

Traditional Aboriginal and Inuit judicial proceedings: a comparative approach

Abstract

Judicial procedures of the Inuit and Australian worlds are compared on the basis of a classification developed for the latter, which articulates three formal criteria (symmetry, moderation, designation). The classification proves to be relevant for the Inuit world as a whole and allows us to grasp its main characteristics. Beyond the well-known priority given by the latter to psychological and social aspects rather than physical sanctions, two essential features emerge. The first is the dichotomy between Alaska and the more eastern regions. The latter are marked by the almost total absence of collective designation procedures, in any form whatsoever, with the possible and rare exception of the regulated battle. This absence explains both that of warfare – at least, internal to the Inuit groups – and the low intensity of feud. Alaska, on the contrary, experienced several variants of collective procedures, including feud and judicial warfare strictly speaking.

Keywords

Australian Aborigines, Inuits, Law, Feud, Warfare

Introduction

Since the founding works of Malinowski (1926), Hoebel ([1954] 1979), Gluckman (1965) or Pospisil (1971) (without even going back to the 19th century), legal anthropology has undergone a spectacular development. Research, both theoretical and empirical, has multiplied, exploring an incalculable number of issues around cultural values, legal rules, the articulation between customary and modern law, as well as modes of conflict resolution (a list which is, of course, not exhaustive). It might therefore seem rash, if not pretentious, to propose, as this article does, an original classification of legal procedures, and to use it in the context of a comparative study - in the present case, between two sets of hunter-gatherer societies, namely the Australian and the Inuit worlds.

Indeed, on closer inspection, the many successes of legal anthropology cannot conceal the scale of the task that remains to be accomplished. Like the discipline as a whole in other fields, it has not succeeded in forging analytical tools that meet with consensus and that allow for an authentic comparative and classificatory approach - that is, an authentic science of societies. In the more specific field of law, to our knowledge, no real attempt has been made to develop a genuine framework of comparative universal law, which would allow for a rational organisation of all the provisions encountered in the various human societies. From this point of view, the famous outline undertaken by Hoebel has remained without any real posterity.

The approach proposed here does not concern, strictly speaking, the rules of law, i.e. those that organise social life and stipulate obligations and prohibitions with regard to material goods or other individuals. It focuses on what has been called, for want of a better term, legal procedures, i.e. the socially legitimate way of settling disputes. This approach was developed in a previous work based on a thorough survey of the literature concerning Australian Aboriginal societies (Darmangeat 2020a). Surprisingly, despite the vast amount of documentation available on them, no systematic study of their legal systems had ever been undertaken (Fison et Howitt 1880, 209-33; Wheeler 1910; Warner [1937] 1969, 144-79; Berndt et Berndt [1964] 1992, 336-66). Although some writings gave a more or less exhaustive list of the different ways in which justice could be administered, as well as the range of sanctions to which it had recourse, these had never been the subject of a coherent classification, which would reveal, behind the diversity of the modalities, the social logics that were at work. We therefore attempted to develop such a classification on the basis of criteria which, as we shall see, characterise both the form of these procedures and their social meaning.

It should be noted that this deliberately vague term “procedure” corresponds to the fact that in these societies, justice does not always distinguish between the determination of guilt and the actual sanction. This may be the case, for example, when an individual is executed by the community for breaking a ban on incest, or when he is subjected to corporal punishment according to customary rules, as compensation, at the hands of the party he had wronged. But duels, in particular, whether individual or collective, and which are a far from marginal mode of dispute resolution, are most often not primarily concerned with determining which party is in the right, and inflicting punishment on the other. Regardless of the outcome - in Australia, the violence used in these duels is strictly controlled - their main function seems to be to settle the dispute.

It should be added that the proposed approach, as far as Australia is concerned, makes it possible to identify more closely the relationship, often perceived but rarely made explicit, between the so-called 'feud' and war proper. War, in the full sense of the term, undoubtedly existed in many parts of the continent, but it largely, if not completely, escaped the usual motives: in no case was it fought for religious or political purposes. As for economic incentives, they seem to have been almost totally absent: the numerous data do not mention any plundering of goods, nor any subjugation of prisoners leading to demands for ransom, tribute, or putting them into dependence. Only a few territorial conquests seem to be attested, but it is not clear whether they were the cause of the conflict or merely a by-product of it. In fact, almost all of the warlike episodes recorded stem from disputes over women's rights or from acts of revenge. To paraphrase a famous maxim, the Australian war is almost entirely a continuation of justice by other means – a proximity that has been noted several times (Hodgkinson 1845, 236; Wheeler 1910, 130, 153; Berndt et Berndt [1964] 1992, 356).

The issue thus arises as to the validity of this analytical framework for other societies, starting with those also marked by the absence of formal political structures and by the marginal role played by material wealth. The Inuit as a whole imposes itself as an inescapable object of this questioning, all the more so since, unlike in Australia, the themes of law and justice have often attracted attention, even giving rise to some particularly detailed syntheses (in particular Rouland 1979; Patenaude 1989). Does the classification of legal proceedings developed on the basis of the Australian case apply to other comparable societies, and does it make it possible to reveal significant divergences and common points? Can the links between feud and war highlighted in Australia be compared with those prevailing elsewhere?

