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Workshops, Notes and Papers

Materials for the Workshop on a Participatory Process for Transforming Policy into Law

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Boston University

DRAFT REPORT ON THE WORKSHOP ON
A PARTICIPATORY PROCESS FOR TRANSFORMING POLICY INTO LAW
May 24-28, 1993

I. Introduction:

700 bill /
Once its representatives enter the halls of government, the democratic movement of South Africa faces the challenge of dismantling the authoritarian apartheid machinery that, ~~ever~~ ^{today} centuries, ~~has~~ ^s forced the African majority to work as low cost labor reserve to enrich the minority. This will require the

exercise of state power through law to create new, democratic institutions. ~~that~~ ^{To guarantee the success of the anti-apartheid movement requires that these institutions} empower the majority to participate in all ~~aspects of~~ ^{Governance. Especially, the people must participate in} transforming South Africa's social, economic and political structures. ~~to fulfil their basic needs.~~ ^{in ways that destroy apartheid, alleviate poverty and reduce vulnerability. Because the}

^{apartheid regime systematically excluded them from participation in lawmaking. The democratic forces have little experience in using the legal system as a tool for social change}
In May, 1993, a participants from several organizations of the democratic movement, all working on aspects of South African rural development, took part in a workshop sponsored by the Land and Agricultural Policy Centre in the Economics Department of the University of Witswatersrand. ~~There,~~ ^{Over} for a week, they worked together to ~~begin the task of~~ ^{design and} mastering a theory and methodology for using law to ~~create the~~ ^{The new} institutions required to ~~empower~~ ^{address rural} South Africa's ~~poor rural majority to participate effectively in~~ ^{poverty and peasants} achieving full employment and an improved quality of life.

The workshop centered on enabling the participants to learn ^{To do so, as case studies, the participants undertook} the process of transforming policy into law by ~~tackling the task of~~ ^{legislative preparation for bills} drafting ~~bills~~ to restructure two central institutions that shape the lives of rural South Africans: 1) for improving the working and living conditions of the millions of farm workers on South Africa's 60,000 commercial farms; and 2) to establish an Extension Agency to

support the efforts of South Africa's rural unemployed to obtain productive employment and raise their living standards.

~~Drawing on their experience in China,~~ ^{learning to draft} the workshop facilitators observed that ~~the proposed drafting process~~ resembled that of learning to ride a bicycle. A 'consultant' could lecture for a week about how to ride a bicycle, but in the end the hearers, no matter how willing, could still not ride it. The consultant would only have to spend a half hour showing them how to ride, and give them each a bicycle to ensure that in a few hours all would be able to learn for themselves. Using the second approach, the facilitators explained to the workshop participants the basic principles of the theory and methodology of drafting legislation to put their policies into law. Then the participants, ^{with} using the facilitators ^{acty} only as resources ^{persons}, ~~spent the remainder of the week~~ ^{used} using the methodology to think through the underlying premises of legislative programmes relating to critical aspects of South African rural development, and beginning to draft legislation in two of the priority legislation areas they identified.

This report summarizes the results of their work. It

- 1) outlines the theory and methodology introduced at the workshop;
- 2) defines those the workshop participants included in their

^{and Robert B.}
1. The facilitators, ~~Bob and Ann~~ Seidman, currently serve as the Chief Technical Advisors for a five year project to draft 22 priority economic laws designed to facilitate China's Reforms and Open Policy; to use the occasion to enable some 200 Chinese drafters to learn the theory and methodology of legislative drafting; and, in particular, to give some 40 Chinese a sufficient in-depth knowledge of theory and methodology to become the facilitators for extending the learning process to the thousands of drafters required to generate an adequate legal framework for a fourth of the world's population.

concept of the 'rural poor';

3) indicates the scope of the three legislative programmes necessary to meet the rural poor majority's basic needs;

4) presents the elements of their initially-proposed draft bills, and their outlines of the accompanying memoranda of law required to explain why they proposed those elements; and

5) presents their proposals for continuing and expanding a democratic participatory process of completing the drafting of these bills and tackling the larger essential legislative programmes.

II. A theory and methodology for a democratic, participatory process of transforming policy into draft legislation:

Operating through law, the state, warts and all, serves as the organized polity's primary instrument for the conscious social change that development requires. The legal order constitutes the operative form of state policy. No matter how much they may desire social change, governments can only implement policy through laws directed at influencing the behavior of people. If state policy aims to increase mineral extraction, for example, the government cannot decree that ore deposits uncover themselves. It can only try to induce people to invest in finding and digging them out. In this sense, government has no choice but to employ the legal order instrumentally, using it to change the behaviors of citizens and state officials.

Social policies have no effective content until expressed as law. Yet few development theorists or practitioners have studied the process of moving from general policy prescriptions to the more detailed level required for formulating statutes or regulations. That process requires knowledge of the law's limits.

The legal order does not constitute a free good in unlimited supply. Policy-makers cannot simply determine their policy goals,

assuming that technicians will always find the appropriate legal means to attain them. Unless policy-makers honor the limits of law, their policies must fail (Pound, 1917). The legal order therefore imposes its own constraints upon the policies that a state can implement. As Malinowski (1941:1237) wrote long ago,

Questions about the limits of legislative action, about its ability to create new types of man and types of culture are as practically cogent as they are theoretically illuminating.

A. INSTITUTIONS AS REPETITIVE PATTERNS OF BEHAVIOR.

All laws address social problems. By definition, a social problem consists of repetitive behaviors that somebody characterizes as undesirable; not only behaviors commonly so denoted (prostitution, wife abuse, child marriages), but also those commonly called 'economic' (inflation, low productivity, blocked technology transfers) or 'political' (corruption, the excessive use of power by local political bosses). All these consist of undesirable repetitive behaviors.

