

# Legal Volumes from Arctic College's Interviewing Inuit Elders Series

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Review Essay

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## Review Essay

## Legal Volumes from the Arctic College's *Interviewing Inuit Elders* Series<sup>1</sup>

PAUL GROARKE<sup>2</sup>

INTERVIEWING INUIT ELDERS is an overlooked series of softcover books that provides a written record of the oral Inuit tradition. All five books in the series are available in Inuktitut and English. The first three volumes are also available in French. The series is apparently intended for Inuit students and consists largely, as the name suggests, of conversations with elders.

The series is also of interest to ethnographers and legal anthropologists. The first volume, simply entitled *Introduction*, acquaints us with the mythological origins of the Inuit tradition.<sup>3</sup> The stories and songs in the volume also highlight its pantheism, which provides a contrast to the division of the spiritual, material, and social worlds of our own Western intellectual tradition. One of the main themes of the series is that traditional Inuit law cannot be understood without knowledge of the culture from which it derives. Accordingly, the entire series provides a background to the study of this law.

Other aspects of the cultural and legal traditions of the Inuit are covered in the third and fifth volumes, which are dedicated to *Childrearing Practices*<sup>4</sup> and

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1. Review essay of Mariano Aupilaarjuk *et al.*, *Perspectives on Traditional Law*, vol. 2, *Interviewing Inuit Elders*, ed. by Jarich Oosten, Frédéric Laugrand & Wim Rasing (Iqaluit: Nunavut Arctic College, 1999) 237 pages [Aupilaarjuk *et al.*, *Perspectives*]; Mariano Aupilaarjuk *et al.*, *Cosmology and Shamanism*, vol. 4, *Interviewing Inuit Elders*, ed. by Bernard Saladin D'Anglure (Iqaluit: Nunavut Arctic College, 2001) 262 pages [Aupilaarjuk *et al.*, *Cosmology*].
  2. Endowed Professor of Criminology and Criminal Justice, St. Thomas University, Fredericton.
  3. Saullu Nakasuk *et al.*, *Introduction*, vol. 1, *Interviewing Inuit Elders*, ed. by Jarich Oosten & Frédéric Laugrand (Iqaluit: Nunavut Arctic College, 1999) 213 pages.
  4. Naqi Ekho & Uqsuralik Ottokie, *Childrearing Practices*, vol. 3, *Interviewing Inuit Elders*, ed. by Jean Briggs (Iqaluit: Nunavut Arctic College, 2000) 139 pages.

*Perspectives on Traditional Health*.<sup>5</sup> Since there was no clean distinction between law and custom in traditional Inuit society, there was a legal aspect to all facets of community life. However, the second and fourth volumes in the series, *Perspectives on Traditional Law* and *Cosmology and Shamanism*, are of particular legal interest.

## I. PERSPECTIVES ON TRADITIONAL LAW

Volume two, the volume on traditional law, is based on the material that was put together for two courses delivered at the Arctic College in Nunavut in 1997 and 1998.<sup>6</sup> The first course was part of a program that introduced the students to the principles of Canadian law, as well as to their own traditional law. The students were also given the opportunity to interview Inuit elders. This is in keeping with a wisdom tradition among the Inuit, which helped to maintain order in the community.

The idea behind the second course was that law and other mechanisms of social control cannot be viewed in isolation from the broader culture. The introduction describes the second course in greater detail:

In this course the focus was not on practices and beliefs equivalent to a Western system of law. A separation of principles of social control from principles of control by outside forces (such as game, weather, and spirits) is artificial with respect to Inuit culture. Therefore, the facilitators focused on the question of how Inuit dealt with problems which in *qallunaat* [southern] society are usually dealt with by law.<sup>7</sup>

This was clearly the right decision.

The second course apparently took the form of an inquiry into four areas of interest: murder; the role of elders, campleaders, and shamans in the system; the rules of family life, which might be classified as a form of private law; and the use of storytelling in setting rules and guiding behaviour.<sup>8</sup> These can all be considered aspects of the legal system that governed the daily life of the Inuit, and they provide the basis for the second part of the book.

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5. Ilisapi Ootoova *et al.*, *Perspectives on Traditional Health*, vol. 5, *Interviewing Inuit Elders*, ed. by Michèle Therrien & Frédéric Laugrand (Iqaluit: Nunavut Arctic College, 2001) 328 pages.

6. Aupilaarjuk *et al.*, *Perspectives*, *supra* note 1 at 7-8.

7. *Ibid.* at 10.

8. *Ibid.*

## A. THE CONCEPT OF LAW

The editors are obviously aware of the precedents in legal anthropology, where there has been a heated debate as to the proper characterization of aboriginal and tribal law. The most well-known discussion of this issue is probably found in Leopold Pospíšil's *Anthropology of Law*, where Pospíšil struggles to provide a satisfactory definition of law.<sup>9</sup> Although there are many currents of thought in anthropological literature, one of the main schools of thought holds that tribal and customary law are culturally unique and can only be understood in the specific cultural context in which they occur. This view seems to provide the philosophical backdrop to the series.

