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Greenland Criminal Justice: The Adaptation of Western Law

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The conflict which many indigenous peoples experience with Westernized systems of law has precipitated a search for alternative models of criminal justice. While the process of colonization has most often resulted in the destruction of traditional practices of social control, in Greenland an attempt was made to adapt Western law to the indigenous culture. The Greenlandic justice system has several unique attributes which have attracted the attention of indigenous peoples and governments worldwide. This article traces the origins, development and evolution of the Greenlandic Criminal Code and criminal justice system, the factors which influenced its development, and the extent to which the objectives of the architects of the systems have been met. The discussion provides key insights into the potential and limitations of adapting Western law to indigenous cultures.

Introduction

The Greenlandic criminal justice system is considered one of the most unique in the world and has been receiving increasing interest from indigenous peoples and governments in many jurisdictions. Compared to the nearest neighbours to the West, the Inuit population in the Eastern Arctic, Northwest Territories, Canada, for example, Greenlanders are in the privileged situation to have a legal system "of their own" and Greenland may, as suggested, serve as an inspiring example to indigenous peoples and governments in Canada as well as in other countries where the establishment of aboriginal-controlled justice systems have become of central political concern (Jensen, 1996).

At the same time the Greenland case draws attention to the very question of adapting Western law to a non-Western cultural setting. What does adaptation really mean? Anyone who is confronted with the task of designing a legal system, more sensitive to the culture and social conditions of an indigenous population living within the borders of a Western state, is necessarily facing some rather difficult questions such as: Should a hybrid legal system be developed with elements from both indigenous and Western legal culture? If yes, how should the indigenous and Western elements be weighted? To what degree and how should the principles and procedures of the State legal system be adjusted to the local culture? How should the indigenous population be involved in the framing of the new legal system? And in which way should the indigenous population be involved in the administration of justice under the new system?

The purpose of this paper is to critically evaluate how these questions have been answered in Greenland, either explicitly or implicitly, in the course of

history and how the path taken has led to the present legal and justice system. It begins with a discussion of law and social control among Greenlandic Eskimos prior to colonization by Denmark and then considers the main periods of Danish-Greenlandic relations. This will illustrate how Danish legal policy in Greenland has been intimately bound up with Danish-Greenlandic relations since the beginning of the colonial period.

Traditional Justice Practices in Pre-Colonial Greenland

Early European observers reported that the Greenlandic Eskimos lived very harmoniously together in spite of the fact that there was no law and no authorities to maintain discipline and order (Egede, 1721-36/1925: 37). The process of social organization seemed to have an amorphous character. The common code of conduct, which was the normative foundation of social life, was not a clearly articulated set of rules but rather a body of implicit standards developed through generations of day-to-day interaction. Social control was embedded in everyday life and mostly occurred in an informal and discreet manner in the context of pre-existing primary group relations.

Social solidarity and co-operation within the settlement group was strengthened through an extensive system of meat sharing, through kinship and marriage, through many kinds of bilateral partnerships (wife-exchange, namesake partnerships, joking partnerships, meat partnerships etc.) and also through feasts and ceremonies (Holtved, 1967; Jensen, 1970; 1973; Kjellström, 1973).

A substantial number of cases show that conflicts were by no means unknown to the Eskimos (Larsen, 1982). There could be a variety of reasons why two persons were on bad terms with each other. It was deeply ingrained in traditional Eskimo culture that a person should never show angry feelings or otherwise behave aggressively in his daily interaction with his fellow men. Verbal and physical aggression were considered as improper behaviour. Direct confrontations were avoided as much as possible (Kleivan, 1984A: 615).

The non-confrontational behaviour of the Eskimos was readily misinterpreted by the first Europeans in Greenland as a sign of extreme peacefulness. Thus, giving rise to the hard to die stereotype of 'the peaceful Eskimo' (Larsen, 1982: 60-65). Evidence has been found proving that lethal violence occurred, sometimes even quite frequently.