Social problems occur neither by accident, nor because of transcendental forces, whether supernatural or the market's 'invisible hand.' They arise because of the social behavior of determinate sets of actors: State officials who determine government policy; mine, factory and plantation owners and managers who decide whether and what to produce and whom to employ; bankers who determine to whom and how much money to lend; workers who choose to work for the wages offered; peasants who decide to plant sorghum for the family or cotton for sale. Norms, formal or informal, invariably purport to prescribe the behavior of these various sets of social actors. Each set therefore consists of what

sociologists call 'role occupants,' that is, the addressees of norms. 'Institutions' likewise comprise the repetitive patterns of social behavior by particular sets of role occupants (Homans 1967).

In South Africa, as elsewhere, poverty and powerlessness persisted because of the myriad sets of social behaviors that comprised institutions. To overcome that poverty and powerlessness meant changing those institutions. That necessarily meant changing the legal order.

B. THE FUNCTION OF THE LEGAL ORDER IN THE DEVELOPMENT PROCESS.

Societies can purposefully change repetitive behaviors -- institutions -- only by altering the norms that define them; "rules are the midwives of organization" (Wunsch and Owolu 1990a:10). In the 20th century societies consciously changed institutions primarily by using state power to alter the legal order. Roscoe Pound (1942) called that "social engineering through law."

The legal order constitutes a specialized normative system that defines specific rules or norms, and an associated sanctioning system that enforces them. In that normative system the state plays the leading role (Lowi, 19^^). The state comprises, not only the rules of law, but also the behaviors of all the officials who formulate and implement them: Bureaucrats, elected officials, police, soldiers, sailors, teachers, jailers and sheriffs and agricultural extension officers, and a horde of others (March and Olsen 1989:17). In their roles as officials, they act within public institutions such as courts, legislatures, ministries, public corporations, departments, the uniformed forces, state schools and universities, all the state's implementing agencies (cf. Jessop

1982:222). These officials' behaviors comprise the exercise of state power.

One cannot intelligently discuss the institutions that shape a nation's reality -- property, international trade, corporations, banks and the money supply, and so forth -- without discussing the relevant laws: Property law, the law of international trade, corporation law, banking law and the laws affecting the granting of credit and the creation of paper money.² Conversely, one cannot make sense out of these laws without discussing the nature and role of the relevant institutions -- that is, the patterns of relevant role occupants' social behavior.

C. METHODOLOGY, PERSPECTIVES, CATEGORIES

If everyone agreed on values, the problems of drafting legislation for development would become easy. In South Africa, plainly no such agreement exists, as evidenced by the polarized socio-economic structure imposed by apartheid. Furthermore, most people reject the notion that if a Great Leader decides on the law, that alone makes it valid. Instead, experience has taught that a valid decision must prove 'rational', that is, one that "can be explained and defended by arguments acceptable to a reasonable audience" (Kronman 1990:1045; see Majone 1989:34; White 1990:50). To persuade others of the validity of their decisions, policy-makers must convince them they followed a rational set of decision-making rules: A "logically ordered sequence of questions that policy makers can ask, prior to making a decision, that will

². Giving central importance to structural-legal relationships in state-group ties, corporatist theorists come close to this perception.

provide prescriptions for acting" (Elmore 1982:^^). In South Africa, too, the democratic movement needs a theory to guide the policy-oriented research that must undergird rational law-making.

An adequate theory of law and development must incorporate a methodology, a perspective (or 'grand theory'), and explanatory categories. Its methodology provides a research agenda for deciding what policies and what laws to propose; that agenda provides preliminary criteria for relevance. Its perspective guides the discretionary choices researchers make in pursuing that agenda; that, too, provides criteria for determining what counts, and what does not. Its explanatory categories direct them to investigate specified sets of data, implicitly declaring other matters irrelevant. Thus theory bounds law-makers' rationality; without bounded rationality they become overwhelmed by the world (Simon 1982).

As a framework for drafting legislation, the May workshop focussed primarily on methodology, and categories.³

A. METHODOLOGY

Conventional development decision-making implicitly or explicitly typically incorporates an ends-means methodology:

"[I]n order to decide rationally, policy-makers must specify their objectives; lay out the alternatives by which the objectives may be accomplished; evaluate the consequences of each alternative; and choose the action that maximizes net benefits" (Majone 1989:12⁴; cf. Lindblom 1963).

³ Space does not permit a review, far less a critique, of the broad range of often-conflicting grand theories that inevitably influence researchers' and practitioners' research and proposals.

⁴ Majone uses the term "decisionism" for what we here call "ends-means" (see also Lindblom 19^^).

That agenda contradicts three important criteria for an adequate development theory: By falsely separating facts and values, it denies the possibility of deciding what policies to adopt based on experience; it does not require evaluation of the consequences; and it fosters authoritarianism.

In contrast, the problem-solving policy-making research agenda,⁵ ^{used by} ~~adopted~~ at the May workshop, meets all four criteria for an adequate methodology for formulating legislation. Inherently grounded in evidence it meets the central criterion for good theory, the employment of reason informed by experience. It requires reference to evidence at each of its four steps:

1. **Identifying the problem.** (Policy-oriented researchers must first decide on what problem to focus attention and then analyze available data to figure out its full nature and scope. Since social problems consist of dysfunctional behaviors, the state and law can only address social problems by trying to change those time- and place-specific behaviors. For policy purposes, therefore, researchers must specify whose and what behaviors constitute the social problem under review. 260-111)

2. **Formulating and testing tentative explanations (explanatory hypotheses).** Having identified the specific features of the problematic social behavior, policy researchers must gather evidence to test the explanatory hypotheses a theory initially suggests. If those hypotheses coincide with the available evidence, they provide a rational basis for formulating legislative proposals addressed to the causes they specify.