One of the problems with this position is that it does not deal with the more fundamental philosophical issue raised by the oral Inuit tradition. There is the question of whether law exists outside the political framework provided by government. This was the major theoretical controversy in early legal anthropology. In 1934, for example, H. Ian Hogbin rejected "the supposed absence of law in primitive society" and investigated whether religion can provide the sense of obligation that compels us to follow social rules.<sup>10</sup>

This controversy also explains a long-standing historical interest in the Inuit, which extends back to their original contact with European explorers. Early anthropologists were fascinated with the Inuit, legally and politically, because they appeared to have no formal mechanism of government, or, at least, no positive law. This explains the tendency to minimize the legal traditions of the Inuit in the work of anthropologists like E. Adamson Hoebel, who was unable to accept the notion that "law," in the full sense of the term, could exist in the absence of a fully developed legal system. Thus, he stated in 1954 that the Inuit had only "[r]udimentary [l]aw in a [p]rimitive [a]narchy."<sup>11</sup>

Sally Falk Moore has written that a more recent generation of anthropologists has been essentially forced to adopt a "legal pluralism" that discounts the

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9. *Anthropology of Law: A Comparative Theory* (New York: Harper & Row, 1971). See especially chapter 2 at 11 ("Form of Law").

10. *Law and Order in Polynesia: A Study of Primitive Legal Institutions* (New York: Cooper Square, 1972) at 76.

11. E. Adamson Hoebel, "The Eskimo: Rudimentary Law in a Primitive Anarchy (chapter 5)" in *The Law of Primitive Man: A Study in Comparative Legal Dynamics* (Cambridge: Harvard University Press, 2006) 67 at 67ff.

idea that the state is the sole source of our legal obligations.<sup>12</sup> This is certainly where the philosophical issues lie. Legal anthropology has moved on, however, without recognizing that the major source of such judgments lies in the successful appropriation of the word “law” by the legal positivists, which has given rise to the “analytical jurisprudence” that still holds sway in our law schools.

The problem with the model of law provided by legal positivism—as set out, originally, by Jeremy Bentham and John Austin, and later by H.L.A. Hart—in the present instance is that it leaves us without the conceptual resources to explain the presence of law in traditional Inuit society. Yet, there is law, and it is evident, on reading these accounts, that the Inuit were governed by law rather than by politics. One is reminded of Frederick Pollock’s statement that “not only law, but law with a good deal of formality, has existed before the State had any adequate means of compelling its observance and, indeed, before there was any regular process of enforcement at all.”<sup>13</sup>

## B. THE INUIT CONCEPT OF LAW

The introduction to *Perspectives on Traditional Law* contains a significant discussion of the Inuit concept of law. Three fundamental terms are explained: *piqujait*, *maligait*, and *tirigusuusiit*. These terms have no equivalents in English and can only be roughly translated.

*Piqujaq* is usually translated as “customary law,” but is better expressed as that “which is asked to be done” by someone—a reference that recognizes the role of elders and leaders in preserving and maintaining the law.<sup>14</sup> *Maligaaq* is often used to describe our own statutory law, since it carries the same sense of compulsion. But there are important shades of meaning here. In the context of traditional law, *maligaaq* emphasizes “the obligation to obey,” rather than “the wish to obey.”<sup>15</sup> Finally, *tirigusuusiit* refers to prohibitions that must be followed with respect to game and other elements in the larger world. These

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12. Sally Falk Moore, “Certainties Undone: Fifty Turbulent Years of Legal Anthropology, 1949-1999” (2001) 7 J. Roy. Anthro. Inst. 95.

13. *A First Book of Jurisprudence for Students of the Common Law* (New York: Macmillan, 1896) at 23.

14. Aupilaarjuk *et al.*, *Perspectives*, *supra* note 1 at 1.

15. *Ibid.* at 2.

prohibitions have cosmological significance and create a far more insistent sense of obligation than our own idea of law.<sup>16</sup>

It is in the enforcement of the traditional law that we run into the most obvious difficulty from the perspective of our own legal system. This is partly because the sanctions for the violation of these laws were often found in the natural and supernatural worlds. One elder stated, "Whether people break the *qallunaat* laws or the Inuit *maligait* the consequences are the same. A person will shorten his or her life."<sup>17</sup> Wrongdoing had consequences for the following generations, who might die early as a result of a wrong committed by an ancestor.