Four major types of culturally circumscribed reactions or conflict tactics can be identified in the ethnographic literature from the early contact period (Larsen, 1982: 65-88):

1. *Withdrawal and avoidance.* Simple withdrawal from conflict-laden situations seems to have been the most common way to handle a conflict.
2. *Covert hostility.* The Greenland Eskimos had developed a whole repertoire of acts which can be categorized as covert hostility, including gossip and sorcery.

3. *Ritualized confrontation.* Song duels were the most well-known and spectacular way of handling conflicts among the Greenland Eskimos (Kleivan, 1971; Petersen, 1982). Here the antagonists confronted each other directly, but the confrontation took place in a highly ritualized context.

4. *Killing.* Under certain circumstances the killing of a person was considered to be a justified or even a mandatory act. It was considered a just and useful act to kill a murderer, including anyone suspected of having taken the lives of others by sorcery. On rare occasions a killing was done by a group of cohabitants. This was the only instance in traditional society where a sanction was carried out by a collective decision.

The driving force behind the individual reactions to conflict laden situations seems to have been an “enlightened self-interest”. One could withdraw from the situation if that was assessed to be the smartest thing to do, or one could retaliate by inflicting shame (slander, song duels) upon the opponent, or by physically injuring (use of magic, killing) the opponent.

Early Colonization — A Legal Interregnum (1721-1862)

The colonization of Greenland started in 1721 but was restricted to missionizing and trade (Gad, 1984). While gradually undermining the indigenous normative order, no steps were taken to impose Danish law. Greenlanders were considered to be “a free people” not subject to any law. The most far-reaching effects on the normative order and control practices among the Greenlandic Eskimos were brought about by the missionaries. Several of the common practices of the Eskimos were in striking conflict with the moral concepts of the pietistic 18th century missionaries.

The missionaries effectively succeeded in abolishing blood vengeance and the killing of witches along with other cultural practices such as infanticide, senilicide, polygamy, divorce etc. Song duels were abolished, in the first instance because the missionaries considered dancing and singing to be sinful, but also because the non-Christian Eskimos apparently used the song duels to ridicule the baptized Greenlanders for giving up their traditional beliefs (ibid.). By the end of the 18th century, gossip, avoidance and similar “low-key methods” which would not provoke the disapproval of the missionaries were the only methods left of the traditional repertory of conflict management among the Eskimos in West Greenland.

The Period of Tutelar Democracy (1862-1953)

The tenor of this period was paternalism mixed with the ideals of liberal democracy. Greenlanders lived under the tutelage of the traders and missionaries in a state of “colonial peace” but notwithstanding, the indigenous communities showed signs of stagnation and disorganization. It was felt that the traditional patterns of authority were rapidly disintegrating and that the

only way of turning the tide was to restore native authority. Local councils with the participation of Greenlanders and Danish officials were established. These councils, called the Board of Guardians, were vested with police and judicial authority as regards the indigenous population and became instrumental in the development of a colonial customary law and in the involvement of the indigenous population in the administration of justice.

The system of local government developed gradually during the colonial period. For the Danish government, the councils were a means of creating and co-opting an indigenous elite that could serve as an intermediary between the Greenlanders and the Danish officials thereby making the colonial administration more effective.

The establishment of the Board of Guardians represented, in several ways, the crucial step in the implementation of Western law onto the Greenlandic society. For the first time, Greenland was introduced to the Western court model according to which breaches of normative rules and conflicts would be decided by a third party empowered to make decisions which were binding upon the parties, as well as having the right to impose punishment on the parties. Like the song duels, the court could confront a person directly with the charges brought against him.

Decolonization and the Post-War Law Reform (1953-1979)

The colonial status of Greenland was abolished in 1953 when the former dependency became an integral part of the Kingdom of Denmark. The Greenlanders became "full citizens" and an extensive modernization program was launched in order to "normalize" the social and economic conditions in Greenland compared to the rest of Denmark.

When the colonial era in Greenland drew towards its close the question of a legal reform could not be postponed any longer. A modern legal system was introduced based on written laws which incorporated elements from colonial customary law. Greenlanders and Danes alike, within the geographical boundaries of Greenland, became subject to the jurisdiction of the new legal system. The courts, police and correctional services were predominantly staffed with Greenlanders.