Explanatory hypotheses lie at the very core of problem-solving. Policy researchers may generate them from a variety

⁵ As distinguished from ~~the pragmatic incrementalist approach that Cox (1986:208) described (and criticised)~~ ^(who has proposed several approaches): A methodolog thaty

takes the world as it finds it, with the prevailing social and power relationships and the institutions into which they are organized, as the given framework for action. The general aim of problem-solving is to make these relationships and institutions work smoothly by dealing effectively with particular sources of trouble.

of sources: by examining hypotheses apparently warranted by experience in other times and places; by teasing them of grand theory; by searching the scholarly literature; by reviewing their own list of explanatory categories; or simply by cutting them out of whole cloth. These hypotheses consist of tentative causal propositions at an appropriate level of abstraction that, together, comprise possible explanations for concrete, time- and place-specific problematic behaviors. They properly serve to focus the researchers' scarce resources on gathering the evidence that might falsify them, and therefore away from irrelevant data.

In this sense, an explanatory hypothesis functions as a map, telling researchers what evidence to look for. Just as general principles of map-making do little to help travellers grope their way around a given rural area, so general theory remains on too high a level of abstraction to guide researchers in their search for the facts required to help explain -- and hence solve -- social problems in particular circumstances. On the other hand, a map of the area on a one-to-one scale that covered all its details would have to be as large as the area itself -- and hence useless. A map maker takes the middle way, selecting particular features of the area useful for specific users: To help travellers find their way around, some on roads, some on trains; to help recreation planners to discover where open spaces seem desirable; to acquaint zoners with prevailing occupancy patterns; to identify hilly areas and sources of water. In the same way, explanatory hypotheses purporting to explain how law relates to specific social problems serve as maps to guide researchers' investigations. They exclude irrelevant data and single out evidence likely relevant to their problem.

3. Proposal for solution. Unlike most academic research,

problem-solving, policy- or law-oriented research cannot stop with testing explanations. To change problematic behavior requires reformulating policy expressed in new rules -- legislation, ministerial or departmental regulations, or, in non-state institutions, new internal rules of conduct. These rules must, of course, try to solve the social problem in the most socially cost-effective way. Generating the operative form of a policy proposal -- a specific set of laws or regulations -- therefore calls for three steps: a) Critically reviewing alternative possible measures that follow logically from warranted explanations; b) finding the alternatives that will most likely effectively resolve the problem; and c) determining which seems most cost-effective.

d. Implementing and monitoring the proposed solution.

4. The problem-solving methodology requires implementation of the specific legal measures adopted, and monitoring the consequences. The problem-solving methodology explicitly insists on incorporating feedback into the law-making process. The results almost never turn out as expected for three

reasons: First, the explanatory hypothesis may not correctly identify all possible causal factors; second, the implementation process may prove inadequate; and, third, as the real world conditions inevitably always change, institutions that initially worked well may in time block more appropriate new patterns of social behavior. Since policies implemented through law never achieve precisely the results anticipated, they present new difficulties that require repetition of the problem-solving agenda's four steps. Development is not a static goal, but a process of constantly explaining and solving new problems.

B. CATEGORIES

Explanatory categories constitute a second component of any theory. Alone, those categories do not explain anything; at best, in conjunction with the researcher's perspective (grand theory), they spark off educated guesses (explanatory hypotheses) as to specific causal factors. These explanatory hypotheses then direct researchers' attention to the data they must find to falsify them. In that way, the categories researchers use turn their attention to causal factors likely to prove relevant (Popper 1972:46; Homans 1967; Winch 1958:15⁶).

Legal realists generally agree on the necessity of explaining how the state and the legal order influence social behavior. They remain sharply at odds, however, over what explanatory categories to consider. This section first considers the behavioral model on which they generally agree. It then suggests additional categories that seem to encompass all the other potential factors likely to influence social actors' behavior when confronted by law.

1. A general model of law and social behavior. A simple model (Fig. 3) captures the legal realists' agreement on the broad

⁶. Because words denote concepts, and "concepts" and "categories" have the same referent, what we denote as "categories" we might equally denote as a "vocabulary".

categories likely to explain any role-occupant's behavior. It builds on Hans Kelsen's model (Fig. 2):⁷ Lawmakers issue norms that either command addressees to obey (e.g., tort or criminal law), or offer them opportunities (e.g., contract and corporation law); and simultaneously, direct agencies (administrators, courts, police) to implement them (Bentham, 1970:144; Kelsen 1961:58-64; Austin, 1834:lectures I,V).

[Fig. 2 about here].

The law's addressees, or role occupants, may constitute every member of society ("Thou shalt not commit murder"); a defined class of non-officials ("No director of a corporation may use insider knowledge for private benefit"); or an official ("The Minister shall promulgate fair and reasonable rules for the generation and distribution of electricity").

Fig. 3 positions this ideal-type model of law's or norms' influence in the real-world reality of flesh-and-blood actors choosing how to behave in a world over which they have at most limited control.

