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A POLITICAL ANALYSIS OF THE PHILIPPINES' KATARUNGANG PAMBARANGAY SYSTEM OF INFORMAL JUSTICE THROUGH MEDIATION

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This article analyzes the Philippine system of compulsory conciliation both in terms of its significance in the context of the political system as a whole and in terms of its operation at the village level. I argue that the mediation structures established by national law are part of a pattern in which the Philippine state is incorporating within it the various sectors of civil society, but that the cooptation of the customary method of dispute processing is not meeting resistance from the rural Filipino. This analysis supports the more general argument that systems of informal justice operate to enhance centralized political authority, yet it reveals the dialectical nature of such arrangements for dispute processing.

In recent years there has been an international movement toward the informalization of justice in social systems as diverse as the precapitalist states of the Third World, revolutionary societies, and Western industrial nations. In post-independence India, the promotion of Nyaya Panchayats (village courts) was a massive attempt to provide access to justice for the rural population (Meschievitz and Galanter, 1982). Revolutionary movements in Cuba, Chile, Portugal, and Mozambique also gave rise to neighborhood courts and systems of popular justice. In the United States, more than one hundred mediation centers have now been established (Merry, 1982a: 172). The informal justice mechanisms in these various social situations are legal in nature and informal

to the extent that they are nonbureaucratic in structure and relatively undifferentiated from the

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larger society, minimize the use of professionals, and eschew official law in favor of substantive and procedural norms that are vague, unwritten, commonsensical, flexible, ad hoc, and particularistic (Abel, 1982: 2).

The Philippines joined the international movement toward informal justice in 1978 with the promulgation of the Katarungang Pambarangay law, providing for a nationwide system of dispute processing by means of mediation at the neighborhood and village level. The law, Presidential Decree No. 1508, establishes a system of informal justice in which mediation is conducted by either the barangay captain, the principal neighborhood/village official whose everyday occupation is normally non-governmental, or by a conciliation panel of village/neighborhood residents. The Katarungang Pambarangay rules direct the barangay captains and conciliation panels to process conflicts in an informal manner "without regard to technical rules of evidence, and as is best calculated to effect a fair settlement of the dispute and bring about a harmonious relationship of the parties." Lawyers may not participate as counsel. In terms of its goals, the Katarungang Pambarangay law sets forth as its official objectives the "speedy administration of justice" and the diversion of disputes from the regular courts as a means of reducing the alleged congestion in the national adjudicative institutions.

My understanding of the Philippines' system of informal justice is based on research undertaken in three villages of Cebu Province from October 1981 to August 1982. While in these villages I interviewed both village officials and the complainants and respondents in all disputes brought to mediation while I was there. I was also able to observe some of the dispute-processing sessions. Finally, I examined relevant presidential decrees, government reports on the operation of the Katarungang Pambarangay system, and village level records of dispute processing.

From a political perspective, the Katarungang Pambarangay law presents two paradoxes. First, as a system of informal justice designed ostensibly to divert disputes from the adjudicative institutions of the national legal system, the law might seem to decrease the Philippine government's control over civil society. Yet the result is the exact opposite; the Katarungang Pambarangay law increases the power of the state. Second, given the cooptation of the traditional method of dispute processing by the Katarungang Pambarangay system,

one might expect resistance to the implementation of the new law. Yet the rural population does not oppose the Katarungang Pambarangay's system of informal justice.

The initial portion of this article will analyze the first paradox, focusing on the political significance of the Philippine policy for informal justice in the context of the political system as a whole. My general argument is that the mediation structures established by the Katarungang Pambarangay law should be understood as part of a pattern in which the Philippine state is seeking to incorporate within it the various sectors of society. In other words, Presidential Decree No. 1508 is a step toward the rationalization, under state coordination, of the existing local institutions for dispute settlement. This is politically significant because it reduces the importance of local elites and forestalls the tendency of the rural population to turn for justice to revolutionary alternatives. Village conciliation tends to diffuse potential threats to the existing social system because it focuses on individual differences rather than on systemic problems, and the rhetoric surrounding the promulgation of the decree is an amplification of the ideology that the Marcos government has utilized to increase its legitimacy. Because the second paradox concerns the actual operation of the system of informal justice, the second portion of this article will focus on the mediation process in the villages of the Philippines. I argue that the rural population does not oppose the Katarungang Pambarangay's system of dispute processing because the village mediator meets a perceived need for conflict resolution and because mediation provides an avenue for political influence within the village. Furthermore, key values and beliefs of the folk legal culture support mediation as the most desirable form of dispute settlement.

I. THE STATE AND INFORMAL JUSTICE

In the years since the declaration of martial law in September 1972, the regime of President Ferdinand Marcos has pursued a systematic policy of destroying key political institutions of the precoup era, such as the Congress, and has attempted to rationalize and incorporate within the state formerly independent power blocs such as the mass media, labor, and business. At the same time the regime has tried to ensure that new institutions are controlled by the central

government.¹ One illustration of these policies is the fact that neighborhoods and villages are now incorporated within a hierarchy coordinated by the state.

Shortly after the declaration of martial law, President Marcos issued a decree establishing "Citizen Assemblies" in each village and in city districts or wards throughout the country. These were then used by the regime for the ratification of the new constitution, which subsequently provided the underpinnings for the current government—"constitutional authoritarianism," as Marcos terms it. Instead of seeking approval of the 1973 constitution through a secret ballot plebiscite supervised by the Commission on Elections, as the existing 1935 constitution and the new one required, President Marcos called for a referendum by *viva voce* or acclamation in citizen assembly meetings. He then proclaimed the 1973 constitution ratified on the basis of a report that 95 percent of the members of the citizen assemblies had favored it (Presidential Proclamation No. 1102, January 17, 1973).