In addition to putting an end to the dual legal system the purpose of the post-war legal reform was to introduce Danish law in Greenland as far as it was deemed practical and did not conflict with the Greenlandic ideas of justice (Bentzen et al., 1950). This might have swung the door open for a wholesale introduction of Danish law in Greenland. But the idea of a slavish imitation of the Danish legal system was soon rejected by both the Danish Government and the Greenlandic politicians. The parties agreed that the new legal system should be based on the specific Greenland conditions. Accordingly, a new legal system was created that included elements from Greenlandic law as it had developed during the colonial period.

After careful consideration it was decided that 18 district courts staffed with lay persons, and one appeal court with a lawyer presiding as a judge should be established (Grønlandskommissionens, 1950). As a consequence, Greenland got its own *Administration of Justice Act* which in many respects differs from the corresponding Danish act (Lov nr. 271, 1951). A majority of the positions in the district courts (lay judges, lay assessors and lay counsellors etc.) were from the outset filled with Greenlanders. The courts were given general competence in all civil and criminal cases thereby laying the foundations to the present community-based court system.

A juridical expedition was sent out to describe the legal habits that had developed during the period of the dual legal system in order to find out whether and to what extent Danish law could be applied to the Greenlanders. The reports from the expedition showed, that Western legal practices and concepts had gained a solid footing in Greenland, but also that Greenland law had its own characteristics (Betænkning, 1950).

The Greenland *Criminal Code* was drafted by Verner Goldschmidt, one of the three participants in the juridical expedition. What characterized sentencing in Greenland, according to Goldschmidt, was 1) the extreme variation and individualization of the sentences and 2) that offenders, even if they had committed serious crimes, were not isolated from the community (imprisonment was only used on very rare occasions and none were sent to Denmark) (Goldschmidt, 1956). In the approximately 2000 cases that he examined, he counted 190 different types and combinations of correctional measures! This was perhaps hardly surprising considering that only very rudimentary written rules on sentencing existed and thus, providing the courts with discretionary power in deciding criminal cases.

Furthermore, the judges did not have any legal training and there was no appeal court which could have ensured uniform decisions. But in Goldschmidt's opinion it also reflected the way people looked at offenders in the small Greenlandic communities: an offender who appeared before the court was not an anonymous criminal. Usually, the judges had personal knowledge to the person's background and were therefore, able to impose a sentence which would fit the criminal, as well as the special circumstances of his case.

The reluctance to isolate offenders from the community was not only caused by practical obstacles — there were no prisons in Greenland — but also by what Goldschmidt called 'active tolerance' towards offenders. He called special attention to sentences drafted with a pedagogical or therapeutic aim where a young offender, for example was sentenced to live in a private household and receive training as a fisherman or a sheep farmer. In the rare cases where a person was sentenced to a term of confinement, a provisional cell was arranged in which the prisoner could be placed at night while he normally was allowed to have a regular job during the day-time and move about as he pleased on Sundays.

In most cases offenders were treated with leniency. During the period 1938-48 fines were being imposed as the sole or major sanctions in 43% of all

imposed sentences (Goldschmidt, 1957 2: 25). In some cases no sentence was imposed at all. According to Goldschmidt, this trend seemed to reflect the cautious attitude on behalf of the courts 'not to make things worse' (Goldschmidt, 1956). Many cases were settled in court in an informal manner (Goldschmidt, 1957 2: 78 ff.). In a small community a sentence could be as harmful as the offence itself by adding more fuel to an already disharmonious and disruptive situation caused by the criminal act. Instead of implementing a formal legal sanctioning system, a community would often resort to the type of social control known from primary groups where petty violations and insults are met with numerous and flexible orchestrated responses from the other group members. Goldschmidt also found examples where the courts had replaced one sentence by imposing another sentence if the first one for some reason did not have the desired effect (Kriminalloven, 1962).