Fig. 3 about here

People act by choosing among alternatives (Barth 19^^). Acting in the face of a rule of law, role occupants choose not only

⁷. In effect, adopted by the dominant 19th Century school of jurisprudence, classical analytical positivism.

in light of the rule (the relevant legal order), but among all the constraints and resources of their milieus. These include three sets of factors: (a) the rule itself; (b) the expected behaviors of law-implementing agencies; and (c) the non-legal constraints and resources of the role-occupants' milieus. In addition, the milieus of official in the relevant implementing agencies also include feedback from the direct addressees of the rule (the primary 'role occupants'). To generate middle-level hypotheses to explain behavior in the face of a rule (and thus to guide the all-important empirical research required to change it appropriately), the model teaches policy-makers to consider all these categories. The legal realists failed to agree on what causal factors to include in the non-legal constraints and resources.

2. **The ROCCIPI research agenda.** The sociological jurists tried to reduce the non-legal factors' influence on a role occupant to a single one: "Values and attitudes" (Friedman 1969). Law and Economics proposed another monocausal explanation: Material incentives (Posner 1986). Recognizing the importance of these two factors, the generation of fruitful middle-level propositions to explain role-occupants' behavior in the face the law requires more inclusive categories (Seidman, R. B. 1978b; cf. Allott 1980:236ff.; Lloyd-Bostock 1979; Jones 1968; Evan 1965:285):

The Rules. The explanation for a rule of law's failure to induce desired behavior may lie in the rule's inadequate formulation. Does its wording specify precisely the desired behavior? Or does it provide only vague guidelines that leave too much to the role-occupants' discretion -- thus inviting goal

substitution?⁸ Does the law specify adequate implementation procedures and provide sufficient resources for enforcement? Does it provide adequate monitoring of the implementation process?

In addition to particular rules that directly address the behavior at issue, researchers must consider the entire system of laws and implementing agencies that may affect role occupants' behaviours. For example, water polluters act not only in light of the rules conventionally labelled "water pollution law", or 'environmental law', but also property law, contract law, water law, tax law, constitutional law, and many others. Every legal system includes the proposition that what the law does not forbid, it permits. Unless a law expressly forbids landowners from polluting streams that run through their property, they have a legal right to pollute it. Moreover, the legal order includes not only the rules, but implementing agencies. Polluters will take into account not the sanctions 'in the books', but those they expect that the implementing agencies will actually impose.

b. The Requirements of Choice. Only when circumstances force role-occupants to choose do they consciously decide whether or not to obey a law. As an extreme example, to say that a babe in arms 'obeys' the law against driving a car below the legal speed-limit misuses the word 'obeys'. Role-occupants consciously choose whether to obey a law only when three additional categories of factors coincide:

⁸. Goal substitution occurs when role occupants, especially implementing agents, substitute their own personal goals -- like accepting a bribe or appointing unqualified relatives -- for the aims intended by the law.

- (i) Their environment provides them the opportunity to choose to obey or disobey. For example, a bantustan authority has many opportunities to embezzle other people's money; a poor rural resident very few.
- (ii) They have the capacity to obey, that is, they possess the skills and resources to perform the task the law prescribes. In several African countries, for example, colonial authorities passed laws requiring peasants to grow cash crops. Without inputs or credit to buy them, without knowledge of how to plant and tend them, without roads to the market, many could not act as prescribed.
- (iii) The rule must be communicated to the role-occupants. For example, if peasants in colonial Tanganyika did not know that the law required them to grow cash crops, they could obey it only accidentally. Researchers should ask: (1) Does the law's wording adequately communicate the law-makers' intention? (Rubin 1989:408 et seq.; Thornton 1987; Driedger 1983; Allott 1980:36-37; Ilbert 1914; Thring 1902); and (2) does the way law-makers publicize the law ensure its addressees know of their intention? (Seidman, R. B. 1972:680; Gifford 1970:409; Robertson & Teitlebaum 1973:665, 695ff).

(c). Interest. Law and economics had it at least partly right: Material incentives plainly do influence behavior. Researchers obviously must investigate the incentives and disincentives thrown up by the role occupants' environment. That includes the threatened pains and penalties, or the rewards offered

by the law itself. Role-occupants consider, however, not the law-in-the-books, but the likelihood that implementing authorities will enforce them. (Rural South Africans sometimes disobeyed apartheid pass laws in hopes that no policeman would catch them.) The authorities' own perceived interest may influence their implementing behavior. If public officials see that strictly implementing agency rules prohibiting large industrial organizations from polluting will prejudice their post-retirement job opportunities, they may conclude that their interest lies in enforcing the rules laxly or not at all (Arnold 1981:853; Bernstein 1955; cf. Jaffe 1956:1068).

d. Process. Whether role-occupants, as individuals or in collectivities, obey a law depends in part upon the process by which they reach their decision. For example, if an agency managing national parks conducts secret negotiations with commercial enterprises, it will likely make different decisions than if it holds public hearings at which environment-protection groups testify.

