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Contemporary Tribal Codes and Gender Issues

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This paper makes three related points: first, that many of the present-day legal codes of U.S. Indian tribes are unexpectedly innovative and representative of contemporary indigenous viewpoints, especially in the ways in which individual rights are conceived; second, that the variability in the way the codes treat issues of special concern to women demonstrates the extent of the imprint of local tribal people on their own codes; and third, that analysis of the implications of tribal codes for Indian women is a valuable and hitherto undeveloped avenue in clarifying women's circumstances. I address these points by comparing the categories of code that eight western Washington tribes have created and by looking at a set of legal issues that particularly influence women's lives. This essay is intended as a preliminary effort to make use of legal materials in the analysis of contemporary Coast Salish life.[1] The codes of these eight tribes vary in their overall emphases, in their legal treatment of family networks, in the rights of parents, and in attention given to women's issues generally.

In 1985, William Rodman commented that legal innovation in small-scale societies "is a topic so few anthropologists have studied that a summary of relevant sources takes only a few paragraphs"; he noted further that "[l]egal scholars use 'innovation' exclusively to denote changes that the state introduces,

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never changes that local people make of their own accord . . . ."[2] Rodman correctly argued that the trend towards "legal centralism" (a state-centered view of the law) and an emphasis on the coercive nature of the state have made it difficult to perceive indigenous legal innovation. Further, Vincent[3] wrote that the anthropology of law has turned to the study of historical legal change "in the guise of legal pluralism," thereby resurrecting diffusionist theory and diverting attention from local developments.

The study of tribal law and legal innovation among native North Americans appears to be similarly burdened. What little is written about Indian legal systems suggests co-option by the mainstream political system of tribal governments (under whose authority tribal legal systems are developed) and a disproportionate influence of the nonnative legal system through the importation of legal language (or "boilerplate").[4] Barsh and Henderson,[5] for example, argued that the procedural codes of tribal courts are forced for financial reasons into conformity with model codes derived from those followed in federally administered Bureau of Indian Affairs (BIA) courts. These model codes, they reason, are built on a "police idea" of law and order, with little civil code. Through this process, Barsh and Henderson conclude, the state works to limit the scope of Indian law and sets Indians against their own government. O'Brien's view of contemporary Indian law exemplifies this approach:

> When tribes started replacing the Code of Federal Regulations with their own codes, few had the expertise or the resources to do a professional job of establishing new tribal laws. As a result the codes in operation on many reservations today look much like the federal code they replaced: they are outdated, Anglo-oriented, and poorly reflective of tribal philosophy and culture.[6]

One analyst recently addressed the issue of how women are faring in tribal courts but started from the unstated assumption that women are unable to exercise political power in tribal communities and that, consequently, women's only remedy for a male bias in tribal codes and courts was through the intervention of a reworked Indian Civil Rights Act. This work includes virtually no analysis of tribal codes themselves.[7]

Although there are sizable literatures on the topics of federal, state, and provincial laws concerning Indian people, and on customary law, little literature exists concerning the law that applies in Indian courts. The analysis of a 1978 publication of the American Bar Foundation still holds true:

> There is a wealth of literature, including "legal" literature, on Indian matters, but it rarely deals with contemporary issues. Apart from a few short pieces dealing mainly with the theory rather than practices, there is no legal literature on the present-day tribal court system. Instead the bulk of it concerns jurisdictional issues and treaty rights or land or water use . . . . In addition, there are studies with an anthropological focus—typically, historical quests to uncover the traditional "law-ways" of selected tribes . . . . Practically the only works that deal specifically with the contemporary tribal court system are the reports of the Senate Hearings on the Constitutional Rights of the American Indian (Hearings before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary, 87th Cong., 1st sess., 89th Cong., 1st sess [1961–65]).[8]

The emphasis on understanding Indian codes from the perspective of Indian-white power relations, while necessary, places the analytic frame outside the Indian communities and has the unfortunate result of causing the contents of the codes to be overlooked. Although analysis of tribal law is now overdue, there is still the chance to examine the contemporary tribal code while it is in its infancy, to understand the forces internally acting on its creation and development, and to gain an understanding of the direction the law is headed.[9]

Tribal codes are best understood as innovative and responsive to highly localized circumstances, variable from tribe to tribe. If nothing else, tribal codes are not simply boilerplate, although on cursory examination they may appear to be so. Even in those cases where code is imported from the mainstream system, it is often quickly adapted to local circumstances. In part because these codes are so recent (as described below), they are still relatively uncluttered and the discernible products of individuals and can be thought of, with due caution, as road maps for the visions of political and other leaders for the future of their communities.[10] Perhaps most significantly, many contemporary tribal leaders and tribal councils

have found their own balance points between collective and individual rights, a balance that varies considerably between tribes.[11]

More specifically, for several reasons, analysis of the legal codes provides new leverage that is helpful in understanding multiple dimensions of the gender systems operant in reservation communities. First, the new codes crystallize, for the moment, issues that communities have heretofore struggled over and have often left unresolved. Second, the laws themselves have a direct, immediate impact on the behavior and lives of women and men. Third, as is true of legal systems elsewhere, embedded in these new systems are notions of what it means to be male and female. The laws create male and female "legal statuses"—statuses that themselves come to influence how community members construct gender and organize gender relations.[12] Finally, the codes regulate issues thought to be generally of concern to women, including violence towards women and children; divorce; spousal support; inheritance and ownership of real property; responsibility for children and elders; custody; access to positions of public authority; access to tribal membership; the availability of social and other services, and so on.

THE STUDY

This study is built around interviews with tribal code writers and tribal councillors and a reading of the published codes of eight small Coast Salish tribes in northern Washington State, which range in size from about three hundred to three thousand enrolled members.[13] In 1979, the tribes participated in creating the Northwest Intertribal Court System, which provides judicial services for the member tribes, including supplying the judge, but each tribe maintains its own laws. One of the eight tribes, Lummi, is no longer a member of the NICS. The NICS is described in more detail below.