The comparison will be undertaken according to three series of interrogations, in increasing order of abstraction:

1. At the level of legal proceedings: which ones are common to both areas and which ones are specific to one or the other?
2. At the level of the categories of proceedings: for the three criteria organizing the chosen classification, are there combinations of values present in one area and not in the other?
3. At the most general level: do the two most fundamental principles identified in Aboriginal justice apply in the Inuit world? We will insist on the

phenomenon of war, present in the westernmost area, and we will examine to what extent it can also be related to its Australian counterpart.

1. Compared procedures

Drawing up an inventory of the legal procedures of a cultural area means choosing the desired degree of generality. An extreme position would consist of taking each concrete modality into consideration: for example, one would differentiate between a duel with fists and with knives; a death sentence inflicted by surprise and one in which the guilty party is executed in all conscience, etc. In itself, such a level of detail is obviously not without interest, but it is easy to understand that in such an approach, one would quickly be unable to see the wood for the trees. Conversely, by limiting oneself to asserting that Australian justice always acts by infringing on the physical integrity of its target, one would be stating a proposal that is certainly true, but far too globalizing and that would dilute the different ways in which this general spirit was expressed. In the inventory of Australian and Inuit procedures, we will therefore favor an intermediate degree of generality, chosen in such a way as to bring out the major characteristics of the two cultures.

The repertoire of Aboriginal justice proceedings can be reduced to the following four fundamental forms:

1. The duel, emphasizing that it is not limited to the confrontation between two individuals. It is particularly linked to regulated pitched battles, of which Australian ethnography provides numerous examples and which must therefore be seen as collective duels (or as a sum of individual duels).
2. Corporal punishment, excluding murder.
3. Penalty challenge (most often referred to in the ethnological literature under the inappropriate term of 'ordeal'), in which the offender has to face a group of armed executioners while trying to avoid the projectiles they throw at him or her.
4. Judicial assassination, which either falls under the heading of compensation, when it is carried out in order to balance a previous assassination, or under the death penalty, when it punishes a wrongdoing against the community. In Australia, the two main, if not unique, motives for the death penalty were religious fault and incest.

In practice, these four forms were declined in a dozen variants, depending in particular on whether they were aimed at a single individual or at several – an issue that will be addressed in the following section.

What about the Inuit world? The first point concerns the delimitation of the judicial domain, which has traditionally raised many difficulties in this area due to the informal nature of some of the social responses to conflict situations. Some authors (for instance van den Steenhoven 1959) have thus been tempted to reject all of these responses outside the law, while others have taken a more nuanced position (Rouland 1979). The very notion of sanction, often adopted as a legal criterion, is problematic.

An individual whose behavior was considered reprehensible was, for example, more or less strictly ostracized until he or she rectified it. Such a community reaction is also found in our own society, where family, friends or co-workers may refuse to speak to someone whose conduct, while not breaking any law, is nevertheless considered to be contrary to good morals. But where we make a clear distinction between mere social pressure and the punitive action of the law, the Inuit only establish a gradation.

Patenaude's synthesis (1989) thus distinguishes, in conflict resolution, formal procedures from informal methods. The former includes different forms of duels, banishment and murder. As for the latter, they range from simple gossip to ostracism, insult and mockery. Should these be considered as falling within the realm of justice? One will readily confess the impossibility of finding a satisfactory dividing line. However, it does not seem absurd to admit that in a small community where social relations play an essential role in daily survival, ostracism constitutes a genuine judicial sanction. One is surprised, however, not to find in the list drawn up by this author an institution so common among central Inuit and in western Greenland: public confession, where the offender acknowledges his wrongs in front of the whole community, thereby promising to rectify his behavior. As with ostracism, the judicial nature of this procedure could certainly be questioned; however, it seems to fall within the range of measures (in this case, formalized) by which the community, having established the existence of troublesome behavior, sought to put it to an end.

Ostracism, public confession or banishment, widely used in the Inuit world, were totally unknown in Australia. Conversely, among the Inuit, one finds no penalty challenge or corporal punishment – the case reported by Malaurie (2016, 222), of an unrepentant thief who had had all her hair pulled out to humiliate her, seems marginal, if not exceptional. In itself, the non-existence of the penalty challenge is probably not significant; after all, it can be seen as a simple 'sportive' variant of corporal punishment. However, a comparison between the two repertoires of judicial proceedings reveals a perfectly clear general orientation: while Australian justice strikes exclusively at bodies, Inuit justice is primarily aimed at minds (see table 1). This orientation has undoubtedly contributed to the debates on its perimeter: while no one doubts that driving a barbed lance into a thigh constitutes a sanction, let us repeat that things are much less simple with regard to public confession or ostracism. Various commentators (Patenaude 1989, 46; Rouland 1979, 29) have therefore supported the idea that Inuit justice seeks above all the restoration of social relations, and that punishment is only an ultimate means to this end. This appreciation should probably be put into perspective. To begin with, Australian corporal punishment, which according to this analysis should be equated with modern Western sanctions, was at least as much about restoring good relations by balancing the damage as it was about inflicting sanction in the strict sense of the word. The same is true of armed duels, which sometimes went so far as to impose equal damage on both sides and which, at least as much as asserting the rights of the winner, seem to be aimed at emptying the quarrel, as do our apologies and handshakes. The Inuit world, for its part, was all the less inclined to resolve conflicts through mere contrition when the fault was serious: the guilty party then risked losing its life.