Process measures the extent that the state and the legal order foster democratic community participation: Whose problems law makers and implementers address; what and whose evidence they consider; and the impact of possible measures introduced on various interest groups (including different gender and employment and income groupings). If the state's decision-making process takes place in secret, and only permits the rich and powerful to supply inputs, new rules will almost inevitably reinforce their status. Only changing the decision-making processes to ensure transparency

and participation by the poor and disinherited will likely ensure that the legal order meets their needs.

e. Subjective factors ('ideology'). Like law and economics, the sociologists and their jurisprudential analogues had it partly right: Obviously, people's world views do influence their actions (Friedman, 1969). First, social sentiments commonly sway role occupants' choices. Throughout the third world, especially in rural areas, for example, traditional values and attitudes frequently exclude women from decision-making processes. Second, and more pervasively, actors' actions acquire meaning only in the context of their own subjective understandings, what Gouldner (1970) called their 'domain assumptions' (Schutz 1965:60, 62; Weber 1949:32ff; Parsons 1949:26). Researchers can only explain why one person gives another some thin metal discs if they know how the actors perceive the discs: Perhaps as medals, and the recipient as a craftsman who will polish them; as religious objects, and the recipient as a priest or shaman; or as money, and the recipient as a tradesman receiving them as payment (Kronman 1990:1051; Weber 1968:7; Winch 1958:117). To explain role occupants' behavior, researchers must comprehend their commonly-held beliefs and the socially-acquired and transmitted norms. (Ellickson 1986; Moore & Anderson 1965:72).

The mnemonic, ROCCIPI, helps to remember the seven categories that comprise this more specific research agenda: Rule, Opportunity, Capacity, Communication, Interest, Process and Ideology. Together, broadly construed, these categories seem to encompass all the factors likely to influence the effect of a law

on the behavior of any particular role-occupant. In considering each category,⁹ researchers should critically assess all the middle-level propositions suggested by alternative theoretical perspectives, and incorporate the most fruitful into their explanatory hypotheses -- their maps for investigating the facts in particular cases.

Once warranted by the evidence (or, more likely, revised in light of evidence systematically gathered to try to falsify them), the explanations researchers generate lead logically to proposed changes in laws and institutions likely to induce more desirable behavior.

D. THE THEORY AND METHODOLOGY, SUMMARIZED

No magic wand can provide a 'quick fix' to change the institutions that condemn four-fifths of the South African population to poverty and powerlessness. Evidence from throughout the third world proves that neither simply changing the faces of those at the top, however done, nor copying laws from 'successful' countries will likely lead to effective rural development. Like all institutions, those imposed by the apartheid regime comprise repetitive patterns of behavior that the new democratic state can change only through the legal order. For the democratic movement of South African to transform sound rural policies into appropriate legislation requires adoption of a participatory problem-solving methodology to empower rural South Africans to use the legal order

⁹ Sometimes, consideration of explanations in one or more category may seem superfluous. For example, law-makers usually communicate relevant rules and their contents to key ~~role~~ occupants, officials, in government implementing agencies.

build new institutions based on reason informed by experience.

The problem-solving approach generates middle level explanatory propositions sufficiently specific to ground time-and-place specific policy, and facilitates constant checking and reformulating those middle-level explanations and specific proposals for solution in light of evidence. It has a deeply democratic thrust: By participating in the process of assessing candidate explanations and the consequences of solutions based on them against evidence drawn from their own life experience, the people affected may learn what 'works' and what does not, which middle propositions produce good policies and which do not, and even which methodologies, grand theories and categories prove useful as guides and which do not. Only that kind of learning process can empower rural dwellers to design and implement increasingly effective measures to improve the conditions of their own lives.

To explain the dysfunctions of particular institutions requires that ^{explanations} ~~explanation~~ of the social behaviors of the central role occupants who shape the allocation of relevant resources and make critical political decisions. The ROCCIPI mnemonic lists a set of categories useful in generating possible explanations for that dysfunctional behavior. The relevant explanations, consistent with available evidence, lay a sound foundation for overcoming poverty and oppression by creating institutions designed to facilitate democratic participation and cooperation, and through reason informed by experience.

III. The central difficulty confronting rural development in South

Africa: The poverty and oppression of the rural poor.

To propose draft bills directed at changing the relevant rural institutions, the workshop participants first identified the central role occupants and the aspects of their behavior that comprised the difficulty. As the primary role occupants, they focused on the difficulties confronting the rural poor. These did not comprise a simple, homogeneous mass. Over the decades, apartheid institutions had coerced them into several interrelated impoverished groups: migratory laborers who worked on the commercial farms, mines, and so-called 'modern' industries; women, children and older men who struggled to survive in the bantustans with inadequate land and outmoded tools; and the growing numbers of un- and under-employed men and women, pushed back into impoverished peri-urban areas by the introduction of modern labor-saving technologies in all sectors of 'modern' agriculture, mining, and industry -- now totalling almost half the rural population.

Drawing on their existing knowledge and experience, the workshop participants first used the ROCCIPI agenda to suggest tentative explanations of these primary role occupants' behavior that comprised the difficulties their proposed draft legislation should aim to resolve. Obviously, their initial explanations would require further investigation to ensure they exposed all the causes of rural poverty. Essentially, however, grounded in the extensive collective experience of the workshop participants, they provided an initial basis for proposing the kinds of solutions the proposed legislation would probably need to incorporate. In that sense, they suggested the outlines of broad legislative programmes

required to overcome rural poverty.

The limited space here available permits only an outline of the workshop participants' initial tentative explanations of the difficulties confronting the rural poor, sparked off by considering the ROCCIPI research agenda.

Rules: Apartheid institutions cage every aspect of the work and lives of South Africa's rural poor. Those institutions deny rural folk access to adequate well-watered fertile land, and the machinery and equipment needed to develop the little land they have. They prevent them from acquiring the skills required to manufacture tools for farming, processing and storage of produce, and the basic consumer necessities required for a minimum standard of living. They prevent them from acquiring credit to buy necessary productive tools and equipment. They hamper them from selling what little surplus they do produce, whether in the form of farm products, handicrafts, or simple manufactures. Workshop participants pointed out, for example, that even when an NGO helped a group of women to grow a few vegetables or to sew dresses, local officials often enforced local regulations to block their efforts to sell them.

