfair or even brutal in their treatment of indigenous people.

Underlying the tribal system of laws is the system of law enforcement. According to Upper Skagit records, in 1991 officers were on active duty patrol 16.9 percent of their hours, a total of 1,478 hours, compared to 2,551 hours in 1990. However, 155 cases involving violations of tribal laws and ordinances were logged in 1991, compared to 87 cases in 1990. Of the 155 offenses, 86 involved adults; 52 of these were alcohol related. Forty-six incidents involved juveniles; 22 of these were alcohol related. Subsequently 13 adult males, 5 adult females, 4 juvenile boys, and 4 juvenile girls were referred to the prosecutor. The offenses can be categorized as in table 1.

The Upper Skagit data, and NICS data generally, conform to the generalization that in the tribal court there is a high volume of cases of crimes against the person associated with alcohol abuse (Brakel 1979:36). Crimes against the person are often offenses against family and children, and these data point to the importance of tribal code for women. Upper Skagit code, unlike that of some other Puget Salish communities, seeks to protect women and family in several distinctive ways. The significant role women play in tribal employment, for example, is recognized by provisions against the harassment of tribal employees and by the emancipation of female minors who are heads of household or who have children, in order that they may seek full-time employment

Table 1. Offenses of the Upper Skagit, 1990–1991

	Year	
Category	1990 (n = 87)	1991 (n = 155)
Mixed offenses	5.7%	5.8%
Offenses against property	12.6	8.4
Offenses against public order	35.6	37.4
Offenses against persons	9.5	13.5
Other offenses	26.4	34.8

Source: Data from the Upper Skagit Tribal Police FY91 Activities Report 25 January 1992; B. Miller 1995.

(see B. Miller 1994b for more details concerning tribal code and the gendered implications for men and women).

The Individual, Family, and Tribe Contexualized in Code

The Upper Skagit code is one of several Washington State Coast Salish codes, and I briefly consider it collectively with codes from seven other tribes (the Skokomish, Tulalip, Nooksack, Muckleshoot, Lummi, Sauk-Suiattle, and Nisqually) in order to broaden the discussion of the cultural context of the individual. In addition, the diversity of codes reveals something of the current discourse among Coast Salish peoples. In the codes, the individual is contextualized culturally and also within current Coast Salish codes, not merely as a holder of inalienable rights and worth, but within one or more social roles and within a legal system that allows for aboriginal conceptions of the collective to be considered. Provisions for the application of current understandings of the spirit of tribal law, which pertain in one form or another in the eight codes, allow for contextualizing of the individual litigant at either the point of sentencing or during the trial itself. One tribal youth code provides that "tribal law or custom shall be controlling, and where appropriate, may be based on the written or oral testimony of a qualified elder, historian, or other tribal representative" (cited in B. Miller 1995:155). Another allows that "if the course of the preceding be not specifically pointed out by this code, any suitable process or mode of proceeding may be

adapted which may appear most comfortable to the spirit of Tribal Law" (155).

The following examples illustrate the direct application of the "spirit of tribal law." In one case, the tribal appeals court ruled that tribal custom creates a fundamental right of individuals to speak on any matter of concern, including issues being litigated. The ruling recognizes the individual within the cultural setting and localized notion of rules of evidence (B. Miller 1997:127 n.33). In a second case, rights of individuals are restricted. The tribal court held that although the United States imposed a Bill of Rights because of a history of abuse of minorities, the tribe had no such history nor cultural practice, and therefore the Tribal Bill of Rights need have no provision analogous to the Sixth Amendment (127 n.34). In a third case, the tribal court rejected an appeal lodged on the grounds of the failure to employ the exclusionary rule regarding pretrial testimony (which was formulated to proscribe police conduct) because it does not take into account Indian cultural background and community common knowledge (127 n.35). Here, in effect, rights of the individual are limited in favor of the community through the expectation that individuals share cultural understandings.

Tribal code both places community members within a legal context (situating people as members of the community, as adults, as members of extended families, and so forth in relation to others) and serves as a text by which social discord is mediated. Most significantly, the everyday social context, even in the present, incorporates social beings other than human beings; therefore, consideration of the set of human-human relations must be supplemented with human-nonhuman relations as well.

There is another sense in which the individual, kin group, and tribe conceptually merge. Tom and Sarah Pocklington, in considering the issue of nepotism in Indian politics, note that universalistic precepts of the polity stem from a political ideal that stresses personal autonomy (1993). The familial or parochial precepts, which are said to generate nepotism, on the other hand, emerge from a conception of polity that stresses community and the collective. Paradoxically, then, individual rights are connected to the universal, and communal rights to the particular. This is one sense in which drawing a distinction between collective rights and individual rights fails; both individual and collective are connected to some conception of the greater good but are defined in differing ways.

In the case of contemporary Coast Salish societies, corporate extended families make up the tribal community but do not of themselves constitute the collective. In fact, the extended families are widely regarded by Coast Salish people as particularistic in nature and as acting to defend their own interests at the expense of the large collectivity. Some Coast Salish people argue the other side, holding that the creation of legal rights of individuals and of the tribe violates the rights of the corporate extended family, which itself ought to be regarded as the primary social body, the collective. The differing emphases heighten the difficulties facing those creating codes in balancing interests within the tribe.

Legal Statuses in Puget Salish Law

The eight sets of tribal codes and constitutions create complex, overlapping systems of legal statuses, about which some generalizations can be made. Men and women are treated by the codes as undifferentiated individuals with entitlements (interests in community-held resources of various sorts). These legally distinct individuals are restrained in their interests by two other sets of interests, those of the tribe and also, in limited ways, the rights of family networks. Second, men and women are legally members (citizens) of the tribe (and also of the community); as such, they are entitled to residence in Indian country and are shareholders in community assets (such as fisheries resources, education programs, Indian Health Service care, and reservation housing). Community membership alone does not confer these entitlements. Third, in most codes men and women have legal standing as extended family (or family network) members. As such, in some tribes people are entitled to make claims to fishing locations (under customary provisions of use-rights), and rights to oversight over the children of the family network. In addition, the law places restrictions on citizens on the basis of kinship affiliations that overlap in various ways with membership in corporate, temporal family networks. For example, several of the codes restrict individuals from running for office in the event that a relative is a sitting member of council. Finally, people are legally parents, with an array of parental rights and obligations.

The various legal statuses an individual may occupy are not fully compatible (in part because of the long history of federal policy and

Court officials of the Upper Skagit Court, September 2000. (*Left to right*): Martin Bohl, tribal court chief judge; Michele Robbins, court administrator/clerk; Edward Wurtz, tribal prosecutor. The Upper Skagit justice system employs non-indigenous personnel and American Indians from other nations, such as Michele Robbins, in addition to community members. The Upper Skagit constitution and legal code are local, however.

court rulings that have imposed and reconstructed concepts of membership), a circumstance that leads to significant disagreement in the communities. Some people residing on the reservations are legally members of the community but not members of the tribe (some are legally members of other tribes, others are non-Indians). A further complication is that some nontribal members who are resident on the reservation are family network members and hold legal rights as such. They may, for example, have priority in adoption or in provisions for the care of family network children, or they may have legal rights to attend family-sponsored ceremonial events while incarcerated. These incompatible statuses give rise to role conflict. A recent debate on one reservation, for example, arose over whether community members who were not tribal members were entitled to treaty fishing rights, a vital resource. Tribal council members split over this issue by sex, with three

council women arguing to allow these community men to keep fishing (and thereby provisioning Indian family members) and three council men arguing against granting permission. In this case women's statuses as tribal members were in conflict with their role in provisioning family members. Table 2 summarizes the primary generalizable legal statuses that individuals occupy and the associated legal entitlements.

The legal codes differentiate on the basis of age and other criteria. Legal minors are distinguished from adults in a variety of ways: voting for public office is a privilege available to tribal members over eighteen, children are restricted from fishing and hunting (with some exceptions when supervised), and in some cases children's movements are restricted by curfews. But some of the codes (Skokomish, Tulalip, Upper Skagit, Nooksack, Muckleshoot) allow for the formal age requirements of adulthood to be set aside under certain circumstances. In two of the codes (Skokomish, Tulalip), children can be emancipated when acting as a household head, a circumstance of special importance to females, who frequently begin families while in their early teens and who assume responsibility for the provisioning of their offspring. Emancipation releases minors from restrictions on fishing or hunting by virtue of age.

Adult men and women also assume secondary legal status as owners of real property, as heirs to the property of others within the community, as members of a regulated community that provides rights to safety and comfort, as voters and potential tribal councilors, as official tribal committee members, and as jury members or witnesses. The implications of each of these legal statuses are somewhat different for men than for women.

The NICS Study

After an initial flurry of activity in creating tribal courts and training court officials in order to manage tribal assets, especially the salmon fishery, tribal leaders and community members reflected on their own prior justice practices and concepts and how these have been transmitted and transformed. This work took the form of an intertribal study, completed in 1991. The study is notable, not just for its effort to record justice ideology, but because it itself became part of the current discourse about justice between segments of the larger Coast Salish world. The

Table 2. Key legal statuses and their entitlements and restrictions

Minor (under-age individual)
Rights to participate in ceremonial life (e.g., attend funerals even if incarcerated)
Restricted from fishing, hunting, voting
Adult (adult individual; age of adulthood defined by activity; includes emancipated minors)
Rights to fish, hunt, and vote (if a tribal member)
Kinfolk (as defined independently of membership in corporate family networks)
Some restrictions on tribal officeholding by nepotism rules in some codes
Parent
Some limited rights to control of offspring
Mitigated by rights of extended family members in some codes
Household head (an emancipated youth may be a household head)
Rights to tribal resources (if a tribal member)
Community member
Rights to residence and some tribal services
Restricted from voting and holding tribal jobs
Family network member
Some rights regarding access to children
Some customary resource-use rights (e.g., for fish camp sites) in some codes
Restricted from holding a tribal office or permit by nepotism rules in some codes
Tribal member (or adult individual)
Rights to vote, hold a tribal office, and compete for tribal jobs, and to collective resources

Source: B. Miller (1994:53).

current politics of justice, then, are both reflected and altered by the NICS study, and for this reason I consider closely how justice of the past is understood in the early twenty-first century. It is interesting to note how anthropological materials produced in an earlier period have been employed in this study.

Each NICS tribe maintains its own court and its own codes and constitution. The NICS project in 1989–90 "aimed to provide a background to the tribes and their tribal court systems and how disputes were handled traditionally and how these processes and behaviors changed over time" (NICS 1991b:2). Members of three tribes, the Sauk-Suiattle (immediate northern neighbors to the Upper Skagit), the Swinomish (immediate southern, saltwater neighbors), and the Skokomish, participated in the project. At the time of this project, the Upper Skagit tribe was a member of the NICS. The project focused on "traditional dispute resolution within and between villages, and, after the creation of reservations, dispute resolution within a reservation or tribal community" (3). The research included historical research, interviews with elders and other tribal members, and observations of disputes. This research was conducted in communities with functioning tribal courts, Peacemaker programs (also known as Tribal Community Boards that developed as alternatives to formal tribal courts), and control over significant assets and tribal programs. This study was not intended, however, to provide the basis for beginning a new justice initiative, nor to substantially redirect the ones already in existence.

Here, my attention is directed to the NICS elders' reconstructions of the justice practices from an earlier period and the way NICS authors, some academics and others community members, have constructed their study. The research team included tribal researchers, a tribal Peacemaker program coordinator, two university professors, and a NICS attorney. The initial framing of the research as a study of "traditional dispute resolution" has critically shaped the direction of the work. The document reveals internal disagreement about whether to acknowledge prior conditions of difficulty and focus on the local-level resolution of small-scale disputes or to advance the notion of a harmonious prior society, or "harmony society," to borrow Nader's term (1990). This latter stance gives little attention to how real conflict was resolved. Even the focus on the local resolution of disputes underplays significant violence and social contradictions such as those imposed by the existence of

social classes and slavery. Such violence shows up with great regularity in ethnographic field notes, oral traditions, community histories, and current discussions within the communities about earlier periods.

The document and, arguably, the views of contemporary elders fail to reconcile these differing viewpoints. The project summary notes, for instance, that one elder objected to the terminology of "dispute resolution" because "in pre-treaty times, people would not have focused on 'disputes' and their 'resolution'. The focus was on how to get along together to minimize the outbreak of disruptions in family and community life" (NICS 1991b:5). However, another elder caused the NICS researchers to "define resolution very broadly" by humorously and cynically observing: "Research on dispute resolution? You mean there was ever a dispute that was resolved here?" (5).

