

THE INDIAN CHILD WELFARE ACT AND IÑUPIAT CUSTOMS: A CASE STUDY OF CONFLICTING VALUES, WITH SUGGESTIONS FOR CHANGE

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This Article analyzes the Indian Child Welfare Act (“ICWA”) and its capacity to fulfill its primary goal—the return of partial control over child welfare proceedings to Indian and Alaska Native tribes. Drawing both from legal sources and Alaska Native anthropological sources, the Article examines the misalignment of Federal and Alaska state law to Alaska Native cultural “law ways.” The Article then comments on the unique issues that arise from the intersection of the conflicting nature of these two systems. The Article concludes by proposing suggestions for change and inviting others to investigate the problems identified.

I. INTRODUCTION: NATIVE CULTURE AND SOVEREIGNTY UNDER THE INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act (“ICWA”)¹ was enacted in 1978, primarily to return partial control over child welfare proceedings to Indian and Alaska Native tribes.² It was also intended

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1. 25 U.S.C. §§ 1901-63 (2000).

2. Because federal law still refers to all indigenous peoples of America as “Indian” and that term has acquired meaning as a term of art in the province of federal Indian law, the author will use it rather than “Native American” for this discussion. The author will also refer to “Alaska Natives” or “Natives” to denominate those indigenous peoples living in Alaska. Finally, the author refers to the Iñupiaq-speaking peoples of the Arctic as “Iñupiat” here rather than “Inuit” or “Eskimo”; however, some source materials use the latter terms, and the author has not attempted to edit out those usages. “Iñupiat” is the term referring to the

to ensure that Indian and Alaska Native children were not removed from the communities and cultures in which they were born. To achieve these goals, Congress (1) increased procedural and substantive safeguards that gave deference to the sovereignty and cultural values of Indians and Alaska Natives in adoption and foster care proceedings³ and (2) provided a means for the return of jurisdiction to Indian tribes.

While these goals are crucial to maintaining Indian culture and sovereignty, there has been little progress towards achieving them. There are two main reasons for this: (1) there has been inadequate support for development of tribal courts and the education of their staff; and (2) despite its well-intentioned efforts, the ICWA imposes ideas and procedures that do not comport with the underlying principles of the cultures they were intended to protect. This Article compares the cultural traditions of the Iñupiat people of Alaska with the ICWA's premises and procedures.⁴

While this Article focuses largely on the traditions and values of the Iñupiat, the nature of the problems associated with the ICWA and its implementation is similar in relation to other Alaska Native tribes.⁵ This Article focuses on the Iñupiat for two reasons:

group itself, and "Iñupiaq" is both the name of the language and the adjective form.

3. Although ICWA governs both adoption and foster care placements, this Article will address only adoption issues. Nevertheless, many of the same concerns are relevant, and, as will be explained below, the distinctions between fosterage and adoption are less clear-cut in Native society than they are in the American legal system.

4. Iñupiaq culture is circumpolar in nature. Therefore, while practices and customs vary somewhat from one area to another, it makes more sense to speak of the Iñupiat as a multinational cultural unit than to confine one's analysis to the basis of artificial political boundaries. Thus, this author has supplemented anthropological materials from Alaska with additional cultural information from the Canadian Arctic.

5. Alaska Natives are not organized as tribes in the same sense in which that term applies to groups in the continental United States. The terms "tribe" and "tribal court" are commonly used to refer to Alaska Native villages and village councils respectively. This author will follow that usage here. ICWA defines the "Indian child's tribe" as the following:

(a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts

and an "Indian tribe" as

any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native

(1) English language literature regarding the Iñupiat is readily available, via studies that have been conducted both in Alaska and in the Canadian Arctic; and (2) this author has a more intimate understanding of the Iñupiaq culture than other cultural groups in Alaska. Because of the limited scope of this article, it would be beneficial to compile similar studies for other native groups, such as the Aleut, Athabascan, Central Yupik, Haida, Siberian Yupik, and Tlingit.⁶ Such information is relevant to the effectiveness of the ICWA and should be made available to the appropriate tribal courts and Alaska state courts presiding over child welfare cases.

The primary focus of this article is the consequences of the current allocation of jurisdiction over child welfare cases between federal, state, and tribal authorities in Alaska. While the issue of jurisdiction inevitably underlies such a discussion, it does not supersede the larger issue. Therefore, this Article does not attempt to detail the jurisdictional distribution as it currently exists in Alaska.⁷ Rather, it discusses the choice of law—federal, state, or tribal—and helps enable Alaska state courts to choose and apply the relevant portions of each body of law effectively. This article also discusses choice of forum—state court or tribal court—and the

village as defined in [the Alaska Native Claims Settlement Act], section 1602(c) of Title 43.

25 U.S.C. § 1903(5), (8) (2000).

6. Some of these groups, particularly the Athabascan, would benefit from further subdivision prior to study. Moreover, a village-by-village study would be ideal. Nevertheless, cultural-language group subdivisions provide a first approximation, and studies based on such divisions could serve as a starting point for more refined local studies in the future. This author draws her division into basic groups from the director of the Alaska Native Language Center, University of Alaska at Fairbanks. CLAUS-M. NASKE & HERMAN E. SLOTNICK, *ALASKA: A HISTORY OF THE 49TH STATE* 10 (Univ. Okla. Press 1987) (2d ed. 1979) (referencing a map by Michael E. Krauss, *Native peoples and languages of Alaska*); see also WILLIAM C. STURTEVANT, SMITHSONIAN INST., *EARLY INDIAN TRIBES, CULTURE AREAS, AND LINGUISTIC STOCKS* (1967), reprinted in U.S. DEP'T OF INTERIOR, U.S. GEOLOGICAL SURVEY, *NATIONAL ATLAS OF THE UNITED STATES* (1991).

7. A comprehensive analysis of ICWA's jurisdictional provisions is available in Barbara Ann Atwood, *Fighting Over Indian Children: The Uses and Abuses of Jurisdictional Ambiguity*, 36 UCLA L. REV. 1051 (1989). Thorough analyses of the issues surrounding the Public Law 280 discourse in Alaska are available in Carl H. Johnson, *A Comity of Errors: Why John v. Baker is Only a Tentative First Step in the Right Direction*, 18 ALASKA L. REV. 1 (2001); Donald Craig Mitchell, *Alaska v. Native Village of Venetie: Statutory Construction or Judicial Usurpation? Why History Counts*, 14 ALASKA L. REV. 353 (1997); Susanne DiPietro, *Tribal Court Jurisdiction and Public Law 280: What Role for Tribal Courts in Alaska?*, 10 ALASKA L. REV. 335 (1993).

differences in the law applied to natural and adoptive Alaska Native parents and their tribes.

This article is unusual because it draws on both legal and anthropological literature. This is necessary because, until recently, anthropological observation provided the best, and often the only, written record of the primarily oral nature of Iñupiaq culture, attitudes, and practices. It is important to note here that the absence of a written code does not mean the absence of a legal system. Despite an informal record amassed from anthropological literature, there exists a significant body of “law ways” that govern adoption practices in Iñupiaq society. Therefore, anthropological literature regarding Iñupiaq society is an appropriate source for comparison with the American legal system’s view of adoption and the rules imposed by the ICWA.

Section II of this article presents an overview of the relevant legal and anthropological sources. First, it discusses the ICWA’s provisions, particularly as interpreted by the Alaska courts. Second, it explains the anthropological data used herein. Section III presents a discussion of Iñupiaq law ways. Section IV subsequently draws a comparison between those law ways on the one hand and the ICWA’s provisions on the other. Together, these sections serve to illustrate the consequences of Alaska’s current jurisdictional allocation over child welfare proceedings, and analyze how the law is applied in those proceedings. These sections also discuss tribal jurisdictional reassumption⁸ merely as part of the solution to remedy the ICWA’s failure to address tribal needs adequately. As such, jurisdictional details are passed over in favor of an analysis of the consequences of, and potential modifications to, jurisdiction which may mitigate some of the more severe consequences, *i.e.*, the problems associated with choice of law issues.

Finally, Section V suggests that, although the ICWA purports to allow tribes to have increased control over their children, in practice tribes often do not have the skills or resources needed to reassume such control successfully. Efforts to facilitate the return of control and assist tribes in exercising this control should be made a priority. This could be effectuated either by means of jurisdictional changes or more effective interventions in state court proceedings. To accomplish the goals of assisting tribes in regaining nominal jurisdiction and exerting that jurisdiction effectively, new

8. This is the term used by ICWA, which implicitly recognizes that tribal jurisdiction is not a delegation of federal or state jurisdiction to tribes, but rather is a return of jurisdiction that has been abrogated by statute or otherwise. *See* 25 U.S.C. § 1918 (2000).

funding for tribal court development should be allocated. Alternatively, when jurisdiction is not reassumed, tribes should be assisted in preparing written materials regarding their tribal customs and preferences. If such information is not made available, the ICWA's mandate to consider and apply those relevant tribal customs and standards is lost, and state courts will continue to make decisions based solely on American value systems.⁹

II. A BRIEF OVERVIEW OF THE ICWA'S PROVISIONS

Before discussing the ways in which the ICWA fails to address the needs of Alaska Natives in general, and the Iñupiat in particular, it is useful to have a general understanding of the jurisdictional provisions affecting tribes and the enhanced protections they offer parents and custodians of Indian children.¹⁰

A. The ICWA Jurisdictional Issues and Public Law 280

In 1953, Congress enacted legislation known as Public Law 280 ("P.L. 280"),¹¹ which established state jurisdiction over cases between Indians arising in Indian country within various states. In 1958, Congress amended this list to include Alaska.¹² Effectively, this law preempted any Indian law or custom within the named states by requiring Indians to proceed in the American court system under state laws. The ICWA, to a minor degree, altered this mandate by providing a means for affected tribes to regain the power of jurisdiction that would otherwise inhere in such states.¹³ The process itself is not difficult or complex from a legal point of view; it consists simply of developing a plan for exercising jurisdiction once it is returned, and submitting that plan, along with a petition, to the Secretary of the Interior.¹⁴ However, for many tribes, this can be a daunting task, since tribal councils are often unfamiliar with such processes.