Table 1 : Inuit and Aboriginal judicial procedures

		Inuit	
		Present	Absent
Australia	Present	Duel (physical) Assassination	Penalty challenge Corporal punishment
	Absent	Ostracism Public confession Banishment Song duel	Payments in wealth Deprivation of liberty

In any case, this preference of the Inuit community for psychological conflict resolution also marks the dueling procedures. In the central regions, these were carried out, in a classic manner, by head blows or fists, struck on the upper arms or on the temple. In Greenland and Alaska, however, the blows were supplemented or replaced in various ways by declamations. These songs, composed especially for the occasion, emphasized the faults and misdeeds of the opponent, and aimed to ensure victory by making him lose face in front of the assembly – “little, sharp words, like the wooden splinters which I hack off with my ax.” (Hoebel [1954] 1979, 93).

While it may seem trivial, one last essential point deserves to be noted: the Inuit judicial world, like the Aboriginal one, ignores both the deprivation of liberty and the compulsory transfer of property. This is all the more notable because, since the abolition of the death penalty, most of the sanctions imposed by our own judicial system fall into one or the other of these categories. Their absence in the two cultural areas discussed here must obviously be related to their social structures. While imprisonment is most likely typical of the state, the obligation to transfer property to repair a wrong reflects the importance of wealth in the social play. It is not surprising, therefore, that justice in societies with no state and no socially significant wealth ignores them. However, there remains an enigma to which we shall return: that of Alaska, where wealth had unquestionably emerged, engendering obvious socio-economic inequalities, without penetrating either the sphere of justice or that of war.

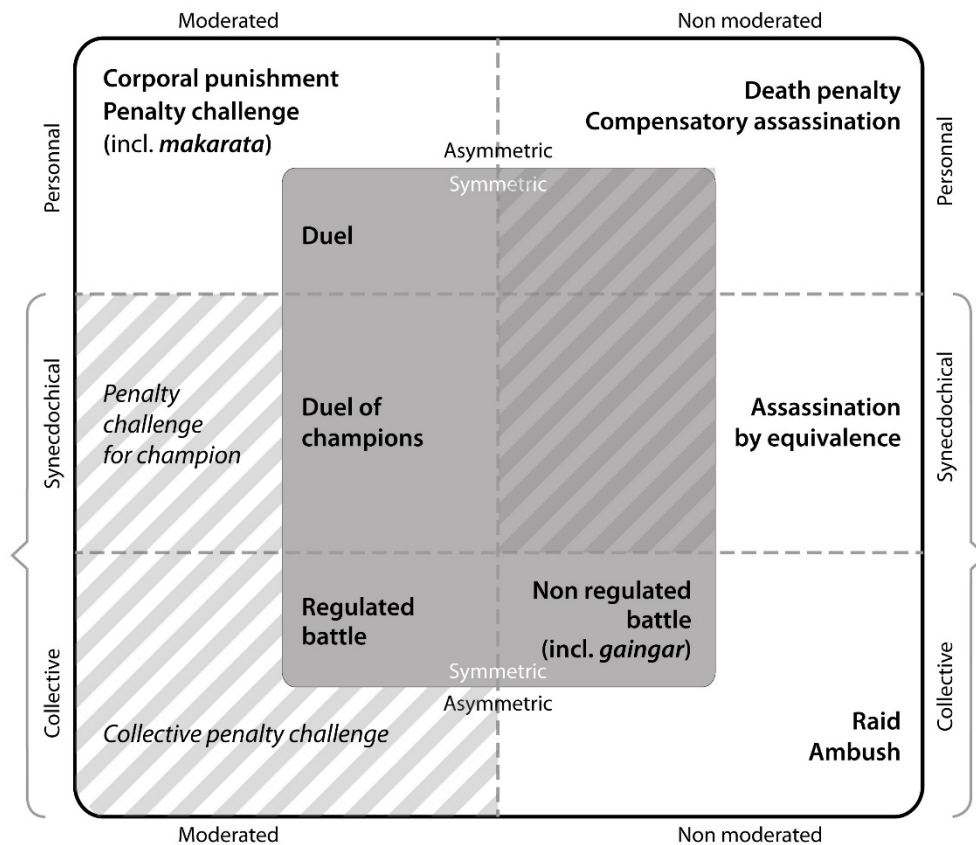
2. Classification and categories

As stated in the introduction, it is possible to go beyond a simple inventory and to organize legal proceedings according to three criteria that characterize both their form and the social context in which they are used. Two of them can take on two values, the last one admitting three. The classification thus defines twelve possible combinations. The three criteria are as follows:

1. **Symmetry:** a procedure is considered to be symmetrical when the parties in dispute proceed on an equal footing. Legally, this situation corresponds to a situation where rights are disputed. Conversely, in an asymmetrical procedure, one of the two parties, previously considered guilty, is placed in inferiority of means, with or without his consent.
2. **Moderation:** a procedure is moderated when rules limit its lethality. Moderation corresponds to the will to balance a prejudice that is itself moderate, or to that of attenuating the strict compensation of a more serious damage.
3. **Designation:** a procedure may be aimed at individuals in a personal or collective manner, depending on whether they are involved in the events on an individual basis or solely on the basis of their membership of a group. In the latter case, the designation is said to be plenary when it concerns all the members of the group, or synecdochical when it is restricted to a determined number of individuals. Typical cases of synecdochical designation are the duel between two champions, or the compensatory assassination targeting any member of the culprit's group. The distinction between plenary and synecdochical designation is essential, and it is undoubtedly a major mistake by Raymond Kelly (Kelly 2000) not to have perceived it. His concept of "social substitutability" is very close to the idea of collective designation. But if social substitutability is a necessary condition for war, it is by no means a sufficient condition, and many societies can in many ways practice this substitutability without waging war.

