

# The Possibility of Popular Justice And International Mediation: Cultural Aspects



Take Home Final for  
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## **Introduction**

This take-home final covers two distinct subjects of Law & Society 150. The first question asked covers the notion of popular justice. Is it possible? Is it practical? Is it something we really want? I will be discussing three points supporting the possibility of popular justice, and three points negating it. To follow will be the reasons, in my opinion, we cannot achieve popular justice as defined in Merry & Milner's book *The Possibility of Popular Justice*. The second question asked covers the comparison between Rouhana & Kelman's intercultural approach to international mediation versus the five common types of agreements to ethnic conflict presented in class. I will be discussing and contrasting five strategies of agreement in relation to Rouhana & Kelman's intercultural approach found in their article "Promoting Joint Thinking in Intercultural Conflicts: An Israeli-Palestine Continuing Workshop" in *The Journal of Social Issues*. I will focus only on the issues described above; however, I learned much more from the readings, lectures, and guest speakers.

## **The Possibility of Popular Justice**

The compilation of articles by Merry & Milner are well weighted towards the cons of popular justice. Further, one case described throughout *The Possibility of Popular Justice*, the San Francisco Community Boards (SFCB) project, received many praises yet, many more criticisms.

Before I discuss the pros and the cons of popular justice, I would like to define the various distinct notions of popular justice. The four notions described in class and in "Sorting Out Popular Justice" by Sally Merry are as follows:

1. The reformist notion is supported by liberal democrats and capital economies. Their main concern involves the streamlining of the formal legal system and making it available to everyone. The U.S. and many developing third world countries have this notion of popular justice.
2. The socialist notion “springs” from Marxist-Leninist theories of popular tribunals to empower the masses (working class) and to teach them the ideology of their socialist society. Communist countries have this notion of popular justice.
3. The communitarian notion seeks to operate entirely free from state control. The SFCB project is one example. Kibbutz in Israel, and the Amish and Mennonites in the U.S. are others. Often morals and ethics are at the center of their formation. These institutions exist only where the community founding them continues to exist as an autonomous group.
4. The anarchic notion takes the form of mass uprisings in ad hoc groups (eg. militias) assuming power to judge & punish. It threatens the established social structure and is never supported by the “state”.

Community boards, and public forums to mention only two structures, promote the various notions and ideologies of popular justice.

First, popular justice enables citizens to directly resolve their own conflicts. As Shonoholtz points out, “Disputants retain the full power to resolve their own matters while they are provided a balanced ethnic and racial group of trained citizens to assist them.” It also enables the community to hear a wider variety of conflicts. In essence it empowers the community.

Second, popular justice promotes diversity and participation. It has been found to break racial and ethnic barriers creating ties among its participants. In other words it encourages participation from a diverse group of people who have unique values.

Third, popular justice attempts to resolve conflicts before they escalate to violence or law violations. In addition, it also reduces recidivism. Some chapters in *The Possibility of Popular Justice* document “the ideology of non-violent resolution of differences and of a consensual process that operates out side the law” is emerging.

The cons outnumber the pros; however, I will only discuss three. First, examples given in the book suggest, “popular justice has a critical temporal dimension.” It often becomes absorbed into the formal legal system. Popular justice therefore is continuously adapting. Once one program is absorbed, another is created.

Second, Barbara Yngvesson in here article comments that the SFCB is rejected by some parties and it currently has not been successful in producing more socially cohesive neighborhoods. That may be due to America’s autonomous culture.

Third, Fitzpatrick comments in his article that popular justice as it is defined is impossible. Informal law can not be totally autonomous from some sort of formal legal system. Informal law will always be dependent on its formal counterpart.

### **My Opinion of the Possibility of Popular Justice**

Popular justice in all notions mentioned above have been instrumental in the development of the United States and world as we know it. Anarchist notions have brought about the American revolution of 1776 and our freedom. Reformist notions have brought about small claims, probate, bankruptcy, and divorce court along with arbitration,

mediation and the like. Communitarian notions have brought about the SFCB and various community programs around the world. Socialist notions have been in operation in China, USSR, Cuba, and Chile in the near past and present.

Have all or any institutions with the above notions withstood the test of time? No. Most have dissolved or have been absorbed into formality, and have been taken away from the control of the citizenry. It is not foreseeable to have any one program or one form of popular justice survive for any extended period. Furthermore, in an autonomous culture such as the U.S., popular justice such as community boards may not be popular, practical, or desirable.

### **Intercultural Approach Versus Five Common Types of Agreements**

Rouhana & Kelman's intercultural approach is ground on a set of assumptions about interethnic conflict derived from, "social-psychological" analysis as summarized to follow:

1. There are many aspects of international conflict and conflict resolution for which the individual represents the most appropriate unit of analysis.
2. International conflict must be viewed as an intersocial phenomenon, not just interstate or intergovernmental.
3. "Conflict is an interactive process with an escalatory, self perpetuating dynamic."
4. There is a need to broaden the range of influence processes employed in international conflict relationships.

Their approach utilizes a third party facilitator that helps make it possible for the parties of a conflict to come up with new creative ideas for solving it. At first the process was

contained in a “one-time workshop”. Their newest process involves the continuing workshop.

The continuing workshop, “provides[s] a private unofficial forum in which influential members of both conflicting parties could freely discuss their conflict with the express goal of fostering joint thinking and producing new ideas about the future relationship between the two communities.” Participant selection is critical. Participants must be close enough to the centers of power to have some influence on decision makers of their government and political institution. They also must be credible. Ground rules for the workshop include: privacy and confidentiality, open discussion, analytical discussion, expectations, and a distinct third party role. The continuing workshop is much better than a one-time event because it fosters an ongoing relationship to the parties and encourages more interaction and joint creativity. Therefore the continuing workshop provides an environment in which the parties can jointly explore the underlying issues that have created or are likely to create obstacles in official negotiations (176).

In stark contrast to the methods described above, lecture offered five strategies that have been adopted in the past and their unfortunate outcomes.

The first strategy is to make ethnic identity equal national identity. In other words, drop ethnic and accept national identity. Unfortunately that doesn’t work because the citizenry cannot get rid of their traditions, racial background, or religion. The second strategy, consociationalism, involves keeping ethnicism; however, forming coalitions between groups which can veto items involving internal self regulation. If it works, you won’t know until after it is tried. Unfortunately, it only shows up successful or not after

the fact. The third strategy, reciprocal concessions (concession convergence), involves giving up things in exchange for the other party doing the same. Unfortunately you never get to the actual interests of the conflicting parties. Furthermore, creating some sort of quantitative measure for the concessions is difficult or impossible. The fourth strategy, radical surgery, involves creating separate and distinct living spaces in particular geographic areas. Unfortunately the ethnic identity of the populace is not static and changes across boundaries. This means that a homogeneous group's limited conflict devolves over time. The fifth and final strategy, international integration, involves an effort to unify the people through a common market and similar financial interests. It has limited short-term success as do all the above prior four strategies.

The strategies offered in class give little hope for the resolution of international conflict. Fortunately, the intercultural approach offered by Rouhana & Kelman shows promise.

## **Conclusion**

In conclusion, I learned a lot about ADR. More specifically, related to this exam, popular justice does not seem feasible; however, it offers many benefits to those willing to participate in it. The second topic supports the notion of ADR and popular justice. New innovative ideas to negotiations are making progress especially on an international level when previous official methods (tactics) have been temporary at best if fruitful at all.