Goldschmidt saw it as his objective to formulate the Greenland *Criminal Code* in a way so that the flexible and humane sentencing practices of the Greenlandic courts could be maintained. He believed there was a clear parallel between the Greenlandic way of sentencing and the thoughts that were being advocated by contemporary Western criminologists regarding individualized treatment of offenders as the best way to secure the reintegration of law-breakers to 'normal life'.

The Greenland *Criminal Code* was passed by the Danish Parliament in 1954 and put into force the same year (Lov nr. 55, 1954, English translation: The Greenland *Criminal Code* 1970). Apart from some minor changes, the general principles of Goldschmidt's draft were accepted both by the Parliament and the Greenland Provincial Council.

The Greenland *Criminal Code* consisted of two parts. The first part was called 'On crimes' and contained a definition of the crimes which was covered by the law. These definitions were a simplified version of the crime definitions found in the Danish Penal Code. The second part was called 'The Legal Consequences of Crime' and included a catalogue of the sanctions that might be applied by the courts. These were: 1) Warning, 2) Fine, 3) Supervision 4) Restrictions as to residence and visiting particular places, 5) Compulsory labour, 6) Compulsory training, 7) Medical treatment, 8) Placement in an institution, 9) Other limitations on freedom of action, 10) Confiscation. The court was also given the opportunity to abstain from applying any of the sanctions to a person who was found guilty if that was deemed to be the most sensible reaction.

The catalogue did not include imprisonment or placement in a correctional institution in Denmark. Goldschmidt did not want to comply with the Greenlandic politicians' frequently raised demand to establish prisons in Greenland since, according to his belief, that would be not only impractical but also contradictory to the idea of resocialization (Betænkning, 1950 vol. 6: 80).

The treatment perspective was also reflected in the fact that the Code did not have any provisions concerning insanity. The courts were free to tailor the sentences to the specific needs of the offender including mentally ill or deficient persons.

The general principle of sentencing implied in the Code could be summarized by the following three rules:

1. For lesser crimes the principle of general prevention should prevail and a fine should be imposed.

2. For serious crimes the principle of special prevention should prevail in all cases where the offender was in need of treatment and a therapeutic measure should be imposed.

3. In cases of serious crimes where no treatment was indicated the principle of general prevention should prevail and compulsory labour should be imposed.

The *Code* did not provide any guidance as to where the line should be drawn between lesser crimes and serious crimes or what criteria should be used to distinguish between cases where there was a need for treatment and cases where there was not. Only the local courts application of the *Code* could answer these difficult questions.

Viewed in the context of Danish criminal policy, the Greenland *Criminal Code* was a radical extension of the turn towards treatment, rehabilitation and individualized sanctions and a departure from classical criminal law which had occurred during the first half of the century, and which was manifested in the new Danish penal code from 1930 (Tamm, 1990). The Greenland *Criminal Code* had been strongly supported by some of the most influential contemporary Danish legal scholars (first of all Stephan Hurwitz and Louis le Maire) who seem to have been excited about the opportunity to see the idea of rehabilitation realized in its pure form. The Greenland *Criminal Code* soon won a reputation as "the most progressive *Criminal Code* of the world".

The *Criminal Code* was looked upon as a "social experiment" by the legislators. The *Code* contained a particular provision which stated that the effects caused by the sentences available in the *Code* should be followed up by sociological research. A research report was published in 1962 (Kriminalloven, 1962) on the *Criminal Code* in general and it was supplemented by another report a few years later that focused specifically on how the sanctions of the *Code* were applied (Therbild, 1965).

Both reports gave a very critical evaluation of the way the sanctions were administered. The first report concluded that the legal authorities had not applied the sanctions in accordance with the legislators' intent. Fines had been used to a much greater extent than intended by the legislators, i.e. also in cases where treatment was indicated (Kriminalloven, 1962: 92), whereas measures like compulsory labour and compulsory training only had been put into use on a modest scale. This was explained by the fact that the legal authorities had been without the practical possibility of carrying out these measures. Some of the sanctions, such as supervision and training, were based on the assumption that private citizens were ready, able and willing to take care of the offenders but it had been difficult to find persons who actually wanted to open up their homes to convicts or to supervise them (ibid.: 99 ff.).