The representation of the different variants of the Australian procedures results in the Venn diagram below (Figure 1: rare procedures are italicized, and areas not or poorly represented are hatched).

FIGURE 1 : Classification of Australian procedures



The classification of the Inuit forms previously mentioned does not raise any particular difficulty: insult or ostracism correspond to asymmetrical, moderate and personal designation procedures. Banishment, whose outcome was almost always fatal, should be equated with the death penalty.

What about the existence of other forms?

1. Compensation assassination by equivalence

This form, in which one kills someone other than the murderer himself by postulating the equivalence of the life thus taken, is apparently found in all Inuit regions. One notices nevertheless that, outside of Alaska, this synecdochical designation remains so minimal that its reality can be seriously questioned. To begin with, one always seeks to kill first and foremost the culprit himself: it is only “failing that” (Rouland 1979, 57) that one attacks someone else. Equivalence is therefore only a second best, which is another way of saying that it is not really one. Secondly, the scope of this substitution “as a matter of collective responsibility” (Rouland 1979, 57) remains very limited. It never goes beyond the narrow circle of close relatives, in a defined order: ‘first and foremost his descendants: children, grandchildren, and only afterwards: brothers and other relatives. (If the culprit is a woman, she will be the object of vengeance, but it does not seem that she can be harmed as a relative).’ (Rouland 1979, 57)

From the central areas to Greenland, nothing can be observed similar to the Aranda expedition, which demanded the lives of three Ilauras in retaliation for acts of witchcraft, no matter who they were (B. Spencer et Gillen 1899, 490-92). It will therefore be concluded that, in the whole of this area, the forms of equivalence were too weak to be considered as such, and that the compensatory assassination was carried out on the sole basis of a personal designation.

This is in stark contrast to Alaska, where for example between the Malemut of the Gulf of Kotzebue and the Tinne of the interior:

“The desultory feud (...) partakes of the character of blood revenge, except that each side seeks to avenge the death of relatives or fellow tribesmen upon any of the opposing tribe” (Nelson 1900, 293, my highlights; See also Burch 2005)

2. Open battles, raids and ambushes

Here again, there is a very clear gap between the same two zones. Apart from Alaska, the Inuit world is virtually devoid of any form of collective confrontation. Armed conflicts involve only very small troops, and even then they almost never involve more than one individual. In the rare situations where a certain extension of the conflicts is perceptible, they always remain contained within narrow limits, both in terms of the numbers involved and the lethality of the fighting. Let us look at Irwin's synthesis about the central zone: admittedly, according to an informant of Balikci named Irkrowaktoq, a revenge expedition at the beginning of the 19th century would have resulted in ‘many’ deaths, without further precision – an episode that is clearly an exception or an exaggeration. All other data indicate that the maximum number of victims was ‘four, or three or two. Four was the most. The losers would be those with three or four deaths’ (Irwin 1990, 198). The same was true in Greenland, where murder was as rare as it was morally reprehensible. As for the war itself, it was ‘to their eyes incomprehensible and repulsive, a thing for which their language has no word’ (Nansen 1894, 162).

Certainly, it is known that the southern parts of the country were sometimes the scene of bloody clashes with neighboring Indian groups. The most famous episode is a massacre in 1771 of about twenty Copper Inuit men, women and children by their sworn enemies, the Dene, who were allied for the occasion with the Chipewyan. The raid was observed by the explorer Samuel Hearne, the original version of the story having unfortunately been lost. Further east, belligerent relations also prevailed with the Cree, who did not hesitate to raid slaves among the Inuit they attacked (Saladin d'Anglure 1984, 477, 499). There is no evidence to suggest that these hostilities were one-sided: it is possible, and even probable, that local Inuit would retaliate when they could. Regardless of their scale, however, these conflicts were confined to border areas and were unknown among Inuit groups themselves.

In comparison, Alaska presents a striking contrast. War, in its various forms, was omnipresent and culturally valued:

‘Young men were specifically trained to be warriors, and there was admiration for those who participated in larger-scale violence and were good killers. This was in contrast to the east, where there was no preparation or training for war among the young men; rather, skill as a hunter was revered above all and there was no exaltation of men who killed others.’ (Darwent et Darwent 2014, 187)

Above all, these recurring episodes of war occurred even within the same population, between subdivisions of linguistic and cultural groups that occupied their own territories. The most detailed case is that of the Iñupiat of the area known as NANA (Northwest Arctic Native Association), studied in detail by Burch (2005) for the first half of the 19th century. However, although the information available on them is much more incomplete, their Inuvialit neighbors, who lived further east, on the strait of the McKenzie River, suggest a similar configuration (Friesen 2012). The same is true for the Yupik of central Alaska, who are related to the Inuit and whose collective conflicts have been well documented by the Fienup-Riordan study (1994). We will return to these warlike episodes later, showing that, as in Australia, they were indeed a matter of the exercise of justice.

While the most common form was the raid, in which one attacked a village by surprise, trying to slaughter all its inhabitants, violent, pitched battles also occurred. These could involve dozens or even hundreds of participants.