By Presidential Decree No. 557, Marcos extended the barrio system into the cities (where it had not existed previously) and renamed the Philippine barrios barangays.² Government rhetoric proclaimed the barangays as instruments of democracy. Marcos wrote that "we are now changing society through a reorientation of our political authority" and added that "the modernization of the barangay system in the form of the Citizen Assemblies, restores power to the people, where it properly belongs" (1973: 76-77). In commenting on the place of the barangay in contemporary Philippine society, Marcos notes:

the development of the Barangay is the basic vehicle not only for the achievement of political normalization but also for the restoration of political power to its rightful owners, the people. . . . We hope, therefore, to go beyond the concept of the consent of the governed into a situation in which the governed not only participate in the political process but are "themselves their own governors" (Nawawi, 1982: 274).

¹ There is an extensive literature documenting this argument. One might start with Robert Stauffer's (1977) analysis of the corporatist nature of Philippine institutional change.

² As the smallest unit of local government, the Philippine barrio may be traced to the Spanish colonial period, when the previously autonomous villages or *barangays* were incorporated as administrative subunits of the equivalent of today's municipalities. In the 1950s, national legislation recognized the barrios as legal entities with the right to elect their own leaders, to impose limited taxes, and to enact ordinances. Sociologically, the Philippine barrio is rural in character and is best described as a village or hamlet.

Ultimately, however, the regime has declared the barangay to be simply the lowest unit of government and, in spite of the rhetoric, citizens of the Philippines have not participated in substantive decision-making since policies are set from above. Through the barangays, citizens are merely mobilized in the implementation of these policies (de Guzman, 1976: 18). In addition, the leadership of the barangays has been arranged in a hierarchy of organizations ranging from an aggregation of the barangay captains in each of the municipalities to a national "Society of Barangays" (*Katipunan ng mga Barangay*), with the municipal and provincial tiers selecting representatives to the next higher level.

Another illustration of the policy of centralization is that conflict resolution has increasingly become the responsibility of bureaucratic agencies of the national government. During the 1970s, landlord/tenant conflicts were diverted from the Court of Agrarian Relations to dispute processing by the field staff of the Ministry of Agrarian Reform. The new labor code places restrictions on the right of workers to strike and provides for the compulsory arbitration of labor disputes by a state agency.

Mediation as a form of dispute resolution is widespread in the Philippines. The Philippines' National Labor Relations Board often relies on mediation as its technique for resolving employee/management disputes; the field staff of the Ministry of Agrarian Reform commonly utilizes mediation to handle conflicts between landlords and tenants and to process disputes between beneficiaries of the government's land reform program; and the Ministry of Education and Culture frequently uses mediation to deal with controversies between employees of the public schools. In each of these instances, the use of mediation for dispute settlement is under the control of the state since these agencies are components of the national government. Third-party intermediaries are also used to resolve about 90 percent of the complaints brought to the municipal courts and a large majority of the cases filed in the Regional Trial Courts (Machado, 1979: 2), and even before 1978, mediation was used to resolve disputes in the villages.³ But both mediators at the village level and third-party intervenors who persuaded litigants to drop or settle complaints typically had no formal connection with the judicial system of the state.

³ Chavez and Helsabeck report that 76% of the 42 barangay captains they interviewed had mediated disputes prior to the promulgation of Presidential Decree No. 1508 (1984: II-7). See also Nydegger and Nydegger (1966: 63-65).

Indeed, mediation was quite often a means of avoiding state legal institutions.

In this context, the first essential characteristic of the Katarungang Pambarangay system is that it seeks to rationalize and bring under state control the informal dispute processing that has normally taken place outside the sphere of governmental influence.

What was once largely a matter of concern to local leaders and residents is now supervised by one of the bureaucratic organizations of the central government, the Ministry of Local Government. The Ministry, which is responsible for the implementation and administration of the barangay justice system, has formulated rules and regulations to govern the conciliation process in the barangays and has made itself responsible for ensuring that "the barangay settlement of disputes . . . shall be efficiently, effectively, and fairly . . . carried out" (Bureau of Local Government Supervision, 1979: 25). Since the promulgation of Presidential Decree No. 1508, the Ministry has disseminated copies of the decree and of its rules and regulations to barangay leaders, has drawn up a standard set of forms for use in dispute settlement, has conducted training seminars for the barangay captains, and has monitored the performance of the barangays.

The Katarungang Pambarangay law specifies the types of disputes that will now be mediated by village officials.⁴ Traditionally, each barangay captain defined the scope of the conflicts to be mediated by accepting or refusing specific issues and parties. Frequently, the scope of the leader's jurisdiction was much broader than the present law allows. Also, the law specifies the structures that the villages must now utilize for mediation. The barangay captain is the initial mediator.⁵ It is the captain who, under the law, appoints the members of the *Lupon Tagapayapa*, the local body responsible for the administrative supervision of the village justice system. If the

⁴ "All disputes may be the subject of proceedings for amicable settlement" except for certain enumerated cases: where the parties reside in different barangays or where the property at issue is in different barangays; where one party is the government or where one party is a public official and the dispute relates to the performance of his official duties; where the dispute involves an offense punishable by imprisonment exceeding 30 days or a fine exceeding 200 pesos; or other classes of disputes certified by the Prime Minister (Presidential Decree No. 1508, Section 2).

⁵ From the Spanish period until the early years of the Republic, barangay captains were found only in the rural areas of the Philippines and were appointed by the municipal governments. In the 1950s, village residents were given the right to elect the barangay captain. His authority today rests on traditional norms, his individual personal power, and his elective status.

barangay captain is unable to mediate the dispute successfully, the law specifies that the next step is to take the case to a conciliation panel (*Pangkat ng Tagapagkasundo*) composed of three persons chosen by the disputants from among the members of the *Lupon Tagapayapa*. Furthermore, by Presidential Decree No. 1508, village level mediation is a precondition to legal action in the courts of the formal adjudicative system on any matter falling within the jurisdiction of the Katarungang Pambarangay system:

No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated (P. D. 1508, Section 6).