This failure was attributed to the increasing number of criminal cases which had occurred as a result of the transition from a traditional society to a modern society. The nature of the crime, more than the criminals personality and his surroundings, now appeared to influence the type of sanctions imposed which was contrary to the principles of the *Code* (Goldschmidt, 1970: 7).

The Greenland *Criminal Code* combined the idea of rehabilitation with the vision of "popular justice": The people should judge the offender and take care of the ones convicted. Custody should only be applied to habitual or dangerous criminals and convicts should be allowed to work and move around in the community as far as security reasons made it possible. The local police should ensure that the sentences were carried out and no special apparatus was organized to secure the implementation of the sanctions. This reflected the idea that the local courts should apply the sanctions with great flexibility and in co-operation with the community. (cf. Goldschmidt, 1956: 255). Generally, it was believed, that too much organization would only stiffen the flexible and creative application of sanctions known from the colonial period.

The two reports disclosed an obvious discrepancy between the intentions of the lawmakers and the practical implementation of the *Criminal Code*. To address some of the deficiencies in the administration of the Act a professional probation and correctional service was organized. The first probation officer was appointed in 1963. Between 1966 and 1979, five correctional institutions were built: three night prisons and two for young offenders (a provisional detention house had existed since 1956). They are all open institutions where the inmates can go to work or attend school in the local community during the day time.

A small number of dangerous criminals, predominantly recidivists (murderers and rapists), who for safety reasons cannot be placed in an open institution, have since 1958 been sent to a secure prison in Denmark for an indeterminate period of time. Mentally disordered persons who have committed serious crimes are likewise placed in closed psychiatric institutions in Denmark. To address this, the Greenland *Criminal Code* has been revised twice since it came into force (1963 and 1978). The access to indeterminate sentencing has been somewhat restricted but the basic structure of the *Code* remains and rehabilitation of the offender is still one of its prime objectives.

The establishment of a professional correctional system has made it easier to apply rehabilitative measures aimed at the offenders. The question of whether this system has caused a more extensive use of individualized sentences and a relative reduction in the application of fines must be answered in the negative. One reason for this seems to have been the practice of the police when they act in their capacity as public prosecutors (Schechter, 1988).

In 1951 a professional police force replaced the members of the local councils who up to that time had been vested with police authority. The Greenland Police became a subdivision of the Danish Police. The goal had from the outset been to replace the Danish policemen in Greenland by Greenlanders, as soon as a sufficient number of native constables had been trained (Vesterbirk,

1961). Today the vast majority of police officers are Greenlanders while the Chief Constable and his staff are Danish jurists.

In a study of the prosecutors work routines, Schechter (1988:425) found that an unofficial standardization of the sanctions has taken place. In Scandinavia the philosophy of individualized sentencing and treatment lost much of its attraction in the early 1970's whereas the principle of proportionality in sentencing had gained ground. "New classicism" became the prevailing sentencing ideology among Danish jurists and this has made itself felt in Greenland throughout the daily work routines of the prosecutors who are unfamiliar with the legal ideology of the Greenland *Criminal Code*.

Today, the following sanctions are being imposed: fines (used in approximately 90% of the cases and then often in the form of out-of-court fines), suspended sentences, sentenced to a correctional facility or to a youth facility on a determinate time, as well as to supervision by the prison service — the latter often in combination with treatment of alcohol dependency. In a few cases, the offender is sentenced to serve an indefinite time in a security prison or at a psychiatric hospital in Denmark.

The Period of Self-Determination (1979-present)

The ethnic mobilization of the Greenlandic population during the 1960s and 1970s, partly a reaction to the negative side effects of modernization, culminated in the establishment of Home Rule in 1979. Under the *Home Rule Act* the local authorities have assumed legislative and administrative control over all important areas except defence, foreign affairs and the legal system. No major changes of the post-colonial legal system has so far been made. In 1994, a government commission was set up in order to review the Greenlandic legal system and to, during a period of 4 years, introduce reform proposals.