“Apparently, these took place either when the animosity on both sides had reached such a high level that the combatants wanted to fight it out in the quickest way possible or when so many troops had been mustered that a sneak attack was not feasible.” (Burch 2005, 104).

Such open battles also existed among the Yupik. Starting with the use of throwing weapons after the troops had formed a line and copiously provoked each other, they continued in ruthless hand-to-hand combat:

“Surrender was not an option for the losers, for captives were not taken, but a single survivor was left alive to tell the tale. Although mutilation did not always follow a battle, successful warriors sometimes severed the heads and genitals of the corpses. This mutilation might have been related to the Yup'ik belief that to finally kill an opponent, especially one with supernatural powers, the body must be severed at the joints. If the body was not dismembered, the spirit of the dead might successfully reanimate the corpse and the fight begin all over again”. (Fienup-Riordan 1994, 331)

3. Regulated battles

The regulated battle, so common among Aborigines (and in other parts of the world), is almost unknown in the Inuit world. To my knowledge, the only mention of such a phenomenon is reported among the Netsilik of the Central Arctic by an informant named Itimangnerk:

“All would travel to the enemy’s place and, at a short distance from it, they would pitch camp: for the others, probably being unaware of their arrival, should be able to prepare themselves. Then, the revenging party would send forward an old man or old woman to find out whether the others were prepared. For those old ones, according to our customs, were never attacked. Thus the old woman asks them if they are ready to come outside. If so, the other party would advance and, while they were approaching each other, each would choose an opponent whom he considered his match in strength. They would shoot with bow and arrow; and if they were not many, they might fight with snow knives also. Harpoons for bear and muskox hunting were also used. Now, if one party had suffered, say four casualties or wounded, they would concede the victory and the winners would let the defeated go home.” (van Steenhoven, 1959, quoted by Irwin 1990, 212)

It is interesting to note that, as in the Australian case, not only does the regulated battle appear as a collective duel, but also tends to dissolve into a sum of individual duels.

4. Atypical duels?

Some duels evoked by the ethnography devoted to the Inuit show some features that raise the question of particularisms calling for a specific classification.

A first potentially deviant form is found in Baffin Island and Labrador, where Hoebel asserts that duels could have a fatal outcome, the winner apparently being entitled to finish off his defeated opponent (Hoebel 1941, 168). However, no original source is provided to support this a priori somewhat surprising assertion, which is not found in any other synthesis and which I have not been able to corroborate. Until further information is available, this information should therefore be considered erroneous.

Another problem arises in these duels where the confrontation clearly went beyond the person of the protagonists and where, through them, the joust involved collectivities. Sonne (1982) thus recalls that before a duel of songs, each family investigated the opponent in order to gather grievances that could be addressed to him. During the confrontation itself, which was always public, the reactions of the assembly influenced the morale of the protagonists. As Kleivan (1971) has already noted, this participation of the audience constituted a factor of inequality between the parties, favoring the one with the most supporters and relatives in the audience. The same scholar noted that in such cases, through the intermediary of duelists, it was actually communities that were opposed. These observations therefore raise the question of a possible synecdochical designation. However, this possibility must be ruled out: if, because of the solidarity they enjoyed, the protagonists became de facto champions of their group, there is no indication that they took part in the duel on any basis other than that of a personal quarrel. Incidentally, there is little evidence to suggest that duels were a means of resolving individual conflicts only in the central area, and that in the peripheral regions, collective dimensions took precedence (Eckett et Newmark 1980).

Finally, it is necessary to examine this, to say the least, astonishing institution in the central region, described by Boas in the following terms:

‘Their method of carrying on such a feud is quite foreign to our feelings. Strange as it may seem, a murderer will come to visit the relatives of his victim (though he knows that they are allowed to kill him in revenge) and will settle with them. He is kindly welcomed and sometimes lives quietly for weeks and months. Then he is suddenly challenged to a wrestling match (...), and if defeated is killed, or if victorious he may kill one of the opposite party, or when hunting he is suddenly attacked by his companions and slain.’ (Boas 1888, 582)

One does not know how to interpret such information, which contradicts everything else that we know. The regulated duel, which is always supposed to clear up disputes, is used here to determine which party can then legitimately execute the other. Moreover, the procedure not only gives a murderer the right to escape the vengeance of his victim's parents, but it also opens up the possibility of a second killing, whose logic is hardly discernible. From then on, one of two things is clear: either the facts reported have been distorted; or they are accurate, and we can only confess to being as perplexed as Boas himself.

Conclusion

The mapping of Inuit legal proceedings must therefore make a clear difference depending on the region under consideration. In Alaska, among the Iñupiat and Yupik, several procedures indicate the possibility of generalizing disputes to the level of entire groups, through synecdochical or collective designation (Figure 2). In the central regions and Greenland, on the other hand, these collective dimensions are so restricted that they must be regarded as absent (Figure 3).

