

## The Democratic Credentials of a Hybrid Institutional Framework

***Based on a historical assessment of conflict management interventions in the Philippines, Jeroen Adam argues that the establishment of hybrid institutions in peace building and post-conflict reconstruction has often followed an authoritarian rationale. It is therefore suggested that NGOs and practitioners carefully examine the democratic credentials of some of the hybrid institutions through which they work and critically interrogate untested assumptions about their supposedly socially legitimate qualities.***

In 1978, at the height of the authoritarian Martial Law regime in the Philippines president Marcos – through a **Presidential Decree** – decided to set up an institution called the Lupon with the objective of ‘amicably settling disputes’ at the village level. As can be read in this decree, it is stated how the creation of the Lupon needs to be understood against the background of a failure of the formal judicial system as one of its primary aims is to ‘relieve the courts of docket congestion’. Further, it claims to ‘preserve and develop Philippine culture’. Until today, this Lupon is a prime institutional venue to mediate disputes at the village level and has in this capacity been subject to different interventions by large international NGOs.

Interestingly, this Lupon bears remarkable similarities with the tribal ward courts that were established in 1904 by the American colonial authorities in the recently occupied territories of Muslim Mindanao. Although these tribal ward courts nominally stood under the supervision of the district governor; in reality, the district governor was represented by a customary authority and the system unofficially recognized prevailing traditional practices of informal mediation and dispute settlement. In a later stage, these tribal ward courts were replaced by peace courts at the level of the municipal districts. It was hereby **formally stated** in P.C. Act No. 2520, Section 3 (1915) that: ‘Judges of the Court of First Instance and justices of the peace deciding civil cases in which the parties are Mohammedans or pagans, when such action is deemed wise, may modify the application of the law of the United States applicable to the Philippine Islands, taking into account local laws and customs: Provided that such modification shall not be in conflict with the basic principles of the laws of the United States of America.’ In reality, the establishment of these peace courts thus further confirmed the prominence of customary practices of mediation, as was already the case with the tribal ward courts

Although not being framed as such at the time of their installment, these institutions resemble very much what today would be called hybrid institutions. Indeed one witnesses a clear interaction between the formal and the informal, and a large space is deliberately provided to traditional/customary forms of mediation. Interestingly, both in the colonial period as well as during the Martial Law regime, the installment of these hybrid institutions followed a highly authoritarian logic, as they were part of a counterinsurgency strategy focused on violently suppressing a restive peripheral region of the country.

All this provides a striking example of how acknowledging ‘the local’ or ‘the traditional’ within a formal legal framework does not necessarily follow a democratic agenda. Furthermore, **fieldwork data gathered over the past 2 years** clearly indicates how the workings of this Lupon – and other practices of amicable settlement – tend to confirm or even reinforce local power imbalances, despite them being judged as fairly effective in quickly settling violent disputes. These two observations put forward some crucial questions to the current emphasis on hybrid institutional frameworks and the literature’s push to acknowledge traditional institutions of conflict management in broader strategies of peace building and post-conflict reconstruction.

Much of this attention for the local is rooted in a critique that has been formulated on the overly (liberal) state-centric discourse that underpinned most post-conflict interventions throughout the nineties. For instance, the British academic Oliver Richmond is a vocal protagonist of this turn

towards the local. Based on an assessment of what he sees as the dominance of the liberal peace model, **Richmond suggests** a radical shift in strategies of post-conflict reconstruction and peace building wherein local agency, traditional institutions and local understandings of peace obtain a central place. Another **much quoted paper** providing a similar critique on the universalist pretension of post-cold War state building has been written by Boege et.al. As an alternative to this liberal state-centric model, both authors argue that local and traditional institutions of governance and regulation need to be integrated in any attempt at post-conflict reconstruction and peace building. Ultimately, this will give emergence to so-called hybrid institutions as a symbiosis between local; traditional institutions and formal governance frameworks.



Without any doubt, this ‘discovery of the local’ has provided a necessary critique on overtly state-centric models of peace building. However, this literature also goes beyond a range of crucial political questions about the democratic credentials of these hybrid institutions. Based on our empirical and historical assessment of customary institutions of amicable settlement in the Southern Philippines, we tend to answer that – at least in this part of the world – these are limited. The local is not an a-priori democratic or socially legitimate space and the broader rationale for acknowledging customary governance institutions through this hybrid institutional framework is potentially of a highly authoritarian nature. This echoes the findings of other **JSRP research papers**.

The suggestion, therefore, is for practitioners in the field of conflict management and peace building to move away from indistinct conceptualizations such as the ‘hybrid’ or ‘the local’, and the set of untested implicit assumptions of the local as being more flexible, more legitimate or more socially accepted that they often entail. Rather, any intervention should start from a critical and transparent assessment of the democratic credentials of these institutions, and assess the consequences of recognizing these by integrating them with formal governance frameworks.

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