Discussion

Greenland's criminal justice system represents a unique attempt to combine Western criminal law with the legal norms of the native population. It is a mixed system which was established according to a thorough criminological investigation of the legal customs which had developed during the colonial period. No attempt to re-establish the pre-colonial customs was made but, nevertheless, it seemed to have been an unexpressed assumption amongst the people who created the new legal system that the colonial customs rested upon a truly popular foundation originating in the traditional culture. It was this popular legal belief that the new community-based legal system should be built upon.

Goldschmidt and his colleagues had an honest desire to go beyond their own cultural background. They also managed to get the required support of the political decision-makers in Denmark and Greenland. And yet their intentions did not materialize. What went wrong?

Goldschmidt has suggested a number of possible explanations for this failure. His most concrete explanation has already been mentioned: Although the courts, the police and the people, generally, had been in favour of the *Code*, the legal authorities lacked the possibilities to carry out the most important rehabilitation measures stated in the *Code*: compulsory labour, compulsory education and assigned placement at certain locations (Kriminalloven, 1962: 9-11; Goldschmidt, 1963: 119). A heavy increase of criminal cases caused the lack of placement possibilities even more noticeable.

Another explanation was sociological: since the development of the *Code*, the Greenlandic society had rapidly become more modernized and urbanized, which had caused an increase in criminal activities and significant change in social relationships. Greenlandic society had now, to an increasingly degree, become characterized by secondary group relations. This, in turn, resulted in more hostility toward local criminals (Goldschmidt, 1973) and a change in view of law breakers from *active tolerance to passive tolerance* (ibid.: 159 ff.).

The most general explanation regarding the *Criminal Code's* lack of success, Goldschmidt provided in some of his later reflections on the Greenland *Criminal Code* (Goldschmidt, 1973; 1978; 1981). He described two models of conflict solutions which he named the *arctic peace model* and the *conformity model*, respectively. The arctic peace model was the original method by which conflicts were solved in the small arctic society. This model was characterized by its flexible attitude towards the deviant behaviour and had as its primary purpose to maintain a harmonious society. According to this model no one should be punished and no one should be blamed. Opposite this is the conformity model of larger societies, which is characterized by its attempt to force the deviationists to conform to the societal norms through the use of punishment, psychiatric treatment, medical treatment, etc. The maintenance of existing norms has the highest priority according to this model.

The arctic peace model had to give way to the conformity model as the Greenlandic society became industrialized. The entire idea of trying to maintain the flexible conflict solution model, known from the traditional Greenlandic, through a codification of customary law was naive. Codification, alone, would only lead to a rigid solution of something that used to be flexible, as well as to a "judicialization" of conflict solution in small societies (Goldschmidt, 1981: 128).

The overall theme in Goldschmidt's explanations on why the Greenlandic *Criminal Code* failed its quest in maintaining the legal traditions in Greenland is that the social and cultural environment that the *Code* should operate in had changed radically and that these changes could not be counteracted by the *Code*: "Factors outside the *Code* have been decisive" (Goldschmidt, 1963). If Goldschmidt's assessment proves to be correct it will bring a sad message to the native population who, today, are working towards the establishment of a separate legal system founded upon their own cultural values.

There are other possible explanations on why the intentions of the *Criminal Code* did not materialize. Perhaps the *Code* rested on a more or less erroneous

picture of the Greenlandic legal thinking which thus could be categorized as an example of “invented tradition” (Hobsbawn and Ranger, 1983). It is probably correct to argue that the impressions and reactions people, living in the small Greenlandic communities, had towards a non-conforming individual differed from those of the people living in a big city in the West (and still does). But to depict the Greenlanders as “original rehabilitators” seems to be a gross misreading of a complex interaction pattern that defies an easy classification into the categories of Western criminology.

What may this story teach us? The story can, for instance, teach us that we should not only look in the rear mirror but that it is imperative to also look ahead when we are going to develop a legal system which will be specially adapted to a group of indigenous people: the legal system shall not be the mirror image of a (real or imagined) former condition but should instead be geared towards the present and future societal trends. It is therefore, dangerous to ignore the native politicians’ opinions even if these may be considered as more westernized than the opinions expressed by the native people in general. Usually, politicians are good seismographs when it comes to registering the underlying attitudes of their constituency. A close and committed dialogue with the political representatives of the people may perhaps be far more important than sociological and anthropological investigations of the legal customs.

The Greenland case is also an illustration of the well-known fact that what you see depends on how you look at it. The theoretical optics of the observer makes him or her sensitive to certain aspect of reality and insensitive to others.

Concluding Remarks

The current Greenlandic criminal justice system is a result of a development process which has lasted for more than 200 years. During this period, societal conditions in the country have changed dramatically. The Inuit population in Greenland has been involved in the administration of justice since the mid-19th century. The law reform in Greenland was initiated some 40 years ago, so it has had plenty of time to prove itself, and, by and large, it has stood the test although, as has been demonstrated, in some respect it did not live up to the intentions of its creators.

It is uncertain whether the Greenlandic *Criminal Code* was actually founded upon the prevailing attitudes of the Inuit population or it, in reality, introduced a new legal-political line of thinking in Greenland. The *Code* may be looked upon as a framework within which a new legal tradition has developed (the absence of maximum or minimum penalties has ensured great adaptation possibilities). This custom has been influenced by the ideology upon which the *Code* is built and the actual possibilities provided by the law and the social conditions in Greenland.

Today, nine out of ten people working within the Greenlandic justice system are Greenlanders. It is a system which is based on the use of lay people

and the indigenous language. A court system based on the use of lay assessors has become a central and unique system of conflict resolution. Although, it is not based on Eskimo legal traditions, the Inuit culture manifests itself in a more subtle way. One may call Greenland law an example of “applied legal technology”. It embodies the principal ideas of Western legal thinking but the details and the day-to-day operations of the system have been marked by the Greenlandic culture.

The French legal anthropologist le Roy has coined the term “local law” as a description of a legal system that is created by the state, but where the day-to-day operations have been left in the hands of the local authorities in order to promote a policy of decentralization. This is an accurate description of the law and criminal justice in Greenland.

The originality of local law lies in the fact that it is initiated and regulated by the state as a means of social control but, unlike those methods used to achieve the same results through the corruption of traditional law, it is based on the interpretation of external legal instruments according to the spirit of indigenous legal thinking.

Local law can be ambiguous in nature: it appears both as the law of the dominated, since they play a direct part in adapting it to their needs, and also as the law of the dominators, whose grip is maintained or tightened (Rouland, 1994).

The crucial point here is whether or not the legal system is held in esteem by the citizens. On several occasions the local media have been the forum for debates concerning the populations’ demands for a harder line on crimes. Nevertheless, it appears that the legal system enjoys the confidence of the Greenlandic public. An indication of this is the fact that the Greenlandic politicians did not raise the question of legal politics during the negotiations about Home Rule in the 1970’s nor have they done so after the transition to Home Rule in 1979. Legal politics has so to speak been a non-issue for many years in local politics in Greenland.

One of the most important things on the agenda of the commission is an educational program for the lay judges, the lay assessors and the lay defence counsels (Kommissorium, 1994). For the first time they will have a regular education. The Greenland society has changed dramatically during the last decades. There is, for example, much more private business now than a few years ago. This produces a lot of complicated civil cases which have been difficult to tackle for the lay judges. The pattern of crime has also changed, so the job as a defence counsel has become more demanding.

In addition, a number of desirable changes in the *Administration of Justice Act* will be made. Danish lawyers have recently criticized the Act for not meeting the standards of the European Convention on Human Rights which is something that troubles the Danish government — and rightly so! In the field of criminal law, steps will be taken to build a secure prison in Greenland so that the small group of Greenlanders who serves time in Danish prisons can be transferred back to Greenland.

Much better support for crime victims is needed and the Commission will be making recommendations in this area. It is also likely that correctional services will be transferred to the Home Rule government. Steps will be taken to strengthen the use of the Greenlandic language in the written communication of the courts and the police. However, there does appear to be total agreement in the Commission and among the politicians that the basic features of the legal system, including the fact that it is predominantly a non-lawyer system managed by the local population, will remain after this reform has been carried out.

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