Subjecting the unofficial legal system of the village to state domination is, in fact, a declared policy of the Philippine government. The preamble to Presidential Decree No. 1508 recognizes the prior existence of mediation at the village level when it notes that the "speedy administration of justice" may be attained by "the perpetuation and official recognition of the time-honored tradition of amicably settling disputes among family and barangay members at the barangay level without judicial recourse." The preamble also recognizes the desirability of institutionalizing the prior village practice and subjecting it to state domination: "it is deemed desirable to formally organize and institutionalize a system of amicably settling disputes at the barangay level." These goals are confirmed by the authors of the volume *Katarungang Pambarangay: Dynamics of Compulsory Conciliation*, who were members of the Technical Committee which drafted Presidential Decree No. 1508. They note that the limited access of the majority of Filipinos to adjudication requires continued reliance on the informal mode of conciliation:

The desirability of a formal recognition and cooptation of the informal means to the formal system of dispute resolution, thus becomes apparent. By structuring the indigenous "folk legal system" and creating some uniformity in the proceedings, an amorphous practice is given definite form, uncontrolled discretion is confined and regulated (Pe and Tadiar, 1979: 170).

The institutionalization under state authority of the traditional methods of conciliation is politically significant for several reasons. First, it reduces the political significance of local elites by channeling dispute processing through only the barangay captains rather than through other personages in the barangay or municipality. In general, persons who resolve disputes and apply norms gain power from that role in that, at a minimum, it gives them authority, publicity, and prestige (Abel, 1982: 12). In this instance the power gained by the barangay captains comes at the expense of informal local leaders and municipal elites because of the historically dyadic nature of Filipino politics. While the pre-martial law political system of the Philippines had its own institutional structures, it tended to rely more heavily on

a great net of dyadic alliances, some of them horizontal but more of them vertical, leading inward and upward from the villages to the national government, from "little people" to "big people," and from those who have favors to ask or demands to make to those who have the power to grant them (Lande, 1973: 116-17).

"Little people" and local elites (landowners, bank managers, lawyers, municipal mayors, etc.) often entered into patron-client alliances in attempts to manipulate the law (see Kerkvliet, 1979: 17; Silliman, 1981-1982: 97). Clients assumed they would fare better with the support of people of higher status than themselves while local leaders were moved to intervene in disputes either because of the need to assist a follower or in hopes of gaining an additional client (Machado, 1979). In such instances, the assistance provided by the patron created obligations for the client and either formed the basis for a new alliance or solidified an ongoing one. In either case, the dyadic relationship constituted a leader-follower linkage which competed with or undercut relationships that might be formed between the citizen and the state. The institutionalization of mediation diminishes the likelihood that such alliances will form because it confines the authority to mediate to the barangay captain, the lowest member of the Philippines' unitary government.

A second politically significant aspect of institutionalizing the traditional mode of dispute settlement under the control of the Philippine government is that the new procedures appear to respond to popular dissatisfaction with the regular courts and so, in the rural areas, forestall tendencies to turn for justice to the revolutionary alternative of the New People's Army of the Communist Party.

Fairness is clearly a component of the rural Filipino's concept of what constitutes a just dispute-processing system. Fairness means that the law and the courts should not treat the rich and the poor or the powerful and the powerless differently. It means that even the poor and the weak should be able to turn to the legal system for redress of offenses committed against them (Silliman, 1982). But while the rural population views the national courts as the "proper" channel for dealing with "big" offenses and for processing disputes under state law, there is a common conviction that the national courts are not fair. The strong popular belief is that the law will not be strictly enforced against the rich or against those close to the centers of power and that it is only such persons who receive justice from the courts. In short, people feel that there is one quality of justice for the rich and another for the poor. One informant told me that the poor can't win in court, even if they have a just cause, "as you must pay the lawyer for each hearing and you may even have to pay the judge." Another, an unemployed laborer, observed that jails are only for the poor; there are no rich in the jails. And a third, a carpenter whose son had been stabbed to death by a youth who continued to live in the village and had never been brought to trial, remarked bitterly: "If there is no money, there is no justice; . . . if we were wealthy, the offender would have been sentenced long ago." One alternative that such people perceive is the New People's Army (NPA). Many Filipinos comment that NPA justice is swift and provides remedies for the poor in a political system in which the law normally favors the wealthy and influential. Some Filipinos have acted on the basis of these attitudes, turning to revolutionary forces for justice.

The government knows of these attitudes, and the rationalization of informal mediation appears to have been partly in response to them. The late Chief Justice Castro indicated the regime's concern when he explained to the Integrated Bar of the Philippines that "the slow, expensive and cumbersome procedures in our courts today have been a cause of tremendous dissatisfaction and discontent among our people" (1976a: 2). A member of the Technical Committee is more direct:

In a developing country where an active rebel movement is going on, discontent with the slow judicial process is dangerous to the stability of government. Frustrated expectations tend towards and give support to the underground (Tadiar, 1980: 3).

Thus, the political intent is to divert disputes from the regular adjudicative structures, where views of judicial injustice are only likely to be exacerbated, while providing a state-controlled forum for dispute processing that will maintain the rural population's involvement within the state's legal system.

From the perspective of the regime, the village mediation system is a particularly inexpensive method of reducing popular discontent because the types of disputes to be diverted to the barangay captain are those that, in general, are systematically inconsequential; they are largely personal disputes among village residents.⁶ To create discontent in processing such disputes, which do not normally raise questions about the fundamental distribution of society's goods, is to squander the regime's political resources.