Still, the analytic focus on dispute resolution and on "patterns and values that reinforced social cohesion" (Nader 1990) casts a conservative light on Coast Salish justice. The elders' commentaries appear to reflect their publicly stated views of ideal behavior, rather than actual practice, and to present the view of a conformist community, rather than one rife with difference of opinion and of the persistent failure of intersubjective agreement that characterizes Coast Salish society. Those ethnographic materials cited in the document also reflect the conservatism inherent in ethnographic materials gathered fifty to seventy years ago (although published more recently in some cases). These materials emphasize cultural cohesion and internal consistency through descriptive, flattening, normative statements (see, as examples, the critiques of this sort of ethnographic description in Clifford 1988; Clifford and Marcus 1986). This conservatism is reflected in turn in the approach to the issues taken in the document.

In addition, the commentary is unable to reconcile its picture of conformity to cultural norms with the failure to conform or to resolve disputes, as indicated by the presence of ongoing blood feuding. The approach underplays the persistent theme of competition and struggle over resources and status within and between Coast Salish communities and individuals. Despite the conservatism of the ethnographic materials for the area, these struggles show up in descriptions of intercommunity gambling, in thinly disguised mock violence between antagonistic guests at potlatches, in episodic seizure of slaves and marriage partners, in village fissioning, in the spiritual murder of those not yet strong

with their spirit powers, in "evil doctoring" (the use of spiritual gifts for malevolent purposes), and in accusations of the slave status of someone's ancestors.

The authors of the NICS report are not unaware of conflict, but they acknowledge and address the undercurrents of violence and competition with a functionalist twist, observing that "Gambling and other challenge contests and games may also have served to alleviate tensions between families and communities" (NICSa 1991:45). But this, too, reflects the intellectual predispositions of the period in which much of the ethnographic writing occurred. For instance, Marion Smith, an ethnographer who wrote in 1940 that gambling was a substitute for fighting among south Puget Salish, is cited to support the view, a thesis in line with Codere's functionalist interpretation of central Northwest Coast potlatches as a symbolic substitute for war (Codere 1950). The NICS report notes that the prestige of potlatch hosts was lost if serious trouble broke out between guests, although the literature suggests that, nonetheless, this happened, and continues to happen today. The NICS report quotes Smith's description of a *xadsitl* ("crowding against you") that occurred as guests arrived at a potlatch: "The leader or warrior sang his power song and others joined in. According to Smith, each singer was calling on his power to protect against hostile shamans and to provide protection for the women and children. This was seen as offensive rather than defensive behavior." Smith relates:

> In such situations men lined up along the landing place to receive the newcomers. These men were generally of one guest-group and the host and his followers and the other guests who might have already gathered did not participate, they watched, ready to interfere if occasion demanded. The waiting line held a pole parallel to the beach to be used in a tug-of-war with the landing group. In attempting to push each other across the goal line the contestants not only grasped the pole but tried to loosen each other's grip, cutting their opponents' hands with knives, pulling hair, etc. This contest sometimes became so serious that persons were badly wounded or killed. In any case, the losers "felt bad and they gave presents to wipe out the stain." During the struggle slaves could be taken as in warfare and these were immediately redeemed so they bore no stigma later. (Smith 1940:108–9, quoted in NICS 1991a:44–45; see also Smith 1949, 1950)

The NICS summary report concludes, however, that previously society was primarily cooperative. One passage reveals the focus of the documents on consensus and cooperative coexistence: "The way in which the pre-treaty Salish societies were organized minimized open disputing and emphasized a cooperative coexistence that was essential to the survival of the family and village. With a strong community consensus about standards of behavior, various forms of indirect social control, rather than regulations and sanctions, pressured people to control their behavior" (1991a:47–48). Other passages connected family discipline and training with group cooperation:

> The family was the most important social group. When conflict arose within a family, every effort was made to resolve the issue within the family. Dispute resolution was learned from birth. Proper attitude and behavior were taught—primarily by elders—by example, lecture, story telling and recounting of family history. Story telling, history and advice that was passed from generation to generation within the families ensured the continuity of tradition and identity.
>
> Children were trained from an early age in the qualities that led to continuity and flexibility within the communities. They learned to respect their elders and teachers, to refrain from boastfulness, and to value qualities of self-discipline, self-control, generosity, peaceful attitude and hospitality. Their training prepared them for their role in a society that was structured to minimize open expression of dispute. (NICS 1991a:4–5)

In these passages, the significant phrase is the fear of open displays of hostility or dispute, which was avoided to a degree by the use of coded, oblique language in public oratory. These passages do not treat the issue of expressions of covert hostility, such as spiritual harm done through shamanic practice or even secretive efforts to harm others. Snyder (1964), for example, notes the occasional effort to disguise aggressive actions, which could then, potentially, be found out by spiritual measures such as the use of the *skedelich* spirit boards.

The authors of the report summarized the present-day elders' views concerning pre-reservation period practices in ten propositions, which they refer to as "traditional themes," and which I paraphrase here:

1. Families are central to dispute resolution. Loyalty to family and

family privacy are strong forces affecting disputing behavior. Pressure can be applied to family members.

2. Dispute resolution was learned from birth. Elders and others taught proper behavior and attitudes that influence disputing behavior, particularly generosity, cooperation, and privacy of the individual and family.

3. Elders were key to advising about disputes. They exercise power by expressing how they see things. This power was advisory.

4. Indirect social controls (gossip, teasing, ignoring, insulting) help reduce the need to dispute.

5. Frequently, disputes are resolved by allowing time to pass. During the interim, elders' counsel and spiritual practices help things calm down. Eventually the dispute may be set aside following a large gathering over a meal.

6. Family or multifamily gatherings over meals are opportunities to set disputes aside, air concerns, restore status, and make payments to end a dispute. Elders' oratory helps bring everyone to a "common level."

7. Meetings for decision making and group disputes featured oratory, the hearing of all sides, and consensus.

8. People became leaders and were turned to for help because of age and seniority in a generation or a family, as well as character, status, and ability. Their positions were not formalized, and their authority was dependent on acceptance and respect.

9. Spiritual beliefs and practices allowed the individual great freedom and privacy that helped ease tensions created by group living. These beliefs may be associated with a non-interference or privacy ethic, which makes people reluctant to intervene directly in the disputes of others.

10. The annual cycle of fishing affects disputes because during the fishing season disputes are commonly put on hold. (NICS 1991a: 7–10)

The report's discussion makes a particular reading of the ethnographic literature concerning social class in which persistent inequality is referred to, but not disagreement over rank. Winter ceremonials are mentioned as the time for putting aside difficulties in order to "pay tribute to their relationship with their spirit power" (NICS 1991a:19). However, contests between antagonistic Spirit Dancers are not mentioned, nor the dangers that co-exist for humans in their personal and collective relationships with nonhuman beings.

Shamans are described within the benign context of "social control," a term that dismisses the sources and objects of domination. Their use of power is described as generally socially approved and operating within a "practical" ethical system that releases a shaman from blame if his "power went out of control," although, it is noted, if he caused too many deaths, he might be killed himself (NICS 1991a:23). This killing of shamans is reported widely among Coast Salish communities. This section also notes the likelihood that "violent bullies" who wronged their own family or village would "die soon" (23), although community histories reveal instances in which this did not happen and bullies continued to dominate communities that remained frightened of their physical and spiritual powers. An example of this is the story of the "Agassiz boy," noted in Duff (1952:42) and still told in various forms today. In this story, a boy killed his sister's child and subsequently attacked travelers, killing for pleasure. His relatives at Agassiz disbanded their village and moved to the south side of the river about 1840 (as summarized in J. Miller 1999:157).

NICS authors report the role of heads of families and villages as the organizers of ceremonials to settle feuds and their obligation to "maintain internal harmony in the community" (1991a:31). However, their role in arguing and competing for the interests of their own families, potentially to the point of violent conflict, is not mentioned. Likewise, those senior people who remembered family history and genealogy are said to have been useful in settling disputes, but their role in challenging claims of other families at naming ceremonies or the transference of privilege is not considered. Authority, generally, is said to be based on respect and "acceptance of established modes of conduct and behavior" (33), although it is not made clear that individual families are described in the literature as holding a variety of teachings and practices, with considerable disagreement over proper conduct.

In addition, leaders are described as emerging unscathed from the social field around the axes of birth, charisma, wealth, and ability (NICS 1991a:34), but not the politics of leadership and the undercurrents of dispute and contention that surround leaders, sometimes through their whole life or longer. Collins (1974b) reports, and community members recount, for example, that one Upper Skagit leader was murdered because of differences of opinion even though he had dominated community life. The emphasis in the ethnographic literature and in elders'

discourses on "quiet" leadership and on leading by example distracts attention away from the issues of how domination works and how subordination is experienced, issues that have received critical attention in social theory (Foucault 1979). The NICS report notes, for example: "Leaders had qualities that lent them authority and caused others to call on them for help. Stern provides examples of how people chosen to represent a family, to end feuds and personal quarrels, or to mediate a quarrel between spouses, were good speakers. . . . A leader never referred to himself as wealthy or important but in fact might belittle himself. From childhood, there was the teaching that it was improper to boast" (Stern 1969:72–73 in NICSa 1991:27).

In this case, the absence of boasting and the public use of coded language to ostensibly belittle oneself is confused with the absence of the exercise of power. A better case can be made that the mastery of oratory allows one to claim the right to exercise authority—and, ultimately, the power to impose one's own viewpoint—through culturally appropriate appeals to modesty. These claims to modesty are not to be taken as literal statements of the leader's self-assessment (nor did the speaker's audience make this mistake), but, rather, they are themselves the tools of leadership and power (Duff 1952:80 implies something like this without developing it). Presentation of the self as humble left others to take precautions because "things were and never are what they seemed to be" (J. Miller 1999:146). Indeed, the report's reference to charisma disguises and naturalizes the play of power by implying that the exercise of charisma (noted on 34) is unambiguous and uncontested. Collins's commentary on the Upper Skagit "quiet leader" is cited to underscore this point: "A *sia'p* [upper class] showed that he deserved his title by behaving in a special way. He was not aggressive or disagreeably forceful. He was slow to take offense and display anger and often acted as a peacemaker within the family" (Collins 1950:334, cited in NICS 1991a:35).

A passage that cited Collins to convey the point that "people took time to consider the matter before deciding" (1950:36) instead reveals something quite different. Collins, writing about councils called to "settle differences," indirectly points to the distinction between an ideology of egalitarianism and the authoritarianism implicit in the pervasive hierarchy: "Anyone could speak for as long as he or she wished. *In actual practice only certain persons were likely to speak since there was a tradition*

of formal oratory in which not all persons were skilled. These were more likely to be men than women" (Collins 1974b:112–13, cited in NICS1991a:36, emphasis mine). I do not wish to be construed to indicate that because women were less likely to be orators they lacked political clout, because this is not uniformly true (see B. Miller 1992a, 1994a); my point here relates to rank and class rather than gender.

Finally, because distinctions of rank and class are naturalized in the document, the problem of social mobility, and the irritants this presents, are not considered. Ethnographic materials suggest that social mobility was limited and that a change in status to the upper class was not ordinarily available in one's own lifetime (Suttles 1987b). The concentration of ethnographic material that shows the persistence of concern for social status suggests that issues of social hierarchy must have been significant and that limits to social mobility were deeply felt and the source of conflict. More generally, then, the issue of stratification is treated as unproblematic and from the perspective of cultural continuity rather than that of conflict, domination, and subordination. Although the NICS report indicates that there must have been conflict that was addressed by leaders and in councils, it does not purport to show the sorts of conflict or the causes and sources of conflict. The report thereby fails to reveal the ways in which those who exercised power and authority were implicated and the ways subordinated community members responded.

While the NICS report presents the view that residual justice practices can be reinforced and reestablished, it also presents standards from the past that the present-day community has little reasonable chance to meet. In addressing such circumstances, O'Nell (1996) created the concept of the "empty center," a circumstance in which indigenous peoples view their own lives as inadequate compared to those of their ancestors. According to O'Nell, this problem is partly hidden because community members assign elders the task of cultural continuity, a task for which the elders themselves feel inadequate. Since community elders do not regard themselves as equal to their ancestors, they have become aware of an "empty center," in the absence of anyone to carry the community in the way it is thought to have once been led. Such a viewpoint is frequently expressed in Coast Salish communities in both British Columbia and Washington. People report, for example, that Spirit Dancers of earlier generations had greater powers than

those of today and could "Hug the stove with both arms and not get burned" or that grandparents' powers of precognition exceed those of the present elders. There is a constant sense of slippage and failure in these communities, even while monumental efforts are made to rebuild for the future. Bierwert wrote that contemporary Stó:lō elders complain of a decline in storytelling ability (1986:382), although to her, virtuosity persists. Nevertheless, the scale of loss, of many sorts, and the symbolic importance of loss are the cause of deep grief (416). This perspective is not new, however, and field notes of ethnographers of earlier generations (Snyder, for example) reveal similar feelings. The idea of slippage may simply be characteristic of societies that give authority to the past.