FIGURE 2 : Inuit judicial procedures (Alaska)

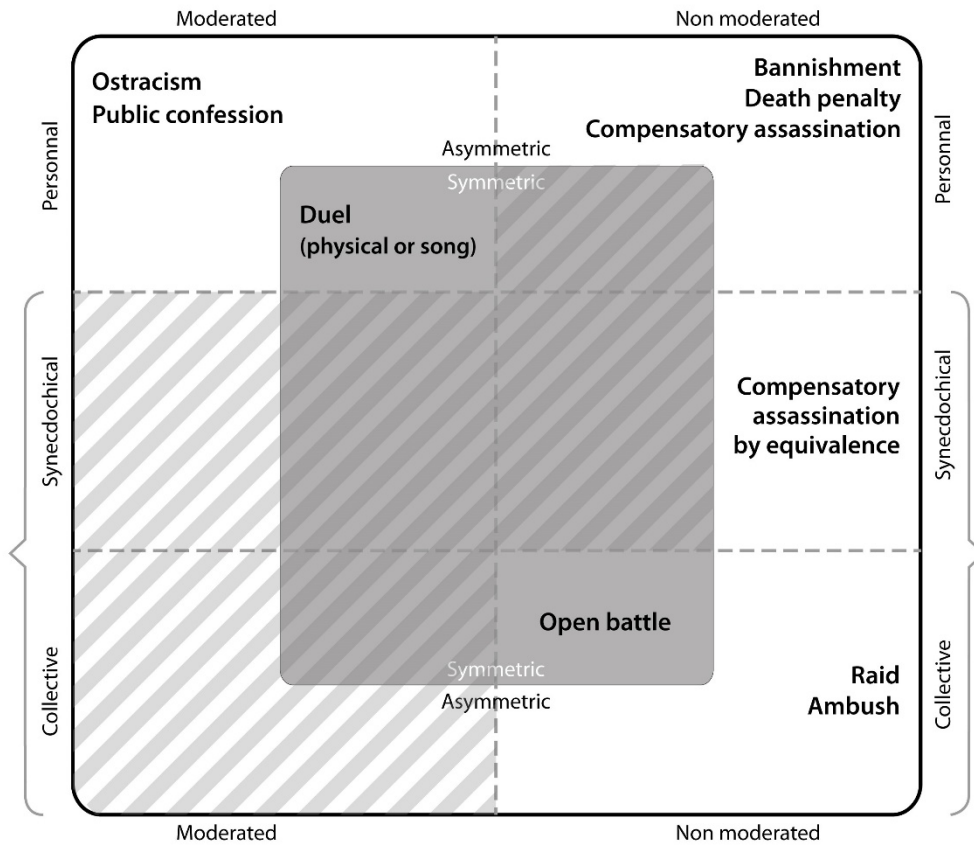
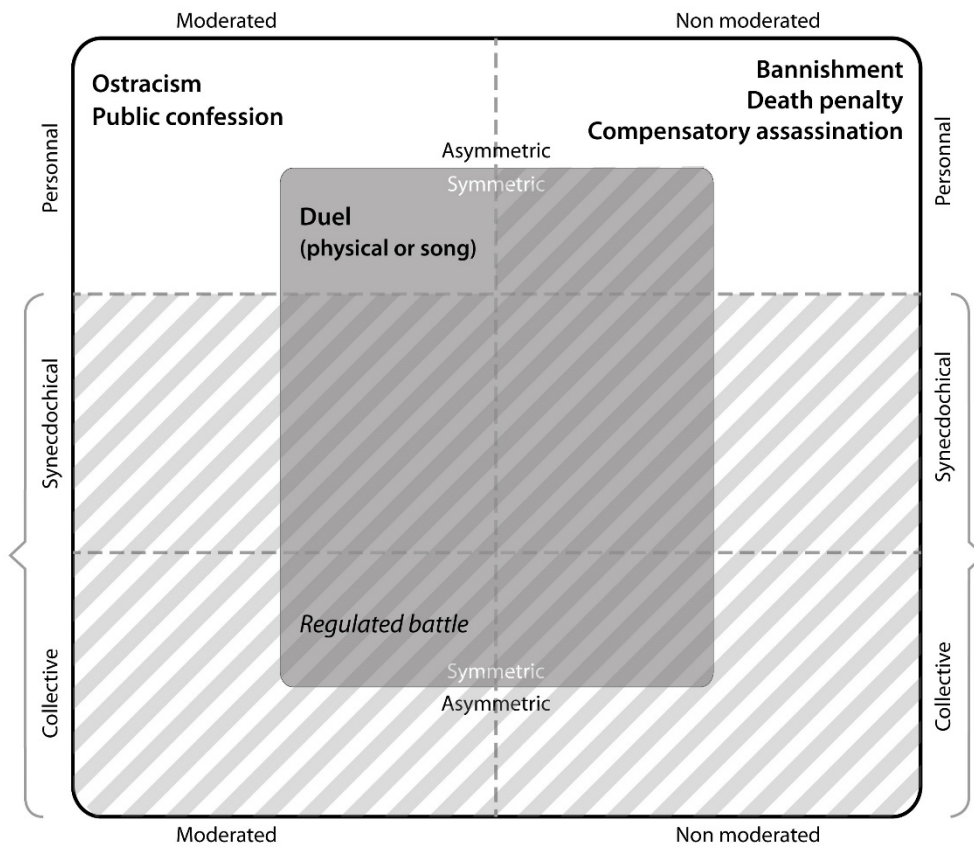


FIGURE 3 : Inuit judicial procedures (central areas and Greenland)



3. War and the modulation principle

General reminders

One final point remains to be examined, which concerns both the judicial nature of warfare and its articulation with other judicial procedures. The analysis conducted on Australia had indeed revealed the predominantly, if not exclusively, judicial character of warfare. This can be seen in the alleged motives for the hostilities, which are never political domination or the taking of spoils or captives, and almost never territorial conquest. If one fights with the will to crush the adversary, it is above all to take revenge for wrongs suffered, real or supposed - whether these be accumulated conflicts over women or alleged acts of witchcraft.

If warfare in Australia is an extension of justice, it is because the latter rests on two fundamental principles. The first, well known, is that of retaliation: 'an eye for an eye, a tooth for a tooth': in a very ordinary way in a non-State society, Aboriginal justice seeks a priori to compensate for damage with equal damage. But this is where the action of a second principle, much less noticed than the first, comes into play: the principle of modulation, which varies the degree of compensation according to the social relations prevailing between the parties. If these relations are close and friendly, then the compensation is attenuated, and a murder will be compensated, for example, by a simple penalty challenge, or by corporal punishment. On the contrary, however, if the relations are marked by mistrust, or even hostility, it opens up the possibility of escalation: a benign damage will be compensated by a greater one, or the compensation, instead of a single individual, will extend to a group as a whole. The lines of action of the principle of modulation are thus exercised, in both directions, between moderate and non-moderate procedures, and between personal (or synecdochical) and plenary designation.

Typically, a war is a feud that expands, both by the number of combatants involved and by the deepening of its objectives - the former being only the consequence of the latter. Where the feud is a revenge that aims to balance losses, war is limitless, and seeks to inflict as much damage on the opponent as possible. To use the terms of our classification, where the feud is a series of acts and responses that operate on the basis of a personal or synecdochical designation, war aims to kill on the basis of a collective designation (on these points, see the remarkable clarification made by Boulestin 2019).

Alaska

Does the Inuit war observed in Alaska comply with these characteristics?

To begin with, one can verify that its objectives correspond in every respect with those of the Australian wars. Concerning the Iñupiat, Burch expresses himself without

reservation on this point, correcting the error of perspective committed by late ethnographies, based on societies already disrupted by Western influence:

“The ultimate causes of warfare may have been outside pressure, economics, land acquisition, and ethnic enmity or some combination thereof, but by the early 19th century most manifestations of international hostility were probably straightforward acts of vengeance.” (Burch 2005, 66)

Significantly, the Iñupiat vocabulary did not distinguish between the terms ‘war’ and ‘revenge’. Incidentally, the expeditions that slaughtered a whole village distinguished themselves by the somewhat surprising habit of always leaving a victim alive, so that he could explain to the other members of his group who the aggressors were. Supposedly intended to terrorize and prevent reprisals, this practice most often had the opposite result, fueling future revenge.

As for the Yupik wars, their motivations show a very similar pattern:

“The object of organizing a war party was not to acquire booty, extend territory, or defend boundaries, but to exterminate the enemy.” (Fienup-Riordan 1994, 329)

Their myth about the origin of war, which describes it as a worsening feud, could not be more eloquent:

“Throughout western Alaska, a single story is repeatedly cited to account for the origin of warfare. This is an old story, and narrators typically locate the incident in a village in their region. According to tradition, two boys were playing with bone-tipped darts in the men's house. One of the boys aimed poorly and accidentally hit his companion in the eye, blinding him. The father of the offender told the father of the injured boy to go ahead and poke out one of the eyes of his son in retribution. However, the father whose son had been injured was so enraged that he poked out both of the offender's eyes, blinding him completely. The other father reacted by killing the first man's son. And so it went, the violence escalating and each man in the men's house joining sides until the entire village, and eventually the entire region, was at war”. (Fienup-Riordan 1994, 326)

Not only was Alaskan warfare, like its Australian counterpart, part of a judicial framework, as an outgrowth of the feud, but the mechanisms that brought about the transition from one to the other were also derived from the principle of modulation.

Burch points to what he calls xenophobic feelings between the different groups that occupied the territory (which he calls 'nations'), and between which existed at best a certain mistrust, at worst outright hostility.

The general pattern was very straightforward: in general, it was not only acceptable but sometimes even desirable to kill members of other nations. Killing a member of one's own nation was prohibited except under extraordinary circumstances, although it did, of course, occur. To kill one's own countryman was murder (ifuaq-), whereas to kill a foreigner (ruqut-) was conceptually not much different from killing a mosquito. A stranger from another country could be killed simply because

he was an alien, although other factors were often involved as well. (Burch 2005, 20)

The principle of modulation expressed itself in the difference between what happened in the case of a murder within a nation and a homicide committed by a foreigner (R. F. Spencer 1957, 98). When the murderer belonged to the same nation as his victim, the response was circumscribed in two ways. First, only the closest male relative of the victim could carry out a compensatory killing, and second, the killing was directed exclusively at the perpetrator in person or, failing that, at his close relatives. On the other hand, where the alleged perpetrator was a member of another nation, any male member of the victim nation could attack any male member of the guilty nation. Escalation was therefore possible, provided that resentments were brought together.

‘Offenses against an individual by a foreigner tended to produce a sympathetic collective response among the aggrieved party's fellow countrymen. (...) The key, then, was for the offended individual to persuade his countrymen to join him in avenging what began as a personal affront. The only way to do this was to appeal to the fund of grievances that had accumulated over the years in the population at large. If it was great enough, an apparently minor incident could precipitate an attack.’ (Burch 2005, 65)

If, at worst, an assassination within a nation could lead to a feud between two families, under the proper circumstances, a murder involving two different nations could therefore degenerate into a real war. Even if the details differ, one can only be struck by the similarity between this configuration and the one described regarding the Kurnai of south-eastern Australia (Fison et Howitt 1880, 220-21), or some New Guinea populations (Roscoe 2014, 231-32).