A third politically significant aspect of the institutionalization of village conciliation is that the style of mediation provided focuses on individual differences and problems rather than on systemic trouble or the collective resolution of disputes. By doing so, it tends to divert attention from the conditions that give rise to disputes and to allocate to the state a communal task around which local groups might coalesce. For example, young males are among the most common participants in the disputes brought before the barangay captains in the villages of Cebu. Mediation, as I observed it, focuses entirely on the immediate circumstances of the disputes in question and never attends to the general social problem of high unemployment among village youths although, talking informally, the barangay captains and other residents do connect conflicts among village youths to broader social issues. It is not necessarily the case that such issues would become sources of political conflict were mediation not provided, but it is clear that the existing style of conciliation, with its individualistic focus, tends to diffuse whatever political potential might otherwise exist (cf. Abel, 1982: 6-7).

Such depoliticization is not a necessary characteristic of all informal justice mechanisms. In revolutionary systems where informal systems of justice have been part of a social movement, fundamental social issues are raised and dealt with in the process of conflict resolution. During the Mozambique war of liberation, for example, informal "tribunals often

⁶ For example, in Sangat village, the type of complaint most frequently brought to the barangay captain concerns damage or theft of personal property, quarrels or fights, and defamation of the complainant's reputation (*Sangat Log Book*).

located both the cause and the resolution of a problem in its broader social context" (Isaacman and Isaacman, 1982: 298). But the Katarungang Pambarangay law of the Philippines was promulgated by the political elite and did not arise in response to a movement for social change. Its apparent political contribution is to perpetuate the status quo.

As its final contribution to the state control of civil society, the barangay system of justice provides an opportunity for the regime to expound its ideology, a set of themes by which the government is attempting to legitimate its rule. Since 1972, the Marcos regime has repeatedly used coercive instruments—arrests of social activists, police control of demonstrations, military campaigns against Muslim and communist rebels, and the like—to perpetuate its control of the Philippine state. But, as Weber observes, every system of domination "attempts to establish and to cultivate the belief in its legitimacy" (1968: 213); that is, the belief of individuals that an order is "a just order to which they should rationally submit" (Turkel, 1980: 19). The benefits of legitimacy are widely recognized. In its tendency to maintain political stability, it is a low cost, effective alternative to coercion (Easton, 1965).

Recognizing the importance of legitimate power, the Marcos regime has articulated a set of beliefs and values as a basis of consensus between itself and the Filipino people. In particular, the regime has sought to demonstrate that, even though it is authoritarian, it is "constitutional" and that Marcos' perpetuation of himself in office is justified by his efforts to reform the Philippines and construct a "new" society.⁷ Marcos has repeatedly criticized the politics of the "old society" as divisive and destructive of the national interest, and former Presidential Executive Secretary Alejandro Melchor has stated that "the ultimate concern of the New Society . . . is the promotion of social justice and equality for all Filipinos" (Wurfel, 1977: 7).

The rhetoric surrounding the establishment of the village mediation system reinforces these legitimating themes. Barangay justice is presented as a "form of social ordering that is availed of to stave off the destructive forces of conflict in human relationship" (Pe and Tadiar, 1979: 147), and the

⁷ By the middle of the 1970s, the regime's justification for continuing in power was no longer the same as its basis for proclaiming martial law in 1972—the threat of armed rebellion. Instead, it defended its right to rule with the argument that it was engaged in reforming Philippine society and that only through a new style of politics could economic development and social justice be achieved.

preamble to Presidential Decree No. 1508 justifies the establishment of a nationwide system of village level mediation by emphasizing that the purpose of the arrangements is to "enhance the quality of justice dispensed by the courts."

Equally important, the Katarungang Pambarangay system of informal justice allows the elite to emphasize its ideological theme that the barangay is the historical basis of traditional Filipino society as well as the basis of the "New Society" being constructed by the regime. In providing a picture of Filipino society prior to Western colonialization, historians have shown that the Philippines was not a national entity unified under a central political authority and have suggested that the Filipinos were, instead, organized into a series of local, relatively autonomous kinship units known as barangays (Phelan, 1967: 15). Filipino nationalists have emphasized this theme in their search for sources of national identity and national pride, and the barangay has become one of the important myths of contemporary Philippine society. President Marcos has utilized this myth in the various decrees relating to the formation and functions of the citizen assemblies discussed earlier, describing the citizen assemblies as "the modern expressions of the barangay" (1973: 79). The Spanish designation for the Filipino village, *barrio*, has been abandoned in favor of the label "barangay," and the primary village official, formerly known as the *barrio* captain, is now designated as the "barangay captain."

The myth has been used to institutionalize village mediation by labeling this system of informal justice as "katarungang pambarangay" or "barangay justice." In Judge Castro's 1976 speech advocating the creation of such an arrangement, he notes that the formation of "neighborhood paralegal committees" would be a "salutary throwback to the pre-Spanish times . . . when in all kinds of suits, the case was heard before the old men of the district in which the litigants lived" (1976b: 14). The preamble to Presidential Decree No. 1508 seeks to legitimate the new system by making reference to "the time-honored tradition of amicably settling disputes among family and barangay members at the barangay level" and by suggesting that one of the purposes of the act is "to preserve and develop Filipino culture."

Whether the symbols articulated in relation to the Katarungang Pambarangay do in fact increase the legitimacy of the elite's exercise of power is an empirical question that has

yet to be tested.⁸ We can, however, inquire into the manner in which the rural Filipino is likely to evaluate the system of informal justice that the Katarungang Pambarangay law created. To do so requires us to shift from the perspective of the external—and Western—observer to that of the actors directly involved in the informal justice system. From this perspective what is most important is not that the law exists or the consequences of the law for the national political system. Instead, it is personal experience with the practice of mediation in a particular village. Furthermore, if we are fully to understand the rural population's evaluation of mediation, we must pay attention to the folk culture. It is the meanings and interpretations that the actors themselves give disputing behavior that lends significance, for the villager, to the processes mandated by the Katarungang Pambarangay law.