The Upper Skagit community faced the difficult tasks of adjusting to life after the creation of a mid-nineteenth-century treaty without a land and resource base, without compensation, and without a clearly defined government-to-government relationship with the nation-state. However, long-term efforts were undertaken to resist, to gain compensation for the land, and to create a political structure capable of helping to retain cohesion and identity. There were a range of Upper Skagit responses to imposed legal concepts and practices. Upper Skagit leaders monitored the making of the most significant legal documents, treaties, created in 1855, by attending the discussions and allowing minor leaders to sign. Later, in the 1870s and 1880s, efforts were made to repudiate the authority of the mainstream society's courts and modes of surveillance through surveying the land and regulating people's activities on it. Attempts were made to ascertain the chain of command in American political life and to make appeals for compensation based on the ideas of continuity of indigenous ownership of the land and resources. Later still, Upper Skagits took advantage of federal legislation to gain title to the land in a new way—through the American system of land tenure. Much of Upper Skagit postcontact history concerns the efforts to elude American authority by moving beyond its reach geographically and eluding its reach through continuity in cultural practice (such as Syowen). By the 1920s, however, the main impetus was to use the mainstream legal system to directly defend their resources and rights.

Finally, in the 1970s a court system was created in response to the establishment of the legal status of the Upper Skagit people as a tribal

entity and clear rights to a tribal commercial salmon harvest. The court became elaborated with time, following a process of borrowing legal language from other jurisdictions and eventually tailoring it to local purposes. In establishing a legal system, the tribe created code that addressed fundamental issues of the relationship between the constituent segments of society—individuals, families, and the tribe itself. The legal processes allowed for the use of elder testimony in litigation or in sentencing. Other Coast Salish tribes of Puget Sound, however, approached the core issues somewhat differently, an indication of the extent of efforts to localize justice and to tailor imported code. The Upper Skagit people, in common with the other Puget Salish, attempted to resist the legal reach of the mainstream society and to extend their control over their own membership by writing code for major crimes and youth in incarceration in other jurisdictions, areas over which, in theory, they had no jurisdiction.

An intertribal legal consortium, the Northwest Intertribal Court System, created its own study of traditional dispute resolution in 1989–90, relying on elders and a reading of the ethnographic record. The subsequent report, rich in detail and careful in interpretation, nevertheless expressed a conservative view of tribal life that gave little attention to processes of community power and dissention, relying instead on normative, functionalist descriptions of a stable society and omitting consideration of the causes and sources of conflict.

4

The Stó:lō Nation

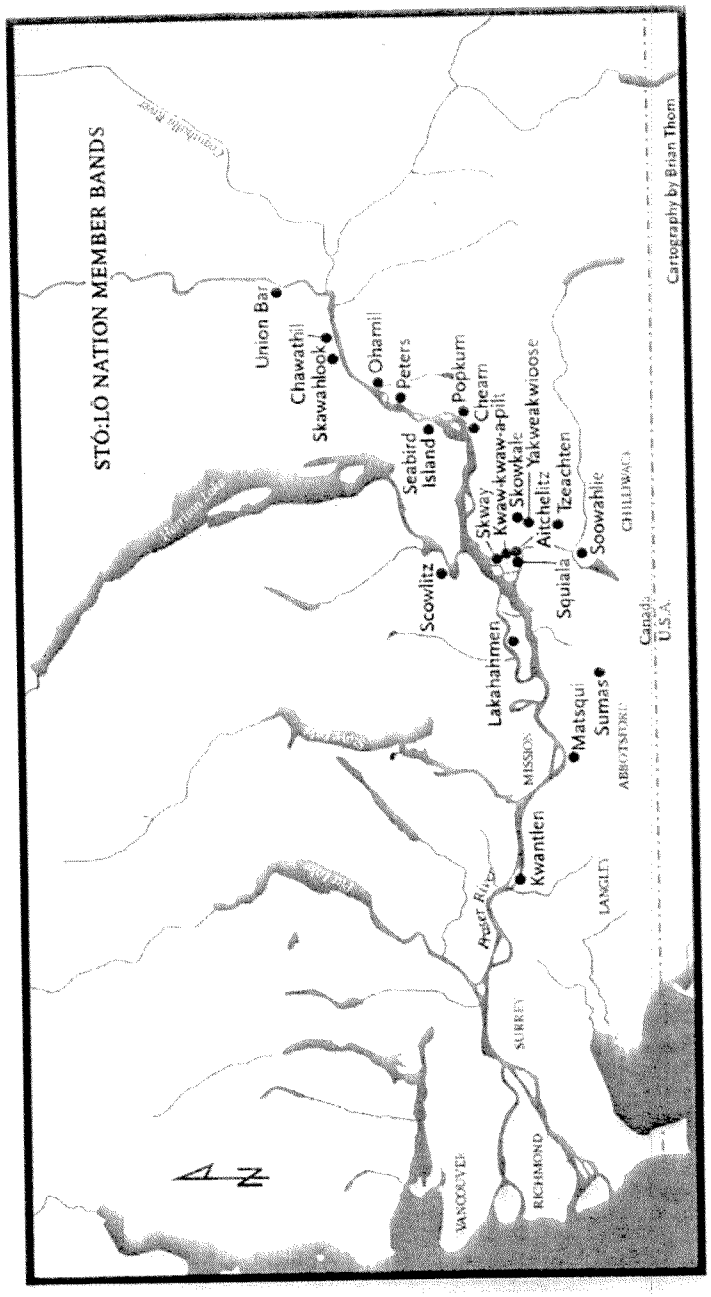
A Brief Political History

The circumstances surrounding justice are strikingly different for the Stó:lō under the Canadian regime than for the Upper Skagits in the United States. The Stó:lō have had less control over the institutions of justice and, as of yet, have not reestablished criminal and civil jurisdiction over members. For these reasons, their responses to intrusions of the mainstream society have not been the same. They do, however, face the same core question: namely, how to order relations between the constituent groups within their own society while managing relations with outsiders. Like the Upper Skagits, the Stó:lō are in a creative historical phase, currently working out the structure of governance and justice while contemplating earlier practices. A recurrent theme has been the relations between the bands that compose the nation and the central government, the Stó:lō Nation political apparatus, particularly in light of current negotiations with the federal and provincial governments to create a treaty and settle compensation for territory. These issues are not resolved, and the great extent of community diversity and the differences between bands in size and circumstances make resolution difficult. Current justice debates recapitulate traditional mythic concerns regarding greed, fairness, and power. The reproduction of mainstream concepts is another thread, and external influences on justice discourses, especially healing narratives, are strongly felt.

The Stó:lō are the indigenous residents of the upper Fraser Valley of the lower mainland of British Columbia. Historically speakers of a Coast Salish language known as Halkomelem, today English is the first language for the vast majority, and Halkomelem is fluently spoken only by a handful. For this reason, the justice dialogues take place predominantly, but not exclusively, in English. Occupants of the region for some ten thousand years, only over the last one hundred sixty or so years have they had regular direct contact with non-indigenous

peoples. The five thousand Stó:lō people are organized under the federal Indian Act into twenty-four bands, each of which holds status as a recognized First Nation. The Stó:lō Nation is a political organization formed in 1994, as a successor to earlier groups including two immediate predecessors, the Stó:lō Nation Canada and the Stó:lō Tribal Council. Three bands within Stó:lō territories remain independent, although the number varies, and there is a regular movement of bands in and out of membership within the political body (*Sqwe'lqwel te Stó:lō* 1, no. 1 [1995]:3). A primary reason for the unification of bands under a single political umbrella was to "effectively marshal resources and present a stronger presence at the treaty table. More importantly, however, following treaty negotiations the Stó:lō anticipate increased political autonomy" (McMullen 1998:8).

A smallpox epidemic in the late eighteenth century dramatically reduced the indigenous population before direct contact with whites, killing perhaps two-thirds (Carlson 1997b:28). Shortly afterward, in 1827, the Hudson's Bay Company established Fort Langley, thereby creating the first permanent white settlement in the Stó:lō territory. Hudson's Bay Company policy initially encouraged marriage between employees and Stó:lō and other First Nations people as a means of creating good will and enhancing the economic success of the trade. However, the company also began the process of establishing an external, coercive authority in the region, even before the formal governance associated with the establishment of a colony (Harris 1997). Canadian control over the Stó:lō was not quickly established, however, and it was not until the gold rush of 1858 and the arrival of perhaps thirty thousand miners (Carlson 1997b:60), including many heavily armed miners from the California gold fields, that outside ideas of property and title began to be thoroughly imposed. Miners staked claims to territories the Stó:lō had never ceded and disrupted fishing locations on the Fraser River. By 1860 most miners had left, but the government of Canada encouraged immigration to the valley in order to maintain Canada's interest in the area in light of concerns about further American encroachment. To further this aim, the colony of British Columbia was proclaimed in 1858, and the stage was set for the implementation of policies of assimilation and removal from the land. Colonial authorities, initially under Governor James Douglas, did not negotiate treaties with the indigenous peoples, although Douglas had begun the process in a



small way on Vancouver Island and intended to do so in Stó:lō territory according to Stó:lō oral traditions (67). In any case, the Canadian view, in common with American policy, was that assimilated peoples, with time, would no longer reside collectively on reserved lands and that treaties would become unnecessary. Nevertheless, land surveys were begun, but not completed, and reserves were established in 1864.

There is ample evidence of Stó:lō efforts to resist all these changes to their circumstances. Several individuals and indigenous groups attempted to subvert Hudson's Bay Company efforts to dominate the economic field by establishing themselves as intermediaries in the fur trade being conducted at Fort Langley, and leaders hoped to use strategic marriages to gain influence over company activities and to make their own economic profits. Second, there were efforts to diffuse predations by violent miners, including both armed attacks and efforts to aid and befriend the miners (Carlson 1997b:63). Later, Stó:lō leaders met with government officials, in order to represent their communities' interests. Following British Columbia's entry into the Dominion of Canada in 1871, jurisdiction over Indian affairs transferred to the federal government, and Stó:lō leaders organized a meeting of chiefs in 1874 in order to draft a petition asking for an increase in their land base, hoping for better treatment than they had received from British Columbia. In 1913, leaders appealed to a Royal Commission established to respond to undiminished indigenous complaints about the size of their reserves. However, in 1929 the federal Indian Act was amended to make it illegal for any lawyer to work for an indigenous person or group in bringing suit against the federal government, a provision that remained in force until 1951. As a consequence, later efforts focused on participation and leadership in intertribal political and cultural groups, including the Indian Rights Association of British Columbia, the Allied Tribes of British Columbia, and the Native Brotherhood of British Columbia, which had an implicit interest in band legal rights.

The first residential school in the Stó:lō territory, St. Mary's, was established in 1864 by an Oblate priest at the invitation of the colonial authorities. A Methodist residential school, Coqualeetza, was created later. The government mandated school attendance in 1884, although enforcement lagged behind. Some Stó:lō children attended public day schools with non-indigenous children, but many others were raised away from their homes in one of the two residential schools. The

assimilationist school program hoped to break children's use of their language and to retrain them in a westernized, Christian worldview. Residential schools began to be closed down and children integrated into the public day-school system after First Nation dissatisfaction with the system of education became widespread in the 1950s and 1960s and the injustices became apparent to the mainstream communities.

In 1969 Prime Minister Pierre Trudeau introduced his White Paper, a document written in the hopes of directing public policy toward dissolving the Department of Indian Affairs and abolishing the federal trust relationship with First Nations, and with it, aboriginal rights. This document advocated the completion of the historic mission of assimilation, a direction rejected under U.S. policy by President Richard Nixon in 1970. Unexpectedly, this policy initiative galvanized indigenous people in Canada, along with the widespread realization that cultural identity was seriously threatened in a new way.

Soowahlie (Stó:lō) elder Wesley Sam told historian Keith Carlson that in the period before the White Paper, "No-one wanted to be a chief. It was bad enough having whites treat you differently because you were Indian. You didn't want to make matters worse by being really Indian; by being Chief" (Carlson 1997b:104). This changed quickly, and local, provincial, and national political organizations rapidly formed to push for aboriginal rights and title. Stó:lō members participated in the Union of British Columbia Indian Chiefs and, more locally, formed the Chilliwack Area Indian Council, a forerunner of the Stó:lō Nation. The area council had sixteen member bands by 1973, and nineteen in 1978. Social assistance programs were transferred to the council between 1974 and 1975, as was the Community Health Representative program in 1977. The Stó:lō Nation Canada tribal council was formed in the early 1980s, and the Chilliwack Area Indian Council assumed administrative and service delivery functions, prior to amalgamation in 1988–89. The Stó:lō Nation Tribal Council was formed in 1990, and the two councils amalgamated in 1994 as the Stó:lō Nation.