The eight Coast Salish tribes (Nisqually, Lummi, Skokomish, Sauk-Suiattle, Upper Skagit, Tulalip, Muckleshoot, Nooksack) are situated in close proximity to metropolitan centers, and members live both on the small reservations and in the nearby cities and towns. Many members of the eight tribes live traditional religious and ceremonial lives, engage in subsistence

harvests of shellfish, plants, and other materials, and participate in the regional system of social relations. Although tribal members participate in the local economy, all eight tribes place a heavy emphasis on the commercial salmon harvest. Perhaps most germane to this study is that the tribal communities are themselves organized into competing, temporal family networks. Family leaders, both men and women, help coordinate family economic activities, including fishing, provide for the sharing of resources and labor, and help in the arrangement of the ceremonial and spiritual life of the members of the family network. Family networks typically create voting blocs in tribal elections, and the legal regulation of these units is a critical issue.[14]

HISTORICAL BACKGROUND

Customary Law and the Tribal Court System

Customary law in the Coast Salish region employed a range of sanctions to control behavior and restore communities in the event of a breach. These sanctions included restitution, ostracism, social pressures, and even violent recrimination.[15] Public ceremonies were (and continue to be) carried out in the process of the public debate and resolution of conflicts. The region has been characterized by a cultural emphasis on the avoidance of conflict through proper training in the absence of coercive authority (see the NICS report for a fuller treatment of the topic).[16] After several decades of contact with Europeans and Americans in the nineteenth century, new concepts of political organization, leadership, and law developed. For example, a mid-nineteenth-century Skagit innovator, Slabebtkud, organized loosely affiliated villages and imposed rule based on coercion. He established a system of subchiefs who enforced new, Christian-influenced concepts through the threat of incarceration in stocks.[17]

In 1883, the U.S. Bureau of Indian Affairs (BIA) authorized the creation of Courts of Indian Offenses (CFR courts) for reservation people in order to fill a perceived leadership void following an apparent decline in traditional authority, and to diminish the residual authority of traditional chiefs.[18] The BIA exercised great authority over this court system, selecting the

police and judges and promulgating the rules and procedures. 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."[19] Later, particularly during the termination period of the 1950s when federal policy aimed at ending the trust relationship between tribes and the federal government, little money was available for tribal legal systems.[20]

In the 1970s, federal policy again produced contradictory effects on Indian courts. The new federal policy of encouraging tribal self-determination was accompanied by the efforts of tribes with independent courts and those with CFR courts 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, without a jury trial, to enact a law that imposes punishment.[21] 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 can be obtained (i.e., provisions for the detention of criminals, specific provisions for recourse under the law) or so that funding requirements can 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, was established in 1979 following the fishing litigation (*U.S. v. Washington*, 384 F. Supp. 312, 1974) that 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 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, NICS courts hold jurisdiction over civil, traffic, fisheries, and some elements of criminal domains

for both Indians and non-Indians. The tribal council is responsible for passing tribal code and is assisted in its work by hired code writers and by suggestions from the community itself. In some cases, tribal councils have created formal advisory boards to advise the code writers. There is, as yet, limited development of case law.

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. NICS provides the other personnel, most notably the judge. In this case, 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."[22] In fiscal year 1990, the Upper Skagit court, which serves 540 tribal members, heard 43 criminal cases and 15 civil cases. NICS data (which does 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).[23]

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.[24] In one case, for example, the NICS 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, 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 NICS court, and the formal court system is not easily accessible to ordinary people. In addition, the NICS 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-Indian tribal police, who are largely unaware of community processes, produces a formal treatment of cases and increases use of the courts.[25] These features of the legal system, by their

very nature, exacerbate the alienation that some people feel from their own community institutions and make protection of the rights of the relatively powerless, including some women, difficult, especially in establishing civil litigation.

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 hours, a total of 1,478 hours, compared to the 2,551 in 1990.[26] However, 155 cases involving violations of tribal laws and ordinances were logged in 1991 compared to 87 in 1990. Of the 155 offenses, 86 involved adults, and 52 of these were alcohol related. Forty-six incidents involved juveniles; 22 of these were alcohol related. Subsequently, 13 adult males, 5 adult females, and 4 each of juvenile boys and girls were referred to the NICS prosecutor. The offenses can be categorized as follows:

Table 1
Offenses, Upper Skagit 1990–91

Category	Year 1990	1991
	(n=87)	(n=155)
Mixed	5.7%	5.8%
Property	12.6	8.4
Public order	35.6	37.4
Offenses against persons	19.5	13.5
Other offenses	26.4	34.8

Source: 1991 Upper Skagit Tribal Police FY91 Activities Report, 25 January 1992.

The NICS and Upper Skagit data conform to the generalization that a high volume of cases of alcohol-related crimes against persons are brought in tribal court.[27] Crimes against persons are often offenses against family and children, and these data point to the importance of tribal code for women.

Legal Statuses

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. Secondly, men and women are legally members (citizens) of the tribe (and, separately, of the community) and, as such, are entitled to residence in Indian Country and to shares in community assets (such as fisheries resources, education programs, Indian Health Service care, and reservation housing). Community membership alone does not confer these entitlements. Thirdly, 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 hold rights to oversight of the children of the family network. In addition, the law places restrictions on citizens on the basis of kinship affiliations, which 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 a relative is a council incumbent. 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 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 may have legal rights to attend family-sponsored ceremonial events while incarcerated. (The jurisdictional complexities of Indians who are not members of the tribe in whose territory they reside are

not yet resolved, and have been complicated by *Duro v. Reina*, 495 U.S. 676, 1990, and subsequent legislation.)[28]

These incompatible statuses give rise to role conflict. A debate arose recently on one reservation, for example, 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 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 status as tribal members was 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.

Table 2
Legal Statuses

Legal Status	Key Legal Entitlements
1. minor	some rights to participate in customary practice
2. adult (as defined by activity) /emancipated minor	fishing, hunting, voting rights
3. kinfolk	limitations imposed (nepotism rules)
4. parent	limited rights to control of offspring
5. household head	emancipation, rights to resources (if tribal member)
6. community member	residence, some services
7. family network member	some rights regarding children some customary resource use-rights
8. tribal member	vote, office-holding, rights to collective resources, jobs

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 18; 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.[29] Emancipation releases minors from restrictions on fishing or hunting by virtue of age.

Adult men and women also assume secondary legal statuses 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 councillors, as official tribal committee members, and as jury members or witnesses. The implications of each of these legal status are somewhat different for men than for women, as indicated below.

REGIONAL GENERALIZATIONS

Analysis of the Subject Index of Tribal Codes

The codes of the eight tribes vary in their inclusiveness, which is due in part to the variation in institutional completeness of tribal governments and in the range of services provided. But the raw fact that tribal governments have enacted codes in some areas and not others reflects the interests and specializations of these governments. Table 3 displays the content of the tribal codes by heading.