II. THE VILLAGE

Based on my observation of the mediation process in three villages of Cebu Province, I argue in this section that the rural population supports the institutionalization of traditional mediation in the barangay justice system because villagers perceive the barangay captain as needed for dispute settlement, because mediation by village officials provides an important local political forum, and because key values and beliefs of the folk legal culture treat mediation as the most desirable form of dispute settlement.

Mediation by the barangay captains is the least formal of the state-sponsored dispute processing forums accessible to the villagers. Sessions take place either in the home of the captain or in a makeshift barangay office. The parties often bring family members or friends with them, and other villagers come and go during the proceedings, sometimes commenting on the statements of the parties, offering suggestions, or admonishing one participant or the other. In contrast to the Philippine courts, where English is the medium of communication, the local language (Cebuano) is used. One of the villages I studied keeps few records; a second has final agreements written up and keeps many of them on file; and the third village maintains a log book of both the proceedings and the agreements.

The exact procedures of the mediation sessions vary somewhat with the style of the particular barangay captain and

⁸ See Hyde's argument that scrutiny of the public rhetoric of political elites does not, in itself, demonstrate the existence of legitimacy (1983: 389-90).

from dispute to dispute, but the process normally begins with an investigation of the details of the conflict. This may be confined to the immediate incident, or it may involve an exploration of the full range of the parties' relationship. The complainant states his or her reason for coming to the barangay captain, the other party responds, and the barangay captain then questions the disputants or their witnesses. While there are sometimes disagreements as to who is actually the wronged party, my impression is that participants normally agree on this issue. Ultimately, the barangay captain will ask the complainant what he or she wants by way of a settlement. It is clear at this point that it is mediation and not adjudication that is being observed since both parties must now give their consent to any proposed outcome (see McEwen and Maiman, 1984: 12-16). The respondent may immediately accept the proposed settlement, suggest an alternative remedy, or bargain about the nature of the final agreement. But although the barangay captains may themselves suggest possible solutions or put pressure on one party or the other to settle, they do not have the authority simply to dismiss a complaint or to impose a solution on the disputants. Finally, there is the ritual of asking forgiveness (of either the complainant or the barangay captain), assenting to the barangay captain's question as to whether the two parties have now returned to good relations, and signing the agreement.

However villagers might regard the legitimacy of the Katarungang Pambarangay law and its system of informal justice in the abstract, the barangay captain and village mediation are situated so as to serve an important social need, and they are sought out in times of trouble. For instance, in the three Cebuano villages I studied, grudges among village youths, the existence of gangs (*barkada*) based on territorial subunits within the barrio, and violence revolving around these feelings and structures are of considerable concern to the older generation. The municipal government is conceptually distant, police power is rarely evident in the village, and the sorcery of folk doctors is viewed as inappropriate for coping with this type of conflict;⁹ so parents of the conflicting youths compel their offspring to appear before the barangay captain who, along with the parents, attempts to restore a harmonious relationship

⁹ Rural Cebuanos turn to folk doctors for solutions to a variety of problems, including the rectification of offenses by means of prayer or the punishing of offenders through sorcery. While some believe that sorcery may provide justice for the offended party, it is not seen as the type of solution likely to improve relations between conflicting parties.

or, at least, to avoid the threat of the underlying grudges' breaking out in open violence. Thus, the tendency to turn to the barangay captain exists in the first instance simply because he is there and because the gravity of a situation requires immediate action. However, if the experience is satisfactory, as it often is, this will lend legitimacy to the barangay captain as a mediator and to the system he represents. As a consequence, the village population perceives the Katarungang Pambarangay law as strengthening a local dispute-settlement process that already meets an important social need.

The Katarungang Pambarangay law is also supported by the Cebuano villagers studied because mediation by the barangay captain or by the conciliation committees is an important political forum. The villager, in mobilizing the barangay captain for the resolution of disputes, is, in effect, seeking power over his or her opponent. Women turn to the barangay captain in order to halt the gossip of a neighbor; farmers mobilize the captain to stop the repeated destruction of crops by domestic animals; and other villagers cite a variety of justifications for the power they seek. Thus, villagers who activate the mediation process are like typical court litigants in that they seek to obligate or compel their opponents to take or to desist from a course of action. The desired outcome may be simply a promise not to repeat some action, or it may be the actual transfer of property. In either case, going to mediation is a political step taken by those who without the barangay captain's assistance might be unable to gain satisfaction from an adversary.

The ideal-type conception of mediation as a type of third-party intervention that does not impose solutions tends to obscure the political motives of those who seek mediation and the political nature of the process (Abel, 1982). The political nature of mediation has been successfully obscured in the Philippines, where the typical justification that Filipinos give for the process is that conciliation is the type of settlement most likely to reestablish good relations between disputants; thus they characterize the outcome of mediation as an "amicable settlement." But the barangay captain—as the principal figure in the village government—represents the official means of controlling behavior.¹⁰ When barangay captains function as mediators, they act to assist their fellow

¹⁰ Gossip, the expectation of divine retribution, and the possibility of an aggrieved party's taking revenge are other important instruments of social control.

community members. Yet they also act to restore peace and adequate working relations on behalf of the community. The barangay captains in the villages of Cebu do more than simply focus on personal relationships to establish harmony. Harmony is a norm, but as noted above, mediation is typically undertaken to secure some more tangible goal. While barangay captains do not stipulate outcomes as adjudicators would, they are rarely neutral. Mediation sessions often begin with an "investigation" (*susi*) into "what really happened," and the barangay captain, while appearing to facilitate agreement, will sometimes place considerable pressure on one of the parties to accede to the demands of the other.

It is now generally recognized that coercion can be a factor in the mediation of disputes (Merry, 1982b: 31-32; Tomasic, 1982: 225-27). Thus, it should not be surprising that barangay captains have some coercive resources they can bring to bear at various stages in the dispute settlement process. While some of these resources stem from the captain's personal power, many of them exist by virtue of the increasing institutionalization of the barangay captain's role as an agent of the state. Under the martial law regime, each village is empowered to establish a barangay police force. The power of these local police is limited, but they symbolize the power of the state. Barangay captains use them to deliver the summons, which under the Katarungang Pambarangay law may be issued upon receipt of a complaint. If one or more of the parties fail to respond to a summons, the barangay captain may threaten to file a contempt motion in the municipal court, or he may withhold the clearance required of villagers who wish to work outside the Philippines.¹¹

During the mediation process or afterwards, the barangay captain may use the threat of referral to the Philippine constabulary or to the municipal government to compel disputants to reach an agreement and to comply once an agreement is reached. The former threat is serious because the constabulary possesses an obvious capacity to use physical force and because referral to the constabulary means the involvement of the national government in the dispute. The latter threat is also not taken lightly because referral to the

¹¹ Within the last decade an increasing number of Filipino males have sought foreign employment, especially in the Middle East, under contracts regulated by the Philippine national government. One prerequisite is certification, normally a clearance from the person's barangay captain, that the prospective employee does not have a criminal record.

municipal government can result in entangling litigation which, at a minimum, brings costs—money, time, and anxiety—not to mention a possible fine or a jail sentence.

These resources for coercion are not, however, the most important source of the barangay captain's power. Legitimate power is his most important mediation asset. From the perspective of the rural population, the barangay captain is mobilized primarily because he and the process in which he figures are endowed with authority. When villagers turn to the barangay captain to resolve a conflict, they expect not that the barangay captain will be able to coerce the other party into compliance but that his authority as a village official will produce the desired outcome. This authority is rooted in the values and beliefs of the folk legal culture. The fact that barangay mediation, although prescribed by the state, is consistent with a pre-existing cultural pattern of turning to local leaders for aid in mediating disputes is the final reason why the rural population supports the Katarungang Pambarangay system of justice.¹²

Pospisil has argued that a society does not possess one consistent legal system but that there are as many legal systems within a society as there are functioning subgroups (1967: 2-3). Research on the Philippines, in its recognition of a dichotomy between the official and folk legal cultures, supports this generalization. Stone points to the existence of legal systems other than the official one when he writes:

in addition to the legal culture which exists in the judicial system and the courts at the higher levels, [there is] another legal culture which operates independently from that delineated by the civil and administrative codes. . . . Therefore, in many instances, the law of the land is not, in fact, the legal system which regulates behavior (Stone, 1971: 160).

Similarly, in his analysis of "everyday resistance" by villagers in Central Luzon, Kerkvliet (1983) argues that their struggle for fair treatment is based on a concept of justice embedded in Tagalog culture. My own research (1982) in the Visayan region of the Philippines shows that the rural Cebuano legal culture

¹² That the outcomes of mediation are satisfactory may be an additional reason why the rural population supports the Katarungang Pambarangay system of justice. Chavez and Helsabeck report that 60% of the barangay justice disputants questioned responded that they were satisfied with the outcome (1984: II-1), while Tadiar states that "more than three-fourths of the disputants surveyed felt that the settlements reached in their cases were both fair and satisfactory" (1984: 37). However, based on an analysis of disputants' narrations of cases, Mojares concludes that only 43% of the settlements are considered fair, with all parties satisfied (1984: 62, 137).

combines components of the national legal ideology with elements drawn from Catholicism and from traditional secular norms, but the latter elements predominate. It is this folk legal culture rather than the official ideology of the national elite or even the national legal culture that provides the basis for the legitimacy accorded the Katarungang Pambarangay system by the Cebuano villager.

Three aspects of this folk legal culture are especially relevant. First, the settlement procedures specified by the Katarungang Pambarangay law are regarded as legitimate because the rural population has long preferred the mediation of disputes to formal litigation. Respondents in the three villages I studied repeatedly expressed the belief that there should be a *husay* rather than a court case. As a noun, *husay* refers to a "hearing" or a "settling of accounts"; as a verb, *husay* means "to be peaceful," "put in order," "untangle," or "unsnarl"; and as an adjective, it is translated as "orderly," "without confusion," or "well arranged with everything put in its place" (Silliman, 1982: 237). When asked why this form of dispute settlement is preferred, village residents explain that a *husay* is desirable because it involves little or no expense, and it is quick. They also note that quarrels among neighbors are not good and ought to be settled within the village rather than outside the barangay. Furthermore, mediation is the form of dispute settlement that is seen as most likely to reestablish good relations among the disputants. One village resident expresses it this way:

if there is no *husay* at the village level, then the hurt feelings will remain, the conflict will continue; it is better that the persons shake hands and forget, that the persons be reconciled.

This reason for preferring mediation is also illustrated by the occasional use of the term *hilot* to describe the purpose for bringing a dispute to the barangay captain. *Hilot*, which ordinarily means "to massage a part of the body for health purposes or to reset a sprained or broken bone," when applied to mediation indicates that the process is intended to repair personal relations. It is obvious from this use of language that there is a shared procedural norm that designates mediation as the preferred method of dispute settlement.

The preference for mediation gathers strength from the fact that go-betweens are commonly used to maintain or restore interpersonal relations throughout Philippine society (Lynch, 1973: 12-13). The go-between acts as a buffer to make an

embarrassing request, to register a complaint, or to communicate an unwelcome decision without the shame of a face-to-face encounter. Traditional marriage negotiations are one illustration. A go-between may also be used to remedy an existing state of tension or conflict and to achieve a reconciliation. Thus, a go-between may be utilized to reconcile major political figures or kinsmen who are in conflict. It is apparent from the use of go-betweens and from the villagers' general attitudes toward mediation that the use of the barangay captain for mediation is simply an officially institutionalized version of a pre-existing folk norm.

Secondly, the folk legal culture contributes to the legitimacy of the Katarungang Pambarangay law by supporting the state's designation of the barangay captain as the proper person to mediate disputes within the village. This reflects the fact that elements of the national legal ideology are part of the folk legal culture, for the ready acceptance of the barangay captain's authority is derived from the rural population's understanding of the national law and their perception of officials. Disputants explain that "it is the law" that grievances should be taken to the barangay captain or that "there is a law" that requires disputes to be brought to the barangay captain before they may be taken to the court. Mediation by barangay captains is legitimized by their status as the principal government officials in each village, and it may be enhanced by the fact that they are elected.¹³ Villagers see the holding of an official position as sufficient reason to consult a person: "the incumbent is perceived as someone who is in the position to render and should render assistance . . . in the solution of existing problems" (Castillo *et al.*, 1969: 129). In particular, the barangay captain, as the leading village official, is seen as having a "duty to patch up quarrels." At the same time, traditional norms unconnected with the national legal culture legitimize the barangay captain's status as a dispute settler. Even before the Katarungang Pambarangay law, villagers maintained that one was obligated to take a grievance to the barangay captain out of respect for his person. For example, in insisting that his opponent live up to a mediated agreement, one resident used the term *tahud*, which may be translated as both "obey" and "respect." Non-fulfillment of the agreement

¹³ The requirement that elites be elected was one of the procedural norms of legitimacy established by the pre-martial law political system (Agpalo, 1975: 8).

would be lacking in manners (*walay batasan*) because it would show disrespect for the barangay captain.

The third factor that contributes to the legitimacy of mediation by barangay captains is that they generally treat the disputes brought to them as private disputes even if a criminal law has obviously been broken. The barangay captain in the course of a mediation may make reference to a party's behavior as being against the law, municipal or national, but he does not seek to enforce the criminal law simply because he learns that legal norms have been violated. This may suggest an allegiance not to the state but to the parties as co-villagers. But at a deeper level, the willingness to treat such disputes as private matters reflects the fact that the "Western legal assumption that the public is an aggrieved party when certain acts, defined as criminal, are committed is not widely shared by Filipinos" (Machado, 1979: 300). Also, focusing on the private rather than the public aspects of the wrong reflects the Filipino's personalistic view of authority. The normative concept of the Philippine villager is that power should be utilized in a "personalistic manner" that shows concern for the individual and the group (Jocano, 1969: 249-50). Therefore, mediators enhance their authority by avoiding the impersonal, legalistic, and mechanical rules of the national government and by focusing, instead, on the personal dimensions and circumstances of disputes even while remedies for the breach are being found.

III. CONCLUSION

It may or may not be the case that the Katarungang Pambarangay law will meet its avowed goals of increasing the speed with which justice is administered in the Philippines and of reducing the congestion in the courts. But as with systems of informal justice in other precapitalist societies, the program of compulsory conciliation in the Philippines is increasing the influence of the national government over rural society through the incorporation of the traditional village method of dispute settlement into the state legal system. The political significance of informal leaders has been reduced, and the use of customary symbols and methods of dispute settlement has provided the regime with an opportunity to expound on the themes by which it is attempting to legitimate its rule. Nevertheless, the evidence from the Cebuano region reveals the dialectical nature of establishing systems of informal justice. Though it has been coopted, village dispute settlement

is generally accepted by the rural population, partly because of the coincidence between the norms articulated in the national law and the folk legal culture. But village mediation does not operate precisely as the law prescribes, nor is the rural population depoliticized in any absolute sense. While village mediation focuses on individual differences and problems rather than on systemic trouble, there is a perceived need for the barangay captain to resolve intra-village conflicts, and the Katarungang Pambarangay law reinforces the utility of mediation as a local political forum.

REFERENCES

- ABEL, Richard L. (1982) "Introduction," in R. L. Abel (ed.), *The Politics of Informal Justice: The American Experience*, Vol. 1. New York: Academic Press.
- AGPALO, Remigio E. (1975) "Legitimacy and the Political Elite in the Philippines," *Philippine Political Science Journal* 1 (December).
- BUREAU OF LOCAL GOVERNMENT SUPERVISION, Ministry of Local Government, Republic of the Philippines (1979) *Katarungang Pambarangay Rules and Regulations*. Manila: Ministry of Local Government.
- (1983) "Five Year Summary Report on the Katarungang Pambarangay, 1979-1983." Manila: Ministry of Local Government.
- CASTILLO, Gelia, Patrocinio S. VILLANUEVA and Felicidad V. CORDERO (1969) "Local Leaders: Status, Attitudes and Behavior," in J. V. Abueva and R. P. de Guzman (eds.), *Foundations and Dynamics of Filipino Government and Politics*. Manila: Bookmark.
- CASTRO, Fred Ruiz (1976a) "The Bar and the Congested Dockets." Address to the Third Regional Convention of the Greater Manila Region of the Integrated Bar of the Philippines.
- (1976b) "Making Free Access to the Courts a Reality (and Neighborhood Para-legal Systems)." Address to the Seminar for Action officers—under the auspices of the Malacanang Executive Office—held at the Philippine Village Hotel, November 10.
- CHAVEZ, Ruben and Robert HELSABECK (1984) *Silliman University Project on Barangay Justice—PD 1508*. Dumaguete City, Philippines: Silliman University.
- de GUZMAN, Raul P. (1976) "Citizen Participation and Decision-Making under Martial Law Administration: A Search for a Viable Political System." Manila: University of the Philippines College of Public Administration. Occasional Paper, Back Issue No. 1.
- EASTON, David (1965) *A Systems Analysis of Political Life*. New York: John Wiley and Sons, Inc.
- HYDE, Alan (1983) "The Concept of Legitimation in the Sociology of Law," 1983 *Wisconsin Law Review* 379.
- ISAACMAN, Barbara and Allen ISAACMAN (1982) "A Socialist Legal System in the Making: Mozambique Before and After Independence," in R. L. Abel (ed.), *The Politics of Informal Justice: Comparative Studies*, Vol. 2. New York: Academic Press.
- JOCANO, F. Landa (1969) *The Traditional World of Malitbog*. Quezon City: CDRC—University of the Philippines.
- KERKVLiet, Benedict J. (1979) "Law and Politics in a Philippine Village." Paper prepared for the College of Public Administration, U. P., and for the Institute of Philippine Culture, Ateneo de Manila University.

- (1983) "Everyday Resistance to Injustice in a Philippine Village." Unpublished manuscript.
- LANDE, Carl (1973) "Networks and Groups in Southeast Asia: Some Observations on the Group Theory of Politics," 67 *American Political Science Review* 103.
- LYNCH, Frank (1973) "Social Acceptance Reconsidered," in F. Lynch and A. de Guzman, II (eds.), *Four Readings on Philippine Values*. Quezon City: Ateneo de Manila University Press, IPC Papers, No. 2.
- MACHADO, Kit G. (1979) "Politics and Dispute-Processing in the Rural Philippines," 52 *Pacific Affairs* 294.
- MARCOS, Ferdinand E. (1973) *Notes on the New Society*. Manila: Marcos Foundation.
- McEWEN, Craig A. and Richard J. MAIMAN (1984) "Mediation in Small Claims Court: Achieving Compliance Through Consent," 18 *Law & Society Review* 11.
- MERRY, Sally Engle (1982a) "Defining 'Success' in the Neighborhood Justice Movement," in R. Tomasic and M. M. Feeley (eds.), *Neighborhood Justice: Assessment of an Emerging Idea*. New York and London: Longman.
- (1982b) "The Social Organization of Mediation in Nonindustrial Societies: Implications for Informal Community Justice in America," in R. L. Abel (ed.), *The Politics of Informal Justice: Comparative Studies*, Vol. 2. New York: Academic Press.
- MESCHIEVITZ, Catherine S. and Marc GALANTER (1982) "In Search of Nyaya Panchayats: The Politics of a Moribund Institution," in R. L. Abel (ed.), *The Politics of Informal Justice: Comparative Studies*, Vol. 2. New York: Academic Press.
- MOJARES, Resil B. (1984) *Dispute Processing in Four Cebu Barangays: A Sociocultural Study of the Katarungang Pambarangay*. Cebu City: Cebuano Studies Center, University of San Carlos.
- NAWAWI, Mohd. A. (1982) "Political Participation During the First Five Years of the New Society in the Philippines," 13 *Journal of Southeast Asian Studies* 270.
- NYDEGGER, William and Corinne NYDEGGER (1966) *Tarong: An Ilocos Barrio in the Philippines*. New York: John Wiley and Sons.
- PE, Cecilio L. and Alfredo F. TADIAR (1979) *Katarungang Pambarangay: Dynamics of Compulsory Conciliations*. Manila: UST Press.
- PHELAN, John Leddy (1967) *The Hispanization of the Philippines: Spanish Aims and Filipino Responses, 1565-1700*. Madison: University of Wisconsin Press.
- POSPISIL, Leopold (1967) "Legal Levels and Multiplicity of Legal Systems in Human Societies," 11 *Journal of Conflict Resolution* 2.
- SANGAT LOG BOOK. An unpublished record of mediation proceedings and agreements in Sangat, San Fernando, Cebu from 1972 to the present.
- SILLIMAN, G. Sidney (1981-1982) "Dispute Processing by the Philippine Agrarian Court," 16 *Law & Society Review* 89.
- (1982) "The Folk Legal Culture of the Cebuano Filipino," 10 *Philippine Quarterly of Culture and Society* 225.
- STAUFFER, Robert B. (1977) "Philippine Corporatism: A Note on the 'New Society'," 17 *Asian Survey* 393.
- STONE, Richard L. (1971) "Lagay and the Policeman: A Study of Private, Transitory Ownership of Public Property," in F. Lynch and A. de Guzman, II (eds.), *Modernization: Its Impact in the Philippines*, Vol. V. Quezon City: Ateneo de Manila University, IPC Papers, No. 10.
- TADIAR, Alfredo F. (1980) "Traditional Conciliation a 'New' Alternative to Judicial Resolution of Disputes in the Philippines," *Souvenir Program*, Asian Law Association, 1980 General Assembly (March 24-29), Manila.
- (1984) *Research Survey on the Conciliation of Disputes under the Katarungang Pambarangay Law*. Diliman, Quezon City: College of Law, University of the Philippines.
- TOMASIC, Roman (1982) "Mediation as an Alternative to Adjudication: Rhetoric and Reality in the Neighborhood Justice Movement," in R. Tomasic and M. M. Feeley (eds.), *Neighborhood Justice: Assessment of an Emerging Idea*. New York and London: Longman.

- TURKEL, Gerald (1980) "Legitimation, Authority and Consensus Formation," 8 *International Journal of the Sociology of Law* 19.
- WEBER, Max (1968) *Economy and Society: An Outline of Interpretive Sociology*, Vol. 3. G. Roth and C. Wittich (eds.). New York: Bedminister Press.
- WURFEL, David (1977) "Martial Law in the Philippines: The Methods of Regime Survival," 50 *Pacific Affairs* 5.