Since the merging of the two tribal councils, the Stó:lō Nation has undergone a rapid, dramatic transformation in an effort to assume governmental authority for social, health, educational, and child welfare services. The nation has gone from fewer than twenty employees in 1994 to more than two hundred in 1998. The organizational structure of the nation continues to change rapidly, but to facilitate the process

Leaders at a ceremony held 3 September 1994 in honor of the unification of the Stó:lō bands within an organization known as the Stó:lō Nation. They are wearing cedar headbands and blankets and standing on new blankets, symbolizing purity and a new beginning. The Stó:lō Nation's mandate includes the establishment of justice practices.

of self-government, organizational features of the Canadian state have been replicated. The nation is organized into "a political arm and a bureaucratic arm, much the same way the federal, provincial or municipal government is. The political arm, like the Canadian federal government consists of three branches" (Carlson, 1997b:106).

The Stó:lō political arm is composed of the Lálém Te Stó:lō Sí:yá:m, glossed as the House of Respected Stó:lō Leaders, the Lálém Te S'í:yelyó:lexwa, or House of Elders, and the House of Justice. The House of Respected Leaders is the main political body, and the membership is based on modified proportional representation, with each band holding at least one representative (some bands have as few as twenty-two members), and others with as many as three. The representatives (chiefs) elect from among their group a five-person cabinet called the Special Chiefs' Council (SCC), which consists of one representative for each bureaucratic department of the nation, known as Portfolio Chiefs. The Chiefs' Representative, who is the primary spokesperson for the

The Stó:lō longhouse, constructed at their tribal center, Coqualeetza, located in Sardis, British Columbia. The building is the site of an educational program designed to teach local elementary school children about the Stó:lō Nation and for ritual events such as First Salmon ceremonies. Such buildings were the sites of the conduct of justice in prior times.

nation and, effectively, the head of state, chairs the SCC and is directly accountable to the Stó:lō Special Chiefs.

The House of Elders is composed of elders from every member band and is designed to function in the manner of the Canadian Senate. Elders are selected for their knowledge of Stó:lō traditions and customs, so that "Stó:lō ways of knowing and understanding are well represented by the actions of the Stó:lō government" (McMullen 1998:11). Under the Stó:lō constitution, the House of Elders must approve new laws. Further, the elders are responsible for seeing that the members of the House of Respected Elders live up to their moral obligations to the Stó:lō community. The elders retain the power to remove chiefs who abuse their power or fail to live up to the title (*Sqwélqwel te* Stó:lō 1, no. 2 [1995]:1).

The third governmental branch, the House of Justice, is as of yet unformed. Carlson noted in 1997:

> This body is not yet fully functional, but will deal with justice issues

of particular concern to the Stó:lō people. Stó:lō concepts of justice emphasize "rehabilitation." Many non-Aboriginal people find the thought of a separate justice system for the Stó:lō disconcerting. Stó:lō leaders assure people that they have nothing to fear from a parallel Stó:lō justice system. One important function of the "House of Justice" will be to deal with justice issues that are aboriginal in nature. For the Stó:lō, certain songs and stories are "owned" by particular individuals or families. If a Stó:lō person were to go to a provincial court house and ask a judge to adjudicate who had a right to sing a song or tell a story, the judge would be at a loss as how to proceed. Similarly, Stó:lō families "own" specific fishing sites along the Fraser River. These rights are based upon complex family laws and customs which the mainstream legal system is unfamiliar with. Such matters are very serious to the Stó:lō people. Through the Stó:lō "House of Justice," these and other culturally specific justice matters could be dealt with by Stó:lō people within a Stó:lō justice setting.

Similarly, other justice and legal matters may one-day be dealt with by the Stó:lō "House of Justice." Property crimes and violent crimes between Stó:lō people may be handled more effectively within the context of the Stó:lō justice system. (Carlson 1997b:106–7)

A quasi-legal arm of the Stó:lō Nation, Xolmi:lh, has assumed authority for the welfare of children under a transfer of authority within the self-government process. Its program "combines traditional Stó:lō child care techniques with social work to help recreate healthy families" (Carlson 1997b:107).

Stó:lō Views of Indigenous Justice in the Early and Mid-Twentieth Century

Wilson Duff's (1952, n.d.) fieldwork with a small set of Stó:lō elders in midcentury provides a brief look into then current understandings of indigenous justice. Duff's six Stó:lō collaborators were aged from about fifty-three to over eighty, with all but two about seventy or over, putting their dates of birth from about 1870 to 1900. Their accounts appear to reflect the period of tremendous dislocation by population loss, loss of self-governance, and the endemic physical violence that these people either experienced or heard of from their parents' generation, who experienced this directly. Duff summarizes his work in two paragraphs in

a published monograph, but more detail is contained in his field notes. The published account focuses on the practice of exiling, deserting, or killing those who disrupted the community harmony. Duff observes that elder E. L. "thought that large groups 'could never hang together. There were always one or two persons causing trouble, especially women' " (1952:89), a circumstance that required sending troublemakers away or for everyone to move away. Duff references two stories, one concerning a man who killed his own brother, a troublemaker, and the other, a young man who was deserted by his fellow villagers.

Duff's field notes (book 3) suggest the penalty of death or banishment ("stripped and turned loose") and the loss of one's possessions following "a law trial before a council." The notes (book 4) connect pride and the acquisition of inappropriate power with punishment by Xá:ls in myth times or by the community in historical times. The notes (book 5, for example) reveal a number of stories about no-good people who killed "for little things," sometimes warriors who could not be trusted.

A Perspective on Contemporary Stó:lō Views

The Coast Salish people whom the University of British Columbia students and I interviewed in cooperation with the Stó:lō Nation were selected at the recommendation of Stó:lō research staff and community elders. Not all were elders themselves, but all were regarded as knowledgeable concerning aboriginal culture. Their dates of birth are from about 1915 to the early 1950s, making them from generations subsequent to those Duff interviewed. I use or obscure their names on their own choice. They framed their presentations to us in particular ways. All did not express the same viewpoint or emphasize the same issues. These elders and leaders are situated in various ways within the community—some as members of large, dominant families, and others more on the margins. Here I wish to present both their common beliefs and their divergent viewpoints. What is most striking when viewed in contrast to the South Island program materials I describe in later chapters and the discussions of Stó:lō people with ethnographers in the 1940s is that few of the elders explicitly mentioned the Transformer, Xá:ls, other myth-time beings, or Spirit Dancing and their connections to justice, although the tribal cultural adviser did so. References to

cosmology and spiritual beliefs were embedded in the frame of reference, but the discourse on justice made little immediate appeal to its primacy as a primordial gift of Xá:ls as transmitted to elders (as the South Island elders did, as I describe in a later chapter). Unlike the Stó:lō elders of the early and mid–twentieth century who focused on murder and its consequences, today's Stó:lō focused on less striking causes of community disharmony. As Fienup-Riordan (1990a) pointed out concerning Eskimos, elders' commentaries highlighted particular social processes and values and obscured others. As with the Eskimo case, the conversations foregrounded the role of elders and partially obscured considerations of class, although these were not absent. The interactive effect between class and seniority was generally largely muted or rendered unproblematic. For example, the relative influence exercised by elders and by people from noted families in public or private (interfamily) conflict was addressed only by one person. Participants did clarify the role of senior people (sí:yá:m) in dispute resolution, in giving "advice" (formal training in spiritual and other significant matters), and in counseling those who were causing problems. The senior people in stories and examples, without exception, were described as elders.

Resolution, rather than persistent conflict, was emphasized thematically; indeed, some elders presented the view of an earlier, Edenic society devoid of conflict. In addition, there is an undercurrent in the discourse that privileges the significance of the family in justice matters as opposed to community harmony. Notably, those whose primary frame of reference is family rather than community made more reference to class and to class-based problems. Divergence in perspective can perhaps be explained by another orientation: oddly, and unlike the Puget Salish materials described in chapter 3, those who regard their task as excavating aboriginal practice and knowledge make more reference to underlying conflict than those whose task is to find a way to practice it today. I suggest this inversion reflects the yet undeveloped state of affairs in the Stó:lō world concerning justice; the realities of conducting a working system do not seem to have fully sunk in to some, unlike the Puget Salish.

Still, a cluster of ideas presented to us play on the theme of family autonomy, an important feature in a period when the relationship between families, bands, and the tribe is a major issue. People's views

of how the community was constituted and the relationship between the community and the constituent families in the past and in the present do not necessarily correspond. Some view the growing institutional strength of the tribal government as threatening, or potentially threatening, to the independence of families and bands, which, ordinarily, comprise a single or a small handful of families. For example, tribal control of the delivery of child welfare services has led, in the event of the removal of children from homes, to the transference of frustration from the provincial authorities to tribal authorities. Elders emphasized that the resolution of problems lay in earlier times within the family, that only the right people, acceptable to the family and knowledgeable of the local circumstances, could be brought in to help resolve conflict in the event that it could not be done internally. In the report to the House of Justice, McMullen and I describe this as a "non-interventionist" ethos. Elders spoke further of the importance of the family name (reputation) and of protecting "Indian names," that is, ancestral names that are given primarily to youth and that are thought to have particular spiritual attributes (described in chapter 2). Since only the family itself could deal with its own reputation, and subsequent relations with other families, the family is the site of resolution of internal problems. Further discussion focused on spiritual retribution, the idea that improper behavior generates its own punishment.

Several stories depicted greedy or spiritually inappropriate people whose lives ended in disease or disaster. The consequence of this spiritual retribution was that others need not intervene and that an apparatus of law and order need not be created. Associated with this was the idea of "evil" or bad doctors, spiritual practitioners whose powers were available for good or for bad, and whose influence could explain the wrongdoing of some. As a consequence, the proper resolution in the event of harm is ordinarily not intervention by outsiders, such as members of other families, but, rather, the work of a family-appointed "Indian doctor" capable of countering the effects. All of this emphasized the autonomy of the family.

In addition, young people who act inappropriately were described as analogous to those who are ill, a concept that appears to connect to a widely circulated healing metaphor. But here, the reference is to spiritual sickness caused by the bad thoughts of an individual that result in bad actions. In this case, too, the idea of wrongdoing is embedded in a

spiritual explanation, somewhat akin to psychological explanations for behavior in the mainstream society, which do not suggest resolutions in the workings of tribal authorities. Here, too, the family is seen as the site of action.

There are two other key features to the contemporary discourses of justice. These concern the role of early training to avoid difficulties and counseling in the event of problems, both activities that take place primarily, but not exclusively, within the family. Early training, or "advice," is said to produce adults who know who they are (know their appropriate place in the world) and, as a consequence, know how to act and, especially, how to treat others in a way that avoids conflict. In the event that a family member encounters problems, resolution is achieved primarily through counseling by senior family members to awaken the wrongdoers to the difficulties their kinfolk will experience as a consequence.

These constructions ask, but fail to answer, the question of how individuals and whole families without advice should be treated. An implication is that members of families said to be low class or descended from slaves will be unable to access advice and to know how to behave and avoid trouble. Stories reveal the problems for whole communities when members of such families cause problems, and they emphasize the notion that these troublemakers should conform to good sense (advice). In the absence of intersubjective agreement on who has advice and who does not, a characteristic of Coast Salish society in earlier periods, as it is today, it appears that intervention in the affairs of low-class families might be tolerated as a necessary cost of doing business, but not in the affairs of one's own, more positively valued, family.

A final twist on the theme of tribal-family relations is the focus on greed as a determinant of improper behavior. For many elders, greed is a primary issue, including the hoarding of money but, especially, hoarding of resources available to the band as a whole. Although claims of greed are sometimes made against other bands (for example, in disputes over fishing locations that are held by bands for their own members, thereby discounting claims to the locations on the basis of ancestral use-rights), more frequently they are against others who catch too many fish, live in too fine a home, or drive too nice a vehicle. While these claims are countered as examples of the "crab-in-the-bucket" syndrome (crabs that appear to be crawling out the top are "pulled down" by those below

them), they are connected to supernatural sanctions and to values of reciprocity and sharing. Underscoring this is an unease with unequal access to the limited stock of jobs, patronage, and other resources controlled collectively by the band.

Finally, the interview texts reveal a tension between the spiritual dimension—spiritual causes and remedies for problems—and the human, pragmatic domain. Some see a pragmatic resolution to justice issues through social control of the lower classes, and some through a careful effort to obtain a balance of forces within society. To others, the emphasis is on healing through counseling.

The Stó:lō Interviews

The fourteen Stó:lō people we interviewed (some on many occasions and over several years) all advanced ideas that refer to preferences in aboriginal law for informal resolution and peacekeeping over formal procedures and nonintervention over confrontation. They were uniform in stating that the first stages of solving a wrong or a dispute involved a great deal of talking. A wrongdoer would be spoken to by family and friends. If the wrongdoer continued causing trouble, or if the situation escalated, more people could be brought in to help, including elders, extended family members, and even respected people from other communities. Shirley Julian said:

> At feasts there would be special people who were speakers, real good speakers, one from each place that knew the background and the history and the culture. A teaching is that when you have an argument in the family that you try to resolve it on your own. If you cannot solve it on your own then you invite your people to help you out from the neighboring [areas]. They all get together and say the same thing and then the wrongdoer understands that their parent must be right because everyone is telling them the same thing. You do not want things to be made public, you do not want other people to see your dirty laundry. They will ask someone who the elders knew that was raised with the teachings, the correct way. If it was really serious they would go to the Island and get relatives and friends and sometimes they would go east too.

Jeff Point provided an explicitly primordialist viewpoint, emphasiz-

Chief Frank Malloway (S'iyemches) of the Yeqwyeqwí:ws (Yakweakweeose) Band, Sardis, British Columbia. Chief Malloway is standing in front of the Richard Malloway Memorial Longhouse, a winter ceremonial ritual house. To the right is a carving underway.

ing the influential role of spiritual people who have been described elsewhere as "family historians" and "Indian doctors" and the power of precognition that allowed family members to know of such a person's impending birth. As is characteristic of Coast Salish society, such people had to confirm their spiritual gifts:

When a spiritual person was born, they knew it. They knew it at the time and they knew before it would happen, this man was well respected after and later on in years he was tested to see if it was real because anyone could come along and say 'I know someone is going to be born with it.' So he was tested to see if it was real or not and it was a long process, until he was 18 or 19 until he was considered he could be listened to [see McMillan 1998].

There [spiritual persons] are the ones that carry through everything that was law. You could break the law and they would be the ones who decided whether it was right or wrong. And most of the time the lady would tell her mate, but they were usually brother and sister. . . .

You see, those children would be brought up away from everybody else. . . . They are isolated from everybody, they are not allowed to talk to anybody because their elders are constantly telling them what took place 500 years ago and that has to be brought forward 500 years from that time, you cannot change anything. You see, nothing is allowed to change. I cannot build a house over there because it was not there 500 years ago and it is not going to be there 500 years ahead. . . . [The] decision-making was brought about by a council that served those two people.

Dorris Peters described another significant spiritual practice:

We had seers, everyone had seers, it is just like my great grandfather, he was a seer for a whole community because his totem or clan was the thunderbird. . . . He would, if it was a nice day with no clouds or anything, he would cause it to thunder and people knew it was him calling. He would travel by canoe, walk over the mountain over to where he was in Yale, and they would all arrive there and he would have announcements to make. Also [he would] see ahead and also it was a preventative as well.

Q: (Bruce Miller): They could also find things? Stolen items or bodies?

A: Oh, yeah. . . . They could help to find people, they help to heal people.

Elders stated that those who could "give a good talk" were valued in times of trouble. Therefore, justice depends on counseling; it can even be seen as a system of counseling. Elder Vince Stogan emphasized these healing features of justice and a more diffuse spirituality. To him, talking

and counseling serve to diminish tensions and diffuse problems as they arise (see Kulchyski, McCaskill, and Newhouse 1999:458 for a published interview with Mr. Stogan).

Counseling and, relatedly, teaching started early in life when individuals were taught traditional attitudes and proper behavior through the telling of family history, lectures, and stories. Through this children learned who they were, the significance of their family, their position in society, and what was expected of them. Their family provided the foundation for a good relationship with the community. An elder said: "Each family had their own laws. A lot of families were very strong in their own laws, own family laws, well in everything; way of living, supporting, helping, teaching and even looking after the children and everything like that. I think part of your family law became community law. But it has to start with the family."

Vince Stogan explained to us the important role that all family members had in the counseling and raising of young children:

> They visit the other families and they laugh and are happy together, and so are the children. It was companionship. When they go home they're happy. . . . So, you know, they're continually guided to the goodness of a human being. . . . That is a child growing up. When they're angry at somebody and I say, "Don't talk about that child, your friend, that is your friend, don't talk about them. You'll be alright, you go on your way and don't do that." That is one of the teachings as the child grew up. So they did grow up without too much trouble, see, it's guided all the way.

During times of trouble individuals were reminded of their early teachings by those closest to them. The same elder told us: "So there's not really too much trouble, but when there was, there was a lot of sympathy. You'd sit them down and talk to them for a long time."

Many chances are given to wrongdoers to reinstate themselves in the community. Another elder stated that you have to work with people, that you cannot just forget about them: "It's through contact and counseling and supporting, and letting them know that they did something wrong."

Dorris Peters observed: "I guess the punishment for people in traditional laws were that you were always given four chances, you were

taught four things, I mean you were taught four times for certain things and if you didn't get it you were reprimanded."

Shirley Julian reported a different family practice: "Law is justice. . . . Once it was said one time, that was it, you never questioned the elders, you just listened, you learned by watching and it was only shown to you once."

Jeff Point described a somewhat grimmer picture than others in the event of intrafamily difficulties:

> The young fellow who got caught stealing. Because I heard my uncle tell me about that. It was the common thing to do for anybody who broke the law to cut his ear off. And kick the family out of the home. And then nobody was allowed to take them in. And so what happened was this family turned on the boy and they ran away from him so they could be accepted to another family. . . . This young man, it must have taken a long time to decide to cut his ear off, that is the last point to do that and to excommunicate someone from the house. . . . I imagine the young man had many chances to redeem himself before they did this.
>
> I remember another uncle of mine telling me that this young fellow ran away from home, ran away from his longhouse. He disputed living that way, this was when the time was turning, so when they found him, they brought him all the way home and the ladies were collecting the wood and he had to do that. . . . He had to prove himself that he would not do it again.

Another premise of Stó:lō justice practice is a non-interventionist, non-confrontational ethos coupled with a strong belief in spiritual sanctions for wrongdoing. Elders observed that one's actions determine one's destiny or fate and that people do not necessarily have to punish a wrongdoer, as in Jeff Point's examples, because "things come around," and eventually the evil ways of the wrongdoer will catch up to him or her. One elder told us: "It might take a long time but justice is served by just your actions. . . . If you do something bad you'll get punished for it later. The people don't have to do the punishment, its our Creator, I guess, that makes sure that you don't benefit from what you've done. Maybe you'll benefit in a certain degree, but in the long run you'll suffer for it."

This premise ties in with the first premise of non-interference.

Spiritual beliefs and spiritual powers all contribute to the autonomy of the individual and the desire not to interfere, although there are limits. Angry thoughts can make others ill, and therefore there is an emphasis on self-control. Vince Stogan told us:

> This is the teaching that we got from my Grandfather: "Never hate anybody. Never get angry at anybody. If somebody's real angry at you and still wants your help, you go there and help. Don't have this feeling, 'Oh, he's mad at me, why should I help him?' No, you go there and help. Otherwise, if something happens to that person you'll feel responsible for it after. No matter how mad you get looking at him you go and help." So that's the teaching we got.

This elder's comment relates to the conception that ill-feelings can cause illness or injury in others, even when it is not consciously intended. Similarly, Shirley Julian stated that one must "Have a good mind when you give away. . . . We were taught that if you don't quit what you are doing it will happen to you. You have to be very careful each day."

Stó:lō people told us that if, in spite of repeated attempts at talking and counseling, a wrongdoer is unrepentant and continues wrongdoing, eventually the wrong ways will be reflected in his or her life. In this case, elders are referring to older people in the community, unlike the young people Jeff Point mentioned (above). The wrongdoer's past, in these narratives, will show through in the quality of relationships, health, or other aspects of life. Elders gave us examples of people who became ill, became isolated from others, or died a terrible death because of wrongdoing throughout their life. Thus, there is an imbedded analogy between the fate of evildoers and the notion that all things are eventually returned to you in a reciprocal arrangement. One elder talked about how his grandfather's wrongdoing in life was reflected in his death:

> [My grand]mother always used to accuse [my grand]father of doing something bad because my grandfather died a terrible death. . . . My grandmother always used to scold my grandfather when he was on his deathbed, "Oh you did something wrong, you did something wrong, that's why you're suffering now," because he had TB and he just went down to a skeleton. When he died my dad said there was no flesh on him at all, he was just skin and bones. . . . But my grandmother always used to scold him, "you did something wrong."

A third premise of Stó:lō justice is the view that wrongdoers hurt their

families as much as they hurt themselves and their victims. A wrongdoer puts a "black mark" against the family's name, and thus the family is affected and hurt by the wrongdoer's actions. These black marks extend back through the generations as wrongdoers shame ancestral names. There is a great deal of external pressure from family (especially elders) and internal pressure to behave and put things right. One elder told us:

> If we do something wrong you're not only dirtying your name, you're dirtying our family name. So if you do something wrong you put a black mark on us too so we want you to go out there and fix it. . . . In other words you almost have to live up to why that name is given to you 'cause elders already see some traits in some young people and usually they won't give you a name until you're in your teens or late teens so at least you're developing some of the traits or characteristics of someone, maybe your father, mother, grandfather, great-grandfather, and maybe they think that maybe you deserve that name because maybe you have some of the traits of somebody in the family.

Another elder told us a story of a young person whose excessive drinking was destroying his life. An elder family member spoke to this youth to say that it was not just his life he was ruining but the lives of his parents and siblings, too. It was this realization that prompted the young person to put his life together: "He realized then that he's hurting us, not himself. That struck him in the head, 'I'm hurting Mom and I'm hurting my Dad so I better quit.' "

Stó:lō people told us that conflict resulted from several factors, but chief among these were a failure to be given proper instruction as a child, ordinarily an outcome of birth into the lower class, greed, and the action of spiritual forces. Sonny McHalsie explicitly connected class and behavior, and the implications of class in the interpretation of behavior, as Stó:lō people commonly do:

> Q: (Jane McMillen): What causes people to do wrong?
> A: Most people would say it is their upbringing. If you are from a lower class, you are more like to commit a wrongdoing than from an upper class.
> Q: If someone from a lower class does something wrong, it is less likely to be a big deal than if someone from a higher class does something wrong?
> A: I think so. Because the lower class actions can be easily explained

> away. I am sure some action would be taken. The higher class would be more frowned upon for sure if they did something against their name, then it would be probably taken away, but the lower class did not matter too much if they did not know about the meaning of the [ancestral] name, or did not realize the importance of the name and did something to tarnish it.

Social class in this discussion is connected to the idea of "advice," or family teachings, that provide a spiritual mooring and that enable people to know how to behave, rather than to the idea of the division of society into groups on the basis of differences in wealth reproduced over the generations. Nor does this necessarily refer to where people live; lower- and upper-class people commonly inhabited the same villages. Instead, there is the implication that anyone with proper behavior would be regarded as a member of the upper class, and in this sense, attributions of class are ways of talking about others more than a reflection of discrete groupings of people on the grounds of material differences. In this reckoning, attributions of class status are circular and personal; one identifies oneself as of the lower or higher class because of one's actions. Suttles (1987b) captured this idea with the image of an inverted pear, in contrast to the more common image of class in the shape of a pyramid, with a small upper class and large lower class. Suttles argued that relatively few Coast Salish people are lower class (although some whole villages were "low class"), and most could make claims to upper-class status, and that, consequently, discussions of class are primarily a means of commenting on the behavior of others.

Yet, there is the contradictory notion that one's class is inherited and that personal qualities are likely to persist in families; the child of a lower-class person or family was also of the lower classes (see also Glass 1998). Members of upper-class families are given important ancestral names because they are thought to embody some of the qualities of their predecessors who held that name. Acquiring the name itself is sometimes said to provide support; people attempt to live up to the name and to the social status associated with it. There are other features of the heritable nature of class in practice, as well. The difficult spiritual training undertaken by children would enable an upper-class child to potentially obtain a powerful spirit helper that could help in the achievement of prosperity and significance in the

community. Those without proper advice and training would be less likely to obtain such an important spirit helper and, consequently, membership in the upper class. Coast Salish stories reflect this notion: children of the lower class eavesdrop on the teachings of upper-class families and, as a consequence, become successful. In the stories, this is contrasted with children of upper-class families who fail to heed these lessons and subsequently fail to succeed. Finally, people of very high status were, in many ways, more significant to the welfare of the community than others. They were the ones who managed relations with other communities, who managed the resource stations, and who held important responsibilities for maintaining peace and order within the community. They were expected to marry outside of the group and to have useful external connections. Consequently, their actions were more carefully scrutinized, as McHalsie's comments suggest, and they were expected to be careful not to do wrong and offend public sensibilities. In fact, procedures were in place for them to attempt to recover from mistakes. Upper-class people could (and still do) hold "shame potlatches," in which their improper actions, already public knowledge, could be acknowledged and overcome.