9. See 25 U.S.C. §§ 1915(d), 1921 (2000); see also 25 U.S.C. §§ 1901(5), 1902 (2000).

10. This is necessarily a limited discussion. A detailed discussion of ICWA as applied by Alaska Courts can be found in Andrea V. W. Wan, *The Indian Child Welfare Act: An Alaska Practitioner's Guide* (2001) (unpublished manuscript) (on file with author).

11. Pub. L. No. 53-280 (Aug. 15, 1953), *codified at* 28 U.S.C. § 1360 (2000) & 18 U.S.C. § 1162 (2000).

12. Pub. L. No. 85-615 (Aug. 8, 1958), *codified at* 28 U.S.C. § 1360 & 18 U.S.C. § 1162. See generally FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 344-46 (Rennard Strickland et al., eds., Michie 1982).

13. 25 U.S.C. §§ 1918-19.

14. 25 U.S.C. § 1918(a), (c).

In Alaska, the problem is exacerbated by the nature of Native communities. Unlike tribes in the continental United States, Alaska Natives do not reside on reservations.¹⁵ Several cases, both state and federal, have addressed the problems resulting from the non-existence of “Indian country,” which provides the basis for the P.L. 280 provision that allows reassumption of tribal jurisdiction.¹⁶ However, it appears that Alaska Native tribes are still able to petition the Secretary of the Interior for return of jurisdiction or seek transfer of jurisdiction over individual cases under the ICWA section 1911(b).¹⁷

In addition to providing for return of jurisdiction, the ICWA also protects tribal interests by preempting state law in all child welfare decisions affecting Indian children¹⁸—what is referred to here as the ICWA’s choice of law provisions. Such preemption is possible because the semi-sovereign status of Indian tribes as domestic dependent nations creates a trust-like relationship with the federal government and enables it to possess the exclusive right to control relations with Indian nations.¹⁹ Notably, the ICWA also creates a small exception: under the ICWA, Indian tribes and states may enter into agreements regarding jurisdiction and child welfare services.²⁰

B. Enhanced Parental and Tribal Rights under the ICWA

In addition to the modified jurisdictional scheme it provides, the ICWA also provides enhanced substantive and procedural

15. The Metlakatla, however, who reside on a small reservation in Southeast Alaska, are an exception.

16. See *Alaska v. Native Vill. of Venetie Tribal Gov’t*, 522 U.S. 520 (1998); *Native Vill. of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 561-62 (9th Cir. 1991); *In re C.R.H.*, 29 P.3d 849, 852-54 (Alaska 2001); *John v. Baker*, 982 P.2d 738, 747 (Alaska 1999); *In re F.P., W.M., and A.M.*, 843 P.2d 1214, 1214-16 (Alaska 1992); *In re K.E.*, 744 P.2d 1173, 1174-75 (Alaska 1987); *Native Vill. of Stevens v. Smith*, 770 F.2d 1486, 1489-90 (Alaska 1985). Interestingly, these cases establish that Alaska tribes do not possess “Indian country” within the meaning given that term for tribes living in the lower forty-eight states. Therefore, P.L. 280’s application through its “Indian country” provision is rather odd. However, in Alaska, the practical consequence is simply that all cases arise in “state country” and therefore within state jurisdiction.

17. 25 U.S.C. § 1911(b) (2000).

18. However, if state law provides greater protections, those apply instead of ICWA. 25 U.S.C. §§ 1902-21 (2000).

19. U.S. CONST. art. I, § 8; see also § 1901(1)-(2). This usage derives from Chief Justice Marshall’s decision in *Cherokee Nation v. Georgia*, 30 U.S. 1, 25 (1831).

20. 25 U.S.C. § 1919 (2000).

rights to the parents, Indian custodians,²¹ and tribes of Indian children who are subject to child welfare proceedings.²² Notably different from the usual state approach to child welfare, which limits standing and other rights to a child's parents and potential adoptive or foster parents,²³ the ICWA also vests some of these rights in the child's tribe.²⁴ This article only looks at some of these rights briefly in reference to their applications.²⁵

Perhaps the most vital rights that the ICWA enhances are those of notice and right to counsel.²⁶ The ICWA provides notice to parents *and* tribes of children involved in child welfare proceedings.²⁷ This tribal notice is a fundamental expansion of the scope of those normally entitled to notice and those normally deemed to have a legal interest in such proceedings. Additionally, the ten-day allowance for an answer must be extended an additional twenty days on request of a parent or tribe.²⁸ In the case of indigent parents, this right is also reinforced, by a right to appointed counsel.²⁹

When a child welfare proceeding is commenced in state court, tribes as well as parents have the additional protection of a right of intervention "at any point in the proceeding."³⁰ Thus, even if a

21. See 25 U.S.C. § 1903(6) (2000) (defining Indian custodians as "any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child"). Thus, this broad term includes both adoptive and foster parents if both parents and child(ren) are Indian. For the sake of simplicity, this article refers only to parents, although Indian custodians are included in the rights mentioned.

22. 25 U.S.C. §§ 1912-16, 22 (2000).

23. See ALASKA STAT. §§ 25.23.040, 25.23.050 (Michie 2002).

24. 25 U.S.C. §§ 1901(3), 1902, 1912(a), 1914(c)-(d), 1918 (2000).

25. For a detailed discussion of these rights, see Wan, *supra* note 10.

26. Compare ALASKA ADOPTION R. 10 and ALASKA STAT. §§ 25.23.040, 25.23.050, 25.23.100 (Michie 2002) with 25 U.S.C. § 1912(a); compare ALASKA ADOPTION R. 8 with 25 U.S.C. § 1912(b).

27. 25 U.S.C. § 1912(a).

28. *Id.*

29. 25 U.S.C. § 1912(b). The court may also appoint counsel for the child under ALASKA ADOPTION R. 8. See also *V.D. v. State Dep't of Health and Soc. Servs.*, 991 P.2d 214, 218 (Alaska 1999) (discussing the right to counsel under ICWA and in relation to child in need of aid proceedings); *D.E.D. v. State*, 704 P.2d 774, 778-79 (Alaska 1985) (discussing the right to notice and court appointed counsel under ICWA).

30. 25 U.S.C. § 1911(c) (2000); see also *In re J.R.S.*, 690 P.2d 10, 15-16 (Alaska 1984).

parent or tribe does not timely respond to notice, the parent or tribe cannot be barred, no matter the stage of the proceedings.

If the temporary or permanent termination of parental rights is voluntary, the ICWA provides additional safeguards to ensure that a parent's consent is given in writing and with full knowledge of the "terms and consequences" of such termination as found by the presiding judge.³¹ Moreover, in the case of temporary termination of parental rights, the parent "may withdraw consent . . . at any time and, upon such withdrawal, the child *shall be returned* to the parent or Indian custodian."³² Likewise, a parent may withdraw consent to the termination of parental rights up until a final decree of permanent termination or a final decree of adoption is entered.³³ A parent or tribe may also petition a court to invalidate such proceedings if any of the rights contained in sections 1911-13 are violated.³⁴ Similarly, if fraud or duress is shown, the decree may be vacated and custody returned to the parent.³⁵

Finally, the ICWA contains protections that relate to the proceedings themselves. First, it provides full faith and credit for tribally administered proceedings.³⁶ Second, it provides recognition

31. 25 U.S.C. § 1913(a) (2000). Section 1913(a) requires the judge to provide a "certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian," and that "the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood." *Id.*; see also ALASKA STAT. § 25.23.060 (Michie 2002) (detailing execution of required consent to adopt); ALASKA ADOPTION R. 13(a) (discussing pretrial conferences); *In re F.H.*, 851 P.2d 1361, 1364-65 (Alaska 1993); *In re T.N.F.*, 781 P.2d 973, 975-77 (Alaska 1989) (discussing section 1913(a) in the context of determining standing for a section 1914 action to invalidate the decree of adoption based on a violation of section 1913(a)).

32. 25 U.S.C. § 1913(b) (emphasis added); ALASKA STAT. § 25.23.070 (Michie 2002).

33. 25 U.S.C. § 1913(c).

34. 25 U.S.C. § 1914 (2000). Though ICWA provides no statute of limitations on this provision, the Alaska Supreme Court has imposed a one year statute of limitations drawn from the analogous state provision. *In re L.A.M.*, 727 P.2d 1057 (Alaska 1986); see also ALASKA STAT. § 25.23.140 (Michie 2002).