Table 3
Subject Index of Tribal Codes (1988)

Tribe	Subject											
	Admin.	Building	Business	Domestic Relations	Elections	Enroll/ Member	Exclusion	Fish/ hunt	Gaming	Housing	Juvenile/ children	Labor/ employ
Lummi	X	X		X			X	X	X	X	X	X
Muckleshoot			X				X			X	X	
Nisqually							X					
Nooksack			X					X	X	X	X	
Sauk-Suiattle				X	X	X	X					
Skokomish			X			X		X		X	X	
Tulalip		X	X									
Upper Skagit					X	X	X	X		X	X	

Subject (cont'd)										
Tenant	Liquor/ tobacco	Natural resources	Probate	Sentence	Tax	Traffic	Tribal enterprise	Utilities	Water	Zoning
X	X		X							
	X				X	X				X
				X						
X	X				X					
		X						X		
		X			X	X				
										X
					X	X	X	X		

These data can be comprehended by grouping the codes, thereby allowing for a very rough measure of the interests and intentions of particular tribes. The codes are grouped as follows:

Table 4
Categories of Legal Codes

Category	Type of Code
A Economic Development:	business, fish, gaming, natural resources, enterprise, tax
B Regulation:	building, housing, landlord/tenant, probate, sentencing, utilities, water, zoning, liquor
C Peace and Safety:	domestic relations, juvenile, exclusion, traffic
D Governance/Politics:	administration, elections, enrollment, labor

Laws concerning exclusion from the reservation are included in category C because they have most to do with public safety, ordinarily the only grounds on which nonmembers may be excluded.

Once categorized, raw counts in each of the four categories for each tribe can be computed, giving a picture of the emphases of the tribal councils, under whose authority codes are created. Table 5 presents these results.

Briefly, these data show the divergence among the codes. Lummi has the most comprehensive code (sixteen areas), with code in all four areas categorized as "Peace and Safety." The Upper Skagit and Muckleshoot codes are second and third most complete, respectively (ten and nine areas), and well-developed in the areas of peace and safety. On the other extreme, the Tulalip and Nooksack codes focus on economic development and regulation. The Tulalip code is silent on issues of peace and safety, and Nooksack nearly so (one area). The Nisqually code is by far the least developed of the eight (code in two areas) and contains little concerning peace and safety. The Sauk-Suiattle code is also relatively unelaborated (six areas) but has code in two of the peace and safety areas.

Table 5
Emphases of Tribal Codes—Raw Scores

Tribe	Type				
	A Econ. Dev.	B Regulation	C Safety	D Govern.	Totals
Lummi	3	7	4	2	16
Muckleshoot	3	3	3	0	9
Nisqually	0	1	1	0	2
Nooksack	4	3	1	0	8
Sauk-Suiattle	1	1	2	2	6
Skokomish	4	1	2	0	8
Tulalip	2	2	0	1	5
Upper Skagit	3	2	3	2	10
Totals	20	20	16	7	63

The analysis thus far shows somewhat roughly the differing emphases between the tribes' codes. The next step is to look more closely at how the codes treat issues particularly relevant to women's lives.

LEGAL CODES AND GENDER ISSUES

Inheritance

Here the focus is on a subset of particular legal issues important to understanding women's circumstances. The first such issue is inheritance. Generally, tribal codes follow state law in matters of property inheritance, but there are some important exceptions, especially in areas that state law does not cover. One such exception is the issue of the inheritance of traditional resource procurement stations, particularly along waterways. The eight tribes vary significantly in how this issue is treated. At Skokomish and Upper Skagit, these rights are directly embedded in the code, along with provisions for the reallocation of fishing stations in the event of abandonment of the site. Since traditional fisheries resource use rights are primarily inherited patrilineally (with the exception of female-set net sites), the pattern of inheritance favors men who can control the disposition of the grounds. With the loss of tribal land to white settlers in the nineteenth century, women have lost control of gathering grounds, the primary female-controlled re-

source. The Lummi, Sauk-Suiattle, Muckleshoot, and Tulalip codes are silent on this issue, and traditional use-rights are not protected legally.

A second exception to the institution of the mainstream society's patterns of inheritance is the section of the Lummi code that concerns spousal relations. Title II of the Domestic Relations Act, 11.3.01, specifies,

> Property and pecuniary rights of the husband before marriage and that acquired by him afterwards by gift, bequest, devise or descent, with the rents, issues, and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber as fully to the same effect as though he were unmarried . . . .

Section 11.3.02 provides the same terms for the wife.[30] In the case of the other tribes, state law obtains concerning spousal legal obligations. The Lummi code, however, conforms to the aboriginal practice of the separation of the property of spouses at the time of divorce or death and appears to have the effect of making divorce easy and protecting the critical connections between sibling sets and family networks. The code may have the additional effects of protecting the interests of Indians from non-Indian spouses and of preventing the alienation of extremely valuable property—purse seine boats—from male owners at the time of divorce.[31]

Although inheritance of material objects at the time of death had not been an important practice among Puget Sound Salish, with many items distributed to people beyond the immediate family and household, valuable incorporeal objects were traditionally inherited.[32] Indian names and control of resource procurement sites are among the most important.[33] The effect of the new pattern of inheritance, with the exception of Lummi, is to narrow the claims women may make as sisters and senior members within family networks (with important influence over the disposition of family possessions and the labor of kin) and to reinforce their position as wives and mothers, with primary inheritance coming from a spouse rather than a brother, sister, or parent. In practice, this may be an advantage or a disadvantage for individual women (some women have benefited through amassing large land holdings through consecutive marriages to short-lived men). But, on balance, these inheritance patterns, although gender neutral in

appearance, have differential impact. Modern inheritance practices reinforce the subordination of women to male cohouseholders (affinal relatives) and deemphasizes women's potential for superordination as senior members of a corporate family group.

Regulation of Work

A second important domain of the law concerns the regulation of work. Four of the tribal codes (Upper Skagit, Tulalip, Nisqually, Muckleshoot) contain specific provisions under the tribal bill of rights for equal access by individuals to economic resources and programs of the tribe. Of the eight, the Upper Skagit code is the most focused on the issue of safeguarding the rights of workers to gain access to tribal jobs and protecting them from harassment while working. Both provisions are crucial for women because, at Upper Skagit, as at the majority of Coast Salish tribal and band offices, the bulk of tribal employees are female.[34] The Upper Skagit bill of rights provides economic rights to individuals that are not accorded to family networks. The code protects individuals from criticism by community members in the conduct of their work. Chapter 6 of the Law and Order Code (6.530–Verbal Threat to Public Officials) specifies, "Any person, who shall, when speaking to a public official, including a council member, employee, judge, prosecutor or other public official threaten such person with an act of violence or otherwise try to influence an official act by means of a verbal threat shall be guilty of an offense . . . ." Similar language is used in two other places to prohibit threats to officials and employees. These provisions were created with the expressed purpose of providing a workplace free of disruption by factionalized conflict and to ensure a productive community.[35] The effect is to provide for safety in a workplace occupied largely by women. Several tribal codes contain references to threats against officials (judges, police, or elected officials) but, significantly, not rank-and-file tribal employees. These include Lummi, Muckleshoot, and Nooksack. There is no such language in the Skokomish, Tulalip, and Nisqually codes, leaving employees without special legal protection from harassment.

Finally, the Tulalip code contains provisions aimed at increasing employment on the reservation. Ordinance 61 charters a "Tulalip Construction Company" and provides for educational activities designed to furnish training in jobs related to the con-

struction industry. These provisions appear to favor male employment as an issue of tribal policy, since the Coast Salish construction work force is overwhelmingly male.[36]

Political Enfranchisement

The political enfranchisement of women and the replacement of postcontact male quasijudicial bodies by the system of tribal courts and codes are areas of the law with significant impact on women's lives. For example, the all-male Elder's Council that adjudicated community issues and established sanctions for transgressors among the Sauk-Suiattle of the postcontact period is now replaced by the court system.[37] Sauk-Suiattle women now may influence the direction of the legal community through election to the council or participation on advisory committees.

Similarly, prior to the creation of a constitution in 1974, Upper Skagit women were disenfranchised from the formal political system, although individual women maintained significant influence in the community.[38] The system of selection of tribal councillors left women out: Sitting councillors, under the direction of the chair, nominated candidates who were then ratified by the general membership of the tribe through a process of acclamation. Women served as nonvoting secretaries and treasurers on the council.[39] Immediately after enfranchisement, women ran for public office and, by the 1980s, regularly won the majority of seats. No legal barriers have been posed for women in voting, and, in fact, women control the process of establishing eligibility to vote through tribal membership. Strong evidence suggests that many community members now associate femininity with political life, a rapid transformation of gender ideology.[40] The changes in the constitution altered the nature of women's citizenship and their access to politically important institutions. Women are now full participants as voters and councillors, as well as jury members and members of tribal committees.

Child Care Responsibilities

Another significant area of legal activity has been the creation of laws regulating the behavior of children on the reservation and the associated definition of parental obligations. Ordinarily, chil-

dren are most closely associated with women, who perform the bulk of child care. For many women, child care responsibilities begin as a preteen looking after younger siblings. Many, although not all, women continue to carry out child care through young adulthood and into grandmotherhood. Laws affecting the behavior of children, then, differentially affect women and the organization of their daily lives. The creation of penalties for parental negligence, including fines and possible loss of custody, has been a hotly contested issue, with different resolutions on different reservations. Some men on the Upper Skagit reservation have employed a discourse of traditionality, arguing that strict guidelines for the behavior of children violate traditional cultural values by failing to recognize the autonomy of children and by rejecting cultural patterns of reliance on a network of relatives to ensure that children come to no harm. This argument holds that requiring parents alone to oversee the behavior of children releases other men and women from their duties toward related children. Despite these claims, Upper Skagit code has moved toward defining parental obligations to include both parents and to exclude extended family members, and towards requiring that children be protected from their own actions and the actions of other people. Code therefore may redefine the concept of childhood by moving away from emphasis on children's personal autonomy and on oversight by the extended family.[41]

Chapter 3 of the Upper Skagit Children's Code provides for termination of parental rights in the event of abandonment; willful, repeated physical abuse that creates a substantial risk of death; sexual abuse; or consent of both parents. Chapter 5 of the same code provides for guardians to be appointed for minors, with no rights for family network members. Upper Skagit has also enacted a series of codes designed to protect children's rights, each of which imposes burdens on parents. Chapter 5.110 of the law and order code forbids leaving children under ten years of age unattended in a car; 6.160 forbids desertion and nonsupport of a child; and, significantly, 6.130 specifies that "[a]ny person who, lacking the legal right to do so, interferes with another's custody of a child shall be guilty of an offense . . . ." This last is the clause that most effectively removes children from the oversight of extended family members (that is, extended family involvement without the consent of the parent). Finally, the fishing ordinance forbids those under eighteen from fishing dur-

ing school hours unless holding a GED (high school equivalency) certificate.

Other tribes' codes regulate the behavior of children but do not specify the legal obligations of both parents, even in those cases where the obligations are spelled out. Since women are more likely to have custody of children, this appears to create a burden for women but not men. Sauk-Suiattle and Skokomish, in particular, have created legal structures concerning children and care responsibilities that are quite different from those of Upper Skagit. Section 1.4.060 of the Sauk-Suiattle Family Code contains the broadest possible definition of extended family membership in the context of provisions for responsibility for youth. This definition reads as follows:

> Extended Family Member: a person who has reached the age of eighteen years, or who is of sufficient maturity to care for a child, and who is the Indian youth's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent, and any other person who is considered a family member under tribal law or custom; a non-Indian relative who is an accepted member of the Sauk-Suiattle Indian community and would be consider a family member by tribal custom shall also be considered part of the youth's extended family . . . .

Elsewhere (Family Code 3.1.010), the Sauk-Suiattle code specifies that termination of parental rights is not permissible under any circumstances and that the "supportive network of extended family . . . ," as defined above, is to provide care. Family Code 2.1.010 mentions "raising another person's child" as a customary alternative that does not terminate parental rights and as not necessarily indicating a need for legal "care action." Family Code 3.2.110 specifies that extended family members are preferred in the appointment of guardians for youth. The Law and Order Code, section 5.035, establishes a curfew forbidding children under fourteen from appearing "on the streets, highways, roads, or other public places without responsible adult supervision between the hours of 10 PM and 6 AM," placing the burden on the parent or guardian. In addition, Sauk-Suiattle has ordinances (Law and Order Code 5.110), identical to those of Upper Skagit, forbidding leaving children under the age of ten unattended in a car, and concerning desertion and nonsupport (6.160).

In both Upper Skagit and Sauk-Suiattle, the new codes place heavy responsibilities on adults for the protection and support of children. In the former case, the responsibility rests strictly with the parents, and ordinarily this means the mother. Other family members are not only not legally responsible but are explicitly excluded from entitlement. In the latter case, a wider range of kinfolk are entitled to intervene in the lives of children.

Parental Rights and the Establishment of Paternity

A closely related and critical domain for understanding women's and men's legal status is that of parental rights. Once again there is tremendous variation in how these issues are handled. The codes range from not incorporating this category of law at all (Tulalip), or including few specifics (Nooksack recognizes termination of parental rights and calls for the placement of children with extended family members, where possible), to complex efforts to define paternity and to create legal obligations to testify in court about paternity (Muckleshoot).

A few generalizations may be made. Most of the codes either state explicitly or imply that parental rights are considered individually; that is, either a father or a mother may have such rights terminated (Lummi, Upper Skagit, Muckleshoot, and Nooksack specifically allow for termination), although at Sauk-Suiattle termination is explicitly rejected. Mothers are thereby able to assume sole custody in the event of the unsuitability of the father. Most of the codes specify that children must be supported, leaving open the prosecution of delinquent parents, ordinarily fathers. These circumstances, although gender-neutral on the surface, provide some legal protection for women's relationships with their minor offspring.

A related issue is where provisions for child support are placed within the code. Particular problems arise where child support is handled under criminal law. In these cases, the police must decide whether to pursue the issue (a serious problem in light of police understaffing); criminal convictions depend on a higher burden of proof than civil cases, thereby increasing the difficulty of obtaining legal relief and getting child support; and a criminal conviction carries a stigma and may actually make it difficult for a man to obtain a job and carry out his legal and financial obligations. Beyond these points, the codes diverge.

The Muckleshoot code is unique in its remarkable emphasis on the question of establishing paternity. Parenthood is defined through biology or adoption, except that the legal status of parenthood is not extended to a father whose paternity is not established by the court, through public records, or acknowledged by him. This places an obligation on the mother to take the father to court to prove his fatherhood and establish his legal responsibilities to his child. However, a legal mechanism exists to establish paternity, regardless of the marital status of the mother and alleged father. A second clause creates additional problems for women: Any person who has sexual intercourse on the reservation thereby places himself or herself under the jurisdiction of the tribal court with respect to any resulting children. This potentially places a very difficult, almost unmanageable, burden on women to establish jurisdiction and resolve issues of child support. Evidence regarding paternity can be taken from statistical probabilities, medical or anthropological evidence, or, simply, reputation in the community concerning paternity. Furthermore, a presumption of paternity is made if the mother and the purported father are married and the child is born within three hundred days of termination of the relationship; if they cohabited or attempted to marry by state or tribal custom and the child is born within three hundred days; or, finally, if the child is under eighteen and the purported father receives the child in his home and "openly holds the child as his to the community." The last provision appears to allow for establishment of paternity under conditions adverse to the interests of the mother, while simultaneously making it difficult to establish paternity when the man wishes to avoid it. In addition, no provisions are included to compel a father (or mother) to make child support payments. Despite the problems, the focus of the Muckleshoot code is not to enfranchise extended family members—provisions useful for men who wish to place the burden for child care elsewhere—but rather to create a mechanism, albeit a difficult one, to place legal obligations on fathers. Furthermore, the Muckleshoot law deals with nonsupport in the civil, not criminal, sections of the code.

The Sauk-Suiattle code provides no rights for the unmarried father whose paternity is not established or acknowledged. This code does not clarify who must make the acknowledgment, and the implications vary considerably if the testimony of the mother, father, either, or some third party is sufficient to establish pater-

nity. Nonsupport, neglect, or desertion of children is handled within the criminal code.

The Nisqually code adds another, quite significant, twist (and burden to women) by limiting tribal membership to the children of women who are resident in the community at the time of birth. Women who are mobile for employment or other reasons thus jeopardize their offsprings' tribal membership, a hardship that does not apply to men, who may live elsewhere for employment and have offspring born to mothers resident on the reservation.

The Upper Skagit code provides for the termination of parental rights under specific circumstances (including sexual and repeated physical abuse) and makes desertion of children a criminal offense.

The Lummi code's domestic relations approach to the issues of parental rights and marriage explicitly creates what appears to be the most advantageous circumstances for women of all of the eight codes, although there is no paternity section as such. Civil procedures are established to order payments from delinquent parties—a clause that is not directed to domestic relations issues but that potentially creates a way for women to seek child support payments from fathers. The code provides for arrangements to be made for custody, visitation, maintenance of a spouse (gender is not specified), and child support. Further, the code creates a legal obligation to support one's child, even those born out of wedlock (under common law, tribal custom, or as established by intent to live together). Additionally, parental rights may be terminated for either the mother or father. The Lummi code also restricts categories of marriage partners: People of the same sex are excluded, as are a range of other people who, in earlier times, would have been included in the pool of potential spouses through the Coast Salish institutions of the sororate and levirate.[42] This code eliminates obligations of women to affinal relatives through these earlier marriage proscriptions. Finally, the code separates the property and legal obligations of wives and husbands to each other during marriage and at divorce.

There are several difficulties in the Lummi code for women with children. One problem with Title 5, Code of Offenses (5.6.01 Offenses Involving Children), is determining whether the father is financially responsible for his offspring if the parental couple has split up and the father is not residing with the child. Secondly, criminal rather than civil proceedings are required if a man, "because of habitual intemperance or gambling, or for any other reason, refuse or neglect to furnish food, shelter, or care, to those

dependent upon him . . . . " These features of the code potentially make obtaining child support difficult.

The Tulalip code creates no youth court, has no provisions against nonsupport or for establishing paternity, nor regulations against child abuse. Issues concerning women and children are not the focus of this code. However, as is the case with the Nisqually code, a clause in Article II, section 2 of the membership code specifies that membership is contingent on being born to a member of the Tulalip tribes who is a resident of the reservation at the time of birth. This creates difficulties for women, but not men, who wish to move for employment.

The issue of emancipation is related to the topic of parental rights. Minors may sever the parent-child bond through actions of their own, just as parents may seek to avoid parental responsibilities or the tribal court may end parental rights. In most of the tribes, marriage creates the status of adulthood, independent of age (this is explicitly rejected in the Upper Skagit code). In addition, children who are self-supporting or who live apart (these are regarded as simultaneous conditions) or are heads of households may be emancipated (Muckleshoot, Nooksack, Skokomish, Tulalip). This raises three points: First, emancipation is an advantage for minor females seeking to care for themselves and their children, in that it removes them from a whole series of restrictions that could obstruct their working careers (such as attendance at job training programs and age-linked restrictions from treaty fishing and hunting). Emancipation also removes restrictions as to the types of contracts that minor women can be bound or can enter into. Thus an emancipated woman could execute legal obligations necessary for self-sufficiency, such as buying a car or renting an apartment. Second, the code also creates the grounds under which parental obligations can be overturned. Negligent parents, who are most likely to be the ones whose children establish separate residence, are, in effect, rewarded for their negligence by the diminution of their obligations. Third, emancipation creates a mechanism for older children to get out of abusive situations without being placed in foster care.

Peace and Safety

As with the other issues, there is significant variability in how conditions of peace and safety are achieved on the reservation and

in the meaning of these provisions for men and women. A wide range of regulations have been created to ensure peaceful communities. One significant passage for women is contained in the Lummi code (Upper Skagit has a similar code; the others do not), Title 5.1.08, which specifies,

> In the practice of the culture, traditions, or religions of the Lummi people, no person shall be subjected to any of the following: (1) brutal treatment, including . . . hitting, clubbing . . . biting . . . (3) deprivation of medical treatment . . . (4) forcing any person to take part in any activity relative to traditional culture or religious practices against their will.

These provisions refer to the involuntary seizure and initiation of tribal members into Winter Spirit Dancing societies, occurrences that have produced death and injury in the recent past (precipitating legal action) and that are believed by some women to be differentially abusive to women.[43] Physical contact is used in order to bring a spirit power to the initiate. In addition, the Lummi code (Juvenile Code 8.6.07) establishes legal requirements to report abuse or neglect of children and permits termination of parental rights for cause (8.7.01). Other Lummi code serves to regulate the community, including the following: Chapter 20.6, Illegal Activities, expressively forbids furnishing liquor to minors; the Code of Offenses 5.4.03 requires advance notice and approval for holding public dances, games, or gatherings; and the Housing Authority Declaration of Need 32.2.01 declares the need for "decent, safe and sanitary dwellings," which cannot be relieved through the operation of private enterprise.

Nooksack code (Title 53, Gambling Ordinance, 53.01.010) includes the statement that "in order to safeguard the public health and morals on tribal lands it is necessary to prohibit certain undesirable forms of gambling and to regulate the incidence of those acceptable forms of gambling . . . ." (Nooksack has since opened a public gambling casino.) The code also regulates liquor sales and bans the sale of alcohol, marijuana, and drugs to children (Title 20, Crimes, 20.02.040). These passages are commonly incorporated into the legal codes of the eight tribes, except Nisqually and Tulalip.

Finally, the codes deal with rape in several ways. These provisions must be understood in light of the federal Major Crimes Act, which gives federal courts jurisdiction over seven areas of violent

crime committed on reservations. However, in an effort to assert autonomy and in the event the federal court fails to prosecute, tribes have created their own code, and criminal provisions are created for rape in most of the codes. The Lummi code forbids attempted rape or rape or assisting another. Muckleshoot (Title 5 of the criminal code [5.1.50]) forbids "any person who willfully and knowingly by force or violence, rapes, attempts to rape another, or assists . . . ." Sauk-Suiattle and Upper Skagit forbid forcible sexual intercourse. Tulalip, Nooksack, Nisqually, and Skokomish have no relevant code. The Muckleshoot code adds the burden of demonstrating a mental element and allows for the defense of a "reasonable and honest mistake." It is remarkable that such code has developed at all in the absence of clear jurisdiction.

CONCLUSION

To date, no developed literature exists concerning the legal codes of U.S. tribes, and attention concerning legal issues affecting Indians has been focused elsewhere. The variability of the present-day Puget Sound tribal codes considered here puts to rest the notion that the codes merely reflect imposed legal concepts of the mainstream society, a view that implies uniformity. The fact that the communities considered in this study—with similar traditional cultures and engaged in regular social interaction—have chosen differing routes in establishing their own legal codes argues against such a position. It is true that the use of formalized court systems and the employment of non-Indian code writers does not reflect aboriginal practice, but these facts are not sufficient to allow generalizations about the nature of the codes. This paper suggests three methods to begin the process of understanding the nature of the codes and the implications for women: analysis of legal statuses, comparative examination of the domains of code, and consideration of code.

The eight codes vary significantly in how they balance the rights of individuals and the rights of extended family networks. One aspect that the codes have in common is that they do not rely solely on traditional family networks to provide safety and peace in the community. However, while some codes, such as that of Sauk-Suiattle, broadly incorporate the rights of family networks, the emphasis of other codes, particularly the Upper Skagit, is to

regard entrenched family networks as potentially the locus of women's difficulties and to restrain the exercise of influence and authority of kin groups in order to enhance women's lives.[44] Under the Upper Skagit code, women are affirmed as heads of households through their eligibility for tribal housing, jobs, and services, independent of male relatives. Women are given explicit protection as wage earners on the reservation, thereby facilitating their contributions to the reservation's families and to the economy. Such restraints on family networks have contradictory implications for women, however: Although restraints provide protections for women, they also limit the powerful roles women have played as influential sisters of significant men and as senior members of family networks.[45]

Among the eight codes included in this study, significant differences exist in overall emphasis and elaboration.[46] Some tribal codes focus on economic development and community regulation, with little attention given to women's issues. Other codes are more directed to peace and safety issues. The differentiation in approach has implications for women, particularly regarding such issues as the rights of parents, legal protections accorded women in the workplace, and procedures for establishing paternity and obtaining child support. Among the codes, the Lummi code is notable for its attention to women's issues, even though women have achieved limited success in tribal elections.[47] The code provides for women's control of their own productivity, for the protection of children, and for child and spousal support. The Upper Skagit code is similarly notable for the protection provided for women in the workplace.

Generally, tribal codes reinforce women's double burden of responsibility to home and work, particularly through the provisions regarding child care. But the codes simultaneously allow a full expression of women's activities: Under the current codes, women are legally full citizens, with the rights to vote and run for office. Older, postcontact feminine ideals of passivity and lesser involvement in spiritual life are not the basis of present legal constructions. In fact, legal avenues have developed that recognize the differing life courses of young men and women.[48] In earlier generations, young women were secluded from public life at adolescence; today provisions allow for women's early careers as mothers and wage earners through procedures for emancipation.

This examination of eight tribal codes shows the relevance of further study of codes in understanding contemporary women's

lives. Subsequent research should give attention to the relationship between the rights of individuals and of the collective, noting carefully how the extended family (or other collective body) is defined in various passages of the code. In the Puget Sound case, the extended family is defined as many as seven ways in single codes, thereby allowing restraints on the networks in some areas and facilitating the networks in others. Future work might employ a comparative perspective in order to provide useful material for band councils developing legal structures in Canada and elsewhere. In addition, the development of legal histories can clarify the issue of the interaction between political actors and legal systems in order to provide insights into the factors influencing code construction. Examination of the relationship between the gender composition of tribal councils and tribal code, and of the community economic structures and the code would be particularly valuable.

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NOTES

1. This study does not include analysis of the workings of the court and is not directed to explain why tribal codes differ. Although both are useful topics, the focus here is on the codes themselves. See Chief Justice Tom Tso, "Process of Decision Making in Tribal Courts," *Arizona Law Review* 31 (1989): 225–35, for details of the workings of the Navajo court; and Bruce G. Miller, "The Northwest Intertribal Court System and Indian Law," a paper presented at the 46th Annual Northwest Anthropological Conference, Bellingham, Washington, 1993. Analysis of actual trials would supplement the work presented here, a point made by Peter Just in "History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law," *Law and Society Review* 26 (1992): 373–411.

2. William L. Rodman, "A Law Unto Themselves": Legal Innovation in Ambae, Vanuatu," *American Ethnologist* 12 (1985): 602–24.

3. Joan Vincent, *Anthropology and Politics: Visions, Traditions, and Trends* (Tucson: University of Arizona Press, 1990), 429.

4. Augie Fleras and Jean Leonard Elliott, *The Nations Within: Aboriginal-State Relations in Canada, the United States and New Zealand* (Toronto: Oxford University Press, 1992); Sandra Robinson Weber, "Native-Americans Before the Bench: The Nature of Contrast and Conflict in Native-American Law Ways and Western Legal Systems," *The Social Science Journal* 19 (1982): 47–57; Mari J. Matsuda, "Native Custom and Official Law in Hawaii," *Law and Anthropology* 3 (1988): 135–46; Sharon O'Brien, *American Indian Tribal Government* (Norman: University of Oklahoma Press, 1989).

5. Russel Lawrence Barsh and J. Youngblood Henderson, "Tribal Courts, The Model Code, and the Police Idea in American Indian Policy," *Law and Contemporary Problems* 40 (1976): 25–60.

6. Sharon O'Brien, *American Indian Tribal Government.*

7. Carla Christofferson, "Tribal Court's Failure to Protect Native American Women: A Reevaluation of the Indian Civil Rights Act," *The Yale Law Journal* 101 (1991): 169–85.

8. Samuel J. Brakel, *American Indian Tribal Courts: The Costs of Separate Justice* (Chicago: American Bar Association, 1979). See also Susan Lupton, "American Indian Tribal Codes," *Legal Reference Services Quarterly* 1 (1981): 25–41.

9. Miller, "The Northwest Intertribal Court System."

10. In *Law as Process: An Anthropological Approach* (London: Routledge and Keegan Paul, 1978), Sally Falk Moore observed that it is misleading to seek out core ideas in the law that express important social values because of the slow construction of the law through aggregation. Nonetheless, I argue that despite the fact that much of the law does not result from a rational, considered process, the newly emerging codes clearly reflect the values and aims of influential community leaders. For example, one Upper Skagit tribal councillor held specific concerns that protections be provided tribal employees in order that the community be productive. Her concerns were addressed in specific code. Sometimes the interests of the councillors are more personal. I was told of a case in one of the tribes in which a councillor pushed for code that would accommodate the interests of her underaged son. This is not ordinarily the case, however. These leaders and their values are more fully addressed elsewhere (Miller, "A Sociocultural Explanation of the Election of Women to Tribal Council: The Upper Skagit Case" [Ph.D. dissertation, Arizona State University, 1989]; idem, "Women and Politics: Comparative Evidence from the Northwest Coast," *Ethnology* 31 (1992): 367–83.

11. Harry Chesnin, a Seattle lawyer involved in the process of code writing in Puget Sound since the 1970s, has pointed out that variation in tribal codes may reflect the period in which code was written and the personal outlook and interests of particular code writers hired by the tribes. Code writers, however, clearly assign priority to the interests of the councils and advisory committees. The writers are given guidelines and frequently asked by the tribal councils to revise code, particularly in the last decade.

12. Carrie Menkel-Meadow and Shari Seidman Diamond, "The Content, Method, and Epistemology of Gender in Sociolegal Studies," *Law and Society Review* 25 (1991): 221–38.

13. Ralph W. Johnson, "Introduction," in *Indian Tribal Codes: A Microfiche Collection of Indian Tribal Codes*, ed. Ralph W. Johnson (Seattle: Marian Gould Law Library, University of Washington School of Law, 1981).
14. Miller, "Women and Politics."
15. Northwest Intertribal Court System (NICS), "Traditional and Informal Dispute Resolution Processes in Tribes of the Puget Sound and Olympic Peninsula Region" (unpublished ms.); Miller, "The Northwest Intertribal Court System."
16. NICS, "Traditional and Informal Dispute Resolution."
17. June Collins, *Valley of the Spirits* (Seattle: University of Washington Press, 1974); Chief Martin J. Sampson, *Indians of Skagit County* (Mount Vernon, WA: Skagit County Historical Series no. 2, 1972).
18. Ralph W. Johnson and Rachael Paschal, eds., *Tribal Court Handbook for the 26 Federally Recognized Tribes in Washington State* (Olympia, WA: Office of the Administrator for the Courts, State of Washington, 1991); Donald L. Burnett, Jr., "An Historical Analysis of the 1968 'Indian Civil Rights' Act," *Harvard Journal on Legislation* 9 (1972): 556–626.
19. Burnett, "An Historical Analysis," 565.
20. Johnson and Pascal, "Tribal Court Handbook," 3; Burnett, "An Historical Analysis," 590.
21. Johnson and Pascal, "Tribal Court Handbook," 3.
22. Ibid., 37.
23. Data compiled from Johnson and Pascal, "Tribal Court Handbook."
24. Ted Maloney, Upper Skagit tribal attorney and sometime code writer, personal communication.
25. Public Law 83-280 (1953) empowered states to impose jurisdiction over Indian reservations in several legal domains. Subsequently, Washington State enacted RCW 37.12.010, requiring tribal consent to do so. The Muckleshoot, Nisqually, and Tulalip tribes, among those under consideration here, came under these terms. The Upper Skagit, Nooksack, and Sauk-Suiattle reservations were created later, and it is unclear if P.L. 280 applies. Tribal and state jurisdiction are concurrent under P.L. 280, creating the possibilities for a "race to the courthouse, and a race to final judgment" (Johnson and Pascal 199:9).
26. Upper Skagit Tribal Police Report, 1992 (unpublished ms.).
27. Brakel, "American Indian Tribal Courts," 36.
28. William Quinn "Intertribal Integration: The Ethnological Argument in *Duro v. Reina*," *Ethnology* 40 (1993): 34–69.
29. Miller, "A Sociocultural Explanation."
30. The Lummi code differs from Washington State code concerning common property in that the Lummi code provides for separability of property acquired during marriage. The more important issue is that the present Lummi code is in accordance with traditional practice.
31. These male boat owners have composed the majority in the tribal councils, a fact noted by Daniel L. Boxberger, *To Fish in Common: The Ethnohistory of Lummi Indian Salmon Fishing* (Lincoln: University of Nebraska Press, 1989).
32. June McC. Collins, *Valley of the Spirits*.
33. Marian W. Smith, "The Coast Salish of Puget Sound," *American Anthropologist* 43 (1941): 197–211.
34. Miller, "A Sociocultural Explanation"; idem, "Women and Politics."
35. Personal communication, Ted Maloney.