It is notable that there was no discussion in these interviews on the rational basis of the traditional law. Nor was the obligation to follow the law a matter of debate. As Imaruittuq said: "In the old days a *maligaq* was not allowed to be broken. Nobody was arrested, but it was scary. Even though you knew you were not going to be incarcerated, the consequences might be that the camp could be wiped out through starvation..."<sup>18</sup> To dismiss this as superstition is simplistic and culturally arrogant. Who are we to judge the spiritual insights and developed instincts of a people who survived in such a hostile environment?

### C. PROHIBITIONS AND DUTIES

It is evident that the Inuit had few, if any, of the formal legal mechanisms that we take for granted. In spite of this, these two books bear living testimony to the fact that they had a rich and complex body of law to meet their social needs. The first chapter of *Perspectives on Traditional Law* provides an analysis of *tirigusuusit* and *maligait*; the second chapter discusses the rules that apply to dealings with animals; and the third chapter provides the rules for dealing with wrongdoers. The word "rules" is rather weak in this context, since the fundamental feature of these rules is that they are compulsory. They are laws.

The analysis in the first chapter sets out the conceptual framework of traditional Inuit law. "*Tirigusungniit* are the rules relating to *pittailiniq*, things one should refrain from."<sup>19</sup> This might be picking berries in a certain place, at a certain time; or it might be a personal prohibition that prevents a particular person from

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16. *Ibid.*

17. *Ibid.* at 13.

18. *Ibid.* at 180.

19. *Ibid.* at 16.

drinking in a particular place. The source of these prohibitions is not entirely clear. I have already mentioned that the *maligait* exist, whether we acknowledge them or not. As one elder stated: "The *maligait* of the Inuit are not on paper. They are inside people's heads and they will not disappear or be torn to pieces. Even if a person dies, the *maligait* will not disappear. It is part of a person. It is what makes a person strong."<sup>20</sup>

The concept of law was constantly internalized in aboriginal and tribal societies. The idea that an individual might disagree with a particular prescription was foreign to this system of law.

The traditional law manifested itself in a wide range of legal duties, which took their compulsory character primarily from the internal compulsion of the person who followed them. These duties ranged from the obligation to give meat to a sick person to the obligation to visit the graves of ancestors. There were also natural and geophysical duties, including that an *iglu* must be built to face in a certain direction. Although there is a normative element to these practices, the term "norm" fails to capture their mandatory nature.

The sensible world includes animals, who are aware of what is done to them. The caribou have feelings and it was wrong to laugh at them. It was disrespectful to the animal to leave part of the carcass behind. Killing for fun was prohibited. The bones left by wolves or bears must be turned. The bones of land animals must not be thrown in the water. "Even insects should be treated with respect."<sup>21</sup> Animals could also take revenge upon people; if a hunter mistreated an animal and injured it, he might suffer a corresponding injury.

There were strong prohibitions against stealing. There were also obligations to respect the elderly. Laughing at an older person or causing an older person distress might itself cause sickness or disability. Aupilaarjuk, an elder, stated that "the deterrents and consequences [in the traditional law] were extremely severe."<sup>22</sup> This was more successful than the threat of incarceration, which "just makes things worse."<sup>23</sup> External coercion was no substitute for the internal belief that there were severe consequences for wrongdoings.

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20. *Ibid.* at 14.

21. *Ibid.* at 38.

22. *Ibid.* at 28.

23. *Ibid.* at 29.

The interviews conducted during the second course established that the concept of ownership in traditional Inuit society was relatively flexible. However, the chapter dealing with this subject is rather meagre, as the legal core of ownership and the right to use the land are not explained. There was, nevertheless, recognition of personal ownership with regard to items, such as clothing, guns, and other personal items used by an individual, which are “really yours.”<sup>24</sup> There was a concept of borrowing. If a person took something and acknowledged it, the taking was no longer considered stealing. The reason for this was apparently that a reciprocal obligation was legally created once the taking was openly acknowledged.

It seems clear that the traditional law was based on duties rather than rights. A hunter had an obligation to give the elders meat and hides before giving them to anyone else. There was also an obligation to give women certain parts of an animal. These obligations varied, but followed familiar social patterns. The traditional law of the Inuit required generosity, though there was always a problem with “stingy people.”<sup>25</sup> Yet again, however, the traditional law was backed by the cosmological beliefs of the Inuit, which held that stingy people would be less successful in their hunting.

#### D. THE ROLE OF THE *ANGAKKUQ*, ELDERS, AND LEADERS

The shaman, or *angakkuq*, managed the forces that manifest themselves in the rules and prohibitions that make up the traditional law. There was a recurring problem with *angakkuit* who used their powers for evil purposes, and the term was eventually debased by missionaries, who apparently translated it as “Satan.” However, the *angakkuq* was a legal officer and an inquisitor who was called upon to determine the source of sickness, starvation, or other ills—all of which resulted from breaking the laws. The work of an *angakkuq* was to bring out the wrongs that a person committed and repair the damage that this had caused. Though there were elements of magic and symbolism, the system was primarily confessional. It was the disclosure that mattered.