35. 25 U.S.C. § 1913(d). This section also imposes a two year statute of limitations unless state law provides to the contrary. *Id.*

36. 25 U.S.C. § 1911(d) (2000). However, application of this section has been problematic in Alaska. See *John v. Baker*, 982 P.2d 738, 761-62 (Alaska 1999) (finding that the parental custody dispute at issue did not qualify as a "child custody proceeding" and, thus, the full faith and credit clause did not apply); Johnson, *supra* note 7, at 31.

of tribal customs in proceedings conducted by state courts.³⁷ Thus, the ICWA attempts to ensure consideration of tribal customs by mandating a choice of tribal law where applicable, regardless of whether jurisdiction is exercised by a state court or a tribal court.

C. ICWA's Ability to Address the Needs of Indian Families and Tribes

Applying the ICWA is better than applying state laws to proceedings involving Indian and Alaska Native children where such laws do not have any special provisions for Indians. However, the ICWA does not fully address the needs of Alaska Native families and tribes. From the point of view of the American legal system,³⁸ Indian parents and tribes are offered significantly increased protections in both substantive and procedural areas. Yet the law also imposes the formal American system on a culture-bound and tradition-bound decision-making process that is primarily defined by interpersonal relationships. The ICWA often relies on inappropriate assumptions about values, priorities, and concerns, such as confidentiality, which may have no logical part in an adoption or fosterage in a Native community. Moreover, it may have the effect of freezing a traditionally flexible and malleable system into one that is static, inflexible, and unresponsive to the exigencies of particular situations or the changing nature of community life.

A study of Iñupiaq law ways and cultural values by Arthur E. Hippler and Stephen Conn elucidates the differences between these systems.³⁹ Although their research is approximately thirty years old, its observations are still relevant. In addition, the study's combination of the insights of Hippler, an anthropologist, and Conn, an attorney, helps shed light on the differences between Iñupiaq and American culture, both generally and with respect to legal matters.

37. 25 U.S.C. § 1915(c) (2000); *see* C.L. v. P.C.S., 17 P.3d 769, 777 (Alaska 2001) (applying tribal custom).

38. While in the United States it is customary to discuss an Anglo-American legal tradition and system, to do so is not appropriate in the case of adoption. Adoption, as practiced in the United States, was an invention of the nineteenth century American legal system, whereas in England adoption was not legally recognized until the early twentieth century. *See* SARAH H. RAMSEY & DOUGLAS E. ABRAMS, *CHILDREN AND THE LAW* 248 (West Nutshell Series 2001).

39. Arthur E. Hippler & Stephen Conn, *Northern Eskimo Law Ways and Their Relationship to Contemporary Problems of "Bush Justice": Some Preliminary Observations on Structure and Function*, 10 ISEGR OCCASIONAL PAPERS (1973).

A primary difference between Iñupiaq and American culture is the lack of a centralized power structure or leadership in the former.⁴⁰ There is little or no formal law in the Iñupiaq culture; instead, there are strongly held cultural behavioral norms and patterns of interaction. It is these norms that Hippler and Conn analogize to the American notion of law, and which they aptly call “law ways.”⁴¹ In addition, traditional Iñupiaq culture placed a high value on conflict avoidance and on the skill of those who were able to resolve disputes without overt conflict.⁴² As Hippler and Conn point out, the system was far less formal, and lacked the roles of judge, jury, or advocate:

The Eskimo approach to conflict resolution was essentially devoid of legitimate judicial authority. Its norms were based on avoidance and noninterference and its sanctions were either nonexistent or extreme. Where social gossip failed to punish the offender, the offended party took the responsibility for redress. . . . [The] options open to the offended party were to deny that he was wronged, retreat, or murder the offender.⁴³

Thus, a person’s behavior was limited primarily by social pressure and fear that one wronged would eventually lose control and become violent.⁴⁴

In the nineteenth century, the arrival of white Americans, such as missionaries, traders, soldiers, and whalers, changed this system. American boat captains frequently were called upon to dispense justice, and the military also imposed what it considered a more suitable system in areas where it held sway.⁴⁵ The culture’s system changed further with the formation of village councils and the fed-

40. *Id.* at 4-5.

41. *Id.* at 14-26; *see also* NORMAN A. CHANCE, *THE IÑUPIAT AND ARCTIC ALASKA: AN ETHNOGRAPHY OF DEVELOPMENT* 123-26 (George & Louise Splindler eds., Holt, Reinhart and Winston 1990).

42. Hippler & Conn, *supra* note 39, at 16-17, 26-28.

43. *Id.* at 20; *see also* CHANCE, *supra* note 41 at 122.

44. While outcomes in the American system are far from certain, the American system does at least provide for a range of possibilities and compromise outcomes, rather than the stark all-or-nothing Iñupiat system.

45. ICE WINDOW: *LETTERS FROM A BERING STRAIT VILLAGE: 1892-1902* at 165 (Kathleen Lopp Smith & Verbeck Smith eds., Univ. of Alaska 2001). The captain of the Coast Guard cutter *Bear* served, among his other duties, as something like a circuit-riding judge for the coastal villages in that period, and dispensed justice and news from outside wherever the *Bear* went. *Id.* at 165 (analyzing a collection of letters from a missionary teacher in Wales, Alaska; providing a look at life on the Seward Peninsula in the late nineteenth century; and showing good grace, humor, tolerance, and understanding of the Native culture for the period). *See also* Hippler & Conn, *supra* note 39, at 28-30, back cover.

eral administration of Indian affairs.⁴⁶ However, the village council is not a proper judicial or legislative body, as it is understood in American culture. Rather, the village council is merely a group that discerns community sentiments and needs, and acts as a plurality on behalf of the whole with a minimum of personal control or leadership.⁴⁷ Yet the council is still the primary form of government in most Alaska villages, and it is often such councils that are called upon to act as “tribal courts” in child welfare and other matters.⁴⁸

III. IÑUPIAT ADOPTION: LAW WAYS PAST AND PRESENT⁴⁹

In determining how and whether the ICWA serves or fails to serve the needs of Iñupiat families and tribes, it is useful to look at both current and traditional law ways relating to adoption in Iñupiaq culture. Because of the differences between law ways and formal law, as well as the pre-literate nature of the Iñupiaq culture, much of this information is drawn from anthropological sources. Thus, when considering the information below, it is important to give greater deference to customs and attitudes than might normally be accorded in mainstream American culture.⁵⁰

Modern law ways relating to adoption are similar to the traditional models. Even though the ICWA and state laws purport to regulate adoption in Alaska Native villages as elsewhere, it is in-

46. See DAVID S. CASE & DAVID A. VOLUCK, *ALASKA NATIVES AND AMERICAN LAWS* 6-33, 317-33 (Univ. of Alaska Press, 2d ed., 2002) (1984).

47. *Id.* at 319-26.

48. *Id.* at 432-37.

49. See generally MARGARET LANTIS, *ESKIMO CHILDHOOD AND INTERPERSONAL RELATIONSHIPS: NUNIVAK BIOGRAPHIES AND GENEALOGIES* (Univ. of Wash. Press 1960) (providing anecdotal information concerning adoption among the Central Yupik people of Nunivak Island and containing illustrations of the ubiquity of adoption and its social functions and consequences among the Central Yupik).

50. See Elizabeth E. Joh, *Custom, Tribal Court Practice, and Popular Justice*, 25 AM. INDIAN L. REV. 117, 117-19 (2001) (discussing the uses of customary law and traditional practices in tribal courts); Robert D. Cooter and Wolfgang Fikentscher, *Indian Common Law: The Role of Custom in American Indian Tribal Courts*, 46 AM. J. COMP. L. 287, 287 (1998) (analyzing the use of Indian social norms by tribal courts and emphasizing the need to understand Indian common law); Joseph A. Myers & Elbridge Coochise, *Development of Tribal Courts: Past, Present, and Future*, 79 JUDICATURE 147, 147 (1995) (describing the history of tribal court development and use of Indian custom law); Gloria Valencia-Weber, *Tribal Courts: Custom and Innovative Law*, 24 N. M. L. REV. 225, 225-26 (1994) (discussing the importance of understanding Indian tribal customary law and its development).

correct to assume that the law can truly reach into Alaska Native villages and control social practices. This is particularly true when the law does not fit with the villagers' own values and practices. The remoteness of the villages, their lack of contact with state and federal authorities, and the persistence of traditional attitudes in villages creates a situation where village people simply do as they please and never file the paperwork. In some cases, this works fairly well; in others, the lack of proper documentation and legal decrees can create problems for both the natal and adoptive parents and their respective tribes.

A. Values and Customs Concerning Adoption

In examining Iñupiat values and attitudes about adoption, we must consider three areas: (1) the position of children in Iñupiat society; (2) the reasons why parents seek to adopt children; and (3) the reasons why parents offer children to others in adoption. Many of these values and attitudes are currently held, though the practices of alliance formation and religious concerns have waned in many communities.⁵¹ Likewise, the availability of social services and welfare has altered the economic calculus of maintaining a viable family, though it has not entirely obviated this concern.⁵²

1. *Children in Iñupiaq society.* In traditional Iñupiaq society, there was a delicate balance within families between the number of persons who were supported and the number of persons contributing to that support, both in terms of bringing resources into the family and in terms of the everyday work needed to sustain the family.⁵³ In addition, work was strictly allocated between the sexes. Thus, in addition to having a correct supporter-dependent ratio, the family needed to maintain the correct sex ratio.⁵⁴

51. Lee Guemple, *Inuit Adoption*, Canadian Ethnology Serv. Paper No. 47, 71-72 (Nat'l. Museums of Canada 1979).

52. *Id.* at 69-70.