36. Miller, "Women and Politics."
37. NICS, "Traditional and Informal Dispute Resolution."
38. Miller, "Women and Politics"; Collins, *Valley of the Spirits.*"
39. Miller, "A Sociocultural Explanation."
40. Ibid.
41. See Sally Snyder, "Skagit Society and Its Existential Basis: An Ethnofolkloristic Reconstruction" (Ph.D. dissertation, University of Washington, 1964); Collins, *Valley of the Spirits;* Miller, "A Sociocultural Explanation"; and Pamela Amoss, *Coast Salish Spirit Dancing: the Survival of an Ancestral Religion* (Seattle: University of Washington Press, 1978), for details of male and female life course.
42. Collins, *Valley of the Spirits.*
43. Coast Salish men who were involuntarily "grabbed" have also recently complained of assault in winter ceremonials. A recent case involved Rocky Thomas of the Lyackson band in British Columbia. He was awarded $12,000 in damages by the British Columbia Supreme Court (*Vancouver Sun,* August 1992). It is important to note that not all community members have a negative view of winter ceremonials. There are many participants and supporters.
44. This strategy does not appear to be accounted for in the literature. One analyst argued, for example, that principles of legal and political individualism have been "extended" into tribal governance as a result of the Indian Bill of Rights of 1968 and at the expense of group-based rights (Frances Svensson, "Liberal Democracy and Group Rights: The Legacy of Individualism and Its Impact on American Indian Tribes," *Political Studies* 27 (1979): 421–39). This approach fails to entertain the possibility that innovators within communities may see advantage in reconstructing the relationship between group and individual entitlements.

An interesting comparison may be made with Coast Salish communities of southern Vancouver Island, immediately adjacent to those in Washington State, who lack the jurisdiction to establish their own court systems. Experiments in alternative justice systems that divert charges from the mainstream societies' court system to a band's male-dominated council of elders have foundered on charges of abuse of the system by powerful family networks. Women have criticized the system for covering up sexual abuse of women and perpetuating the influence of the family system. A reporter noted that one woman "says she knows of several cases where powerful families pressured women to use the alternative system, which involves the band's council of elders, rather than bringing sexual assault charges to court. Mavis Henry, a member of the Pauquachin band of southern Vancouver Island, stated, 'It can happen in subtle ways.... A family will offer to buy a car or do repairs on your house in return'" (*Vancouver Sun,* 31 July 1992). The article points out that other women were forced to move from their reserve. The implication of the article is that large, politically powerful families attempt to coerce assault victims into using traditional systems of restitution or to completely bury their charges of abuse. In a related debate, Jo-anne Fiske, in "Child of the State, Mother of the Nation: Aboriginal Women and the Ideology of Motherhood" (a paper presented to the Joint Meetings of the Atlantic Canada Studies and B.C. Studies Association, 21–24 May 1992), has shown how Carrier and Micmac women have relied on metaphors of motherhood in making claims to a present-day political position for women based on "sexual equality [of] folk laws instead of... state law" (p. 5). In this discourse, motherhood is represented as traditionally the dominant

social identity in the community, the font of cultural knowledge, and the source of band identity. Further, these claims are said to be made "not as women seeking individual rights as against their male peers" (p. 24) but in the struggle against the intrusion of the state. "It is because of their [women's] *collective* responsibility for future generations that they seek sexual equality . . . " (ibid.). In this case, traditional kinship structures are viewed as the source of women's protection, and new systems of justice are seen as creating difficulties. See also Teressa Nahanee, "Do Native Women Need Charter Rights? *Priorities: A Feminist Voice in a Socialist Movement* 20 (1992): 5–7; Karlene Faith, Mary Gottfriedson, Cherry Joe, Wendy Leonard and Sharon McIvor, "Native Women in Canada: A Quest for Justice," *Social Justice* 17 (1991): 167–88; Wendy Moss, "Indigenous Self-Government in Canada and Sexual Equality under the Indian Act: Resolving Conflicts Between Collective and Individual Rights," *Queens Law Journal* 15 (1990): 279–305.

45. Such family networks persist as underlying political structures, but women as individuals are free to amass resources outside of this system of resource ownership and control. Many women have responded by directing their resources back within the family network through regular patterns of generalized reciprocity, and others have emphasized development of careers as cultural mediators and technical experts.

46. There are other background similarities between codes. None of the eight legal systems is based on an explicit notion of differences between the sexes. None relies on special theories of femininity or masculinity. Women are not excluded from voting because of theories of differential intellect or moral development, although some codes recognize differing circumstances for men and women in limited ways. Women are not partitioned into legal categories with separate rights. (For example, married and unmarried women are not treated separately except as this applies to the emancipation of youth.)

47. Miller, "Women and Politics."

48. Snyder, "Skagit Society and its Existential Basis"; Collins, *Valley of the Spirits.*