There is a temptation to make an analogy here with the practice of psychiatry or psychology. An elder stated: “Long ago while we still followed Inuit beliefs, we were told to confess or we would be placing ourselves in danger. I think this

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24. *Ibid.* at 141.

25. *Ibid.* at 136-38.

practice should still be followed today.”<sup>26</sup> The psycho-somatic elements in the traditional law deserve further investigation and should not be trivialized.

The healing practices of the *angakkuq* were in the nature of a trial. The usual method of dealing with wrongdoers, however, was to instruct them. Someone who committed adultery or stole something would be counseled. For a first time wrongdoer, the leader and elders would talk to the person, speaking of the good in the person and the community’s attachment to them. A second round of counseling would be more severe, and so on. “The process was not an easy one, for people took care not to hurt each other emotionally. Therefore they did not do this frivolously.”<sup>27</sup>

In a serious matter, all the elders—both men and women, as in shamanic practices—might participate in the counseling. “Women’s minds have always been stronger. It is still like that today.”<sup>28</sup> The Inuit developed a legal vocabulary to deal with this process. “*Misiqqaq* is the word we would use to describe someone who is denying something even though all the facts indicate otherwise. The person who committed the offence would be asked again whether or not they committed the wrong-doing. It would be obvious that the person was denying it.”<sup>29</sup>

One of the roles of a leader was to openly confront someone who might be nursing a grudge or contemplating a murder.<sup>30</sup> Again, there are psychiatric parallels. Nutaraaluk said:

Once, I was in a state of rage because my wife had been beaten with a rifle. I started to think that I would give that person a rifle so I would have a better reason to kill him. I wanted to kill him with my bare hands. What stopped me was that, I didn’t want my nephew to witness such an awful incident.<sup>31</sup>

There appears to be a remarkable degree of forgiveness in traditional Inuit society, but this would be misplaced. It was the existence and preservation of the community that was uppermost in the legal system. For example:

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26. *Ibid.* at 23.

27. *Ibid.* at 46.

28. *Ibid.* at 45.

29. *Ibid.* at 47.

30. *Ibid.* at 158.

31. *Ibid.* at 159.

If the person was remorseful of his act and wished to be part of the community, then you could let him live and be a part of the camp again. This is a case where our systems collide. *Qallunaat* treat a person that has committed a murder the same way, whether they are remorseful for their actions or whether they will probably commit another murder.<sup>32</sup>

The word “remorseful” is misleading. Rather, the essence of the Inuit system was that a person who acknowledged the killing, and did not repress the idea or thought, was not considered a danger.

The introduction of Christianity appears to have devastated the traditional law—mostly because it prohibited shamanic practices. As the volume explains:

Before Christianity, the *angakkuit* were able to make the causes of the wrong-doings visible. When the missionaries arrived they said that Christianity was beautiful, and it would lead to an excellent life. Only part of Christianity was relevant to our culture. Since Christianity has come into our lives we are miserable and unhappy inside. If Christianity had not preached that our culture was evil, maybe a lot of the people that committed suicide would still be alive today.<sup>33</sup>

It also introduced a new, more punitive element into the system of justice.

## E. PRESERVING THE COMMUNITY

The primary purpose of the traditional law was to preserve the community. The most serious legal sanction—which was reserved principally, but not entirely, for murderers—was banishment. The elders see the modern institution of imprisonment in the same terms. This kind of sanction was a last resort, however, as it was a preventative measure rather than a legal sanction. Murderers were treated with suspicion, since they might murder again. “Today’s way of incarcerating those offenders is appropriate, because then they are no longer a threat to the community.”<sup>34</sup> This notion of prevention had its harsher side. We are told that a person who married someone in contravention of local customs would be killed.

Although there is a chapter on murder—which is a Western rather than an Inuit concept—the traditional law recognized different forms of killing, which were dealt with in many ways. Murderers were sometimes killed, not as a form of punishment, but because they represented a danger to others. The second part of

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32. *Ibid.* at 160.

33. *Ibid.* at 50.

34. *Ibid.* at 53.

the book describes an informal execution of a man who, after hearing voices, had killed three people. The story of the execution—the killer was thrown from a cliff into a river with his hands tied behind his back—makes it clear that the sentence was only carried out because he continued to hear voices. There is a sense in the book that the killing of a human being was always regrettable, but principally because it wreaked suffering on other people. The relations between people were fundamental in this form of society.

The darker side of traditional life—and the importance of the relations within the community—was also apparent in the absence of restrictions on personal violence. Self-help was available to the relatives of someone who had been killed, since killing in revenge was not an offence. As one elder explained:

If someone took revenge on another for committing a murder, there was nothing the community could do against the person who took revenge. It's the same with children, if you had a child that instigated a fight and another child paid him back and made your child cry, there is nothing you could do about it. You couldn't come to their defence.<sup>35</sup>

This is common to many tribal societies and is not retribution, so much as an attempt to restore the balance in the cosmological order.

There was also a general belief that someone who killed another person might die in the same way. This is illustrated by a story of a man who was killed by a boy at play, in an eerie recreation of the circumstances in which he had killed the boy's father.<sup>36</sup> The traditional law is full of fatalism and the sense that the natural and supernatural forces will intervene to right the laws that have been violated.

Despite the fact that revenge was not an offence, it was discouraged to avoid the possibility of feuds. Although the elders do not discuss this aspect of traditional life, feuds provide the necessary backdrop to any understanding of this body of law. Thus, we are told that Imarittuq's grandfather gave up on the attempt to make one of his sons a better person. "Because his son did not want to change, my grandfather said that if there was anyone who felt they needed to take revenge on his son, they were free to do so."<sup>37</sup> This was considered a drastic action in most aboriginal and tribal communities, since it is one's membership in

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35. *Ibid.* at 48.

36. *Ibid.* at 163.

37. *Ibid.* at 44.

the family or clan—and the fear of feuds—that protects one from the personal violence of other people.

The purpose of the traditional law, like tribal law more generally, was to maintain social harmony and cohesion. It is therefore no surprise that it was more successful in this regard than our own system of statutory law. The elders express the view that our contemporary system of justice is based on “intimidation, fear and shame.”<sup>38</sup> Offenders are made to feel alienated, which the traditional practices prevented. “They feel badly so they make things worse for themselves.”<sup>39</sup> The primary means of keeping human behaviour within proper bounds in traditional Inuit society was based on the integration of the offender into the community. The contemporary system of justice individualizes wrong and, therefore, in the traditional view, perpetuates it.

The use of songs and storytelling to maintain the law is reviewed in the volume. Stories were adapted to meet the exigencies of a particular time or set of circumstances and to impart and explain rules of conduct. Susan Enuaraq, a student, wrote: “Some argue that the Inuit had no legal system, but I think that the Inuit had their own ways of preventing wrong-doings. *Unikkaagtuat* [stories passed from generation to generation] were part of that.”<sup>40</sup> As examples of folklore tradition, these stories provide explanations of the violence in the natural world and various aspects of our natural and social being. One story explains the origins of the vagina and birth canal.

## II. COSMOLOGY AND SHAMANISM

The discussion of shamanism is taken up again in *Cosmology and Shamanism*, the fourth volume in the series. It is undoubtedly the more conceptually challenging of the two legal volumes, as it crosses disciplinary boundaries. It forces legal theorists and lawyers to deal with the reality of a legal and social system that is completely enmeshed in larger cosmological and religious views. The role of the priest, lawyer, judge, and doctor all come together seamlessly in the shamanic practices of the Inuit.

The editor of *Cosmology and Shamanism* is Dr. Bernard Saladin d’Anglure, a celebrated ethnologist who worked with Claude Lévi-Strauss. Dr. Saladin

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38. *Ibid.* at 51.

39. *Ibid.*

40. *Ibid.* at 179.

d'Anglure is the well-known author of *Être et renaitre inuit: homme, femme ou chamane*, which provides a compelling account of the shamanic tradition in the arctic.<sup>41</sup> He has worked among the Inuit since 1956 and established the international journal of Inuit studies, *Études Inuit Studies*, in 1977.<sup>42</sup> There are, however, social and political sides to his ethnographic interests. In the introduction to *Cosmology and Shamanism*, Dr. Saladin d'Anglure argues that the increasing social problems among the Inuit can be linked to the loss of "their value system, their ideology, their traditional religion, and their last shamans."<sup>43</sup> This is a clear call for a return to the shamanic tradition.

#### A. LATER ACCOUNTS

The book is based on material collected for a course that Dr. Saladin d'Anglure taught at the Arctic College in 1998. Divided into three parts, the first part was recorded by the students, who interviewed elders born in the 1930s, after the general conversion to Christianity. However, the oral tradition is still alive in these interviews, which demonstrates that at least some of the elements of shamanism survived the conversion. Many Inuit elders still believe that the old social order can be integrated with Christianity and the contemporary world.

There is a general discussion of the cosmological views that stood behind the traditional Inuit legal order. There is a chapter on the powers of the *angakkuq*, the shaman, who could take the form of animals, for example, or enter some half-world and travel, through the air, to visit other camps. This is *ilimmaqtuqtuq*, a practice where the *angakkuq* was tightly bound with ropes and rose into the *qila*, or sky, and visited the living or the dead.<sup>44</sup> The shamans' deep knowledge of the cosmological law gave them shamanic powers, which were sometimes abused.

The traditional law of the Inuit extended into the supernatural world. There were spirits of animals and people, but also dwarfs, giants, half-human spirits, beings made up of people and animals, or the numberless dead, who had entered animals or other people. The distinction that Dr. Saladin d'Anglure makes between

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41. (Paris: Gallimard, 2006).