All these explanations pointed to the necessity for a fundamental alteration of the way the legal order supported oligopolistic 'modern' industries and commercial farms' domination of resources, including land and essential inputs, research and extension education, markets, and credit. Only by using law to restructure the existing institutions, embedded in the existing legal order, could the law empower South Africa's rural majority to

improve the circumstances that determined their working and living conditions.

Opportunity and capacity: The workshop participants pointed out that the existing property, marketing, and credit institutions, embedded in the legal order, block the rural population's opportunity to acquire the inputs and markets necessary to enable them to create their own productive employment and increased incomes. Bantu educational institutions explicitly aim to thwart their efforts to learn the skills and build the capacity to utilize even the limited resources available to them. As a result, those rural folk who cannot obtain wage employment at low wages on commercial farms, mines or in urban industries end up depending on the incomes of those family members who can, or struggling in competition with each other to make and sell produce in the 'informal' sector (read often 'illegal' because not licensed under existing law). Women in peri-urban areas, in particular, have little opportunity to earn cash incomes for their families except by setting up 'illegal' shabeens or prostitution.

Communication: The law makers and implementers rely primarily on the institutions of police powers to 'inform' the rural folk of the behaviors the existing legal order imposes on them. The police, for example, often arrest those who try to sell their produce in violation of marketing regulations, forcing them to pay fines or go to jail -- wiping out what little income they efforts might generate.

Interest: Enforcement of legal restrictions on their opportunities and capacity distorted many rural folk's interests in

ways that led to counterproductive behaviors, as when migrants invest their limited cash savings in livestock, aggravating overgrazing in overcrowded bantustan areas; women scour the countryside, chopping down for firewood for desperately-needed fuel, contributing factors leading to environmental degradation; families take children, especially girls, out of school to save school fees and help with house chores.

Process: All governmental institutions for decision-making, not only at the national, but also the regional and local level, exclude the mass of rural poor. Secrecy regulations limit their access to information necessary for participation; working rules prohibit them from providing inputs into the decision-making processes; internal decision-making processes prevent consideration of their concerns and needs; and, except through mass demonstrations and violent protests, they have almost no avenues for feedback as to the impact of relevant decisions on their lives.

Ideology: The legal order's impact on all aspects of their lives and working conditions, together with their relative isolation, has fostered attitudes of dependence and a lack of confidence among many of the rural poor. The institutions of apartheid, coercing men into a migrant labor force, have aggravated attitudes and values of male superiority that particularly disadvantage women both in the community at large and within the remnants of rural family life.

Tested and deepened in the light of further participatory investigations, these tentative explanations already began to suggest the outlines of a legislative programme to empower the

rural majority to take part in development of a future democratic South Africa.

III. A democratic legislative programme for the rural areas.

The list of explanations generated by examining the ROCCIPI research agenda related to the rural majority as primary role occupants led the workshop participants to divide into three groups to analyze the three interrelated components of a legislative programme for dismantling the apartheid system and empowering the rural majority to participate in a democratic process of development.

A. Legislation to give the rural majority access to adequate well-watered, fertile land, and provision for decent wages, working and living conditions for commercial farm workers.

(Bob to fill in)

The first group decided that, in light of the limited time available, they would focus on drafting a bill to provide decent wages, working and living conditions for commercial farm workers.

(Bob to fill in)

B. Legislation to ensure the rural majority acquires the skills, access to inputs, credits, and markets to create their own avenues for employment and improved quality of life.

The second group of workshop participants briefly reviewed the factors suggested by the ROCCIPI agenda to explain the counterproductive decision-making behaviors of central role occupants in the central institutions, enshrined in apartheid laws, whose behaviors perpetuate the impoverishment and oppression of the rural majority. These comprise complex decision-making educational

institutions which, from primary school through university, deny the rural majority the knowledge and skills required to participate effectively in managing and supervising, as well as providing the skilled labor, for modern interrelated industrial and agricultural development; the public and private corporations whose investment decisions foster the growth of an increasingly capital-intensive modern industrial sector (much of it to bolster the military machine required to perpetuate the oppressive apartheid system), aggravating rural unemployment; and the marketing institutions that protect oligopolistically-controlled industry and agriculture by explicit discrimination against African entrepreneurs' produce, whether foodstuffs, productive equipment, or consumer necessities.

C. Rural financial institutions as sources of credit for rural poor.

Group Three focused on the way the existing legal order maintains financial institutions developed as an integral feature of the apartheid system. These remain geared to the accumulation and reinvestment of capital primarily in the expansion of the dualistic political economy: a so-called 'modern' integrated industrial-agricultural enclave that enriched the (white) ruling groups; and the neglected, impoverished rural areas that produced the low cost labor that made the 'modern' sector so profitable for those who controlled it. The predominant financial institutions include the Federal Reserve Bank, the commercial banks, insurance and pension funds, and the building societies.

For nearly a century, in the rural area, the state-operated Land Bank has financed only large, increasingly mechanized (white)

commercial farms, subsidizing them through low interest credit and repeated debt moratoriums that, in recent years, have totalled billions of rands; some 70 percent of the (white) commercial farms only continue to exist because the Land Bank does not call in their loans. Only in recent years has the apartheid regime established new financial institutions, like the Development Bank of Southern Africa which -- despite its claims to the contrary -- finances, not the poor rural majority, but infrastructural projects that primarily benefit the large commercial farms (now including those owned or controlled by bantustan authorities).