53. *Id.* at 25, 34.

54. DOUGLAS B. ANDERSON, ET AL., *KUUVNADMIUT SUBSISTENCE: TRADITIONAL ESKIMO LIFE IN THE LATTER TWENTIETH CENTURY* 64-68 (Richard Nelson ed., Nat'l. Park Service 1998) (1976); Guemple, *supra* note 51, at 25-26; ROLF KJELLSTRÖM, *ESKIMO MARRIAGE: AN ACCOUNT OF TRADITIONAL ESKIMO COURTSHIP AND MARRIAGE* 180-81 (Donald Burton trans., Nordiska Museets Handlingar 1973). But also note:

Among the Eskimos a woman is not property, and she does not become a servant upon marriage. She is a full partner in marriage, and the fact that she is expected to do heavy labor is not in any way a mark of inferior status. It just so happens that being an Eskimo entails a lot of heavy

As the activities of the culture have changed from a semi-nomadic subsistence lifestyle to a partial subsistence/partial cash economy, the work needs of the family have changed. For example, the availability of manufactured clothing and boots alleviates an aspect of female labor, but puts an additional strain on cash resources. Likewise, the use of snow machines rather than dog teams translates a need for dog food into a need for gas, thus reducing hunting as an aspect of male labor.

Economic concerns aside, children are very highly valued in Iñupiaq society. There is a strong cultural desire to have children, and they are tenderly loved and almost spoiled, particularly when young.⁵⁵ Lee Guemple, in his monograph *Inuit Adoption*, notes:

[c]hildren are prized above all other “assets” in Inuit society. So greatly are children wanted that in the traditional culture no stigma is attached to the girl who bears a child out of wedlock. On the contrary, she is preferred as a wife because she had demonstrated her ability to bear children.⁵⁶

He further notes an attitude that “one cannot have too many children.”⁵⁷ Supporting a large number of dependents was traditionally a sign of wealth and community status.⁵⁸ These attitudes are in conflict with the economic rationale of offering a child up for adoption; however, values and attitudes are seldom entirely consistent in any culture. In terms of the emotional desire, little has changed in Iñupiaq culture. Parents still want to have children, and often to have as many as is practical, a desire the welfare system has made more feasible.

2. *Reasons to adopt.* As in any culture, the reasons why families adopt are as numerous as the families themselves. Nevertheless, in Iñupiaq culture, there are several culturally sanctioned reasons to enter into adoptive relationships. The primary reasons, as reflected by the anthropological and ethnographic literature, are (a) infertility or childlessness; (b) alliance formation and mainte-

work, which all functioning members of the community must engage in for the sake of survival.

Albert Heinrich, *An Outline of the Kinship System of the Bering Straits Eskimos* 134 (1955) (unpublished M.A. thesis, Univ. of Alaska) (on file at Univ. of Alaska, Fairbanks, Rasmussen Library) (hereinafter “Heinrich (1955)”).

55. CHANCE, *supra* note 41, at 94.

56. Guemple, *supra* note 51, at 31.

57. *Id.*; see also Heinrich (1955), *supra* note 54, at 149 (“Fathers often display more affection for an adopted child than they do for their own, explaining it on the basis of that adopted child being something extra, something that they are fortunate in having received.”).

58. KJELLSTRÖM, *supra* note 54, at 181.

nance; (c) religion or ritual; and (d) duty or custom mandating adoption of a child by its grandparents.

a. *Infertility or childlessness.* A traditional Iñupiat family was a finely balanced economic unit. A family without children was economically precarious, if viable at all.⁵⁹ The number of workers and the proper sex ratio between them was essential. Moreover, a marriage producing no children was frequently cited as a reason for divorce (more properly viewed as annulment in Iñupiaq culture⁶⁰ unless it was “cured” by adoption).⁶¹

b. *Alliance formation and maintenance.* A central part of adoption in Iñupiaq culture is its role in affirming, renewing, and creating kinship and alliance relationships.⁶² To better understand the importance of this aspect of adoption, it is necessary to note some additional features of adoption in Iñupiaq society. First, adoptions generally take place within an existing kin network, and it is presumed that the fact of the adoption is common knowledge within the community.⁶³ Second, adoption does not dissolve the child’s natal kin relationships and substitute adoptive ones; instead, adoption is seen as augmenting the natal relationships. Thus, the adopted child retains kin status with both sets of parents and siblings.⁶⁴ Third, adoption is not merely a transfer of custody between families; instead, the natal and adoptive families have continuing

59. Guemple, *supra* note 51, at 25, 34; ANDERSON, *supra* note 54, at 64-68; KJELLSTRÖM, *supra* note 54, at 180-81.

60. KJELLSTRÖM, *supra* note 54, at 187 (“[M]arriage was considered binding only after the birth of the first child.”).

61. ERNEST S. BURCH, JR., *ESKIMO KINSMEN: CHANGING FAMILY RELATIONSHIPS IN NORTHWEST ALASKA* 123 (West 1975); KJELLSTRÖM, *supra* note 54, at 192 (considering infertility as an infirmity which would lead to divorce); Guemple, *supra* note 51, at 31-32.

62. Guemple, *supra* note 51, at 28-29, 31; BURCH, *supra* note 61, at 59.

63. L. Fainberg, *On the Question of the Eskimo Kinship System*, 4(1) *ARCTIC ANTHROPOLOGY* 244, 253 (Charles C. Hughes, trans., 1967) (“[T]he parents often gave back one of their own children in adoption as a sign of friendship or kinship.”); BURCH, *supra* note 61, at 50-61, 129-30; CHANCE, *supra* note 41, at 95.

64. Heinrich (1955), *supra* note 54, at 65, 149-50; Albert Carl Heinrich, *Eskimo Type Kinship and Eskimo Kinship: An Evaluation and Provisional Model for Presenting Data Pertaining to Inupiaq Kinship Systems* 85 (unpublished Ph.D. dissertation, Univ. of Alaska May 31, 1963) (on file at Univ. of Alaska, Fairbanks, Rasmussen Library) (hereinafter “Heinrich (1963)”); Guemple, *supra* note 51, at 18-22 (noting that while this is generally the case, there are forms of adoption which are in the nature of outright transfer of all rights and responsibilities, in which this would not hold, and noting that this is always true where the adoption is the result of attempted infanticide).

kinship ties with and obligations to one another.⁶⁵ Finally, adoption may be used to create kin relationships among persons who previously considered themselves unrelated, or less closely related.⁶⁶ Historically, such adoptions were often used to establish kin relationships in other communities to ensure that there would be kin available to provide help to travelers or hunting parties.⁶⁷

c. *Religion and ritual.* In traditional Iñupiat society, religious and ritual matters played a part in the decision to adopt.⁶⁸ For example, adoption provided childless families with children to take over responsibilities in ancestor worship.⁶⁹ A family's ritual status frequently influenced a natural parent's choice of an adopter, since children would be better off in families with higher status.⁷⁰ Finally, unusual occurrences, such as spirits that killed persons, could result in a rearrangement of family relationships, in part due to the need for substitute care-givers.⁷¹ These issues are generally no longer a matter of concern to most Iñupiat.⁷²

d. *Grandparental adoption.* Grandparental adoption was, and continues to be, very common in Iñupiat society. In some communities, there is a tradition prescribing a gift of a couple's first born to the wife's parents, or allowing them to demand the child if they desire.⁷³ This is sometimes explained as a form of compensation to the parents for the loss of their daughter.⁷⁴

65. See Guemple, *supra* note 51, at 21-22.

66. BURCH, *supra* note 61, at 58-61.

67. Guemple, *supra* note 51, at 31. This was also a primary reason for so-called "wife trading," or, as anthropologist Albert Heinrich more descriptively (and probably more accurately) terms it, "spouse adoption." Spouse adoption, like the adoption of children, served to augment kin relationships, since the partners had continuing relationships with each other and, in addition, their children were viewed as siblings. Heinrich (1955), *supra* note 54, at 133-47; see also Lawrence Hennigh, *Functions and Limitations of Alaskan Eskimo Wife Trading*, 23 ARCTIC 24 (1970); PAUL GREEN (AKNIK), I AM ESKIMO: AKNIK MY NAME 45 (Alaska Northwest Pub. Co. 1959) (providing a brief and informative inside perspective with a set of brief, illustrated autobiographical essays written by an Iñupiat man born near Kotzebue, Alaska in 1901).

68. Guemple, *supra* note 51, at 32; KJELLSTRÖM, *supra* note 54, at 182.

69. KJELLSTRÖM, *supra* note 54, at 182.

70. Guemple, *supra* note 51, at 30-31.

71. See ANDERSON, *supra* note 54, at 97-98.

72. Guemple, *supra* note 51, at 71-72.

73. BURCH, *supra* note 61, at 129-30, 165; Guemple, *supra* note 51, at 39; see also Fainberg, *supra* note 63, at 254. The author has personally seen many instances of grandparental adoption in the Seward Peninsula and on St. Lawrence Island (the latter, while Siberian Yupik rather than Iñupiat in culture, shares many values and practices discussed here). For instance, a young mother in Sa-

There are also labor concerns analogous to those of younger families: older persons whose children are grown need to acquire children to help with the day-to-day work, and thus provide for and maintain the household.⁷⁵ Conversely, in some cases grandparents are seen as appropriate adopters because, unlike the parents who are involved in day-to-day labor demanding much of their time and effort, older persons are often free to care for children or have more resources with which to do so.⁷⁶ Thus, a child may be left with grandparents, either temporarily or permanently, due to the parents' need to do work incompatible with caring for small children.⁷⁷

Finally, in the case of those who are too old to do other kinds of work, responsibility for caring for children justifies the continued expenditure of family and community resources to support community elders.⁷⁸ Likewise, it offers psychological benefits by making older persons feel young and useful. Adoption is sometimes described as returning an older person, particularly a woman, to an earlier point in her life cycle, i.e., to the stage when she was bearing and caring for her own young children, or as placing a woman on the same generational level as her own daughters.⁷⁹

While in most communities there remains a sense that "consanguines belong together,"⁸⁰ there also exist tensions within families because grandparents feel they are obliged to care for grandchildren even though they do not have the economic or physical resources to do so.⁸¹ This resentment can be explained in part by the reasons why a grandparent may need to sometimes care for a child, such as a parent's substance abuse or incarceration, rather

voonga, St. Lawrence Island, then pregnant with her fourth child, told the author of how, when her first child was born, she and her (now-)husband had intended to give her child to her parents, in deference to the custom there of giving the first born to the wife's parents. They did not do so, however, because, on seeing their daughter, they loved her so much that they could not bear to part from her. This explanation appears to have been accepted by the mother's parents.

74. Fainberg, *supra* note 63, at 254.

75. See KJELLSTRÖM, *supra* note 54, at 33.

76. Barbara A. Bodenhorn, "The Animals Come to Me, They Know I Share": Iñupiaq Kinship, Changing Economic Relations and Enduring World Views on Alaska's North Slope 71-72, 78-82 (unpublished Ph.D. dissertation, Univ. of Cambridge 1989) (on file with the Dept. of Social Anthropology, Wolfson College, Univ. of Cambridge).

77. *Id.* at 71, 78.

78. Guemple, *supra* note 51, at 32-33.

79. *Id.* at 33.

80. Heinrich (1963), *supra* note 64, at 86.

81. Bodenhorn, *supra* note 76, at 71-72.

than traditional reasons such as hunting, trapping, or work, which are seen as proper and legitimate activities justifying the parent's absence.⁸²

3. *Reasons to offer a child for adoption.* There are various reasons why an Iñupiat family would offer a child for adoption. Unlike mainstream American culture, illegitimacy is not frequently offered as a reason for adoption in Iñupiat society. Illegitimacy did not really exist as a concept among the Iñupiat until the influence of Christian missionaries,⁸³ and even then the Iñupiat did not accept the Western view of illegitimacy.⁸⁴ All children were viewed as wanted and desirable. Moreover, a woman's worth was increased by the proof of her fertility.⁸⁵ Ordinarily, the mother would remain with her parents, who would formally or informally adopt the child as another form of grandparental adoption.⁸⁶

a. *Promise or obligation.* In traditional Iñupiat society, adoptions were often arranged prior to the birth or even the conception of a child.⁸⁷ The arrangement was seen as contractual, though the contract might be subject to rescission or renegotiation until the child was actually given to the adoptive family.⁸⁸ Likewise, the traditional social expectation of giving the couple's first-born to the mother's parents might be seen as a promise or obligation.⁸⁹ As noted above, in some communities these obligations still remain.

b. *Disruption of the family.* A second reason, and one that may seem both familiar and foreign, is disruption in the family unit. Because the husband-wife-child(ren) unit was necessary for economic stability, when either of the spousal roles became vacant

82. *Id.*

83. BURCH, *supra* note 61, at 45-46.

84. Guemple, *supra* note 51, at 78-81; Irma Honigman & John Honigman, *Child Rearing Patterns Among the Great Whale River Eskimo* 2(1), ANTH. PAPERS OF THE UNIV. OF ALASKA 31, 46 (1953); CHANCE, *supra* note 41, at 111 (noting that couples frequently did not marry until after the birth of their first child); ANDERSON, *supra* note 54, at 59, 71, 100 (same).

85. See KJELLSTRÖM, *supra* note 54, at 182; Guemple, *supra* note 51, at 79.

86. Guemple, *supra* note 51, at 79.

87. *Id.* at 10; HARRISON ROBERTSON THORNTON, *AMONG THE ESKIMOS OF WALES, ALASKA 1890-93* at 91 (Johns Hopkins 1931).

88. See Guemple, *supra* note 51, at 10, 14-15, 24 (noting that once a child had been given in adoption, revocation or rescission was normally not available, even where the child was ill-treated). Guemple also notes that the parents usually relied on community pressure in the form of gossip, resorting to an effort to reclaim the child only if this was ineffective and community support was unequivocal. *Id.* at 23.

89. See *id.* at 39.

through death or divorce, the absence would often be cured by a reformation of the family unit.⁹⁰ This often meant adoption of children by relatives, including grandparents.⁹¹ Widowed or divorced wives sometimes returned to their natal families, and there would be a *de facto* adoption of children by the grandparents, since the parental relationship is defined largely by who is a provider and who a dependent.⁹² Because children generally go with the mother, a widowed man might be forced to offer his children in adoption as well.⁹³ Alternatively, he might either quickly remarry, or he might adopt an older girl to act in the female head-of household role.⁹⁴ Finally, children who are orphaned are dependent on adoption for a new family relationship.⁹⁵

c. *Economic distress or ratio of workers to dependents.* Traditionally, the economic status, or the ratio of providers to dependents, and the gender ratio of the providers within the family might lead to a decision to offer a child in adoption.⁹⁶ This tradition continues into the present: economic distress within the family may still prompt adoptions. The character of such situations has been changed somewhat by the availability of public aid.⁹⁷ However, public aid hardly offers a luxuriant standard of living, and many families still rely on traditional subsistence activities to meet their needs.

In the case of an illegitimate birth, the decision of whether to offer a child in adoption may be affected by the age and educational status of the mother. A mother who is young, and particularly one who wishes to complete her schooling, may choose to give

90. *Id.* at 26-28; KJELLSTRÖM, *supra* note 54, at 197-98; BURCH, *supra* note 61, at 165.

91. ANDERSON, *supra* note 54, at 59.

92. *See* Guemple, *supra* note 51, at 55-56; Honigman, *supra* note 84, at 46. In general, any dependent in the household is regarded as the child of the head of the household. *Id.* at 79-80. Thus, for example, the child of a mother who lives with her parents might automatically be “adopted” by the grandparents. *Id.*

93. *See id.* at 60.

94. *Id.* at 27, 56-57. The latter solution is an odd one, even within the society, because as the girl got older, she might become the sexual partner of the father, and thus take on the full wife position rather than simply female head-of-household. *Id.*

95. *See id.* at 27-28, 46-52; *see also* ANDERSON, *supra* note 54, at 104. The orphan is traditionally viewed as being in a very precarious position in Iñupiaq society. Guemple, *supra* note 51, at 46-52.

96. *Id.* at 25, 34; Fainberg, *supra* note 63, at 253 (noting that while this was a legitimate reason, the more common situation was a pre-arranged adoption for kinship-alliance reasons).

97. Guemple, *supra* note 51, at 69-70.

her child in adoption, often to her parents, in order to continue her education. In this case, the relationship is defined in part by the provider/dependent distinction, since the natal mother and the child are both dependents of the child's grandparents. In such a case, while the natal mother would likely continue to live with her parents, the child might well be considered to have been adopted by her parents.⁹⁸ Similarly, a couple's ability to set up an independent household might in part determine the status of their child, since, if they live in another household, the child might be considered the child of the heads of the household per the traditional provider/dependent distinction.⁹⁹

Finally, schooling of children has historically been an important part of determining family living arrangements because children who were not schooled in the village were often adopted or fostered, formally or informally, by families who lived near schools.¹⁰⁰ This reason has largely disappeared because of the Alaska Supreme Court's 1975 decision in *Hootch v. Alaska State-Operated School System*,¹⁰¹ holding that attending a school within his or her district of residence is a child's fundamental right under the Alaska State Constitution.¹⁰²

d. *Sickness or failure to bond.* There are various influences upon the relationship between the parents and the child. Sickness of the child was sometimes seen as an incompatibility between child and parents prompting an adoption. Likewise, sickness of a child adopted at birth might be seen as a basis for revoking the adoption since the child appeared to be incompatible with the adoptive family.¹⁰³ Also, the parent(s) might simply fail to bond with or experience love for a child, sometimes described as "soul-incompatibility,"¹⁰⁴ which might prompt a spontaneous adoption at the time of birth.¹⁰⁵

e. *Child-initiated adoptions.* Perhaps the Iñupiaq adoption practice most notably different from that of the American tradition is child-initiated adoptions. Such adoptions were initiated by children who expressed a preference to live with another family or

98. *Id.* at 55.

99. *Id.*

100. See CHANCE, *supra* note 41, at 123.

101. 536 P.2d 793, 806 (Alaska 1975).

102. *Id.* at 806.

103. Guemple, *supra* note 51, at 23-24.

104. *Id.* at 10-11, 13 (describing one instance in which "a mother took one look at her child and decided that she would not keep it").

105. *Id.* at 10-11 (noting that in such cases, the question of who adopts the child generally depends upon who is close at hand).

simply began living with another family, generally relatives.¹⁰⁶ This reflects an important aspect of the Iñupiaq world-view:

Because of the manner in which Inuit formulate the “nature” of people . . . it is plausible to believe that children can exercise a rational choice of who their parents ought to be. Accordingly, a child can take up residence with another family, effectively adopting them; and the new family can then approach the natal family asking that the child be “given” in adoption.

* * *

Inuit attribute to the young considerably more volition than we do, and they recognize it as their right to make choices about living arrangements. In brief, children are treated as wholly formed persons much of the time—not as “minors.”¹⁰⁷

This suggests that, when jurisdiction is exercised by a state rather than a tribal court, it would be appropriate for the state court to accord substantial weight to the wishes of the child, including a young child, in accordance with the child’s traditional cultural right to assert such a preference.

B. Iñupiaq Adoption Practices

Both the means of arranging an adoptive relationship and the effect of an adoption in traditional Iñupiaq society were substantially different from those in the American tradition. In Iñupiaq society, the basis for an adoption agreement was generally contractual. In addition, both natal and adoptive relationships were considered permanent. Moreover, the child’s social ties were augmented rather than altered after adoption. Conversely, the distinction between adoption and fosterage was, and continues to be, much more fluid than in American practice, particularly where economic, work/subsistence, or child preference reasons prompt the child’s transfer from one family to another.

Modern Iñupiaq adoption customs and practices are increasingly less formal than in the traditional period, particularly when gift exchange and alliance concerns were a central part of adoption and when familial obligations held greater psychological and actual

106. BURCH, *supra* note 61, at 131. This practice was accepted at least into the 1960s. The author knows of one family in which two girls simply came to live with the family of a White fish and game agent, and were raised by him without any formalized adoption or fosterage proceeding, but with the knowledge and consent of the family and community. *See also* Bodenhorn, *supra* note 76, at 65; Guemple, *supra* note 51, at 43.

107. Guemple, *supra* note 51, at 30, 42 (noting that a child may initiate a return to his natal family); *see also* Hippler & Conn, *supra* note 39, at 17-18 (emphasizing the Eskimo importance placed on one’s individuality).

power over members of the community.¹⁰⁸ Nevertheless, the presumed openness and continuation of relationships, the community and social status practices, and the assumptions described for the traditional period are still relevant. In addition, the respective roles of customary and legal adoption are important considerations, as is the role of the tribal council in effecting adoptions within the tribe.

1. *The jural basis of Iñupiaq adoption.* Adoption in Iñupiaq society was traditionally a contractual relationship arranged between the natal and adoptive parents, generally prior to the child's birth.¹⁰⁹ As noted above, such agreements generally were within kin groups and served to strengthen existing kinship ties, or sometimes to create new ones, rather than being primarily in response to a disruption in the family.

While legal adoption proceedings have grown more important in Alaska Native villages,¹¹⁰ a simple agreement between the parties or *de facto* adoption is still common.¹¹¹ So long as the agreement is mutual and all parties remain content with the situation, this is sufficient. However, should the parties become dissatisfied with the arrangement, an enforceable order has several advantages: (1) it can protect the best interests of the child, particularly the interest in continuity of care; (2) it can protect the interests of the adoptive parent(s) by assuring them that their custody is legally enforceable, both against natal parent(s) or other prospective adoptive parent(s); and (3) it ensures that the adoptive parent(s) have the legal right to make decisions about issues such as medical care and schooling for the child.

In most Alaska Native villages, tribal councils serve as the tribal courts. As a result, such councils are placed in a difficult position if a formalized adoption is contested. A council is not truly analogous to a court, and the traditional reluctance to impose the will of an individual, or a small group, upon another remains. However, the group does have the advantage of its numbers, since "no single Eskimo ha[s] to take responsibility for this overt intervention."¹¹² Nevertheless, due to the small and intimate nature of

108. Guemple, *supra* note 51, at 66-67.

109. *Id.* at 9-15; Fainberg, *supra* note 63, at 253 (noting that adoption regularly occurred shortly after birth).

110. BURCH, *supra* note 61, at 131; Guemple, *supra* note 51, at 69.

111. Guemple, *supra* note 51, at 67-69.

112. Hippler & Conn, *supra* note 39, at 31-44.

Alaska Native villages¹¹³ and the pervasive family relationships between members, social and familial relations can be strained by tribal council intervention in contested proceedings.

Tribal councils also often encounter difficulty in exercising jurisdiction and in persuading state courts and agencies to recognize and enforce their decrees. The Alaska Supreme Court has exacerbated this problem by applying a comity analysis to tribal court decisions rather than a full faith and credit analysis. Thus, tribal councils may feel that attempting to exert jurisdiction is a losing proposition and simply choose not to attempt to do so.¹¹⁴

2. *Openness and a continued relationship.* Although attitudes and practices are slowly changing, American law adoptions have generally been characterized by anonymous transfers and complete severance of ties between the natal parents and the child. In traditional Iñupiaq society, the situation has been the opposite: adoptions generally take place between families who know each other and often are related to each other.¹¹⁵ Moreover, there is no severance of the child's relationship with the natal family; indeed, the child remains a member of *both* families, and the adoption does not sever or substitute relationships, but rather strengthens and aug-

113. Populations in villages range between approximately 150 and 750 persons. *The Region's Population*, at <http://www.kawerak.org/csd/population.html> (last visited Jun. 12, 2001); *This is NANA: The Villages*, at <http://www.nana.com/villages.html> (last visited June 12, 2001). Principal villages such as Nome, Kotzebue, and Barrow have populations of a few thousand. *This is NANA: The Villages*, at <http://www.nana.com/villages.html> (last visited June 12, 2001). In the principal villages, perhaps one-half to three-quarters of the inhabitants are Native, whereas in the outlying villages the percentage of Native inhabitants nears 100%. *Id.* For example, Gambell and Savoonga (Siberian Yupik villages on St. Lawrence Island) have 653 and 652 residents, respectively, Wales has 154, and Little Diomedes 133. *Id.*

114. For example, the author has been involved, on and off (on a volunteer basis), in assisting an adoptive family in a case in which an adoption was decreed by a tribal court (with the mother's consent) shortly after the child's birth, but which was challenged by the father in state court on due process grounds. The case has now been in the state court system for more than three years. Moreover, the parties are contesting the issue of personal jurisdiction, since the father is not a member of the tribe that entered the adoption decree. The situation is further complicated by the fact that neither parent is seeking custody; instead, the battle for the child is between the mother's cousins and the father's parents. Situations like this present a discouraging prospect for tribal councils seeking to exert jurisdiction in future child welfare proceedings.

115. BURCH, *supra* note 61, at 129-30.

ments them.¹¹⁶ The ICWA takes an intermediate approach by permitting anonymity but mandating release of information sufficient to establish or retain the child's tribal membership(s).¹¹⁷

Furthermore, Iñupiaq ideas of kinship and relatedness differ somewhat from those of mainstream American culture. While blood relationships are important in determining who is kin, a blood relationship is neither necessary nor sufficient to establish whether a person ought to be considered a kinsman. Affinal relationships, including adoptive relationships, are considered every bit as "real" as blood relationships for kinship purposes.¹¹⁸ On the other hand, a consanguine or affinal relationship serves only as a *potential* basis for kinship.¹¹⁹ More than a simple blood relationship is required to acknowledge a relationship. Interaction between the individuals in the context of a familial relationship, that is, acting in conformity with the social expectations for persons in that relationship, serves to "maintain" or "activate" that relationship.¹²⁰ This concept of maintenance or activation of a relationship underscores the importance of placing Iñupiaq children within their communities, and preferably with relatives.¹²¹ In fact, this is mandated by the ICWA in the absence of good cause to depart from those preferences¹²² because without that continued "face-to-face contact," a child may be in danger of losing kinship relationships or having to work later to re-establish them.¹²³ This is particularly important in light of the high value placed on familial relationships in Iñupiaq society and their significance in contributing to an individual's happiness and satisfaction.¹²⁴

3. *Fluidity in the fosterage-adoption continuum.* Due to the frequent and informal nature of the movement of children between households, the distinction in American law between fosterage and

116. *Id.*; Heinrich (1963), *supra* note 64, at 85; Heinrich (1955), *supra* note 54, at 65. Burch also notes that all persons to whom either a consanguine or affinal relationship (or both) can be traced are considered "family." BURCH, *supra* note 61, at 49.

117. 25 U.S.C. §§ 1917, 1951(b) (2000).

118. BURCH, *supra* note 61, at 50-61; Heinrich (1963), *supra* note 64, at 85.

119. Guemple, *supra* note 51, at 23.

120. *Id.*

121. *Id.*

122. 25 U.S.C. § 1915(a)-(b) (2000).

123. Guemple, *supra* note 51, at 23.

124. BURCH, *supra* note 61, at 229-33. Even today, family relationships are essential to the maintenance of cultural identity, since access to many Native goods, particularly food, is determined by a family relationships' position in the Native community. *Id.*

adoption is much more fluid in Iñupiaq society. Children may move from family to family based on (1) their parents' seasonal work; (2) the children's need to learn skills from other families; or (3) simply because they wish to do so.¹²⁵ In theory, unless there was an adoption agreement or a parent died, a transfer was considered temporary—a form of fosterage; however, where older children were concerned, a *de facto* permanent transfer sometimes took place.¹²⁶

IV. CONFLICTS BETWEEN ICWA AND IÑUPIAQ LAW WAYS

Iñupiaq law ways governing adoption present a stark contrast to state and federal law. The American legal model is premised on *substitution* of relationships rather than *augmentation*, and generally consists of a one-time transfer of custody, often between strangers, with no continuing relationship and, in many cases, anonymity between the parties. It is a legal transaction resulting in a re-formation of relationships rather than an interpersonal agreement resulting in broadened social ties. It is considered a private transaction, often taking place at or near birth, done in the ignorance of the community, instead of a public decision that presumes the knowledge and consent of the community. Generally, American adoption is conducted between persons who are unrelated rather than within an existing kin network. Intergenerational adoption is considered a remedy for a disruption in family life rather than, as in Iñupiaq society, a natural arrangement which is intrinsically desirable.

These contrasts are deep and pervasive and highlight the ways in which the American adoption system fails to address the needs of Iñupiaq families and communities. As noted above, Iñupiaq law ways are vastly different, both in their content and in the ways social control is exercised in a culture which balks at any person imposing his or her will on another. Sensitivity to these differences is essential to an effective use of the ICWA to protect the rights and effect the desires of Alaska Native parents and tribes. Likewise, tribal councils and their members need to be educated about the function and culture of the American legal system so that, when confronted with it, they can use it effectively to achieve their goals rather than having their goals determined or thwarted by the system.

125. Bodenhorn, *supra* note 76, at 65.

126. BURCH, *supra* note 61, at 165-66.

A. The Need for State Recognition of Tribal Action

Section 1911(d) of the ICWA provides:

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.¹²⁷

However, the reality is not so simple. Recognition of tribal court decrees is, of course, the *sine qua non* of vesting child welfare jurisdiction in tribes, for a decree without effect away from the reservation or outside of the village is of very limited utility. Moreover, since tribes may be dependent on state agencies for enforcement of these decrees, full faith and credit is a necessary component of giving those decrees practical effect. Full faith and credit for tribal decrees may also play an important role in determining adoptive or foster families' eligibility for social services and public aid.

In *John v. Baker*,¹²⁸ the Alaska Supreme Court interpreted and applied the federal Constitution's Full Faith and Credit Clause and its concomitant legislation very narrowly:¹²⁹ "Because Congress specifically distinguished between territories and possessions and Indian tribes in enacting the ICWA's full faith and credit clause, we do not view this legislation as extending the full faith and credit requirement to tribal judgments."¹³⁰ Instead, the court in *John* held that the rule of comity governed state recognition of tribal court action: "our courts should refrain from enforcing tribal court judgments if the tribal court lacked personal or subject matter jurisdiction" and should "afford no comity to proceedings in which any litigant is denied due process."¹³¹ The court, however, tempered this holding by noting:

127. 25 U.S.C. § 1911(d) (2000).

128. 982 P.2d 738 (Alaska 1999).

129. *Id.* at 747. The court did not apply ICWA or ICWA's full faith and credit provision because it found that ICWA did not apply where the dispute was between the natural parents of the child rather than between third parties. *Id.*

130. *Id.* at 762; see Johnson, *supra* note 7 (discussing this decision and its ramifications). The court further found that neither the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A(a) (2000), nor Alaska's enactment of the Uniform Child Custody Jurisdiction and Enforcement Act, ALASKA STAT. §§ 25.30.300 *et seq.* (Michie 2002), extended full faith and credit to tribal decisions in this situation. *Id.*

131. *Id.* at 763. This ruling effectively applies the same deference accorded to other states' family law decisions by the courts of many states.

The comity analysis is not an invitation for our courts to deny recognition to tribal judgments based on paternalistic notions of proper procedure. Instead, in deciding whether a party was denied due process, superior courts should strive to respect the cultural differences that influence tribal jurisprudence, as well as to recognize the practical limits experienced by smaller court systems.

Additionally, superior courts should not deny recognition to tribal judgments simply because they disagree with the outcome reached by the tribal judge or because they conclude that they could better resolve the dispute at issue. . . .

Although the comity analysis is not an invitation for superior courts to disregard tribal decisions with which they substantively disagree, the comity analysis, when properly applied, does allow state courts to refuse to enforce a tribal order that “is against the public policy of the United States or the forum state in which recognition is sought.”¹³²

Thus, in light of *John*, an Alaska tribal court would be well advised to comply with at least some aspects of procedural due process as interpreted by the Alaska courts in order to ensure that its judgments and decrees are upheld. This is particularly true where there is a dispute between the natal parents, which would make the ICWA inapplicable.¹³³ However, since *John* does not deal directly with tribal decrees under the ICWA, it is unclear how the court would treat a case in which the ICWA did apply, but in which due process was denied by the tribal court. It is possible that, in a case in which due process was denied, the court would apply the Indian Civil Rights Act to invalidate such a judgment or decree.¹³⁴

132. *Id.* at 763-64 (internal citations omitted).

133. *Id.* at 747.

134. See 25 U.S.C. § 1302 (2000). The Indian Civil Rights Act (“ICRA”), 25 U.S.C. §§ 1301-1341, provides, *inter alia*, that

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory proc-

B. Obstacles to Reassumption of Jurisdiction and Intervention

The problems with tribal reassumption of jurisdiction over and intervention in child welfare proceedings can be considered in three broad categories: (1) economic obstacles; (2) cultural obstacles; and (3) obstacles to state courts' attempts to apply tribal preferences.

1. *Economic obstacles.* There are numerous economic obstacles confronting parents and tribes in the ICWA proceedings. For example, while the ICWA provides for court-appointed counsel for parents or Indian custodians,¹³⁵ it does not provide for appointed counsel for tribes, either in particular proceedings or to assist them in planning to and petitioning to reassume jurisdiction under section 1918 of the ICWA. Similarly, ICWA does not consider the

ess for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and [or] a fine of \$ 5,000, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

25 U.S.C. § 1302. However, the ICRA's protections are somewhat illusory since the only remedy it provides for violations of these rights is a habeas corpus petition to the federal court. 25 U.S.C. § 1303 (2000) ("The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe."); *see also* Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). "In the absence here of any unequivocal expression of contrary legislative intent, we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit." *Id.* at 59. "Congress retains authority expressly to authorize civil actions for injunctive or other relief to redress violations of Section 1302, in the event that the tribes themselves prove deficient in applying and enforcing its substantive provisions. But unless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication of such actions in a federal forum would represent, we are constrained to find that § 1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers." *Id.* at 72. Nevertheless, if an Alaska court was faced with recognizing a judgment or decree that violated due process, it might use this provision, especially in combination with the *John* analysis, to invalidate the tribal court's action. Thus, tribal courts should be aware of this problem.

135. 25 U.S.C. § 1912(b) (2000).

cost of travel, which is often prohibitive for parents and tribes in Alaska Native villages, where the only means of travel is by air. Although Alaska courts allow telephonic appearances,¹³⁶ the interactions are inherently suboptimal, especially in child welfare cases. A tribe that wishes either to reassume jurisdiction or to exert existing jurisdiction must find a way to pay for the necessary administrative costs for jurisdiction and training costs for instituting jurisdiction effectively. Because tribes often do not exercise their rights due to lack of money or lack of knowledge of how to fulfill those rights, these obstacles, and others like them, continue to prevent the effective implementation of the ICWA.

2. *Cultural obstacles.* Another problem confronting both parents and tribes in the ICWA proceedings is their unfamiliarity with the American court system. There are two primary aspects to this lack of familiarity. First, the language barrier poses a problem. The ICWA requires that any voluntary agreement to termination of parental rights be presented to the parent(s) in a language he/she understands,¹³⁷ but does not provide for interpreters for involuntary proceedings, or for the substance of proceedings, whether voluntary or involuntary.

Second, the adversarial and formalized nature of the American court system is at odds with Iñupiat notions of dispute resolution. Traditionally, disputes in Iñupiaq society were resolved informally where possible and adversarial confrontations occurred only in the most extreme circumstances. Moreover, coercive control was largely absent, and thus, the concept of a court that can enter orders regarding interpersonal relationships and obligations is foreign, even if familiar.¹³⁸

3. *Obstacles to state courts' attempts to apply tribal preferences.* Just as Iñupiat parents and tribes have difficulty navigating the American court system, the courts themselves are often perplexed by the mandate to apply tribal cultural standards and orders of preference.¹³⁹ As well-intentioned as a court may be, if it cannot determine what tribal custom would dictate, it cannot be expected

136. ALASKA R. CIV. P. 99.

137. 25 U.S.C. § 1913(a) (2000).

138. Hippler & Conn, *supra* note 39, at 14-17.

139. See 25 U.S.C. § 1915(c)-(d) (2000); C.L. v. P.C.S., 17 P.3d 769, 777 (Alaska 2001); L.G. v. State, Dep't of Health & Soc. Servs., 14 P.3d 946, 951-55 (Alaska 2000); J.W. v. R.J., 951 P.2d 1206, 1213 (Alaska 1998); *In re T.N.F.*, 781 P.2d 973, 977-78 (Alaska 1989); *In re J.R.S.*, 690 P.2d 10, 18 (Alaska 1984); see generally *In re N.P.S.*, 868 P.2d 934 (Alaska 1994).

to consider that custom in making its own orders. Thus, such information must be made available to state courts so that they are able to follow the ICWA where they exert jurisdiction.

V. A PROPOSAL FOR CHANGE: ASSISTANCE IN REASSUMPTION OF JURISDICTION AND IN WORKING WITHIN THE STATE COURT MODEL FOR THE ICWA PROCEEDINGS

The ICWA is well-intentioned. However, with respect to the Iñupiat, it misses its mark. In order for the substantive and procedural rights accorded families and tribes to be meaningful, those rights need to be expanded to include assistance to tribes in the following areas: (1) reassumption of jurisdiction; (2) effective use of reassumed jurisdiction; and (3) exercise of tribal rights in state court proceedings. In addition, where state court proceedings are necessary, statements of tribal law ways need to be accessible to state courts so that they can apply both tribal values and placement preferences in compliance with the ICWA.

A. Reassumption of Jurisdiction under ICWA Sections 1918 and 1919

Ideally, jurisdiction in child welfare matters can be returned to tribes, preferably under the ICWA section 1918.¹⁴⁰ Section 1918 jurisdiction is preferable because it provides for permanent return of jurisdiction rather than revocable agreements or case-by-case transfers.¹⁴¹ This would provide a more stable arrangement for tribal courts and would provide a greater incentive for tribal jurists to develop skills and procedures for effective jurisdictional management.

140. 25 U.S.C. § 1918 (2000).

141. Section 1919 provides:

(a) Subject coverage. States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected. Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

25 U.S.C. § 1919 (2000); see *Native Vill. of Stevens v. Smith*, 770 F.2d 1486, 1498 (9th Cir. 1985) (discussing the application of this section in Alaska); *In re C.R.H.*, 29 P.3d 849, 852 (Alaska 2001) (dealing with the transfer of jurisdiction under ICWA section 1911).

To facilitate this process, forms should be developed for tribes seeking to file reassumption petitions, providing examples to follow without forcing tribes to seek costly legal counsel. Such a form packet might include a model petition and a set of statements, and/or a set of “fill-in-the-blank” questions on topics relevant to child welfare proceedings,¹⁴² and/or a model plan for the exercise of jurisdiction, along with a set of instructions on how to complete the forms. In addition, assistance should be made available through the Secretary of Interior’s Office, the BIA,¹⁴³ or regional Native non-profit organizations.¹⁴⁴ With such assistance, tribes wishing to make applications would not be deterred by the difficulties in complying with the requirements of filing the petition. Such assistance should be funded through grants from the Departments of Interior and Health and Human Services as provided by the ICWA sections 1931-33.¹⁴⁵

B. Effective Use of Reassumed Jurisdiction

Reassumption of jurisdiction is desirable in the long term. However, the unfortunate fact is that, even if jurisdiction were immediately returned, many Alaska tribes would be ill-equipped to exercise it. Consequently, in addition to assistance in filing petitions, tribal councils need help in designing mechanisms that allow them to exert their jurisdiction effectively once they reacquire it. This support should include assistance in designing and imple-

142. This author envisions a form analogous to the Parenting Agreement provided by the Alaska Court System for use in divorce and dissolution proceedings, but with choices appropriate for a tribal court making plans to exercise jurisdiction. Alaska Court Form DR-475, *available at* <http://www.state.ak.us/courts/forms.htm> (last visited March 15, 2004).

143. The Secretary of Interior is responsible for processing petitions for re-assumption of jurisdiction. 25 U.S.C. §§ 1903(11), 1918 (2000).

144. The Native non-profits in Alaska often do offer such assistance through their tribal development or legal departments.

145. 25 U.S.C. §§ 1931-33 (2000). In particular, the statute authorized the Secretary of Interior to make grants to tribes and organizations for

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

* * *

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

§ 1931(a)(5)-(6), (8). Funding may also be available under the Indian Tribal Justice Act, 25 U.S.C. §§ 3601 *et seq.* (2000).

menting (1) a semi-formalized process that is in keeping both with American procedural requirements and with traditional tribal law ways, but with a minimum of red tape and legalese; (2) a simple but effective method of record-keeping;¹⁴⁶ and (3) a simple process for recording tribally administered proceedings with the state in order to ensure that the full faith and credit provisions of the ICWA are used to their fullest effect. As noted above, these again could be funded through grants from the Secretaries of Interior and Health and Human Services.¹⁴⁷

C. Education of Tribes in Exerting Tribal Rights in State Courts

Maintaining its emphasis on tribes, Indian parents, and their children, the ICWA provides a statutory right for the tribe to intervene at any point in state termination proceedings involving a child who is a member of the tribe or who is eligible for membership in the tribe.¹⁴⁸ However, for this right to be meaningful, tribes must both be aware of its existence and understand the means of invoking it.¹⁴⁹ Thus, tribes must be educated not only about the existence of this right, but also about the process for exercising it, and how it can be used to protect tribal interests in child welfare proceedings. In addition, the costs of participation should be mitigated where possible and/or funding for such participation should be provided by federal or state grants or judicial orders, such as for appointment of counsel.

D. Assistance to State Courts Applying Tribal Customs

Alaska state court judges have shown their sensitivity to the ICWA's choice of law provisions requiring them to apply tribal

146. One approach is offered by Canada's (primarily Native) Nunavut province which has enacted such a process in its "Aboriginal Custom Adoption Recognition Act." 26 R.S.N.W.T. §§ 1-9 (1994); N.W.T. Reg. R-085-95 §§ 1-5 and accompanying schedules.

147. 25 U.S.C. §§ 1931-33.

148. 25 U.S.C. § 1911(c) (2000).

149. See *In re J.R.S.*, 690 P.2d 10, 15-16 (Alaska 1984) (drawing a clear distinction between proceedings for termination of parental rights and those for adoptions and holding that, in voluntary proceedings, the right does not apply).

The Act . . . distinguishes between "adoptive placement" and "termination of parental rights"; only in the latter case does § 1911(c) support intervention. . . . If Congress believed that a tribe which had intervened in a termination proceeding would automatically be allowed to participate in an adoption proceeding, the Act it passed does not reflect this belief.

Id. However, the court also found that the lack of a *right* of intervention did not constitute a *bar* to intervention, and that the trial court's refusal to allow intervention was, due to the tribe's substantial interest, reversible error. *Id.* at 14-19.

customs, but have so far been uncertain as to the content of those customs and have not been provided with a clear way to discern either the traditional or current tribal views on child welfare matters.¹⁵⁰

For those tribes electing not to reassume jurisdiction, a well-informed state judiciary is crucial to making the ICWA effective in safeguarding tribal interests. Thus, tribes that do not reassume jurisdiction, and even those that do, should be offered assistance in developing documentary information to be presented to state courts hearing ICWA proceedings involving their members. This information should include both a statement of tribal law ways relating to adoption and fosterage situations—*i.e.*, a summary of relevant tribal law¹⁵¹ and a statement of the tribe's placement preferences to be followed per section 1915(c).¹⁵² This would allow a state court to follow the mandates to consider tribal placement preferences and social and cultural standards, as required by statute,¹⁵³ without forcing the court to conduct anthropological research in order to do so.

VI. CONCLUSION

This Article offers only a brief consideration of the problems the ICWA poses for Alaska Native tribes, and for only one of the many groups of Alaska Natives. It is hoped that it will serve as an invitation and inspiration to others to investigate the customs and problems facing other Native groups. In addition, this author hopes that Iñupiat tribes will themselves take this work and correct and expand it to reflect their specific views, as an aid to both their own tribal courts and to state courts hearing cases involving their members.

The author has illustrated the problems as she sees them, drawing from anthropological work, cases applying the ICWA, and

150. See *C.L. v. P.C.S.*, 17 P.3d 769, 777 (Alaska 2001); *L.G. v. State, Dep't of Health & Soc. Servs.*, 14 P.3d 946, 951-55 (Alaska 2000); *J.W. v. R.J.*, 951 P.2d 1206, 1213 (Alaska 1998); *In re T.N.F.*, 781 P.2d 973, 977-78 (Alaska 1989); *In re J.R.S.*, 690 P.2d at 18; see generally *In re N.P.S.*, 868 P.2d 934 (Alaska 1994).

151. This too, could be facilitated by providing a model set of statements that could be selected and modified to suit the tribes purposes, such as those provided in the Parenting Agreement. While this would provide a less-than-complete picture, it often would be a great help to a state court faced with an ICWA case, since otherwise it might have little or no information available to it.

152. 25 U.S.C. § 1915(c) (2000). A mechanism for filing these with the court could be developed so that, even where a tribe did not intervene, the court would have access to this information.

153. 25 U.S.C. § 1915(c)-(d).

her own work with Alaska Natives in the Seward Peninsula. It is with great respect for those people and their customs, and with a deep conviction that they should have control over their own affairs, that this author offers what ideally will be the opening gambit in a discussion. It is hoped that this will spur a process that will no doubt be long, but which is crucial to the continued existence of Alaska Native tribes as sovereign entities.