42. See e.g. Yves Bonnefoy, ed., *Dictionnaire des mythologies et des religions des sociétés traditionnelles et du monde antique* (Paris: Flammarion, 1981) s.v. "Esquimaux. La mythologie des Inuit de l'arctique central nord-américain" by Bernard Saladin d'Anglure.

43. Aupilaarjuk et al., *Cosmology*, supra note 1 at 2.

44. *Ibid.* at 84-85.

the visible and the invisible worlds is misleading, since there was no clear distinction between the possible worlds. The demarcation between a physical and a non-physical world is a relatively modern, western division, and it fails to capture the full reality of Inuit existence.

The natural world apparently inhabits the same legal world as the Inuit and is subject to the customary rules. There is no avoiding the fact that bestiality, for example, was a social problem in Inuit society. The Inuit believed that bestiality would shorten a man's life. They also believed, however, that a dog might have "offspring that were half-human" as a result. The interesting observation is that the dogs were aware that this violated the natural law and would eat these offspring—"because the dogs were very, very embarrassed about them."<sup>45</sup>

The legal importance of this account—which is subordinated to Dr. Saladin d'Anglure's anthropological interests—lies within the traditional legal system. It is impossible to separate the Inuit cosmology and law. Cosmological rules influence the fabric that holds the entire system together. Though this is a complex and sometimes very amorphous proposition, it withstands analysis, which tells us that the law must be followed.

A hunter who prays for game, for example, by *qinngaq*, shouting a prayer, should choose a place without tracks. If there were tracks, there was always a possibility that someone had done something that they should not have done. They might have violated the traditional law, which would have disastrous results for themselves or others. In one of the more revealing passages in this context, Aupilaarjuk, an elder, stated: "There is a reason behind all the *piusiit*, our Inuit customs. I don't know the *maligait* of the *qallunaat* [the Southerners], but I do know it would be a lot easier if people followed them."<sup>46</sup> On a practical level, this can be read as a rueful comment on the problems that attend upon a legal system that separates law from the internal mechanisms of obligation and the moral, religious, and cultural basis of conduct.

## B. EARLIER ACCOUNTS

The second part of volume four covers the same themes as the first part. It is based, however, on interviews that the editor conducted with elders in Iglulik in 1972. The purpose of these interviews was to investigate the cosmological views

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45. Aupilaarjuk *et al.*, *Perspectives*, *supra* note 1 at 152.

46. Aupilaarjuk *et al.*, *Cosmology*, *supra* note 1 at 52.

of the Inuit in the early 1900s, at a time when Europeans began to inquire into them. As one might expect, given Dr. Saladin d'Anglure's interests, this goes much further in exploring the social role of the shaman in Inuit society than the first part of the book. These accounts are full of sound historical information; the prose is polished and the reading is lively and full of human interest.

The shamanic process was confessional and psycho-somatic. There is an account of a famous seance, in which Nanuraq, herself a shaman, was healed.<sup>47</sup> Although it is a translation, the word used, in diagnosing the source of her illness, was "offenses."<sup>48</sup> Again, the level of intimate detail is remarkable. Nanuraq confessed that she had broken the taboos that apply, for example, to menstruating women and someone who touched the dead. Slowly, she disclosed a history of hidden wrongs.

The *angakkuq* was not satisfied:

"Ha, if the patient remains obstinate and will not confess her own misdeeds, then the sickness will gain the upper hand, and she will not get well. The sickness is yet in her body, and the offences still plague her. Let her speak for herself, let her speak out."<sup>49</sup>

But it was the gathered community that decides that she should be forgiven, and who responded, typically: "[l]et her be forgiven,"<sup>50</sup> or "[l]et her be released from this burden, from this cause, from this source of illness,"<sup>51</sup> followed by cries of "[t]auva!"<sup>52</sup> [there it goes!].

The elders describe *qilaniq*, a form of divination used for healing, in which the head or another part of the body would become heavy or light, in response to the answer.<sup>53</sup> There is an open question in legal anthropology that asks whether these kinds of practices—and much simpler practices, such as buf-feting, a kind of trial by blows—can be considered legal processes. Those who scorn this idea have forgotten that the common law was based, first, on trial by battle and, later, by ordeal.

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47. *Ibid.* at 107-29.

48. *Ibid.* at 111.

49. *Ibid.* at 125.

50. *Ibid.* at 110.

51. *Ibid.* at 112.

52. *Ibid.*

53. *Ibid.* at 133-36.