Meanwhile, existing legislation and bank practices deny credit to the majority of rural (black) farmers and un- or under-employed cannot obtain the funds necessary to finance their farms or other efforts to enter into entrepreneurial activities. Restructuring the existing system of financial institutions constitutes a third essential legislative programme area for rural development.

Their reviews led Groups Two and Three to conclude that a new democratic government would have to enact legislation to restructure the entire system of interrelated apartheid legislation that shaped these institutions. Given the limited time available in the workshop, however, they decided to work together to formulate an initial draft bill to create an extension education agency that would in every way seek to empower the rural majority to acquire the knowledge, skills and credit to acquire the resources and engage in producing and selling the essentials for rural development, from food and clothing, through appropriate tools and equipment, to construction and furnishing housing.

The next section summarizes the draft memoranda of law that explains the reasoning behind workshop participants' initial draft bill relating to farm workers, and the creation of an extension education agency.

IV. Rough drafts and accompanying outlines of memoranda of law for two priority bills as the basis for further participatory research:

A. Proposed legislation for protection of farm workers and their families;

(Bob to fill in)

B. Proposed Extension Agency to empower rural poor to obtain productive employment and improved living standards.

Groups Two and Three drafted an outline of a memorandum of law that, incorporating the explanations sparked off by their review of the ROCCIPI categories relevant to existing extension educational institutions, provides the reasoning that lies behind their draft bill proposing an extension education agency to empower the rural poor to engage in productive employment and improve their living standards. By outlining a draft memorandum of law, they began to identify the areas of further research needed to warrant and deepen those explanations, ensuring that the proposed agency would help to overcome the causes of rural unemployment and impoverishment.

1. Explanations for the inadequacy of the existing extension institutions:

The two groups reviewed the evidence they had relating to explanations suggested by the ROCCIPI research agenda as to the way the existing extension educational institutions functioned to disempower the black rural majority.

*Whole + what
follows?*

As a result of the rules, the white-owning do they say?

Rules: The members of the two groups pointed out that the existing legal order not only ensured that the apartheid state spent far more on general education at all levels for whites, but in particular had for many decades provided extensive research, extension educational, and financial support to ensure the success of white commercial farmers. The limited extension programmes for blacks primarily aimed to teach them skills for operating machinery on those (white-owned) commercial farms, not for the farm administration, marketing and finance necessary for managing the commercial farms. Extension programmes established by bantustan authorities operated on limited budgets and under regulations that limited their potential for empowering poor bantustan residents, especially women, to enter market production. National and bantustan legislation permitted on-government organizations (NGOs) to set up programmes to assist black rural residents to acquire skills to engage in small-scale farming and informal sector projects, but gave them little if any resources for the purpose. The Development Bank of Southern Africa, for example, established by agreement between the South African government and the bantustan authorities, recently has claimed to provide credit to the rural poor through NGOs, but the available data suggests that it actually allocates little more than one percent of its total credit for that purpose; most of its resources assist infrastructural projects that only benefit large commercial farms (including some owned by bantustan elites).

The two groups' participants, however, emphasized the need to acquire further detailed information relating to the existing

legislation discriminated in the provision of skills and resources to the commercial farmers and bantustan elites, on the one hand, and the impoverished majority of rural residents, on the other. That would facilitate identification of specific changes required to create an effective democratic extension agency to empower the rural poor.

Opportunity and capacity: The existing national research and extension education programmes typically aim to ensure white farmers retain control over the commercial farm sector, and foster continually expanded investments in the labour-saving technologies that have aggravated unemployment among black farm workers. Without opportunities to acquire advanced skills, [rural blacks have little choice but to work as unskilled or semi-skilled farm labor or to migrate to live in hostels and work on the mines -- when job opportunities exist.] The limited bantustan extension education programmes service the needs of the larger elite-owned bantustan farms. Lack of financial and other resources limit NGO programmes to particular areas where they reach relatively few rural poor with either the skills or resources to engage in production and sale either of farm or other commodities. [Rigid licensing and other restrictions, as well as lack of information about market opportunities, hamper those who succeed in producing a surplus from selling it profitably.]

This talks about purpose of this bill, + explanation

This doesn't relate to opportunities to acquire farming, agribusiness - why doesn't white farmers have advanced skills?

Has nothing to do with learning skills

Communication: White commercial farmers receive regular information about the research and extension education services available. Bantustan extension educational personnel typically inform only larger farm owners of the limited programs they

provide. Black farm workers may hear of opportunities through their employers, but many never even know of the limited opportunities that exist. NGOs make more effort to reach the rural poor, and some particularly focus on women; but their efforts remain limited by their limited resources.

Interest: National extension education personnel, mostly white males, found it in their interest primarily to service white commercial farmers. They have the land and capital to make profitable use of up-to-date, relatively capital-intensive technologies, and can ensure the system rewards extension personnel who provide them. The bantustan extension systems likewise offer greater rewards to personnel who service the bantustan authorities and their cronies. Extension personnel who work for NGOs that seek to foster rural development exhibit greater interest in reaching the rural poor.

Process: Black commercial farm workers and other rural residents remain excluded from the decision-making processes at all levels. Large scale commercial farmers have powerful lobbies that influence the Parliament to pass legislation and fund research and extension educational programmes to fulfil their requirements. In the bantustans, the authorities retain control over their limited services. [The DBSA mechanisms exclude the rural poor from participating either in decisions as to what projects should receive credit or in providing feedback as to the impact of those funded.] Although NGOs often proclaim their aim to encourage participation of rural personnel in their decision-structures, some are more successful than others. Some, funded from abroad, tend to

*to the
Bantustan
Services*

respond more readily to directives from their overseas donors than to foster rural residents' efforts to achieve self-reliance.