Central Arctic and Greenland

In the rest of the Inuit world, which, it should be remembered, was virtually devoid of events akin to war, the principle of modulation was not totally absent, but its scope was in a sense much more restricted. A first example comes from the way in which the injured party, in order to assert his rights, could choose to resort to dueling songs rather than to compensation killing:

“If the potential avenger chose the song duel as his means of revenge, revenge became a public matter in which the audience decided whether the revenge was just; at the same time the song duel normally put an end to the feud, since the parties were not allowed to resort to deadly violence during and immediately after the song duel.” (Sonne 1982, 32)

In such cases, modulation - in the direction of mitigation - thus operated in two ways. Firstly, by the choice of verbal rather than physical weapons. But also, and perhaps above all, by the choice of a symmetrical rather than asymmetrical procedure: in so doing, the plaintiff was in some way choosing to assert vis-à-vis the community that

the wrongs were disputed, and that he refused to place the opposing party in a position of unilateral guilt.

However, unlike the situation in Alaska, there were no communities that marked a difference between an 'us' and a 'them' in the handling of court cases, and thus provided the ground on which the principle of modulation could have truly played out one way or the other: 'The Inuit of the central Canadian Arctic did sometimes commit murder but the killing of a fellow tribesman and a member of another tribe cannot be distinguished in the Inuit culture' (Irwin 1990, 190). Thus, within the relatively limited range of procedures available in this area, modulation remained a decision taken on a purely individual basis: it did not, as in Alaska or Australia, stem from a logic that organized the settlement of conflicts between social subsets.

Conclusion

This overview confirms the interest of the formal approach developed from the Australian case. The identification and classification of legal proceedings according to the three proposed criteria makes it possible to apprehend essential dimensions of social relationships and shows the close proximity, in this respect, between the Australian and Inuit worlds. The former's taste for physical punishment and the latter's taste for more psychological action are differences, not in nature but in spirit, in the way the same score would be played here by a brass band, there by a string ensemble. Fundamentally, the ways and means of the two legal systems are remarkably similar.

Two essential questions remain.

The first is that of factors that may explain the dichotomy, in the Inuit ensemble, between the western part, marked by the presence of collective designations, and the central and eastern areas, where justice recognizes only personal designations. This echoes the situation in Australia, where war was practised in some areas, while remaining unknown in others. At the very least, procedures with collective designation seem to be found throughout Australia, which is not the case in the Inuit world. Part of the difference between the two is probably due to the pervasiveness among Aborigines of various formal kinship groups that were just as remarkably absent among the Inuit. However, this element provides, at best, only part of the answer. Indeed, it is very difficult to explain precisely why, in Australia, conflicts crystallised into genuine wars in some areas and not in others. One can only suspect the action of various factors which, unfortunately, the ethnological material does not allow us to identify more accurately. The same is probably true of the Inuit. The first answer that comes to mind to explain the presence or absence of collective designation is demographic: we know that the Inuit of Alaska, as well as the Yupik, lived in a territory with resources much more abundant than those of the central regions and Greenland. The density of their populations, as well as the size of their habitat groupings, were therefore much higher, and may have contributed to the existence of a collective feeling, even if it was not based on any formal organization:

“Distance has two effects: it renders boundaries among groups of people superfluous and inhibits communication, both of which erode group identity” (Darwent et Darwent 2014, 183). Inuit settlement began in Alaska some time before 1000 AD. Even if not decisive, the archaeological evidence seems to indicate warlike activity at that time (Lambert 2002; Mason 2012). Thus, the most likely scenario is that feelings of collective belonging (in the absence of formal structures, the existence of which cannot be asserted) were present in the original Inuit population, and then gradually dissolved as this population occupied environments that forced them to disperse over considerable areas.

The second issue remains more resistant to investigation. It concerns the physiognomy of warfare – and, more broadly, of judicial sanctions – in Inuit and Alaskan related societies. It is indeed paradoxical that wars, where they did exist, were fought for purposes that never involved wealth, even though they occurred in the only societies in this area that were clearly marked by socio-economic inequalities. The Iñupiat were known for their wealthy individuals, the *umialit*, who owned, among other things, trading partners, whaling ships and food stocks. It is therefore intriguing that the wars fought in these societies were never aimed at looting property or capturing captives. Burch's explanation of the difficulties of long-distance transport in circumstances where people had to retreat as quickly as possible to avoid pursuit is only half convincing. The absence of looting and capture during wars must indeed be related to another, much more global absence in this society: that of the transfer of material goods in transactions of a social nature. Contrary to the most common pattern observed throughout the world, wealth in Alaska, while ensuring a dominant position for those who possessed it, had in fact not penetrated the spheres of marriage and justice. A bride price could not be paid to marry, nor a wergild to extinguish a fire. Beyond the reasons likely to explain what, at least statistically, must be called an anomaly, such a configuration raises more deeply the problem of the definition of wealth and its various lines of development (Testart 2005; Darmangeat 2020b), of which many mechanisms remain to be discovered.

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