There is a chapter entitled “The Private and Public Performances of the *Angakkuii*” and a chapter on the cosmological significance of shamanism and the abuse of the shaman’s powers, in *ilisiqsiniq*, or hexing. A shaman might be consulted to find a lost knife or to improve the weather, like a rainmaker. There are accounts of *makittarniq*, making predictions using bones; *irinaliuti*, the practice of incantations; *qinngarniq*, shouting prayers; and even *niliqsiniq*, the use of farting to blow the spirit of the *angakkuq* onto a person.<sup>54</sup> There is no prudishness in matters of sexuality and bodily functions that characterizes our own society.

It is probably impossible for us to fairly judge these matters. How can we speak authoritatively of the starvation that the Inuit faced, the spectre of cannibalism that went with it, or the dread of hunters lost in blinding weather? The best we can do is to recognize that the natural world plays a central part in these practices and understand how the moon, for example, might be consulted in the management of the relationships that maintain a harmonious balance in the cosmos.

The fundamental legal point, however, is easily grasped. The failure to meet a legal or religious obligation had natural and social repercussions. An omission by the group could itself be the cause of the disease or malady suffered by an individual. The complete integration of the individual into the natural, supernatural, and social worlds is fascinating to anyone interested in the development of our own legal system, which has developed on entirely different lines.

### C. AND THE STUDENTS

The third part of *Cosmology and Shamanism* is composed of student essays, which contain personal and secondary references, some of them scholarly, and a few brief interviews. Dr. Saladin d’Anglure’s justification for including these essays in the book is clear: “They are much more than essays. They are the accounts of a new generation of urban Inuit who have spent almost half their lives at school and are searching for their identity in a rapidly changing environment.”<sup>55</sup>

There are a few striking passages in the essays, such as the statement from the shaman Ava from Ilulik, in 1922, who found it incomprehensible that our exis-

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54. For an account of *niliqsiniq*, see *ibid.* at 144-46.

55. *Ibid.* at 197.

tence should simply end with our death.<sup>56</sup> This is really an ancient philosophical argument, which holds that being cannot become non-being.

The students discussed the significance of names and alluded to the relatively complex relationships between family members, the powers of shamans, and their tutelage.<sup>57</sup> There is a discussion of their repertoire of spiritual practices, in which they allowed themselves to be harpooned, or even shot, in order to placate spirits, appease forces, or find the location of game. “The shaman epitomized the coming together of all the antagonisms of the cosmos.”<sup>58</sup> It is hard to say how much of this is coming from their instructors. The reality, though, is that these essays are too fragmented to provide a satisfying account of the traditional law. One is left wanting a more advanced and coherent discussion.

### III. INUIT AND MODERN CONCEPTS OF JUSTICE

Although there is ample material in these books to interest anyone—if only because they are a part of a storytelling tradition and have considerable literary interest—it is necessary to comment on their legal significance. The two legal volumes raise a number of fundamental issues that force us to reflect on the failures of our own legal system—particularly in the field of criminal law.

The most striking feature of the traditional legal process is its remarkable simplicity. The principal mechanism of justice in Inuit society was truth-telling. “People have always been told to confess,” one elder said. “I told you before about the three women who did not confess, that put their whole camp through hunger.”<sup>59</sup> “Today, lying occurs more than it used to. . . . Today in our communities, people are lying a lot.”<sup>60</sup> It is immediately plain that the proper place of truth-telling in our own legal system has not been properly examined in the legal or theoretical literature.

This carries over into the general discussion of moral conduct. There was a remarkable absence of guilt and shame in the elders’ narratives. There is little sentimentality, and references to bestiality and incest are a matter of fact. The cure for personal and social ills laid in the simple act of acknowledgement. “If a

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56. *Ibid.* at 201.

57. *Ibid.* at 212-15.

58. *Ibid.* at 227.

59. Aupilaarjuk *et al.*, *Perspectives*, *supra* note 1 at 145.

60. *Ibid.* at 142.

person made a full confession they would live longer.”<sup>61</sup> One has to wonder what this says about the right to silence in our system of justice and the level of denial that permeates our social and political culture.

These books also teach us about the epistemological foundations of our own concept of law. The obvious conclusion on the theoretical side is that a secular model of law, based entirely on the idea of social control or the idea that law is “process” (to borrow from the title of a book by Sally Falk Moore), does not capture the full meaning of the word.<sup>62</sup> The programmatic and policy functions of law that seem so central in Western legal theories and have manifested themselves in the sociological preoccupations of theorists such as Roscoe Pound, may also have emptied the law of the belief system that puts a sense of obligation into legal rules.<sup>63</sup> The conversation of these elders is obvious with wisdom. It is impossible to face this without acknowledging that it may be our own mechanistic view of the world that fails to catch the complexity of being. The idea, on a practical level, that one can deal with violations of the *malagait* without accessing the world of the shamans seems utterly naive to these elders. Although it may be difficult to discuss the practical side of this from a vantage point outside their society, it is plain that our reliance on a rather simplistic positivist legal model misses a good deal. The limitations of the shallow rationalism that has replaced the older tradition are evident, as Dr. Saladin d’Anglure argues, in the social turmoil within contemporary Inuit society.

The books provide many other reasons to reflect upon the role of elders in the Inuit tradition. It is hard for an outsider to know the origins of many taboos, but the mere knowledge of the traditional law appears to have held an important place among the Inuit in preserving the natural, social, and supernatural orders. This knowledge was maintained by elders, in a dignified wisdom tradition that invested them with the responsibility to teach and inform others. Although there has been an attempt to re-establish the oral tradition, in the name of restorative justice, the reality is that this customary role is in danger of being lost.<sup>64</sup>

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61. Aupilaarjuk *et al.*, *Cosmology*, *supra* note 1 at 129.

62. Sally Falk Moore, *Law as Process: An Anthropological Approach* (London: Routledge and Kegan Paul, 1978).

63. See *e.g.* Roscoe Pound, *Social Control Through Law* (New Haven: Yale University Press, 1942).

64. See *e.g.* Jarich Oosten & Frédéric Laugrand, “*Qaujimajatuqangit* and Social Problems in

#### IV. PHYSICAL ASPECTS OF THE BOOKS

The physicalities of the series speak of their provenance. As a frontispiece for each volume, there is a map of the traditional Inuit territory, drawn on a spherical earth. The chapter headings are printed in bold at the bottom of the odd-numbered pages, which makes it easier to thumb through the book and find particular passages. This is offset, however, by the fact that there are no indexes. The production values of the publisher are also rather disappointing. The typesetting and typographical features of the books are reminiscent of a corporate or government publication, while the font varies, the glue is faulty, and the binding is poor. The deficiencies should have been corrected in the copy-editing process.

There is a list of references in each volume, with a glossary of Inuit terms. The individual glossaries differ, however, and readers may occasionally be forced to search for the meaning of a term in the glossary of another volume. From a scholarly perspective, at least, it would have been more sensible to treat the entire series as a single work and include maps, a glossary, a full index, a comprehensive bibliography, and other aides in a separate volume.

There are, however, redeeming features. The cover art for all five books is a black and white illustration by Lydia Jaypoody entitled "Man and Animals." This seems apt, as it is impossible to separate the human and natural worlds in Inuit law. The books also contain some interesting half-tones. *Perspectives on Traditional Law* has photographs of the students and elders who came together in the writing of the book. *Cosmology and Shamanism* has older historical photographs. There is one of a shaman, in 1905, bound with rope apparently practicing *ilimmaqtuqtut*.<sup>65</sup> Another from the same year shows *qilaniq*. There is a photograph of a man with *kigjugaq*, a tattoo between the eyes to protect someone who has killed a human or an *ijaraq*, a human-like spirit, from retaliation.<sup>66</sup> There are photographs of famous *angakkuut* and a number of drawings. One drawing shows coastal Inuit throwing "avatait, sealskin floats," to frighten the *ijiraq*, who believed that the Inuit were throwing boulders about.<sup>67</sup>

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Modern Inuit Society. An Elders Workshop on *Angakkuuniq*" (2002) 26 *Études Inuit Stud.* 17.

65. Aupilaarjuk *et al.*, *Cosmology*, *supra* note 1 at 85.

66. *Ibid.* at 62.

67. *Ibid.* at 61.

## V. CRITICISM

There is plenty of room for criticism. The plan of the collection is not entirely clear, since the individual books stand largely on their own. The publisher seems to have wrestled with the question of whether these should have been separate books or part of a larger series. The series would benefit from a more conventional arrangement, which would present this oral body of knowledge in a more systematic fashion.

There are additional concerns from a legal perspective. The ethnographic focus of the books—and the continual refrain that the students appreciated and learned from their elders—is no substitute for a systematic analysis of the law. The books come in too many parts, and the chapters and sections in each individual book are often disconnected. There is little of the synthesis that one would expect and want in an academic study of traditional Inuit law; it seems that this is still to come. The editors appear to have escaped the hard work of assembling the discrete parts of these books together in a single, more coherent whole, by simply relying on what was said.

The style of the books is conversational, as one would expect, and it may be a mistake to judge this series on the basis of accepted academic standards. Still, there is a certain lack of academic rigour, and the practices of traditional Inuit law have not been situated in the larger native and legal tradition. The narrative often moves abruptly and unpredictably from subject to subject. The commentary is sparse and scholars, at least, will find that they need more explanation. Despite the problems, there is some scholarly material and prefatory remarks, which provide some general commentary and situate the interviews in a broader context.

From an academic perspective, there is work that remains to be done. In spite of this, the account of traditional Inuit law in these two volumes is momentous and important. The Arctic College should be strongly encouraged to produce a definitive, hardcover volume on the traditional law, outside these ethnographic accounts, which addresses the interests of legal scholars more directly.