Ideology: The extension education training programmes have for decades inculcated extension education personnel with attitudes that assume only whites (and occasion rich, well-connected blacks) can take advantage of their services. Too often, they assume black rural workers and small farm owners remain ignorant, unwilling to risk investments in new technologies. Moreover, the typically male bantustan extension educational personnel neglect female farmers who do a major share of most small-scale bantustan food farming. While NGOs often proclaim their desire to give rural poor, especially women, greater opportunities, ^{Obscure} they sometimes find it necessary to educate their own agents to reject these ideas, as well as to combat the feelings of inferiority and lack of self-confidence imposed on the rural poor by decades of apartheid.

2. Reasons for the proposals incorporated in the draft bill to create a new Extension Agency:

Their review of the existing institutions relating to rural research, extension education, and finance led the group to ^{propose} ~~draft~~ ^{legislative proposal for} a ~~bill~~ ^{proposing} a new democratically structured Extension Agency which in every respect would seek to empower the poor rural majority to engage in productive employment activities and market their produce. It would particularly focus on assisting rural un- and under-employed, especially women.

^{Without the report} The new government would appoint an Administration composed of the heads of (the) five departments. A governing board would include representatives appointed by the elected authorities of the

regions.

The Agency will consist of five departments: A research department; an education and training department; an extension department; a finance department; and a monitoring and supervisory department.

The criteria and procedures determining the functions of these five departments will require that each creates input, conversion and feedback processes that involve the participation of the rural poor as fully as possible in every aspect, providing transparency and accountability at every point. At the end of the first year, each department will report to the newly-elected regional authorities and the newly-elected Parliament as to its progress in making appropriate institutional linkages and developing its programme in ways calculated to meet the production needs of the rural majority.

The Planning and Research Department. The Planning and Research Department will focus on identifying appropriate technologies for rural production of farm inputs and consumer necessities, and the institutional changes required to ensure adequate markets, processing and transport for commodities produced by small-scale (including cooperative) rural enterprises. It will identify and allocate adequate resources to improve the work of existing research institutions, including those in universities and separate institutes. Together with the Training Department and the Extension Department, it will coordinate the development of an appropriately integrated research, training and extension education programme.

Training Department: The Training Department will undertake two types of training programmes. First, it will identify existing training institutions, including universities and secondary schools in every region, to coordinate and develop short term training programmes for the rural poor. The department will provide financial resources to appropriate institutions to give them an incentive and the funds to introduce creative new training programmes to provide the rural poor with adequate knowledge and skills to engage in productive activities and market their output, as well as to participate in restructuring rural institutions to meet their own needs.

Second, the Training Department will identify institutions to undertake a one year programme to train a core of extension education agents ^{to} work through the Extension Education Department to assist the poor rural majority to engage in productive activities.

Extension Education Department: The Extension Education Department will employ extension agents who will work with the rural poor either on a part-time and full-time basis to assist them in acquiring the knowledge, skills, and physical and financial resources to engage in productive projects and establish the processing, storage and transport facilities essential to market their output. Because of the difficulties of working with many individual small producers, the Extension Education Department agents will encourage the rural residents to form appropriate forms of voluntary cooperatives to facilitate provision of resources and skills. Drawing on the evidence provided by extension agents and

together with the Research Department, this Department will also make recommendations to the national and regional elected legislatures for new measures to improve the marketing institutions and create adequate linkages between industrial and rural development.

Finance Department: The Finance Department will have three functions: First, it will manage a revolving credit fund which, on the advice of appropriate extension agents, will make initial allocations of credit to small-scale farmers, rural entrepreneurs, and cooperatives, at low rates of interest. Second, it will work with financial institutions, including the DBSA, the SBCD (?), commercial banks, insurance and pension funds, to guarantee larger allocations of credit for successful on-going productive rural projects. Third, it will make recommendations for legislation to improve the contribution of national and regional financial institutions to rural development.

Supervisory and Monitoring Department: The Supervisory and Monitoring Department will have two primary functions: First, it will create mechanisms to ensure that all Agency departments carry out their mandate of creating appropriate rules and regulations to empower the rural poor, especially the un- and underemployed and women, to participate in all aspects of the development of their programmes. Second, any Agency employee or any rural resident engaged in any aspect of the Agency programme may appeal to an internal tribunal in this Department regarding the decisions of any relevant Agency department. The tribunal's decision shall be subject to review by an appeals court, not de novo, but only on

procedures.

3. On-going research:

Many details of the draft Agency bill and the accompanying memorandum of law require further research along several lines. First, more detailed analysis of the laws that underpin the existing relevant institutions will facilitate analysis of the changes required to enable the Agency to undertake its task. Second, democratic movement researchers should gather and critically review all the available relevant documents produced by government, universities, and NGOs. Third, rural community members should be encouraged to participate in assessing the evidence they have as to the nature of difficulties they confront, the kinds of explanations they might generate for the behaviors of institutional role occupants, and the range of possible solutions they might propose. Fourth, a careful social cost-benefit analysis of the proposed bill requires a great deal of evidence as to relative costs to the new government (compared to other possible ways of tackling the causes of rural unemployment and poverty); what groups would likely experience negative consequences; and the extent of the probable benefits to the rural poor.

These initial drafts, both of the memoranda of law and the proposed bills, then, comprise only a first step in an on-going process of transforming South Africa's democratic movement's policy proposals into draft legislation. The workshop participants proposed several follow-up measures as the next steps in that process.

V. Follow-up proposals: