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PROCEDURES AND PROFESSIONALISM and/versus PARTICIPATION AND POPULAR ORGANISATION: Some Problems of Accountability and Community Action

by

Reginald Herbold Green

The development of Tanzania will come from the decisions of village and urban governments and from thousands of local groups which decide to help themselves in development and take the actions necessary to do so.

> President J.K. Nyerere
> "A Time of Struggle," National
> Assembly, 1980.

If the people are to develop, they must have power. They must be able to control their own activities within the framework of their...communities....At present the best intentioned governments--my own included-- too readily move from a conviction of the need for rural development into acting as if the people had no ideas of their own. This is quite wrong--people do know what their basic needs are...if they have suffi- cient freedom they can be relied upon to determine their own priorities of development.

> President Nyerere, Opening
> Address World Conference on
> Agrarian Reform, 1979.

I.

Introductory Ground Clearing

Four major difficulties arise in surveys of tensions and interactions between popular organisation and action on the one hand and procedures and professionalism on the other:

1. there is no standard terminology and the frequent use of terms as banners is analytically confusing and often socio-politically mystifying;

2. what forms of interaction are likely/possible/desirable depends on the context; and depends, it is necessary to stress, in complex ways. The plausible courses of action of an organisation of poor villagers in Maharastra, West Bengal, Lucon, Mindanao, Central Kikuyu, the Northwest Frontier District, Mbulu District and Iringa Region are each quite different because the contexts differ --not only between India, the Philippines, Kenya and Tanzania, but within each of them;[1]

3. perceptions of the value of procedures, professionalism, participation and popular organisation depend both on the context and on the perceivers' position in that context--in ways which are not always easy to deduce. A senior civil servant, for example, may feel much less threatened by popular organisation and/or participation than a field level junior officer even if their class background and income levels would at first glance suggest the reverse. Professionals are often prone to attack the restrictive practices and procedural priorities of other professions, but not their own;[2]

4. no one observer has an adequate array of direct experience across contexts (and from different positions) to do a taxonomic survey or a synthesis of case studies, which would provide useful rules about these interactions;[3]

The balance of this paper will therefore concentrate on:

a. considering what meaning can be placed on participation, professionalism, procedures, and popular organisation;

b. certain interactions and tensions among those concepts, and some of their implications for accountability;

c.   some of the actual and potential roles of law, laws and lawyers in these interactions and notes on possible action by professionals (especially lawyers) concerned with furthering accountability through popular organisation and participation.

II.

Participation: In What? How?

In a paper oriented toward popular organisation, community action and accountability it is presumably unnecessary to state a case for participation. Indeed part of the problem with using the term is the wide range of meanings appended to it. Even elitist technocrats now find it desirable to call vociferously for participation as opposed to (or as a more acceptable means of?) demanding discipline and coercion of "lazy, ignorant, stubborn" workers and peasants. Unfortunately, in many of these cases, the use of the term "participation" is not pure hypocrisy--the user has a genuine concept in mind which does entail some elements of participation but which is not the concept of participation stressed in the context of "another development"[4] or "basic human needs."[5]

What is needed is a working definition setting out certain aspects of participation. First, participation includes taking part in decision taking (either by proposing and commenting on proposed action in a way that actually does influence the decision or by being represented on the decision-taking body in more than a formal sense). Second, it includes taking part in actions to carry out the decisions by the (non-managerial) participants, normally with at least some freedom for self-organisation and adjustment of the process. Third, it comprises inclusion in, as well as power to initiate, review and appraisal both of implementation and of decisions feeding back into the first stage of decision taking when review shows the need for altered and further decisions.

However, participation is not somehow rendered invalid if it is in response to an external stimulus. The Tanzania Coffee Authority takes Village Council Members from Kagera Region (where coffee trees are not pruned or fertilized or treated against disease) to see peasant practice in Kilimanjaro Region (where coffee bushes are pruned, mulched and treated against diseases). On their return some do advise their Councils to undertake programmes to change cultivation practices and to set an example in their own coffee groves. This does appear to be participation even though the impetus in one sense comes from TCA. Certainly many initiatives will

come from members of a popular organisation, but again usually because one or a few members have the combination of knowledge, experience and conceptualizing ability to suggest something new; e.g., there is a high correlation between Development Villages operating one or two lorries and/ or buses (usually to serve villages en route to their basic destination as well as themselves) and those with a former commercial driver or mechanic on the Village Council.[6]

Participation can operate at varied levels. True, if there is none in the basic community and workplace (e.g., village, neighbourhood, factory, office), then the "higher level" (broader community) participation may be suspect. But not all problems can be handled only or even dominantly at community levels. Further, innovation and initiative do need some frame-work to preserve an acceptable degree of coherence. For example, full worker determination of wages in each office or factory separately could hardly be expected to add up to a coherent or equitable wages and salaries' policy at the national level. Further, there are conflicts among nationalities and interests. For example, in areas in which boreholes are the only prac-ticable source of water, sequences taking into account the urgency of village needs and the feasible routings to keep expensive, scarce equipment busy drilling (and not travelling back and forth) must be agreed upon if substantial loss of potential additional pure water points is to be avoided. And in the case above a national income distribution policy can only be coherent and equitable if there is a national framework. The primary way to participation is to ensure that directly or indirectly basic communities and popular organ-isations are involved in the basic decisions and, if possible, in key conse-quential decisions setting wages and grower prices.[7]

The broader levels of participation can only function by representation. A village can meet for key decisions, but needs somebody chosen by it to articulate and oversee implementation. A region (say 1,000,000 persons) cannot have effective decision taking and review participation except by representative bodies and by decision taker consultation with basic commu-nities and/or some members thereof. The case for indirect participation is not an abstract one but a technical necessity related to numbers and distances. In other instances it also relates to the knowledge needed to act effectively in certain second level (articulation) decisions. Workers and peasants have every reason to insist on participation in deciding policies about foreign ex-change generation and foreign investment. Typical workers and peasants cannot literally take part in the technical analysis of how to use natural gas for chemicals, how to link with technology-marketing-finance, ways of nego-tiating a viable contractual package. That requires professionals with spe-cialized skills operating in a frame set by the basic participatory decisions and with technical advice/decisions subject to review (before implementa-tion), e.g., political bodies which are at least indirectly participatory.

III.

Professionalism and Professionals

A professional--for present purposes--is a person with specialized knowledge about, and applicable to, dealing with a particular range of topics. Professionalism is the use of such expert knowledge, whether as an individual proprietor and employee or a member of a "community" of professionals.

On the fact of it, professionals and professionalism should increase efficiency toward almost any set of ends[8]--including participation and popular organisation. However, reality is much more problematic. Several reasons underlie this problematic relationship:

A. Professional knowledge is often inaccessible to "outsiders" (not just the poor!) until translated in whole or in part. Professionals tend to resist translation and to suspect simplified presentations do more harm than good. (But when convinced that popular understanding and paraprofessional training are needed and when willing to interact with non-professionals to seek insights into needs and capacities, professionals can not only transmit but transfer command over much (not all) professional knowledge and procedures. Each case of successful development of "paramedical" based mass primary health care has had a core of highly qualified professionals as one integral component.)

B. Professionals have a tendency to see themselves as Platonic Guardians (and view "their" area of expertise as the center of knowledge and action).[9] This leads to a built-in tendency toward authoritarianism and against participation in decision taking-- especially by individuals or groups less powerful than the professionals.[10] (However, this attitude can be useful to popular organisation if, from the professionals' stance, it is the bureaucrats or the exploiters who are stupid.)

C. Professions and most professionals seek to protect their own interests. Exclusiveness and limiting paraprofessionalism are key instruments. Professions tend--as one aspect--to be trade unions of the relatively well off (cartels in restraint of competition). (Per contra, some professions (law and medicine are examples) have, and many professionals act on, a tradition of providing free or reduced cost services to poor individuals or groups.)[11]

D. Professionals can be remarkably unworldly: in its 1979 <u>World Development Report</u> the World Bank treats Asian urban <u>services inequities</u> as basically muddled inefficiency without ever asking (let alone saying) who profits from (and therefore perpetuates) them.

E. Professional services are easier for the rich and powerful to acquire than for the poor and for popular organisations. This is especially true if and where (e. g. , most of the rural Third World) there are relatively few independent practitioners, and physical availability as well as financial costs become constraints. (The tradition of voluntary service is a partial corrective but hardly an adequate one.)

The word problematic is chosen deliberately. In several of the areas of potential conflict there is also a potential for alliance, and in none is there likely to be a total antagonistic contradiction between all members of any profession[12] and poor individuals/popular organisations. What can be done to develop positive interaction is a critical question, both for popular organisations and for concerned professionals. That, too, is problematic since outlooks of superiority and suspicion (even if subliminal), and the real dangers of overpersuasion or confusion, are usually present.

<u>IV.</u>

Process, Procedures and Proceeding

Procedures are necessary. Equally they always run the danger of being self-defeating. This is as true for popular organisations and for innovations arising from spontaneity as for the rule of law and a system of legal advocacy.

The proper purpose of procedures is to facilitate proceeding.[13] Proceeding to what depends on who designed the procedures, why and who operates them how. They may facilitate a process (or hamper it), and it may or may not be the intended process.

For example, in Liberia land registration on a freehold roll applied to all land within a given distance of made-up roads and was awarded to the first applicant after the road was decided upon. The effect was to allow the elite (notably the late President's family) to secure land at the expense of the prior users who had held it under "tribal" tenure which became invalid at the point

of the road decision. This procedure worked well in the sense that it facilitated the process its authors intended.

Per contra: Tanzanian rent control legislation procedures are not very effective. The tribunals to set rents must meet on individual cases. To operate at all they must operate ward by ward. As there are few, the gap between determinations and between a new building's completion and coming under control can be long. The old 14% of initial cost maximum rent rule is also procedurally dubious as on over 10-15 year-old buildings the rent often does not cover proper maintenance and repair plus insurance. The honest landlord (e.g., public corporations) either cannot afford to keep his buildings up, and/or cannot build more to meet real demand and/or operates at a loss. The dishonest can often avoid a determined rent and still oftener can demand "under the counter" cash payments subject to no contractual safeguards (nor to income tax).[14] The degree of protection for tenants and of viability for honest landlords is uneven and problematic despite the procedures.

Procedures are necessary to organize sequences and to keep track of each case. To handle hundreds of parallel transactions on a spontaneous, ad hoc, non-sequential basis is slower (given the number of people working on them) and almost certain to produce total inconsistency in outcomes. Bureaucratisation--in the strict, Weberian sense--is essential if a large number of case decisions are to be taken speedily and consistently. Further, procedures can--if clear to the outside user--enable him to know exactly what he must do to achieve a given result.

However, procedures can--wilfully or otherwise--block out would-be clients who do not understand them (creating a bias in favour of the edu-cated, the physically close and those who share a common culture or class with the bureaucrats). For example, to a medium-sized urban shopkeeper the Tanzania Trade Licensing Act procedures are intelligible and practi-cable--except for the Party scrutiny which may reject him on grounds he does not comprehend. But to a Development Village Shop the procedures are hard to learn of or to follow--except for the Party branch role which becomes a means of access to knowledge and correct form filling.

Procedures can also be abused to favour individual cases without this being evident. For example, Land Registration in Tanzania is rather cum-bersome with a variety of forms and stages. Because this results in uneven time for registration it is all too easy for a bribe to be demanded/offered to speed up the process (or pressure applied on the bureaucrat to take a favoured application out of the waiting list). Here pathology in the procedure worsens its results. If--as in principle could be the case within the proce-dures--three months was the average waiting time (not two to three years),

there would be less incentive to seek special treatment and less opportunity to disguise acceleration or delay related to extortion.

In principle, therefore, speed, participation and acceptability can be facilitated by procedures. What procedures depends on how routine and how common the type of decision/action is and at how "high" a level action is needed. Further, whether a procedure facilitates participation or not depends on its intelligibility, whether it facilitates access to the proceeding, the intent of the procedure framers and the present governing coalition, and the ways bureaucrats operate it. By and large acceptability will depend on whether to an onlooker the procedure seems intelligible, speedy, open in and productive of results which appear to him both consistent and equitable. Needless to say, an engrossing landlord and a threatened peasant could have very different perceptions of the acceptability of the same procedure!

Procedures are rarely value or class neutral. Unequal knowledge alone guarantees that. So does the fact that procedures usually are designed to further some process which is also neither value nor class neutral. Finally, the way they are used--whether by bureaucrats operating them or by unintended or unforeseen potential beneficiaries[15]--alters their objective meaning in equally non-neutral ways. The neutrality or equality of procedures at most applies to identical decisions on identical cases. Even that can be achieved only if the operators are honest and understand the procedures and all "clients" are actually able to (or can secure adequate advice on how to) interact with the procedural process. In practice anyone who is poor, uneducated and isolated is likely to face handicaps and to be made worse off by apparently neutral procedures, even those intended to operate legislation enacted to serve his interests. The case of low-income housing / squatter programmes is replete with examples of the latter.

V.

Popular Organisations: Notes on Tupes, Strategies, Tactics

Popular organisations in the context of participation and accountability can be defined as organisations whose basic membership and leadership is made up of workers and peasants. Organisations genuinely in solidarity with them whose basic membership and leadership consists of professionals, managers, officials, politicians, can best be seen as support groups.[16]

The structure of popular organisations--like their activities--varies widely. Logically there should be a base of direct membership, primary

community units. There may or may not be superstructures of district, regional or national organisations (or de facto superstructures of alliances with other popular organisations not constituting a formal organisational level). A superstructure only body is less likely to be a true popular organisation because the chances for broad, direct participation are minimal as are the opportunities for self-initiated, self-carried-out action. Certainly acting as a pressure group is one of the common roles of a popular organisation (sometimes the initial one) but it is probably not a satisfactory long-term single role.[17]

Popular organisations seem to fall into four clusters depending on the context in which they exist and how they relate to local or national power structures:

a. basically anti-state or anti-system organisations. These are often illegal but may be tolerated so long as they concentrate on activities not directly threatening key interests of power holders, or the power holders they do threaten have enemies within the decision-taking coalition who--up to a point--protect the popular organisation for tactical reasons;

b. radical reformist organisations which do not overtly (and probably not consciously) seek the overthrow of the state or system but do seek such far-reaching structural changes that the success of their programme would de facto constitute a revolution. These may operate in interstices or may be tolarated as channels for reducing tension, but may also be suppressed, in which case over time they--or a fraction of their membership-- are likely to transform themselves into anti-state/anti-system groups;

c. main-line reformist organisations which do seek substantial changes but ones, at least in principle, attainable within the existing system because they would not require overturning its basic power structures. These may be tolerated or even backed by the power structure or some elements within it. However, those directly threatened by them will seek to co-opt support for hampering or suppressing them from stronger elements of the decision-taking group on the grounds of sub-class coalition solidarity, and often succeed;

d. popular organisations squarely within the system either because the system (or some key fraction of the decision-taking group) is committed to popular organisation or participation, because the

organisation (i.e., its leadership and many of its members) has
an inaccurate consciousness of the nature of the system or be-
cause it has been co-opted. These are normally backed, "guided,"
co-opted or transformed into puppets.[18]

One cannot locate an organisation on this spectrum simply in terms of
its own goals--one must also know the systemic context. Peasant and
squatter organisations on the borderline between a and b in most of India
could well be in the main-line reformist or even within the system clusters
in West Bengal or Kerala. Nor is the location of a group constant over time.
The system may change; e.g., peasant and workers' organisations in prin-
ciple within the system in President Allende's Chile are (to the extent they
still exist) very much anti-system in Caudillo Pinochet's Chile. Alterna-
tively, systemic perceptions of the body or vice versa may change. Most
Southern African liberation movements began as main-line reformist and
were driven by a combination of systemic repression and higher conscious-
ness of the system to an anti-system/anti-state stance. Finally, while the
four-cluster typology is of use, the actual position is a spectrum with many
organisations on the a/b and c/d borderlines and with substantial differenti-
ation within clusters.

Strategies relate to types. An anti-government organisation may seek
a New Heaven and a New Earth (e.g., African branches of Watchtower Move-
ment) or a rather more operationally outlined new system to be achieved by
violence and/or negotiation (e.g., SWAPO of Namibia). A radical reformist
organisation might in practice seek the second but would overtly normally
seek far-reaching changes within the system and seek to rely on existing
formal, legal provisions (e.g., Bhoomi Sena--in Maharastra). A main-line
reformist organisation's strategy may be in terms of limited structural
changes and/or of making the system work more effectively--a combination
likely to feature in the strategy of within the system popular organisations
(e.g., the TAPA, the parent's organisation for education associated with the
Part in Tanzania).

Tactics flow from strategy--albeit apparent mismatches are not
infrequent; e.g., writing letters to magistrates in the pockets of landlords
to ask that the landlords and/or their hired thugs be arrested for extortion
and violence. The range is from systematic violence through direct action
to amicable discussion and on to reasonably amicable dialogue with decision
takers and participation in decision-taking bodies. Within tactics are a
separate sub-division relating to those things an organisation does itself for
its members; e.g., credit schemes, food stocks, particular projects which
are not one-to-one correlated either with external tactics or with type of
organisation.

For the outsider--unless he is in solidarity with the popular organisation as perceived by its leadership and membership--identifying strategy and the details of tactics is difficult. Popular organisations often do not have formally defined, long-term strategies and depend on responsive innovation and specific consensuses to determine tactics on a case-by-case basis. More generally they have a shrewd grasp of the facts that knowledge can be power and that to provide knowledge to outsiders can often be damaging even if the outsider is personally well intentioned; e.g., an anti-government organisation that explained strategy, tactics and structure in detail to a radical academician who promptly published it in an article supporting the organisation would be almost as much at risk as one which provided the same data to an individual who objectively was a police spy.

VI.

Information, Initiative, Involvement, Sanctions: Inputs to Accountability

A principle linked to concepts of participation and "another development" in particular and to democracy (bourgeois or socialist) more generally is that of accountability. A series of questions arise: by whom to whom? Over what range of issues is accountability appropriate? What are the basic components of a workable system of accountability?

The broad answer to the first question is by anyone responsible for taking or implementing decisions on behalf of others--particularly to those who placed him in that position but equally to those significantly affected by his decisions. A catch in this is that accountability may mean different things to differently affected groups in terms of acceptability, or in terms of acting within the limits of law, procedure and policy.

For what in particular should one be accountable can be a hotly debated question. At the one extreme there is little argument that in a parliamentary system the members are accountable to the electorate for the laws that they pass and that these must be published. At the other it is rarely seriously argued that during a war field officers should be directly responsible to the public for their decisions within the accepted scope under the "laws of war."[19] In between these are real divergences of opinion. Some information (much less than secrecy proponents claim but not more) cannot be disclosed without injuring those to whom the person/organisation is accountable, or injuring innocent bystanders. Other compelled disclosures may encourage avoidance of decisions.

The third question--what are the elements of accountability--may be the most critical to examine. The first element is information. No person or organisation can effectively be held accountable by any person or organisation who lacks information on what it has decided or done. Accountability as an integral element in a system requires rather detailed, compulsory, routinized disclosure with backing provisions for securing additional data or checking what has been provided if there is reason to suspect serious incompleteness or inaccuracy.[20]

A second element is initiative. To be able to hold to account an individual or organisation must be able to raise proposals for action (and then have the right to inquire what has become of them and why), to call for explanation and review of decisions, to seek analysis and (if appropriate) correction of the process and results of implementation. Accountability which is purely at the instance of those accountable rests on rather shaky foundations; its coverage and continuity are never assured.

An equally vital element is involvement in decision taking, the progress of action and review. The completeness of and ability to comprehend information and the ability to take initiatives are at best limited and at worst stultified if there is no involvement. In practice involvement (like participation) must often be by representatives and/or indirect; e.g., a worker or peasant co-opt director on a Central Bank Board is practicable and potentially useful, all workers and peasants in the policy committee is neither.

Finally, accountability rests on sanctions in two senses: when an individual or institution defies the other elements of accountability; when the accountability process shows evidence of improper action. Without sanctions the process is voluntary and usually at best incompletely, unevenly and episodically effective.

What sanctions are appropriate to what actions under what circumstances is very much a contextual question. So is the actual and/or desirable balance and interaction among administrative and legal, direction action, political or revolutionary sanctions.

VII.

What Is The Law?

At one level the question "What is the Law about participation, popular organisations and accountability?" is absurd. There is no general answer

for different states and even within most (all?) states. Indeed at some levels--e.g., those of sanctions--generalisations about laws tend to be platitudinous, uninformative and misleading.

However, law is an organizing framework. In that role it does (or should) be consistent in any one state at any one time at least at the level of general interpretation and application. In that context it makes sense to inquire whether as now written and/or as applied in country X, law is generally conducive, limiting, or hostile to participation, popular organisations and accountability.

The law is made up of the body of individual laws (and their interpretation/application). These determine specific issues--and may be rather inconsistent either by mistake or because decision takers intend, e.g., to make private employers accountable to workers but not public enterprises to peasants (the apparent case in the Democratic Republic of the Congo in the late 1960s and early 1970s and to a lesser extent today).

In summary--and with many exceptions--Third World law/laws can be said to:

1. be relatively vague or even silent on accountability, especially to employees, users, recipients;

2. provide for certain types of participation but not, in most cases, those most applicable to popular organisations;

3. place severe limits on popular organisations whether intentionally or by failing to deal with them separately from business organisations or political parties;

4. have very wide divergences between form and practice--in both directions. For example, participation and accountability in Tanzania is only partially underpinned by law or even by clear administrative regulations, and certain de facto accepted forms of direct action used in it are palpably illegal under existing statutes, while a good deal of Philippine statute law is much more participation, accountability and popular organisation-oriented than actual practice;

5. these discrepancies spring partly from hypocrisy, partly from attempts to assuage some groups (internal and external) with form and others with practice, some from the lag between socio-political change and its legal ratification.

In practice legal action is rarely a primary instrument for gaining new rights in respect to participation, accountability, popular organisation. It may on occasion serve to enforce formal rights which have been systematically honoured in the breach. More generally if the form of the law is more favourable than the practice, attempted legal action can be a potent mobilizing instrument even if the actual gains turn on using quite different means subsequently (a fairly common pattern in both Indian rural popular organisations and those of northern Latin America).

Once participation/popular organisation/accountability have been advanced by other means, law (and formal, published administrative regulations which are often its paralegal sibling) is important to incorporate the advances into the "published" socio-political order, to lay down processes - procedures - limits, to set up dispute resolution methods (including consultation, mediation, arbitration, special tribunals as well as normal access to courts), to provide sanctions against violations of what has been achieved.[21]

The role of the legal profession has been problematic. As a whole lawyers are concerned that they are able to participate, to call to account those whose decisions directly affect themselves, to organize their own profession autonomously. It would be unwise and inaccurate from this to see all--or even a majority of--lawyers as dedicated to participation, popular organisation and accountability (especially by themselves to outsiders!) as general social organizing principles. The record is very mixed. In cases of repression (including repression of lawyers) the profession may well take a lead in organizing resistance and play an important role in a popular coalition (e.g., Ghana under Acheampang) but if lawyers themselves are not repressed a majority are very likely to identify with the ruling decision-taking group.

Indeed it would also be unfair to say most lawyers are deeply opposed to participation, popular organisation and accountability as organizing principles. Most have not, in fact, considered or became involved in the question in any serious way.

In most countries some lawyers--perhaps particularly some law faculty members but on occasion also some independent practitioners[22]-- are committed to these principles and act on them. The most common way is by taking individual cases (e.g., the majority of--now decimated--group "black defence lawyers" in South Africa). This is partly because that approach is consonant with a lawyer's normal mode of operation, partly because a lawyer usually wants to believe there is a remedy at law for gross injustice, partly because such a course of action allows a protective

colouration of "professional duty to provide counsel" for words and actions which would otherwise invite punitive action. In a deeply repressive system (e.g., South Africa) this approach certainly does not cause systematic change for the better. It may radicalise lawyers, clients and observers by demon- strating that the system is oppressive and that the existing law and laws are its instruments. It certainly can rescue some rights and some individuals at least for a time. (The evolution of oppression in South Africa is marked by a host of individual legal victories hastily reversed by new laws and regula- tions.) Where the case-by-case approach is most effective is in systems in which individuals violate rights without the knowledge or without the con- sidered sanction of the senior decision takers; the particular cases may focus attention on general problems leading to reforms broader than the case at hand (e.g., possibly the 1977-80 habeas corpus cases in respect to a variety of types of unlawful detention in Tanzania).

Acting as counsel to a popular organisation, advising such a body, becoming a member of a solidarity group with a popular organisation, becom- ing a member and attempting to help such a body develop its own administra- tive/constitutional procedures or to set up a parallel extralegal or illegal adjudication and sanctioning system, are less common, more or less in that order. They are not, however, unknown.

The role of popular organisation law has not been widely and systematically explored. It includes parallel legal systems--whether extra or illegal[23]--which seem to have substantial importance in some contexts. It also includes internal constitutional, administrative, structural codes, documents, formulations; an aspect on which lawyers appear to have done virtually no work although it is logically allied to the more standard areas of constitutional and administrative law. Presumptively, the adequacy and appropriateness (or otherwise) of these aspects significantly affect the effectiveness of popular organisations.

VIII.

Tensions and Contradictions: Antagonistic and Otherwise

By and large there is opposition by the included, exploiters (active or passive) and oppressers (or beneficiaries of oppression) to attempts by the excluded, exploited and oppressed to achieve participation, popular organi- sation and accountability. However, there are always individual exceptions --objectively "class traitors"[24] or converts. There may also be class or sub-class exceptions--arguably some "petty bourgois" groups (e.g.,

intellectuals, civil servants, salaried managers, professionals) tend to ally themselves with (and to be accepted as at least subordinate members of) almost any dominant decision-taking coalition including a popular organisation-based one.

Equally in any actual system there will be tensions. Popular organisation autonomy is not free of conflict with accountability nor are the interests of all popular organisations consistent. Procedures and professionalism have critical roles to play but the appropriate balance between them and participation, accountability, innovation and popular organisation is always problematic, always changing and usually widely divergent from case to case at any one time.

What these tensions are, how seriously they threaten the system and whether they can be creative is not answerable in the abstract. One needs an actual objective correlative at national institutional, local community or organisational level.

Similarly, whether there are contradictions which run deeper than tensions, whether these are basic and whether they are antagonistic (soluble only by power reversal or--less commonly in practice--a new system) again can be answered only in respect to a concrete context. In the cases of South Africa, occupied Namibia, Zaire, El Salvador or Afghanistan, the answer to each question is clearly, yes. In the cases of the Philippines or Kenya the first two questions must be answered yes, but the last is at least slightly (if apparently decreasingly) open. In the cases of Sri Lanka and Nicaragua both the second and third questions are open. In that of Tanzania an answer to the third question is fairly clearly no (at least at present) and that to the second arguably no, even though that to the first is clearly yes.[25]

IX

What Is To Be Done?

What can or should be done to further participation, accountability or popular organisation is again a contextual question. In a sense it is answerable in ways analogous to the discussion of types, strategies and tactics of popular organisations discussed in Section V above.

To seek to make the Tanzanian system more efficient in those aspects which are in principle and partially in practice consistent with participation, accountability and popular organisation, to seek adequate codification of

these elements in laws and in administrative regulations, to fight court cases against specific abuses, to call attention to inconsistencies between principle and practice and to tackle piece by piece, step by step, and institution by institution the hierarchy/participation contradiction is arguably a correct action agenda in that context.[26] Until 1977 it might have been equally appropriate to Sri Lanka. The increasing antagonism in the Sinhala/ Tamil contradiction and the distinct tendencies toward exclusion, authoritarianism and repression by the present government (uniquely high by Sri Lankan standards even if probably uniquely low on South or Southeast Asian regional comparisons) suggest it is no longer adequate--action to bridge the communal gulf, to protect popular organisations (of workers and of peasants) and to create effective resistance to creeping authoritarianism/repression now need to be added.

In the case of the Philippines or in that of Kenya more than simple additions are needed. Not only are the present trends in the "wrong" direction, the base levels of participation, popular organisation and accountability are qualitatively lower (albeit by no means non-existent) and the commitment of the leadership to sustaining them in grave doubt (to put it as mildly as possible). One is not seeking to advance within a dynamic, nor, primarily, to protect past gains, but to hold what exists against an adverse trend and to create a forward dynamic. Reasonable people and organisations are likely to differ very widely on the appropriate mix of main-line reform, radical reform, direct action/confrontation short of revolution and revolution.[27]

In South Africa there is again a need for a qualitatively different strategy. By the system's own definition that strategy must be inherently unlawful and basically revolutionary. That is not to say it may not include elements of negotiation (probably only effective after much more antagonistic confrontations), use of the courts for specific purposes, working via legal or quasi legal institutions (e.g., the South African Council of Churches, some of the Soweto Committees, conceivably some of Inkatha's constituent organisations)[28] either to raise consciousness by building on limited initial activities or by exposing the nature of the system by seeking to enter into genuine dialogue with it, and similar tactics. But to perceive these as even potentially central is almost certainly a grave mistake.[29]

Even within each country there are sharp divergences. The position of women and ethnic minorities and of squatters/landless labourers is usaually significantly worse than that of other groups. It is worth remembering that the Golden Age of Athenian Democracy applied fully to the 5% who were male citizens, indirectly to a degree to the 5% female citizens, in certain rights and legal remedies (but not accountability or participation) to the ten to 15% who were free non citizens and not at all to the 75 to 80% who were not of free status.

X.

Roles for Lawyers and Professionals More Generally

In detail the roles of professionals in general and lawyers in particular must depend on what is to be done and therefore on the context. However, a number of more general points can be made which have at least some applicability in most contexts:

1. provide professional services (preferably free or at most at minimum cost) to popular and solidarity organisations and to individuals within them. These bodies do need access to specialized knowledge and are usually well aware of that need and willing to explore how they might acquire it;

2. define professional services more broadly than normal to include advice on how to proceed in any area in which the professional feels competent and, perhaps more important, seek to devise ways in which the organisation can acquire control over professional skills within itself--at least to paraprofessional and potentially to professional level;

3. act in solidarity with popular organisations (whether individually or through solidarity organisations) on the basis of dialogue and of playing a complementary, supporting not a dominant, determining role. This does not rule out criticism or suggestion; it does countermand attempted imposition of new tactics, goods or levels of consciousness.[30]

4. join popular organisations as individual members.

There is a rather limited variant of the third element which is common --to act in what is believed to be the interests of popular organisations or the poor and the excluded without actually attempting to find out how they perceive those interests. That approach has on occasion produced successes and doubtless will do so again. But it is not very participatory nor does it stand up well to any test of accountability. Further, it runs a grave risk of proceeding either in the wrong direction, with the wrong priorities or in the wrong sequence from the point of view of the intended beneficiaries. What process of interaction is necessary/appropriate/possible is a contextual issue. Formal meetings of executives, opinion polls, ballots, etc., are neither regularly necessary, always appropriate nor universally possible. The test is whether a high degree of mutual communication, a mutual feeling of solidarity and at least some elements of participation and accountability are achieved.

FOOTNOTES

1. In West Bengal the state government is radical and poor peasant oriented but not in Maharastra. In Luzon the struggle is farily straight-forward peasant vs. landlord/merchant but in Mindanoa colonised hill tribes vs. colonizing Luzoners vs. colonizing Southern Moslems vs. colonizing TNCs interact in a much more complex way. In the North-west Frontier District the people are dominantly of communities with little influence on and viewed with hostility by the governing elite, whereas the reverse holds in Kikuyu. In Mbula district land is not scarce and rich peasants' success has not in fact been at the expense of small villages, whereas before villagisation the reverse pertained in parts of Iringa.

   The author's position has usually been that of a semi-detached observer either as an academician or a professional adviser rather outside line bureaucracy.

3. The bulk of the author's direct observation is from a decade in Tanzania. The balance is scattered among a score of African and Asian countries, while second hand (reading, discussion) data is also largely Afro-Asian and rather peripherally Latin American or industrial economy.

4. Cf: Dag Hammarskjöld Foundation, What Now - Another Development (Development Dialogue, 1975), Uppsala, 1975.

5. Cf. R.H. Green, 'Basic Human Needs: A Conceptual Formulation Toward Another Development,' IFDA Dossier #2, International Founda-tion Alternatives, Nyon, 1977.

6. The correlation is even higher, it seems, for the successful operations!

7. At present the participation in frame setting exists albeit the component resting on non-formal influence on officials and politicians seems at least as critical as that of even indirectly elected worker or peasant representatives. Arguably, the same is true of wages. It is demon-strably not true of salaries nor of grower prices. Salary earners and peasants are not involved in the process and do not comprehand how decisions are taken nor are they satisfied that their interests have been considered seriously or on the basis of adequate information.

8. This is independent of whether the goals are material. If the dominant goal is spiritual salvation, theological professionals would appear to be a highly efficient input. It is not entirely independent of whether there is a working consensus among the professionals--three architects

arguing about minimum corridor widths once held up a Tanzania secondary school project for months until the three interested bodies decided to ignore all three and reach a "rule of thumb" compromise.

9. Economists and political economists are peculiarly guilty in this regard, albeit doctors are often worse in insisting that nothing the patient knows or feels is relevant to his "cure."

10. E.g., in the U.S.A. urban planning professionals can often ride roughshod over participation in slum areas but not middle-class ones. (The U.K. seems to have greated evenhandedness but in the wrong direction.) In Dar es Salaam this is rather less true because political participation by poor households can prevent "platonic social engineer-ing." What has not acheived to date is real participation--the unplanned areas are not messed about and do receive some services but have little positive interaction with urban planning professionals.

11. One can be cynical and term this noblesse oblige, discriminating monopoly revenue maximisation. Especially at individ-ual level this can be grossly unfair, e.g., mission hospital doctors in Africa are in no sense income maximizers. Further, such cynicism if acted on throws away what is often the only actually available source of expert knowledge and advice to popular organisations.

12. This is true in some cases even in respect to most "security" profes-sions. Populist and even non-capitalist officers are by no means unknown.

13. Procedures at one level designed to block a process, e.g., tenant evictions--are in another sense designed to serve the opposite process, e.g., tenant security. Whether in any particular case they do so is a different matter.

14. Until the early 1970's prosecutions were nearly impossible because the law treated the "key money" payer as an accomplice and effectively re-quired a second eye witness. Again a dubiously appropriate procedure for protecting would be tenants whatever the general moral or social issues surrounding offering bribes/paying up on extortion.

15. E.g., the Tanzania land acquisition legislation intended to deal with securing hierarchy or public building sites provides for compensation procedures. Land officials worked out rules of thumb adequate to genuine long-term occupiers disturbed in such cases. But when these laws and procedures have been applied to new planned urban areas

they produce waves of brand new "phantom" occupiers who find being bought out under these procedures very lucrative.

16. This is not to imply that a popular organisation may not or need not have some members and some leaders from the managerial-professional-official-politician sub-classes. The distinction is between groups basically of and basically led by workers and peasants and groups basically of and/or led by others, e.g., the various international networks for "Another Development" (or "Law in Development") may be participatory, they may be in solidarity with popular organisations, they may have unique roles to play which popular organisations cannot or can rarely play by themselves--but they are not, and cannot be, popular organisations as the term is used here.

17. The same problem confronts non-specialist support groups, e.g., the World Development Movement in the U.K. What besides reading about the Third World and pressuring/protesting to U.K. leaders are their members to do? In particular what are the members who are not professional intellectuals nor in a position to contact many decision takers or influencers directly to do? WDM admits quite openly that it has yet to find a really satisfactory answer.

18. In the last two cases the organisations may well become shells or frauds indistinguishable from phony "popular" organisations created by the power structure. Ghana's Trade Union movement after the late 1950's went that route though it had earlier been radical or main-line reformist and subsequently a legitimate within the system cluster of popular organisations.

19. In fact willingness to hold officers accountable for violations of the laws of war is by no means universal in principle and is very often honoured in the breach in practice. What was unusual about the Mei Lai massacre case was not that few officers were prosecuted or that the principal defendant, Lt. Calley, eventually received a trivial sentence, but that a well publicized trial with a conviction and a confirmed sentence took place at all. Other security service accountability (prisons, police) is often equally thin in practice and that of other officials may be in some cases, e.g., doctors and engineers, local administrators in physically or dommunication channel isolated areas because demands for action can be blocked and disinformation mobilized relatively easily.

20. There is need for some self-discipline and/or some arbitral mechanism, e.g., a question to the Minister for Finance in Tanzania wanted to know the exact number of price controlled goods, the exact

results of the radical overhaul of indirect tax on each and the result of recent and pending Price Commission decisions. As the answer to the former, if it includes not only categories but also brands, sizes and items covered under a category, mark-up limit provision is virtually indeterminate but probably over 3,000 (2,500 in the categoric mark-up case) a literally complete answer would have put the Treasury analysis unit out of business for two weeks. A responsive answer using ten major sample items and broad general effects was given (and apparently satisfied the questioner)--relatively easy because a similar internal exercise had been done for guidance during the tax restructuring exercise. In an earlier (by a decade) case repeated querying on the impact of a ball bearing tariff increase on typical farm costs in which the initial answer of "trivial" was rejected took half a week of the most senior economic analyst's time and showed an average Sh. 6.0 for the 5,000 odd units probably using ball bearings or Sh. 0.015 for each farm unit.

21. In practice this usually happens with a distinct lag and in a piecemeal fashion. Both shortages of draftsmen and the lack of "legal consciousness" of many decision takers and most popular organisations are contributory factors.

22. Salaried lawyers--especially public sector ones--fairly evidently are rarely prominent. If they are they presumably rapidly become independent practitioners whether by choice or otherwise. The potential exception would be legal service or corporation lawyers charged with providing services to indigent or undefended clients and even here an activist role by the salaried lawyers would not utually be tolerated for very long.

23. If the formal court system is too costly, too complex and too crowded to handle a wide array of "lesser" civil and criminal cases, an extra-legal system may be tolerated, tacitly approved or even transformed into a recognized adjunct of the official system, e.g., the handling of cases of minor assault, theft, drunkenness of Party Cell or Ward Leaders in Tanzania falls halfway between the last two.

24. A "class traitor" may or may not change classes, e.g., Chou En Lai told Stalin that it was true he was from the mandarin and Stalin from the peasant class but they had the fact of being traitors to their class in common. Stalin clearly had left the peasant class, Chou was still a mandarin but attempting to create a new mandarin (bureaucratic) class consistent with socialism.

25. There is a contradiction deeper than simple tension between authoritarian (not merely professional) and participatory elements within the public sector, institutional and procedural structure. There are also increasingly severe strains in respect to distribution because safeguarding the weakest social groups has required draconic sacrifices from the professional and official/managerial sub-classes.

26. The present author is among those who would argue that it was. An individual who believed that adequate levels of consciousness and of social change only come through intense internal contradictions and struggles (whether or not he sees their resolution as necessarily violent) would disagree. He would perceive it as a recipe for friction and gravity to halt and reverse forward movement and would argue that Tanzania's failure to achieve more rapid and more complete transition to socialism is precisely because initial domestic contradictions were of relatively low intensity and the leadership has chosen to act to reduce not to exacerbate (or even in most cases focus attention in polemic terms) on them. This particular neo-Fanonist line of criticism is not necessarily blood-thirsty or absurd. Contextually, however, it is a trifle hard to see how genuinely antagonistic contradictions could have been "achieved" by a left leadership, that workers and peasants would have sought that route, or that the very fragile state and society could have faced very real external contradictions with any degree of success (to date it has survived without U turns or even any significant drift to the right, on balance au contraire) if it had at the same time been riven by deliberately sought, deep and bitter internal struggle.

27. The author does not feel competent to (nor directly involved enough to) offer definite advice. He would, however, doubt the adequacy of a purely main-line reformist strategy or indeed of one with no elements of direct action/confrontation.

28. The author has grave reservations about Chief Buthelezi's tactics and strategy and also about whether he is not too conservative and authoritarian in outlook for the people he seeks to lead. Certainly, Inkatha's effect to date is problematic with some negative aspects (especially the exacerbation of tensions between the Zulu Nation and other black South Africans) and its future as an agent of radical reform unlikely to be very effective. But these judgments may be wrong and to lump Chief Buthelezi with Kaiser Mantazima or quasi-capitalist Uncle Tom's is both cheap rhetoric and (as a present reality rather than a future danger) objectively quite clearly inaccurate.

29. That mistake can waste time in a context in which wasting time is wasting lives. Certainly by 1960, at least, some former liberal party leaders felt that their decade of efforts to block the growth of repression via the legal process to gain time to build a cross-racial basis for non-violent bourgeois democratic reconstruction had mystified them, created false hopes and provided South Africa with an external smoke screen and facade of democratic process and the rule of law.

30. Nothing is less participatory or accountable than the elite member who claims to speak for "the masses" when he quite clearly does not present the same concerns, goals, tactics or world view and justifies this by claiming "the masses" are bemused by false consciousness and would speak as he did if only they were able to understand. If he believes his contention he should first test it against reality by observation and by listening and then attempt to assist in/catalyse a "mass" based dialogue which would (could) result in their achieving by and for themselves a new level of consciousness.

LAW IN ALTERNATIVE STRATEGIES

OF RURAL DEVELOPMENT

Part I I: Law in the Design and Administration of

State-Managed Rural Development