Greed was described as a state of alienation and the opposite of generosity; it isolates people from the community. Waste is considered to be a form of greed, and to be greedy and hoard things is wasteful. The reciprocal movement of goods and services through the community is the glue holding people together on a practical basis, both in mundane giving of food gifts to relatives or the distribution of gifts in potlatches. This system is threatened by greed and waste, and people are kept away from each other. One elder explained, "The most serious crime of our people is greed. That's what we were told by our elders, 'don't you be greedy, you share what you have and in the end it'll all come back.' "

Sonny McHalsie gave another view of the issue of greed, relating it to Xá:ls stories and the issues of stratification, greed for power, and social control:

> Many of the Transformer stories have qualities of social control values about them, the boy who stayed out after dark was turned into a stone.
> Q: (Bruce Miller): What can we learn about justice and relations from the Xexá:ls stories?
> A: Some of them [chiefs] challenged him [Xá:ls or the Xexá:ls sib-

lings], and some of them were just doing wrong, I guess. The one about the warrior at the Mouth of the Pitt River, he was transformed [into a stone] because he wanted to kill a X̲exá:ls. The warrior had heard he would have more power if he killed a X̲exá:ls. So he stood at the mouth of the river waiting for the X̲exá:ls. The X̲exá:ls knew he was there so he came around on land and tapped him on the shoulder and asked him what he was doing, and the warrior, not knowing this was the X̲exá:ls, told him he was waiting to kill X̲exá:ls. X̲exá:ls asked 'why?' and the warrior said so people would recognize that he had more power than X̲exá:ls. The upriver story said that X̲exá:ls transformed him into a stone; the Musqueam story says that he took the warrior's spear and broke it up into his face and transformed him into a blue heron, saying that from now on people will hunt you and use you for food.

Q: So this is a story of pride or greed or misuse of power?

A: Greed for power.

Another way of viewing wrongdoing is through the metaphor of illness. A wrongdoer is akin to someone who is in spiritual danger; the sick, those in mourning, the very old, or the very young are in a state of XeXe. Sonny McHalsie connected the issue of being exposed to too much spiritual power and the subsequent state of dislocation and disturbance: "XeXe means sacred, a place where you stay away from. A spiritual place where an Indian doctor left his power." Wrongdoers are not necessarily considered to be bad people or criminals, but rather it is thought that something has happened in the lives of wrongdoers to put them in a state of alienation from the community. Therefore, there can be a supernatural dimension to wrongdoing that can be manifested in a variety of ways.

Elders stated that bad doctors are often considered to be responsible for wrongdoing. Bad doctors are powerful, and people are wary of them. They are not often called upon to account for their actions. People avoid bad doctors; they are often in a state of informal internal banishment within the community. In one elder's words:

> You don't do anything with them. They have a class by themselves. Nobody touches them, nobody does anything with them, nobody even helps them survive. They do their own fishing and hunting. Most of the old people in the villages always received help from the young

> people. They'd bring them fish or deer, or whatever. But when you are a medicine man and a bad man, you had to go on your own and that was a sort of a type of banishment, but he lived in the village or lived in the area. I don't know if you seen pictures of this . . . when my dad was a kid, his mother used to tell him "Don't you go near that house. He's a bad man." That was. . . . Yeah. He was a medicine man, he'd do bad things to you. So they just ignored him or kept away from him. That was a banishment, but he didn't go anywhere, he stayed right in the village. It's just that they ignored him and wouldn't go near him. . . . I guess the only ones who visited him were the early settlers or people in your job that were looking after the history of our people and that was a sort of a banishment that he suffered, you know. Nobody came to see him, nobody went near him. He wasn't told to leave the village, he was in the village but they just stayed away from him, and if you understand Indian doctors you really had to be careful of them, because if [you] got them mad or angry or anything they could cast spells on you and you wouldn't know what was happening to you, so they just stayed away.

Consistent with the notion that "things come around," it is thought that eventually a bad doctor's ways will catch up to him. He may become isolated and sick or die a terrible death. One elder said:

> A young man that lost two children, they died. He blamed his uncle, a granduncle, who was a medicine man, and he said that he would get even with him for doing what he did. It was something about, something that happened between them that created hard feelings, and the old man was telling his grandnephew that he was going to get even with him, you know, that he would really be hurt emotionally. When this young man's children died he blamed his granduncle. I guess when the fellow was out on the river, the old man was out on the river fishing, and the young man shot him. The canoe drifted down river to the . . . people. The . . . people found him floating down the river in his canoe. They pulled him ashore and sent a runner to Chehalis and said we found a certain person. So they sent four guys down to pick the body up, and they brought it back to Chehalis, and the guy was buried. But there was nothing done about it. You know all they felt that what the fellow received was what he deserved for doing all this bad work. It was really interesting to me because my father said nothing was said and settlement was around all ready, and he

said the provincial police weren't even notified. It was just done in a silent way. I was thinking I guess that is Indian justice, the young man that carried out the ambush, or whatever, the people thought he was delivering a sentence that nobody else could do, and the family looked after their own problems. People came and took the body home and buried it, and no authorities were notified. He said the news just died away, people just forgot about it. In a way I guess they were going back to their old way of dealing with situations like that, when somebody committed a serious crime and the people judged that person and felt that he didn't need punishment, he was just carrying out a justice because the Indian people all say if you do something bad to hurt people, it will come around in a circle and you will be dealt with. You know when that dealing comes through, when that justice is served, nobody questions it. I guess in a way that's what the people thought about this murder, or ambush, or whatever it was. They felt that justice was served, and that's why it just quietly went away and nobody talked about it anymore.

This story appears to reflect a measure of community cohesion; people apparently did not disagree with the means by which this problem was resolved and were willing to conceal this episode from the outside community. More than reflecting uniformity in beliefs, however, the story reveals a disinclination to intervene in the affairs of other families and to draw the mainstream society into internal affairs.

The influence of spiritual forces, induced by bad doctors, is a possible explanation for the behavior of chronic offenders. If someone comes from a good family and has advice, there is often no other reason for repeated bad behavior. One elder explained,

> They look at a person and say, "Well we know you were brought up with your uncle and your grandmother and your grandfather . . . and your parents are good people, so what happened?" . . . People will say maybe bad spirits. . . . A long time ago we had a lot of medicine people, good and bad, and they could inflict, even to this day, maybe not as powerful as before, but it's still being done, to this day. You know put something bad on you to make you maybe, more than likely, to this day its mostly because of jealousy. Maybe, if what you are doing is good, or they are jealous because you are doing well at something or your family is *smalash*, you're above the others and you're doing well, they'll probably be jealous and they'll go grab this person and put something

> on you or do something to you or part of the family or someone else. . . . So it happens, you read about it. . . . When it comes to the courthouse thing and that person couldn't be reconciled by counseling so they'd bring him maybe to a healer to find out maybe if there's something else besides or why to make him go that way. . . . Maybe the person looks normal maybe, but we'll work on them just to make sure that—and again usually you can't work on anybody that doesn't want to be worked on, so that person has to agree. And more often that not, a lot of times the person themselves didn't know why they were doing this, or maybe something was troubling that person they weren't even aware of. Like I say, its happening to this day. . . . Again sometimes its kind of a last resort, if people know if there's some wrong, you know like they say nowadays, "The devil made me do it," okay, well, then let's do something about it if you really believe that.

A primary goal of traditional Stó:lō justice practice, according to the accounts we heard, is to reinstate wrongdoers into the community, solve the immediate problem, and restore right relationships with people. The restoration of the community is more important than punishing the wrongdoer, although these might overlap. Jeff Point described the significance of gambling, *slahal*, in disputes, although he did not describe it as a form of dispute resolution:

> Now this game [*slahal*] came in three or four different ways. . . . If it was a way of playing, when they say a dispute, now that is an English word for two people who don't agree. A long time ago when there was a disagreement among people it was not a game. The game did not see if you are right and I am wrong. The game brought us to thinking both of us are okay and we can forget about it.
>
> Q: (Jane McMillen): To forget about the dispute?
>
> A: Yeah, it did not resolve it. Let's say if you owned the jacket and I said, "No, that is mine," they would play the game and never mind the jacket.
>
> Q: So it was like a diversion away from the disagreement?
>
> A: Yeah.
>
> Q: That would resolve the bad feelings toward one another?
>
> A: That's right. You see, the dispute was over what, just forget about it. The game brings balance out.
>
> Q: So the game is to remind people of the teachings?
>
> A: That's right. Now you're getting it.

In interfamily disputes often the heads of the families would meet to discuss the problem so that things may be made right again through the exchange of gifts. Wrongdoers did not present their own case because they could not mediate. Sonny McHalsie noted the connections between the underlying logic of ceremonial life generally and dispute management:

> It would be someone from their family rather than themselves because it ties in, even when you are doing your own ceremonies you cannot speak on your own behalf, you have to get a speaker from somewhere else to do your work for you. . . . What chance do you have to speak on your own behalf if you are the wrongdoer? The person that would probably be better to mediate the difference would be the sí:yá:m of the family because the respect he'd have from other community members.

Frank Malloway described how families might settle problems between them:

> I think most of it was done through the head of the family. The head of the families would meet and they would discuss the crime, or whatever it was, and they'd reach a consensus. I've never really heard about what the sentences were. They'd say, "Well, we had a family meeting with this family, and they decided on what had to be done," but you never really hear about the punishment itself and how the families reach that verdict, or whatever you'd call it. . . . If you did something wrong the family would take the resposibility and make an offering. They call it an offering. Some of the things in the old days were canoes, because they were like cars today, "Ah, I'll give you my car if you forget about this." But it was canoes in those days. I don't think it was really food because food was so plentiful that it wasn't expensive. Later on, my dad was saying, when it was settlement time, it was horses. They took the place of canoes. He talked about people bringing horses right into the longhouse to distribute to somebody.

The families are brought together through this gift exchange, and the reciprocal relationship is ongoing. The restitution further cements community relations in a manner analogous to marriage and other gift-exchanging events. This reciprocal exchange of goods was described as an exchange of "good feelings." In this sense, the procedures for the resolution of interfamily conflict are described as conforming to a larger cultural pattern of interchange. One elder said that gift giving "brings

the good feelings back"; it means, "we're not mad at you anymore." Elders stated the importance of resolving interfamily problems as the community must be held together and must get along together. One elder said, "you can't have a good community if your families aren't together."

This relatively unproblematic view of community conflict can be contrasted to another that accounts for difference in status and the implicit possibility for ongoing problems within ritualized exchange. Sonny McHalsie connected conflict to its social class implications:

> There is a word for stepping on people. Class and status wise. You know how you are always giving [as in potlatches] to elevate your status, and if someone comes along from the lower class and starts trying to build themselves up to the upper class by giving all of these things away. Well, you know how when someone gives you something you are obliged to give it back, an upper-class family would, to discourage someone from moving up by giving them so much resources and wealth that they could never fulfill the obligation to return it, thus stepping on it.

Another, quite different, although not contradictory, view is that the generosity expressed through the reciprocal exchange of gifts means that the families are no longer alienated from each other. One elder explained it this way, "I think if they, the family, agree that this person is sorry and really trying to pay back by doing different things they'll agree, 'okay, maybe you've done enough.' Maybe then they'll have a little ceremony to say, 'okay, we'll agree with that family and this family,' do it publicly in a feast or potlach or something. . . . Of course they agree to it first." The elder explained that the public ceremony was also a way for the family who was wronged to publicly state to the family of the wrongdoer, "We're not going to be angry with you, we're not going to bring you down, we're not going to say anything. We understand you're sorry, okay, we'll agree to that, we think you did enough to say, or show, you are. Okay, we'll get together, we'll do it publicly where we'll let the public know the thing's been resolved. Let's get on with living together, sharing and helping."

Vince Stogan stated that law and justice are a

> right relationship, a good relationship. . . . I guess our people are always talking about getting along. I guess maybe that's justice. But a

> good relationship, not only with your family but with everybody, and not only people, with mother earth, the birds, the fish, the animals the plants, the grass. It's a relationship with everything, everything on this planet. . . . Take care not only [of] yourself but anything and everything whether it's human, or even the rocks, even the rocks are alive. Take care, and that way you take care not only of yourself and everything will be okay, be balanced.

Law and justice in these discourses can be thought of as directly associated with proper conduct. It is thought that people who have been raised in the community, who have advice, and who live in the community should know the rules and abide by them. It is in this sense, then, that Stó:lō justice is not procedural and legalistic. However, legal procedures do exist and are considered next.

Even in the absence of intent by wrongdoers, restitution must still be given to the families of the wronged. The community must be restored. In this sense wrongdoers might have no intent, or no conscious or controllable intent (although there might be uncontrollable intentions). Wrongdoers are responsible for their actions, however, whether they intended to commit a wrong or not. This holds true even in the case of an accident, injury, or death. There do appear to be some differences in how accidental injury and intentional injury are regarded, however, and some differences in what should be done about them. An elder described for us the events that occurred between the families of two young friends after one friend was accidentally shot and killed by the other.

> What that family done that shot that young fella, they put up a big feast and invited a lot of people to witness how sorry he was, that is hurting him, he's not gonna get over it, but we want your people to help us solve that feeling that we have. . . . The families are talking today, they're not mad at one another because he apologized for shooting his partner. . . . He apologized right there, "I'm sorry, I'll never get over it—that he was my good friend, yet I was the one that—and that's why he's not here today." His family, the one that was shot, his family got up and said, "We forgive you because we want to be your friend, too. We look at it as an accident, but that won't bring back my son, but we're not mad at you anymore." The two families are working together again.

A significant feature of Stó:lō justice is the employment of appropriate

personnel. Only the proper people must be drawn into the resolution and only at the right time. Ill feelings arise when people involve themselves in other people's problems and when those who should be taking care of the problem do not. This is especially true when issues cross family boundaries. An elder gave us an example of an individual stepping in and apprehending his daughter's children. The elder felt it appropriate to do this work himself because he is the grandparent, and the children are his responsibility. There is a strong preference for settling intrafamily disputes within the family. There is also a preference for settling disputes within as narrow a circle of disputants as possible, even in cases involving nonfamily.

Depending on the nature and severity of the conflict, however, outside *sí:yá:m* can be drawn in to resolve the problem. These are widely recognized and respected people, but they do not necessarily occupy a formal position, although formal councils are noted in the late nineteenth and early twentieth centuries in several Coast Salish communities. Counseling from *sí:yá:m* was taken seriously, and they often had the final say on a dispute. Frank Malloway gave an example of a *sí:yá:m* coming in to settle a land boundary dispute between two farmers.

> So they called in Chief Harry Stewart . . . and I remember that because my dad used to babysit me when my mother was busy, he'd take me with him. I was about four or five years old. It's like a dream, I remember walking back here with my dad and the old man with two canes, that was Chief Stewart. So, he heard both sides of the story and looked the site over and then he said, . . . "You're taking his land, but you're half way to the ditch with your fence. I'm not going to tell you to take your fence down and move it. What you do is you go across and cut your lot off." So if you go back there today I think there's a fence still up there. It goes towards the ditch and then stops and goes across to the Scowkale cemetery and that was done maybe about fifty years ago, I guess. And that was the only incident where I've seen outside *sí:yá:m* coming in to decide on an issue and that was Chief Harry Stewart. . . . He heard both sides of the story and then he made his decision. . . . The old respected chiefs, Billy Sepas and Harry Stewart and Billy Hall, their decisions were honoured by the other people even if they didn't come from this reserve. They held high positions as leaders. Whatever they decided, you respected their decisions. So [the farmers], they agreed on it and they never brought it up again.

Harry Stewart was noted by another elder for his ability to settle disputes: "If this community had troubles correcting some families or children or whatever, they would call upon another chief from down in Chilliwack. His name was Harry Stewart. He was one of the greatest . . . and he used to come up here and talk to the people and give them a good talk." There is a strong preference to settle problems within the family, and outside *sí:yá:m* were brought in only for significant, longstanding, unresolved disputes.

Family feasting is a commonly referenced feature of Stó:lō justice practices. Feasting can act as both a means to resolve and to prevent problems, through the act of generosity and the establishment or reestablishment of exchange relations between families. Feasting brings families together and provides a public forum for discussion, and resolution is achieved, if it is to be achieved, through consensus. Payments may be made to end a dispute, and this was witnessed in the public setting of the feast. Sonny McHalsie pointed out the role of witnesses, called to speak at the feast, to affirm generally held values and comment on the specifics of a problem: "I think this is the role witnesses play. Because that is what they always say, that is what they always start with, it is almost repetitive. This is the opportunity they have to remind everyone at the gathering of what the teachings are. They start with the positive stuff and end with what was done wrong, like 'next time you should do this.' "

However, there was no rule of closure, and so in instances where there were deeply divergent views it was possible that the forum could continue for a very long time and that no decisions would be made. Even in such a case there was a benefit, we were told, for in the end, everything could be brought out in the open, and everyone knew where others stood.

Some communities had community courts established in the early reservation period that served as a site for formal public dispute resolution. Headmen or orators presided over these courts. The court was not a forum for determining guilt, and elders observed that if something was serious enough to be heard in the courthouse, then the details of the situation and the parties involved were known to most people in the community: "Well, first of all word gets around and people begin to know, and if they didn't know then you have a runner to go around if you want certain people to come." The wrongdoer was brought before elders

and community members who discussed the problem publicly. Any people brought in from outside the community were given the details of the situation beforehand through a runner. Elders also summarized the problem in the court at the beginning of the proceedings so that everyone would know why they were there. One elder described his memories of the community court house:

> When I was younger, before I was ten years old, our old village site was just back here. There's a church that burned down now. The church was up on the hill and right below was our court house. Our court house, as it was called then, was used for, I guess, it was used as court houses are used today. I was quite young then and I wasn't even sure of exactly what was going on, but I knew by the time I was ten that people that did something wrong were brought to the courthouse, and if it was something that was not really serious then the offender and the victim, people put them in the center and people would sit around. They had benches all the way around, parents and some of the elders would sit around and talk to that person and try to resolve the situation between the offender and the victim. As the offense or crime got more serious, the more people were brought in, like the chief and some members and some elders, and when it got a little more serious then they'd bring other chiefs in from the surrounding area. Elders that had knowledge of some of the things to help resolve the matter. I guess it was more of a reconciliation between the groups. . . . I'm not sure how it really came about. The people at that time used to get together and help one another and share and maybe build it themselves. It was an old building, it looked old with cedar siding, and there were benches all the way around where people could sit down. There were chairs in the middle where the offender and the victim would sit down.

Another elder stated, "More often than not they know what's happened. And I guess with the pressure from the family, you know, talking about the name thing, that person will say, 'Yes, I did it,' and now what are you going to do now? What do you intend to do, and of course then you'd hear views from all sides, and the person more often will say they did it, and if not then the session will go all night."

The court system relied on the cooperation and participation of the wrongdoer. The wrongdoer had to agree to appear before the court, endure public shaming, and then agree to the terms for amending

the wrong. One elder told us that family pressure provided a strong incentive for the wrongdoer to cooperate: "I think when something like that happened they had no choice but to come, and they were almost made to come by their own family, otherwise it's kind of a disgrace. . . . I would think to somewhat degree peer pressure but mostly the elders in the family. They were really strict that way at that time."

Public shaming could involve a public talking-to from members of the community, elders, and visiting participants. It was also possible that those wronged could stand up and make a statement to the participants. Shaming also involved support for the wrongdoers to change their ways. One elder stated, "As the crime gets more serious, then you have more people, and you can really talk to that person and of course let them know that what they've done is wrong, and it's not in our tradition that we do this and about the family thing—how you're damaging the family, family breakdown, and maybe say, like, 'Well, if you keep doing this maybe you won't even be allowed into anybody else's territory.' "

One Stó:lō elder said the public setting of the court proceedings and the prospect of public shaming served as a deterrent for others witnessing the events. "Quite often most of the village would be there whether they were part of it or not. But they'd be there to see what's going on, and they'll know, and I'll guess they'll pass the word on like, 'If you don't behave, you'll know what will happen.' "

Elders told us that restitution (sometimes expressed in that language) was the most common way to settle a dispute. As mentioned before, gift exchanges sorted out problems between families and brought them together in a reciprocal relationship. Restitution may have also included service to the family and community as a way for individuals to reinstate themselves in the community. Vince Stogan described the notion of service:

> To this day I call it a win-win situation, not like the other type of system where its win-lose; you did something wrong so you're the loser, you're going to pay for it by going to jail or something else. But our system at the time was what I call win-win, where it's you did something wrong, let's try to resolve it. Either through restitution or even go live with that person to help them. At that time things were kind of a matter of survival, you had to get wood, you had to go fishing,

> you had to go hunting, because there was no such thing as welfare, so it's a matter of survival.

Vince Stogan and others described healing as a key feature in aboriginal dispute settling. From this viewpoint, it was generally thought best to settle problems right away. However, when disputes were particularly heated and emotions were running high, sometimes it was best to settle the problem after people had calmed down. When disputes are set aside for a while, both parties practice avoidance. Elders' advice and spiritual practice help to calm people down.

Several elders stated that sometimes disputes could not be settled, or wrongdoers would not listen to the teachings of their family and community members or would continue wrongdoing in spite of talking to or shaming in the courthouse. In these extreme cases where problems could not be resolved, a sentence of exile could be imposed by the community. Elders made the distinction between two types of exile, internal and external. The concept of internal exile has been discussed above in relation to bad doctors. Internal exile relates to a state of internal alienation. The wrongdoers still live in the community but are not a part of the community. People practice avoidance of the wrongdoers, who live their lives alienated and alone. Internal alienation can sometimes be taken to extreme ends.

External exile was a formal banishment of wrongdoers from the community. This type of punishment occurred for extreme offenses such as incest and murder. An elder gave us an example:

> Another banishment was if you married somebody too close to you, if you fell in love with somebody that was in your family and it was too close a relationship, you were asked to leave. There's a lot of stories about one fellow falling in love with his sister. When they say sister it could be your first or second cousin because the Indian people for three generations they were your sisters or brothers so when you hear stories like that from the elders you don't know how really close related they are. Today your sister is the same father and mother or same mother, but they were banished too, told to leave the village if they started a family together, they were asked to leave the village. They usually moved away, in those days it wasn't hard to survive because there was so much around you that you needed, you didn't suffer any, but just lack

of companionship with other people and not participating in your village functions. I guess that was banishment enough, lonely people.

External exile apparently was rare, and the practice was ordinarily not to isolate wrongdoers but to restore them into the community and heal wounded relationships. It appears that the purpose of external exile was not to starve or kill wrongdoers but to isolate them from their family and community. The sentence nonetheless led to loneliness and isolation, creating a desire for an individual to be restored to community life. In some instances an exiled person could be reinstated. One elder told us how a banished individual could be brought back into the village: "We had banishment, too, but that was the last resort. Banishment isn't, say, 'So long and we don't see you any more' if they sent you away, and again it depends on how serious it is. If the person mends their ways and does better and helps and gives restitution and [does] all those sorts of things, then maybe they'll be allowed to come back. But again, it depends on how serious it is."

Another elder described the banishment process this way: "The stories I heard was that they accepted the second generation back, the children were accepted back, eventually, but I've never heard anything about the people that were banished being accepted back. Like today, people do violent crimes, and you sentence them to five years, and then they come back to your village or come back out. Well, they've never taken their stories that far where the person is forgiven for the things that they've done. It probably happened, but I never hear the elders talk about it." One elder told us that new communities could be formed by people who were externally exiled. "Some of the ones that were sent out away from the community here they started their own little communities . . . that's how a lot of the smaller communities began."

Formal exile was the most serious community sanction for wrongdoing. Formal execution of wrongdoers carried out by the community does not appear to have occurred. However, elders told us that individuals carried out executions of wrongdoers on their own initiative, such as the young man who killed his granduncle for causing the death of his two young children.

Official Discourse, Community Questions

By the late 1990s, the Stó:lō efforts at conceptualizing and acting on justice issues remained broad and unfocused, tied to a uncertain treaty process that was the target of widespread criticism across the province for its slow pace. In the early 1990s, an effort was made to consult the tribal membership concerning fisheries and aboriginal fisheries law (Glavin 1993). The Stó:lō Nation, under the direction of a retired officer of the Royal Canadian Mounted Police (RCMP), undertook a policing study through the Aboriginal Rights and Title department during the period of the formation of the House of Elders and before the creation of the House of Justice. Questionnaires were distributed through the communities in 1995, and staff conducted additional surveys. Meanwhile, Robert Phillips, then a Stó:lō Nation justice worker, organized a major justice conference to broaden the debate concerning the future of Stó:lō involvement in corrections, aboriginal justice, and policing. The Stó:lō Justice Conference of 30–31 October 1996 drew representatives of the federal, provincial, and municipal governments, as well as First Nations from around Canada. In his opening address to this meeting, Chief Steven Point, Chief's Representative of the Stó:lō Nation, raised a series of questions central to Stó:lō justice: What should Stó:lō justice look like? Should it include police, jails, and other institutional trappings? Should the Stó:lō take responsibility for offenders in their communities? (McMullen 1998:12).

Internal and outside forces, meanwhile, pushed for the immediate deployment of an already packaged, widely publicized, and purportedly proven program from the Maori of New Zealand (see Olsen, Maxwell, and Morris 1995 for a description of this program). The program had the advantage of a set of media materials to sell it, including a video and a variety of well-placed supporters ready to talk it up, and could, in theory, set the Stó:lō on the way to taking over part of the youth justice program. For the purposes of the tribal government, the New Zealand program would mitigate accusations of inactivity on the part of community members. Furthermore, the federal government was in support of the program and willing to provide funding. Martin Suo, an officer of the federal Aboriginal Justice Directorate, Justice Canada, who serves the British Columbia–Yukon region, made a presentation

concerning Family Group Conferencing (FGC), indicating federal support for adaptation of the program within indigenous communities of Canada. In subsequent discussions, the FGC program was compared favorably to the South Island Justice Project and was said to have "greater community involvement" than the elders council of the South Island Project. In addition, FGC would "find appropriate people" rather than rely on pre-identified elders. Kathy Louis of the National Parole Board, however, observed that the FGC model left out the spiritual component of wellness and healing within a restorative model (conference notes taken by author, 30 October 1996).

The Stó:lō Traditional Justice Project was initiated in the spring of 1996, and Stó:lō leaders stressed the value of incorporating important aspects of Stó:lō indigenous justice into the contemporary practice of the House of Justice. Stó:lō elders and chiefs were presented with information concerning a variety of programs in operation within First Nations of Canada, particularly in the Prairie provinces of Manitoba, Saskatchewan, and Alberta. The federal government continued to promote the Family Group Conferencing model for Canadian indigenous communities. The Navajo Peacemaker Court approach was promoted by James Zion, counsel for the Navajo court and a speaker at a variety of international gatherings, including a seminar entitled "Policy Forum on Non-Judicial Family Dispute Resolution in Aboriginal Communities," held in Vancouver in April 1996. Meanwhile, provincial legislation aimed at the British Columbia Ministry of Child and Family Services made provision for implementation of FGC, and the Ministry of Social Services promoted the idea (McMullen 1998:22). As a result, the Stó:lō Nation acted to implement FGC in a small way into the House of Justice family and youth service programs, and a small number of cases were carried out under the provisions of FGC, beginning in 1996. Implementation proved to be difficult, and complications arose, particularly the failure of cooperation of parents and RCMP officers. The justice worker in charge gave an account in a Justice Committee meeting of March 1997:

> It's not going according to plan. I figured it would come together much sooner than it has. . . . I still haven't received the report from the RCMP—the incident report. . . . So I got the run-around from the Mission RCMP! . . . I think it will work much better once we get a

> position for this, or, and I should say, the Stó:lō Peace and Security Service, because then we'll be dealing with our own people and then there will be a line of accountability to our own people and by our own people. (Quoted in McMullen 1998:24)

Family Group Conferencing achieved some limited successes by 1998. However, the Stó:lō justice worker found federal and provincial government agencies to be focused on policy and procedure and to thwart creativity in planning.

At one "traditional justice" planning meeting one Stó:lō leader observed, "We don't want to know what others are doing; we want to know what we did" (quoted in McMullen 1998:15). The dilemma of creating a highly localized system and importing existing, easily fundable models from outside persisted, however, although plans for a Stó:lō Healing Centre were outlined at the Stó:lō People of the River Conference in 1997. In this program, envisioned under the terms of Section 81 of the federal Conditional Release Act, First Nations offenders could be released to the custody of First Nations to finish out their sentences. The Stó:lō House of Justice would broaden its service to include other indigenous people, with the possibility of a financial benefit. This development was critiqued by community leaders, including one who pointed that "the reason the federal government gets rid of facilities is because they are losing money" (paraphrased in McMullen 1998:42 n.15). Others, observing that the offenders were guilty of serious crimes, did not wish them to remain in Stó:lō territory.

A second Stó:lō Justice Conference was held two years later, on 29–30 October 1998. The Stó:lō Nation convened the World Indigenous Corrections Symposium on 23–25 March 1999, in Chilliwack. The Stó:lō Nation's newspaper reported that "Many of the presenters spoke of a history of oppression; prevention of the practicing of their culture, language and traditions, the residential experience etceteras [sic]. The result of all of the above was, high rates of drug and alcohol addiction, incarceration, and suicide" (*Sqwélqwels ye* Stó:lō 2, no. 3 [May 1999]: 40).

In 1999, the Stó:lō Nation began a new stage of development of their justice program by hiring summer intern Kate Blomfield, a non-indigenous law student, to begin the process of producing a statement of Stó:lō legal principles to be presented to chiefs and elders and,

subsequently, a draft of legal procedures and tribal code. Blomfield's work was under the direction of the nation's Aboriginal Rights and Title department. As part of her orientation to the Stó:lō Nation, a connection between justice and landscape was established. Blomfield accompanied Sonny McHalsie, tribal culture adviser, on a tour of the territory emphasizing locations that reveal the work of the Transformer, Xá:ls, are connected to place-names, and are associated with histories of conflicts and outcomes. Additionally, Blomfield took a boat tour of Stó:lō waterways—reflecting Stó:lō preferences for water travel in earlier periods and the existence of petroglyphs, pictographs, and other cultural markers, which were created to be seen by water rather than by land.

Blomfield's work was to focus on resource rights (ownership, access, use, and guidelines for transmission), traditional territory and relations with non-Stó:lō, heritage and sacred site protocol and protection, methods and procedures of conflict resolution, child and family welfare, and obligations and rights of individuals to family and society (Blomfield 1999a:2, 1999b, 1999c). Blomfield's job was to "serve as a record of the inherent and perpetual principles and values of the Stó:lō legal tradition. . . . Ultimately, the codification of traditional laws will better enable Stó:lō legal principles to form the foundation of Stó:lō self-government and the resolution of disputes with the Stó:lō Nation or those that involve Stó:lō people, territory, rights, or resources" (1999a:2). Blomfield added to her tasks a consideration of the desirability of a Bill of Rights and Obligations (personal communication, 1 June 1999). She continued her work in the summer of 2000.

Meanwhile, the Stó:lō Nation's newspaper, *Sqwélqwels ye Stó:lō* (formerly known as *Sqwelqwel* and spelled several ways over the years) provided semi-official summaries of the tribal government's views. In the June 1999 issue, the appointment of a new justice worker was announced, along with the statement that alternative justice initiatives were underway for the Stó:lō Nation Justice Program, including a new try at Family Group Conferencing, (FGC), which was explained in these terms: "Rather than relying solely on the mainstream system as a means of settling disputes and conflicts, FGC offers an alternative that is more culturally appropriate. Rather than focusing on punishment, FGC aims to restore balance and harmony for both the person who has done the harm and the person harmed, as well as for the families and communities involved" (2, no. 4:29).

The FGC program was the outcome of an agreement between the Province of British Columbia, the Ministry of Child and Family Services, BC Corrections, the federal Aboriginal Justice Directorate, and the Stó:lō Nation. The plan was to start small, beginning with first-time youth offenders who admit guilt, and to include the victim, offender, families, friends, and community members in the FGC meetings. A call for facilitators was put out to the community members through the Stó:lō Nation's newspaper. At the Stó:lō: People of the River Conference in October 1999, justice worker Donna Moon reported that the Stó:lō program, begun by Robert Phillips, had "settled on the Maori model" because research and surveys showed that "this is what Stó:lō people had practiced in the past" (Moon 1999). A Halkomelem word glossed as "Family Group Counseling" was applied to the program (Moon 1999), and funding was provided through the Aboriginal Justice Directorate.

An Aboriginal Justice Advisory Board was sworn in on 19 June 1998, composed of RCMP officials, a member of the federal Aboriginal Justice Directorate, a Crown counsel, justice employees of the Stó:lō Nation, and the Chief's Representative, among others. The committee was formed to allow for Stó:lō and professionals in the criminal justice system to regularly talk together and for the committee to meet with Stó:lō community members to discuss alternative justice programs (*Sqwélqwels ye Stó:lō* 1, nos. 7–8 [1998]: 37).

A carefully constructed special issue of *Sqwélqwels ye Stó:lō* in fall 1998, entitled *Xyolhemeylh* (or Xolhmi:lh, both the name of the tribal health and family services program and a reference to respecting and caring for children), addressed criticism of the Stó:lō Nation's health and family services program while describing a reorganization and centralization of tribal service delivery. The special issue also advanced the idea of "listening to the Nation's elders," several of whom were quoted in support of restructuring as a form of "working together." A program of "runners" was announced to facilitate the delivery of information from the tribal headquarters to the bands in order to replicate the aboriginal practice of sending messengers to announce potlatches and other major events. This followed a major disruption of community services that arose, in part, over the issue of whether service delivery should be centralized in Chilliwack or decentralized with regional offices. The special issue contained feature articles that

described traditional life; culture, law, and the role of elders; and how this was accommodated within the current and revised government structure. Meanwhile, privately, an elder who had served on the House of Justice corrections feasibility study questioned whether justice initiatives should occur at the level of the tribal nation or at the level of individual bands (McMullen 1998:25).

The special issue provided a two-page statement of "traditional law," which I summarize here. The headline, in bold print, reads "Traditional Stó:lō People Conduct Their Lives According to the Seven Laws of Life: Health, Humility, Happiness, Understanding, Generations, Forgiveness, Generosity" (6). Cultural traits said to be shared with many other native cultures are detailed: (1) Spirituality—"reflected in direct communications with the Creator"; (2) Respect; (3) Sharing of knowledge; (4) Old Ways—"reflected in practices such as custom adoptions"; (5) Listening, with the notation that "What is meant for you, it will stay with you." The accompanying text describes the Stó:lō concept of "doing things in a good way" (actions that are conscientious, polite, kind, respectful) and notes that the Elder or helper assists couples to resolve family conflict by

> speaking the truth to both members of the family without offending the feelings of either of them. The Elder or helper in this case will carefully balance the harsh truth (crude reality) with a softer version of the same truth (perceived reality) while still maintaining the integrity of the truth.
>
> In traditional ways, conflict resolution and problem solving is achieved by assisting two or more parties to talk to each other and to listen to each other until an understanding and consensus is built . . . the traditional helper will focus on containing the level of anxiety, animosity, and anger from all parties so that each person can gradually see each other's position. The traditional process may also include STORYTELLING . . . the story told by the helper resembles the conflict experienced by the listeners and the listeners clearly see their own conflicts being unfolded in front of them [caps and emphasis in original].
>
> Often, the traditional helper will use his/her own life experience as an example so as to assist the "clients" to feel more comfortable with the helping experience . . . the traditional helper [thereby] acknowledges his/her own humanity including faults in character. . . . The words selected by the helper are usually spoken from the heart rather than from the mind. Compassionate words carry the unequivocal message of care, allow the listener to become relaxed and more open to the healing words of the speaker. (7)

This presentation introduced the idea of a "traditional helper" as a central figure and paired this with a profile of a "Cultural Worker", Herbie Joe, who was selected by significant elders and who works with elders in the Stó:lō Nation's health and family services program. The presentation of "traditional law" was couched within the consensus-healing discourse and overlaps with the "wellness" language of social services. A *Xyolhemeylh* editorial in the July 1998 edition of *Sqwelqwels ye Stó:lō* (1, no. 5: 16), for example, presents Maslow's hierarchy of human needs in explaining the process of healing. Significantly, the presentation emphasizes the role of story telling and of the use of elders' personal narratives as examples. This account of aboriginal justice infuses ideology, including twentieth-century Western healing rhetoric, with the realities of prior indigenous practice and has significant implications for the real world, particularly the community debates about justice.

In common with other Coast Salish peoples, the ancestors of the present-day Stó:lō members suffered through the loss of population due to episodic epidemic, the loss of political autonomy, the loss of lands and resources, and language loss through government efforts at assimilation. The Stó:lō responded with various efforts at using the dominant society's court system through petitions aimed at political leaders and by finding their way into the new economy through attempts to control the trade of the Hudson's Bay Company and, later, through wage laboring. Eventually, indigenous political organizations, including the present-day Stó:lō Nation, were created to advance Stó:lō interests.

By the end of 1999, Stó:lō justice initiatives were driven by a variety of ideas coming from within the communities that compose the Stó:lō Nation and from outside. Some community members were fearful of the consolidation of authority within the nation. The nation paradoxically advocated Stó:lō traditional practices while importing systems from New Zealand with federal government encouragement and contemplating ideas from the Canadian Prairies. An institutional structure had been established, with Houses of Elders and Justice, but justice practices

were not institutionalized. Justice narratives and practices moved toward an explicit link to tribal social services through the Family and Child Services branch of tribal government. Some community members spoke from within the language of consensus, healing, and wellness. Others articulated a more conflictual stance based on real-world problems of relations between families.