The Rule of Law and Ujamaa in the Ideological Formation of Tanzania*

by

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I The Debate

Post-independence states in Africa were bedevilled by such frequent changes of regimes during the first two decades that few radical scholars paid attention to the issue of legitimacy of the state or political rule. Stability of political rule arguably is the minimum condition at the phenomenal level to throw up the query: How do the rulers rule? How do the rulers mobilise the consent of the ruled? What makes the ruled accept their rule? Coercion and consent are the opposite ends of the axis around which many explanations of legitimacy and hegemony revolve. It is fair to say that the ultimate content of legitimacy turns out to be some mix of the two. It is the relationship between consent and coercion and the way it expresses itself on various levels of state and society which constitutes the key-issue in the varied theories of legitimacy and hegemony from Weber to Gramsci.

Coercion, and not consent, was the prevalent mode of political rule and political change in post-independence Africa during the 1960s and 1970s. Little wonder then that the issue of legitimacy was not raised in a sustained fashion, at least in radical scholarship. Yet the flip side of the coin, that is to say, lack of legitimacy as an explanation for lack of stability, also received a short shrift. This can be explained by the other important element in the political rule in Africa. This is the continued presence of imperialism. Imperialist powers were directly or indirectly involved in changes of regimes. The foreign factor, therefore, was often the dominant, if not the only, explanation leaving little room for intellectual inquiry on the plane of internal legitimacy or the lack of it. This explanation seemed so powerful - and, indeed, empirically it was irrefutable - that the stability of such exceptions to the rule as Senegal in West Africa and Kenya in East Africa was also attributed to external imperialist support.

One exception in East Africa that did not quite fit the neat picture was Tanzania. Here radical scholars, though, were debating on a different (if related, although the relation was not teased out at the time) plane (Tandon, 1982; Shivji, 1990a; Copans, 1991). They raised the problem: `Who ruled in Africa?' and sought to answer it within Marxist political economy. The political economy approach no doubt enlightened our vision significantly. But it did leave out, what could have been fruitful inquiries, on other planes and levels. The political economy approach which tended in practice to be more economistic than political virtually dismissed the question: `How do those who rule, rule? And how do the rulers and the ruled perceive that rule?'. Such questions would have then been ruled out of court as Weberian (and idealist) or Gramscian (and neo-Marxist), both being terms of abuse in the debating vocabulary of the time. Further limits to the terms of the debate were set by the way vulgar political economy resolved the issue of `who rules?'. It was resolved into polarised positions: `those who control capital, rule' was one position; `those who control the state, rule' was another (see, for instance, Tandon, 1982 and Hirji, 1982). Much ink was spilt on the character of the state. Little was said on specific state forms. And virtually nothing was attempted on different ideological forms, particularly on their historical and social specificity, which infrom the perceptions of the rulers and the ruled. To be sure, the rulers of Africa spawned many ideologies, but few could claim the coherence of a worldview and very few indeed have had any credible staying power. Even the credible few were dismissed by radical scholars by the process of labelling and

name-calling while publicists eulogised these ideologies without engaging in serious interrogation of their historical and social form.

Perhaps the greatest limitation of the political economy debate on `who rules' was that it belittled an engagement with the perceptions, culture, forms of consciousness and modes of thought of the people - particularly the ruled - not only with respect to the state of political rule, as narrowly defined, but with regard to the larger life processes within which that rule is located, perceived and articulated. This was the limitation of the debate as a whole as well as that of its intellectual and activist participants. Although we have the benefit of hindsight, we are yet to appreciate fully the far reaching implications of this limitation on the past and present intellectual practices of the African Left.

The other field which received superficial treatment was the ideology of the rule of law. Law was conflated with legal rules which in turn were seen as part of the superstructure reflecting the economic base (Owori, 1982). The role of legal ideology in legitimating political rule, or the lack of such role and the reasons for it, did not feature in the debate in any sustained manner (Shivji, 1993: passim). Absence of that analysis is being keenly felt in the current period when the liberal ideological package of democracy with its satellite concepts - rule of law, constitutionalism, human rights, multi-parties, pluralism, etc. - is being offered as an alternative in Tanzania as elsewhere in Africa.

Beginning with the 1980s there has been some effort to theorise the legal practices of the state in Tanzania. This was augmented by the participation of activist-intellectuals in legal aid as part of the rights struggle (Faculty of Law, 1984). This took the form of debates, discussions and the evaluation of (human) rights theories, among other things (Mwaikusa, 1990; Peter, 1990; Shivji, 1991). In the footsteps of the tradition set by earlier debates, the legal debates also have been largely home-grown although have dove-tailed into similar debates elsewhere, in particular the `rule of law' debate in Britain (Fine et.al. eds., 1979 and Berne & Quineey eds., 1982). The aim of this paper is to take the debate beyond the discussion of the social character of law and rules to the ideological level and in this context to investigate the place of the rule of law in the ideological formation of Tanzania.

The other concern of the paper, the ideology of ujamaa, has yet to be fully interrogated. It has received little theoretical attention from the radical left (but see Hartmann ed., 1991). The current conjuncture has seen a significant erosion of the ideology of ujamaa and the manifestation of incipient elements of potential instability. Yet for a whole generation the country enjoyed unequalled political stability on the African continent. This needs to be explained. Officially the ruling party, Chama cha Mapinduzi, has all but in name given up the ujamaa rhetoric. Since the introduction of the multi-party system in 1991, the political debate among the elites and the middle class is conducted essentially in the liberal ideology of democracy, rule of law, constitutionalism and human rights. At the same time, there appears to be an upsurge in the expression of parochial racial, ethnic, religious, and narrow nationalist rhetoric followed by instances of racial and religious violence. It is in the context of the waning of ujamaa and the apparent `rise' of the rule of law as legitimising ideologies that I propose to investigate their role in the construction of counter-hegemonic ideologies and struggles.

The argument of the paper takes off from the extant debates among radical Tanzanian (and African) scholars on the character of law and its ideological role in post-colonial formations. I refer to Western scholars and debates on the rule of law and rights only to the extent that this helps me to juxtapose and highlight the underlying assumptions of the hegemonic role of the rule of law/rights in liberal capitalist formations.

Section II of the paper deals with the ideological premises (principles) around which the consensual character of the rule of law is constructed and various explanations as to why these principles have failed to operate in African countries. Section III goes into more details to illustrate the role of law

(rules) as an unmediated expression of state coercion in the case of Tanzania and how and why legitimacy is sought on the terrain of non-legal ideologies. Section IV is a quick overview of the major elements and premises of ujamaa as an ideological construct. The hypothesis of the paper is that ujamaa provided a consensual ideology to legtimise political rule (manifesting primarily in political stability) because it had resonance in popular consciousness/worldview. The failure of the rule of law to invoke similar resonance is discussed and argued in section V where I dwell on the crisis of hegemony and the erosion of ujamaa. Section VI attempts to explore the implication of my thesis on ujamaa and the rule of law as legitimising ideologies on the construction of counter-hegemonic ideologies to legitimate counter-hegemonic social struggles for social emancipation and transformation.

II Rule of Law and Legitimacy

Central to the rule of law ideology is the conception of rights which appear on the surface of law masking the ultimate force behind it as well as legitimating political rule - the rule of the state. Social-democratic currents in the West have taken the position that law - rights - is located at the intersection of state and civil society (Hunt, 1990:316). Law therefore must not only be taken seriously but has a strategic role in counter-hegemonic struggles and, perhaps, even in constituting counter-hegemonic ideologies. This is in line with the characterisation of the rule of law by Thompson as the `unqualified good' (Thompson, 1977). Other Marxist currents have cautioned that while law and rights must be taken seriously its capacity to disarm counter-hegemonic forces is not only enormous but inherent in the law-form (Piccioto, 1982; Sayer & Corrigan, 1981). So, while law must be taken seriously, `a major part of that taking seriously must lie in recognising that law as such is an alienation of social powers that need to be reappropriated if the people are to rule' (Sayers & Corrigan, ibid.:12). People must keep a class distance from the Law.

More recent contributions to the debate have shifted away from the class perspective. The debate has been conducted around the conceptions of empowering/disempowering powers of law and rights. Instead of, or, some would argue, in addition to, class it is social movements which are seen as the agency of rights struggle (for a good review see Herman, 1993). In a forcefully argued piece Fudge and Glasbeek (1992) have returned to the argument that law and rights are essentially a class project to reproduce and reinforce the unequal capitalist relations; that the new social movements whose struggles are anchored in the `politics of rights' `may reinforce the dominant hegemony, rather than pose a challenge to it'. (Fudge & Glasbeek, 1992: 26). Herman in the piece already cited, while agreeing with some of the critiques of rights, finds Fudge/Glasbeek argument class reductionist and instrumentalist.

These debates are undoubtedly nuanced, subtle and contentious reflecting different social perspectives and transformative/emancipatory projects. What is significant for my paper, though, is that there is a fundamental common ground among the participants in the rights debate. The common ground is the acceptance of the fact that the rule of law plays an hegemonic role in the developed bourgeois formations. It is accepted that the `juridical world outlook', to use Engels' phrase, is the heart of the bourgeois global ideology; that this ideology is hegemonic in that both the rulers and the ruled perceive the rule and their relations through the prism of legal ideology. Legal ideology is not simply a `mask' disguising real relations or simply manipulative of subaltern classes but also acts as a restraint on, and inhibits, the use of arbitrary power by the state. And, therefore, law is important and the rule of law may be legitimately defended by the working classes. Indeed, some would go further and argue that rights struggle can be empowering and is a necessary foci for resistance (see
Herman, op.cit.). I will return to some of these issues in section V. Here it is sufficient to state that things stand differently in a neo-colonial formation like Tanzania.

Studies have shown that in Africa law is by and large a set of `legal rules' stripped of its liberal ideological package. The state rules through law but not within it (Shivji, 1990d). We have `constitutions without constitutionalism' and law without the rule of law (Okoth-Ogendo, 1991 and Ghai, 1986 & 1993; Norrie, 1993:18-20). In short, law rules but is not constrained by it. If so, three questions arise: (1) why rule through law at all? (2) what explains the lack of legitimacy of the rule of law? And (3) on what other non-legal terrains is legitimacy sought?

Okoth-Ogendo, putting forward his axiom of constitutions without constitutionalism, argues that the use of the constitution in Africa has been largely to constitute sovereignty internationally rather than seek legitimacy internally (op.cit). This is certainly a valid proposition for Tanzania. Tracing the constitutional history of Tanzania, I have shown elsewhere how at every stage of constitutional change, while legal forms were observed, there was little effort to observe constitutionalism (Shivji, 1990c). There was no consultation of the people and little public and parliamentary debate. Real decisions were made in the closed chambers of the ruling party which is known to breach every rule of constitutionality and legality. `The concept of power outside the constitution is a key to the understanding of Tanzania's constitutional experiments.', Ghai has correctly observed (1986:187). The same may be said of law generally, i.e. there is very little inhibition in exercising extra-legal power (or power outside law) (Shivji, 1990d).

The fact that the state still uses legal rules to express its power even as it breaches the ideological premises of the rule of law, it seems to me, can be explained mainly by the need to seek international legitimacy. This betrays the essentially dependent and compradorial character of the ruling bloc. Nyerere could in one breath declare that the constitution of the country allowed him to become a `dictator' (although of course he did not become one) (in an interview with a BBC TV reporter quoted in Shivji, 1990d:12) and at the same time argue forcefully in the English introduction to his selected writings on socialism that `the Rule of Law is a part of socialism; until it prevails socialism does not prevail' (Nyerere, 1968:8). It is not accidental that the English introduction was written with largely the foreign readership in mind - particularly the liberal and social-democratic forces of the West. It is crude but not untrue, as Norrie says, that the rudimentary legal safeguards that one finds in a neocolony are `only as a patina of respectability for the assuaging of foreign criticism in order to guarantee foreign support' (Norrie, 1993:18).

The next question that arises is to explain the basis for the virtual non-existence of rule of law as a legitimating ideology. From different perspectives, a common conclusion seems to have emerged among analysts to explain the issue. The explanation lies in the material and social conditions and the character of the political economy of a neocolony. Norrie (ibid.:21) has summarised one strand of the argument thus:

> Ghai (1986) has argued that it is the underdeveloped nature of the third world neo-colony that leads to its adoption of non-rechtsstaatlich ideologies to legitimate its rule, and, particularly, that rule's authoritarian character. The material and organic bases for consensus, and therefore a measure of `rule of law' do not exist in the underdeveloped society.

Samir Amin (1987), discussing the larger question of the non-existence of bourgeois liberal democracy in the periphery, rests his explanation on the configuration of the ruling bloc. The ruling bloc, he argues, is essentially compradorial which fails to master the internal processes of accumulation thus ending up in the `strategy of adjustment of internal growth to the constraints of the world-wide expansion of capital' (Amin, 1987:1148). Thus a national bourgeois project that would sustain a liberal democracy a la Western Europe, Japan etc., and by extension a rechtsstaatlich ideology based on social consensus, is virtually impossible in the third world.

Shivji (1986b and 1989a) relates the existence of what he calls the `right-less' law in Tanzania to the relations of exploitation which he argues are based on

unequal exchange. Here force is integral to the processes of production and therefore what rules the roost is not the ideas of contract (equality, rights, freedom) but the undisguised sanctions of criminal law.

One common, if implicit, thread running through these diagnoses is that the rule of law, even if unachievable because of material conditions, is nevertheless considered desirable, albeit perspectives on the role of rule of law in organising the desired polity differ. Ghai, for instance, ends his article with a clarion call for attending to the `mobilisation of consent ... through democratic and participatory processes', presumably he has in mind the processes of the Rule of Law (1986:206). Norrie too would probably endorse that position although he sees a role for the `mediating forms of right', (presumably some blend of rule of law and `popular involvement') both as an end product as well as a means of legitimizing the resistance and struggles of subordinate classes (1993:41-2).

Shivji (1989b) would see the role of reconceptualised rights ideology in terms of organising and legitimizing the resistance and struggles of popular forces. In other words, he sees the role of rights ideology as a anti-hegemonic, but not necessarily a counter-hegemonic, ideology (1992).

Samir Amin (op.cit.) posits an alternative ruling bloc which would have the capacity to subordinate the external imperatives to the processes of internal accumulation. He sees this alternative bloc constituted by some combination of popular forces (not clearly specified in his article) and which can transcend the social limits of liberal democracy which is characterised by the formal equality of the rule of law and the real inequality of the production processes. He does not, however, explore alternative ideologies and forms of consciousness which could mobilise and legitimate such a project.

I am suggesting that there is one crucial element omitted from these diagnoses and alternative conceptualisations of legitimizing ideologies. They seem to focus on the issue of hegemony (or legitimacy) from the side of the ruling class or bloc not from the standpoint of the people or the ruled. The non-existence of the rule of law as a hegemonic ideology in Africa, for example, is explained by the incapacity of the ruling classes to sustain it, preside as they do over underdeveloped economy and fragmented (nationally, ethnically, racially etc.) polity (for a succinct summary of these arguments see Ghai, 1986). But what about the perceptions of the people? It is assumed that if the ruling class was capable of sustaining the rule of law ideology it would perforce be able to mobilise the consent of the ruled. The assumption seems to be that the rule of law ideology would necessarily strike a common chord in the ruled. The specific historical form of legitimacy which developed in Europe in the 18th century is being assumed to have universal application across time, cultures and social formations.

There are grounds for one to raise scepticism of this unsaid assumption, at least in the case of Tanzania. Let me explain. I want to argue that some of the central elements of the rule of law ideology (equality, individualism, rights) do not correspond to the major elements in the worldview and forms of consciousness of the people, particularly in the countryside. Looked from the side of the people, the perceptions informing and informed by the rule of law ideology are alien, not organic to them. I will investigate these tentative propositions by analysing three sets of evidence and arguments. First, certain crucial events/phenomenon at critical junctures in the politics of Tanzania which were very popular with the large majority of the people and yet in clear breach of the basic premises of the Rule of Law. Here consent was mobilised not through, but in breach of, the rule of law and yet popular perception did not see anything wrong with it. Second, by isolating the critical elements of the ideology of ujamaa and seeing them in relation to the perceptions of the people on the one hand, and the concepts of the rule of law, on the other. To the extent that ujamaa did function - successfully to provide political stability - as a legitimating ideology, its analysis should tell us something, even if partially, about the worldview of the people. In other words, why was ujamaa able to mobilise the consent of the ruled where the rule of law failed. Thirdly,

to reflect on the responses of the people in the current period of multi-party democracy where alternative ideologies (counter-hegemonic?) based on liberalism (constitutionalism and the rule of law) are being offered. What do these responses tell us about the hegemonic significance of the rule of law ideology? I pursue these three strands of arguments together in the next three sections.

III Rule of Law or the Tyranny of Legal Rules?

The Legitimacy of Law

State and law were distinctly a colonial intervention in the trajectory of the development of Tanzanian communities. Independence by definition was the `appropriation' of the state and law by local social forces. Both the state and law underwent substantial changes in terms of their institutional setup and practical operation (Cole & Denison, 1964). But in one respect there was substantial continuity. It is the continuity which concerns us directly in this paper.

The colonial law ruled by centralising violence rather than mobilising the consent of the ruled. As English law, which was the body of law received in the country, crossed the seas it dropped its liberal ideological package. It came naked as an expression of state coercion. Force appeared on the surface of law rather than in the disguise of a consensus between the rulers and the ruled. Received law was alien and the colonial state made no pretence of using it to legitimate its rule.

If legitimacy was sought on the level of law at all, it was on the level of carefully truncated private law. The legal system was characterised by dualism. `Natives' were ruled by native courts manned by chiefs and governed by indigenous or customary law called `native law and custom'. The form was customary but the content was reconstructed in the image of colonial state values through various mechanisms (Snyder, 1981 passim). First there was, what in the colonial jurisprudence is called, the `repugnancy clause'. Native law and custom applied so long as it was not repugnant to `justice and morality' which in effect meant the justice and morality of the colonial white judge. It is the second exception, though, which is significant. All criminal law was codified in a statute - the penal code - which applied to natives and non-natives alike. Criminal customary rules involving use of force were expressly forbidden under the reception clause.

Force was central to the colonial system of production (Mamdani, 1987:78-93). Law was an instrument of transmitting such force rather than a form of legitimating political rule. Labour was procured, regulated and controlled by criminal sanctions, so was the use of land through the corpus of native by-laws (Shivji, 1986a and Shaidi, 1985). `Natives' were left to be governed by `their' law and custom in matters of family, marriage and inheritance so long as those did not offend colonial values on the one hand, and did not become rival centres of the use of force, on the other. Application of statutory/English law and customary law was not an expression of legal pluralism as such, rather it was a pluralist expression of colonial despotism (see Smith, 1965:24-48).

The post-colonial state inherited the colonial legal system and its dualism. The court system was quickly integrated; the offensive repugnancy clause removed but the criminal law remained firmly statutory. Indeed, as the demands for surplus appropriation from producers intensified so did the use of criminal sanctions against them (Williams, 1982). Criminalisation of ordinary civil relations was the norm. Formation of an independent trade union is an offence so is going on strike (see the Permanent Labour Tribunal Act, 1967). Minimum acreage laws require customary land owners (which meant `native' peasants) to cultivate a stipulated area of land for cash and food crops. Failure to do so is visited by fines and imprisonment. Force is indeed integral to the process of production. That force, to repeat, is transmitted through the instrument of legal rules (Shivji, 1989a) .

The fact that the corpus of law is made up of tyrannical rules exhibiting force on their surface profoundly reduces the legitimacy of law in the eyes of the ruled. Which in turn means that it becomes impractical for the rulers to seek to

legitimate their rule on the level of law. This need not be inevitable but has certainly been the case in much of Africa as varied studies have shown (for example, Ghai, 1986). Rulers have sought legitimacy on terrains other than law. I have elsewhere categorised these as ideologies of developmentalism (Shivji, 1990b). Let us explore these in some detail.

Nation-building Ideologies

Developmentalist ideologies have relied heavily on nationalist flavour and phraseology, particularly in the immediate post-independence period. This has led some critical scholars to label them `nationalist' (Campbell, 1992) or `state nationalism' (Mamdani, 1990 passim). I have questioned these labels. In my view, there is a confusion between territory/country as a geographical space and nation as a social space (see Mamdani, ibid.). Wamba correctly categorises these ideologies as `nation-building' ideologies (Wamba, 1991b). That is a powerful description of state ideologies in Africa wherein the state seeks to `build' a nation rather than the state being seen as constituted by the nation and its struggles. The description of a head of state as `the father of the nation' captures the central element in nation-building ideologies. Nyerere recently articulated a similar proposition in a different language when he asserted that in Africa political parties preceded, and in turn, gave birth to nations.

Nation-building ideologies ignore the momentous struggles of the people through their social and cultural movements which consolidated in the struggle for independence (Mamdani, 1990). Nations and nationalities with common social and cultural bonds pre-existed political parties and independence. The territorial demarcations of the colonial powers in Africa, as we know, cut across national identities. The expression of national identities, especially when expressed from below, have been suppressed since under the pretext of enhancing territorial unity under the jurisdiction of a single, former colonial, state. Nation-building, as many writers have observed, was in essence state-building (see Mamdani, 1990: op.cit. & Wamba, 1991b: op.cit.). The legal side of the coin of developmentalism/modernisation was the law and development theory (Shivji, 1993). Developing through law by using law as a mechanism of `social engineering' (see Trubek, 1972 for discussion and an internal critique) was the prescription advanced in our law schools as a legal counterpart to `nation-building' theories of the political scientists. State-building has curiously involved considerable use of legal rules enacted by state-party institutions like the parliament. Even more rule-making has been done through delegated legislation enacted by executive and semi-executive organs. The `law and development' theory in vogue in the `60s and the `70s provided the necessary theoretical justification and rationalisation for the intense law-making activity.

State and Law

A lot of `developmental' legislation was passed in Tanzania in the `60s and the `70s. Maasai pastoralists were supposed to be regulated through the Range Development Act, 1964 while peasants were supposed to be organised through the Land Tenure (Village Settlements) Act, 1965. There were two major objectives of the so-called developmental legislation. One was to bestow the state - meaning a string of government officers - with wide-ranging discretionary powers to do things and, two, was to minimise the space for the people to challenge what the state was doing. So what we had here was a plethora of legal rules but a minimal of the rule of law. It is one thing to govern through the letter of law but quite another to be ruled through the rule of law. It is possible to have a situation where the state exercises power within the letter of law but the powers thus exercised are so discretionary and arbitrary that they are in breach of the rule of law.

Rule of law therefore expressed itself as an unmediated tyranny of legal rules transmitting state coercion. A non-legal researcher investigating land litigation in Mgeta district of Tanzania was perplexed by the fact that peasant

litigants were motivated by factors other than a belief that they would get justice and fairness (Van Donge, 1993).`Grumbles about the judicial system were seldom stated in the form of complaints about unfavourable decisions. The usual expression was: hatupati haki, we do not get justice' (ibid.: 445). Nor did the magistrates believe that their role was to dispense justice. Legal principles, arguments and reasoning played little or no role in their decision-making. Decisions were arbitrary, inconsistent and unpredictable. The writer observes:
The striking and baffling aspect of the behaviour of the magistrates in this Tanzanian case-study is that they used so many devices to avoid coming to a decision at all. There is a qualitative difference between the situation where litigants spend money in the expectation of a favourable outcome, and where they have no reasonable hope of such an outcome.
The courts tended to avoid not only making judgements but also stating legal principles (ibid.:444)

In effect therefore the rulers use law as an instrument to express their power while the ruled use it, as a means of last resort, to wreak revenge on the opponent. And the magistrates use law as a resource to augment their income. None of the parties in the equation believes in the underlying grand principles of the Law's Empire (Dworkin, 199) or are motivated by convictions in the majesty of law or the `eternal' virtues of the Rule of Law. In sum, the historically constructed experience of law in the popular consciousness is one of coercion and arbitrariness rather than an expectation of fair-play or justice.

the rule of law.
Various jurists from as different standpoints as the Marxist Pashukanis (1978) to liberal Dworkin (1977), have shown that the thesis on `equality of individuals' is the central core of the rule of law ideology. Equality here refers to equal rights of individuals. The idea of equal rights, which is not the same as equality of all human beings, was integral to the rise of the bourgeoisie
and the development of capitalism in Europe. As Engels pointed out, the idea of equality is primeval but thousands of years had to pass before `that original conception of relative equality could lead to the conclusion that men should have equal rights in the state and society ...'(1969:129). In the conception of individual (equal) rights we have a double abstraction. First, the human being
IV Ujamaa as an Hegemonic Ideology
The Gramscian Model
To preface my discussion of ujamaa as an hegemonic ideology, I need to explain briefly the limited sense in which the term `hegemony' is used in this section. In the Gramscian model a hegemonic ideology is seen as a common worldview shared by the ruling as well as the ruled. In this hegemonic system there is a fundamental class, `a class situated at one of the two fundamental poles in the relations of production: owner or non-owner of the means of production' (Ramoss, 1982: 5). This fundamental class, as a ruling class, is said to exercise ideological, political, moral, and intellectual leadership; it has ideological hegemony. The hegemony is not given. It is historcally constructed in the course of, and through, social struggles in which the shared history and culture of the social forces involved play an important facilitating role. In this conception both ideology and hegemony have a significance beyond the mere legitimatization of the exercise of state power. Hegemony relates to the exercise of class power at the level of civil society as well.
The concept of ideological hegemony in the sense referred to above assumes an autochthonous development of a social formation such as in Western European countries. It also assumes the separation of civil and political societies, as is often believed to have happened in Western European countries with the onset of the bourgeois epoch.
In former colonial, and now neocolonial, societies in Africa, a different process of development has taken place. Because it is doubtful that civil

society itself is fully constituted (Bayart, 198?:119), it may be argued that the concepts of ideology and hegemony are more correctly restricted to the processes of legitimating the exercise of state power rather than referring to the moral, intellectual, aesthetic, and philosophical leadership of civil society. The limited conception expresses the limited autonomy of the `ruling classes' in these formations. When we speak of ruling classes in dominated social formations we are, more often than not, referring to some category of a compradorial class whose existence is linked to the ruling classes of the dominant countries. In many instances, the compradorial classes are even culturally `alienated' from the popular classes. The damning condemnation of what he called the `national bourgeoisie' that assumed power in Africa on the morrow of independence by Frantz Fanon (1967) still rings true.

A bourgeoisie similar to that which developed in Europe is able to elaborate an ideology and at the same time strengthen its own power. Such a bourgeoisie, dynamic, educated and secular, has fully succeeded in its undertaking of the accumulation of capital and has given to the nation a minimum of prosperity. In under-developed countries, we have seen that no true bourgeoisie exists; there is only a sort of little greedy caste, avid and voracious, with the mind of a huckster, only too glad to accept the dividends that the former colonial power hands out to it. This get-rich-quick middle class shows itself incapable of great ideas or of inventiveness. It remembers what it has read in European textbooks and imperceptibly it becomes not even the replica of Europe, but its caricature (ibid.: 141) ...

This native bourgeoisie, which has adopted unreservedly and with enthusiasm the ways of thinking charactersitic of the mother country, which has become wonderfully detached from its own thought and has based its consciousness upon foundations which are typically foreign, will realize, with its mouth watering, that it lacks something essential to a bourgeoisie: money (ibid.: 143).

A compradorial class is thus considered incapable of exercising hegemony in the sense of giving its ideology the character of a common worldview shared by subaltern classes as well.

Another point should be made regarding the differences between dominated states and states with a fully formed and crystallized bourgeoisie. In the Gramscian model, it is emphasized that political rule by the hegemonic class is predominantly by consensus rather than by coercion. Consensus rests at the level of civil society and must be won there. The model assumes the relative autonomy of civil society. Theoretically and logically it makes a largely valid assumption that the reproduction of relations of production in civil society do not require direct intervention of state coercion.

In a dominated social formation, however, as we have seen, state coercion is integral to the reproduction of the relations of production. This system has been described as an authoritarian political (Thomas, 1984) and legal system (Shivji, 1989a). But it is clear that a distinction has to be made between those authoritarian systems in which there is outright political repression (whether military or civilian) and those in which certain ideological processes are at work to legitimate the exercise of state power. This distinction helps us to throw into broad relief differences between `state coercion' and `state repression'. The use of state repression, which is the apparent exercise of state force unmediated by ideological processes of legitimization, is a reflection of the failure (or non-existence) of ideological hegemony in its narrower political sense. It is in this narrower sense that the notion of ideological hegemony in relation to ujamaa is used here.

The authority/legitimacy of Ujamaa

Tanzania is one of the very few African countries which has enjoyed political stability since its independence in 1961. Its charismatic leader Julius Nyerere stepped down some seven years ago from the presidency of the Republic and the chairmanship of the ruling party, Chama cha Mapinduzi (CCM). He was the founder and leader of the nationalist movement, the Tanganyika African National Union (TANU) which was formed in 1954. In 1967 TANU, the then ruling party, adopted

the famous Arusha Declaration based on the ideology of ujamaa (familyhood socialism) whose architect is acknowledged to be Nyerere himself.
Ujamaa, as an ideology, is a subtle blend of Fabian socialism, claiming its authority from what it puts forward as traditional African communal practices. There are two central premises of this ideology: equality of all human beings (usawa) and developmentalism (Nyerere, 1967; Pratt, 1985). Ujamaa shared the latter element (developmentalism) with various ideologies of nation-building that prevailed in Africa immediately after independence (see supra pp.).
There is little doubt that the ideology of ujamaa has played an important role in sustaining political stability of the regime in the country. After ten years of the Arusha Declaration when Nyerere was asked by Peter Enahoro of Africa Now what he thought was his greatest achievement, he (Nyerere) said the fact that `We have survived'. Five years later he gave the same answer to the same journalist on the twenty years of independence (citation misplaced). It would not be totally correct to attribute machiavellian motives to Nyerere behind adopting the Arusha Declaration but it is clear that he has been very conscious of its legitimating role. He said it in so many words in an extemporaneous speech he made after he had stepped down from the presidency. The occasion and the speech are significant.
The ruling party had organised a seminar on production whose invitees were parastatal executives, entrepreneurs from the private sector including the up and coming private compradorial capitalists, and top party and government leaders. The seminar was in the wake of the liberalization policies adopted a couple of years previously and amid whispers calling for the renunciation of the Arusha Declaration. The theme of the speech was to condemn the dependent nature of the Tanzanian economy, expound on the North South division and urge South South cooperation. These are not new themes with Nyerere. There were two relatively novel themes, however, which he tried to drive home with particular clarity and disarming frankness. One was to extol the virtues of national capitalism which he had rarely done during the heyday of the Arusha Declaration. The other was to underline stability and peace in the country which he had been doing repeatedly since stepping down. The speech is reproduced in extenso below because there is no better statement from the architect of ujamaa as to the way he saw the role of the ideology of ujamaa in the Tanzanian political system. Arguing that peace and stability did not drop from heaven like manna but were the product of the Arusha Declaration, Nyerere said:

It is not that peace has come by itself. The source of peace in Tanzania is not that the Arusha Declaration has done away with poverty even a little bit. Isn't there this poverty we are still living with? This poverty is right here with us. Is it not the same economy we are grappling with? The fact is not that the Arusha Declaration has banished poverty even by an iota - nor did it promise to do so. The Arusha Declaration offered hope. A promise of justice, hope to the many, indeed the majority of Tanzanians continue to live this hope. So long as there is this hope, you'll continue to have peace. Here in Tanzania we have poverty but no "social cancer" [original in English]. It is possible it has just begun. But otherwise we don't have a social cancer. There isn't a volcano [in English] in the making such that if you pressed your ear to the ground you'd hear a volcano in the making, that one day it is bound to erupt. We have not yet reached that stage because the people still have hopes based on the stand taken by the Arusha Declaration. It did not do away with poverty but it has given you all in this hall, capitalists and socialists alike, an opportunity to build a country which holds out a future of hopes to the many. ...
To be sure, you few Waswahili [a colloquial for, in this case, `people'], do you really expect to rule Tanzanians through coercion, when there is no hope, and then expect that they will sit quiet in peace? Peace is born of hope, when hope is gone there will be social upheavals. I'd be surprised if these Tanzanians refuse to rebel, why?
When the majority don't have any hope you are building a volcano. It is bound to erupt one day. Unless these people are fools. Many in these countries are fools,

to accept being ruled just like that. To be oppressed just like that when they have the force of numbers, they are fools. So Tanzanians would be fools, idiots, if they continued to accept to be oppressed by a minority in their own country. Why? ...

Therefore we cannot say that we have now reached a stage when we can forget the Arusha Declaration. Don't fool yourselves. This would be like that fool who uses a ladder to climb and when he is up there kicks it away. Alright you're up there, you've kicked away the ladder, right, so stay there because we'll cut the branch. You're up there, we're down here and you've kicked away the ladder. This branch is high up, we'll cut it. Your fall will be no ordinary fall either. Let me say no more. It is sufficient to say we should accept our principles, we should continue with our principles of building peace and peace itself. Tanzanians should continue to have faith in the Party, in the Government and in you in positions. Tanzanians should see you as part of them not their enemies. They should trust the Party, the Government and you who have opportunities for there is no country where everyone is equal. These fingers of mine are not equal, and in that sense there is no such equality anywhere.

In this speech Nyerere has given a frank and lucid analysis of ujamaa as a legitimizing ideology. His argument that ujamaa engendered hope and a vision around which the consensus between the ruler and the ruled was constructed is incisive and disarmingly forthright for some one who presided over the state for three decades. Ujamaa did not achieve equality, Nyerere admits, but held out a promise, hope, of building a society based on equality. That indeed is the role par excellence of a consensual ideology (including, of course, the ideology of `rule of law').

What about the ruled? What were their perceptions which made them give their consent? Was it simply the illusion of hope? Or were there common chords between ujamaa and the perceptions, the worldview, of the people? To tackle these questions we need to probe into some of the major elements of the ideology.

One of the major constituting elements of ujamaa is the equality of all human beings (usawa). Equality also lies at the basis of the ideology of the rule of law. In my submission, the equality of ujamaa is of a different order from the equality of is abstracted from the concrete social being into an individual juristic person. Then historically constituted (capitalist) social and power relations are abstracted and reified into a bundle of claims or entitlements called `rights' which attach to the individual. Ergo, we have individual rights or (euphemistically called) human rights. Both the `individual' and `rights' are presented as ahistorical and asocial aggregate categories the relation between which is then posited in terms of ownership/possession.

The notion of `equal rights' therefore is a specific historical form in which the general human struggle for equality crystallized during the bourgeois epoch. The pre-capitalist notion of `equality' is not one of equal rights of individuals which the individual possesses as things and can alienate at will (Parekh, 1987:7); rather it is closer to some conception of human worth or dignity (Howard, 1986: passim) located within a web of concrete relations based on relations of status and a notion of duty, rather than rights.

In much of human rights literature and conceptualisation influenced by liberal ideology, `equal rights' and `equality of human beings' are conflated with the result that the rights and rights struggle are universalised to all human societies and all historical epochs. The claim of the rights thesis has been so much hegemonised in the contemporary period that even progressive thinkers fail to make a distinction between equal rights and equality. Mamdani, for instance, asserts, pace Mao, that wherever there is oppression, there must arise a conception of rights (Mamdani, 1991:237). It may be true that wherever there is oppression there is bound to be resistance, a la Mao, but it is simply not true that that resistance always, and neccesarily, takes the form of a conception of rights and rights struggle.

In the same vein, in his comment on the original draft of this paper, Alan Norrie asks a rhetorical question: Why deny the people a (deeper) sense/conception of rights? (i.e deeper than the bourgeois conception). The

point, it is submitted, is not really the depth of the conception. It is rather the historical and social specificity of the conception of rights which presents itself as a universal conception just as the bourgeoisie presents itself as the universal class (agency of transformation?)

It is the argument of this paper that the `equality' of ujamaa has little to do with the notion of equal rights of a juristic subject. Ujamaaist `equality' therefore can co-exist with fundamental breaches of the rule of law. Indeed, it evokes positive perceptions and sentiments in the people even when it is in direct conflict with the equality (of rights) of the rule of law.

In my legal aid practice and interviews with peasants as the Chairman of the Land Commission, one message that invariably came through was that the conception of both `equality' ("usawa") and `right' ("haki") in the consciousness of the people is fundamentally different from those in the rule of law. `Usawa' (equality) here is akin to `utu' (one's humanity) which is real, concrete and lived and defines one simply because of the fact that one is a member of a human community. Similarly, `haki' is not a thing that an individual has or has not as a possession. It is more a description of the state of social relation on the plane of social justice. A more correct rendition of the concept `haki' would be `justice' rather than `right'.

What we have said above applies equally to other premises of liberal democracy. In the recent debate on multi-party in Tanzania, political leaders pitched their demand for multi-party in the rights rhetoric. `The right to form parties is an inherent human right'. This hardly evinced much response among the people, particularly in the countryside. Some 78% of the sample (and even a greater per centage in the villages) interviewed by the Commission on the Party System favoured the one-party system to continue (Tanzania, 1992). Yet a very big majority of those who wanted the one-party system to continue demanded fundamental changes in the setup and structure of the state and party to enable real participation of the people in deciding their destiny. The Land Commission Report (Tanzania, 1994), again, underlines the massive demand in the countryside to participate and to be consulted (kushirikishwa) with regard to land matters. Clealrly, the large majority have, organisationally and conceptually, a different conception of democracy than that posited by liberal arguments revolving around `human' rights and individual self-determination.

Given the distance between the rule of law and the perceptions and forms of consciousness of the people, it is not surprising that The Law as such does not have a resonance in popular consciousness, notably in the countryside. This is so both because of the different conceptual/philosophical base but also because of the colonised people's negative experience of law discussed in section III. Perhaps the most telling illustration of the people's negative (or at best indifferent) perception of the rule of law comes from the period of late seventies and eighties when the economy experienced its worst crisis and the state found itself having to re-establish its legitimacy. We discuss this in the next section.

V Crisis of Hegemony and the Rule of Law

For at least the whole of the decade after the Arusha Declaration of 1967, the ideology of ujamaa exercised virtually unchallenged ideological hegemony. Throughout the period of ujamaa hegemony, there are multifarious examples of measures taken by the state or the President in breach of the law. The banning of cooperatives and the confiscation of their property in 1976 was done by a government circular in disregard of the law (Naali, 1986); so was the massive villagization of the 1973-76 period which paid scant regard to the land tenure laws of the country (Ong'wamuhana, 1984, Tanzania, 1994). During his 30 year term of office as president, Nyerere detained scores of people under the Preventive Detention Act and often outside the confines of even that law (Quigley, 1984). Yet the same Nyerere would not sign death warrants of persons duly convicted and sentenced by courts of law in open trials (see AI 1984:103-5 & 1989:214). Between the two antinomic positions, I am sure, neither Nyerere nor his people felt any moral dilemma.

Perhaps the most dramatic illustrations are from the period when the state had its most serious crisis of credibility. The end of the Uganda war in 1978 ushered in Tanzania's worst economic crisis (Singh, 1984). There was virtually a break-down of the economic order and legal order as racketeers, smugglers, embezzlers and the like had a field-day. Shortages of essential goods abounded while consumers stood in long queues for hours to get their daily necessities. There were reports from villages of people going without clothes - adults resorting to put on gunny sacks while children going naked. The government, as the late Prime Minister Sokoine put it, had gone on `leave'. The legitimacy of political rule was at stake. The Prime Minister, Edward Sokoine, declared a war on `economic saboteurs' and threatened to re-establish the authority of the government through state force.

Some sixty-thousand people attended a rally at the state house in Dar es Salaam - perhaps the biggest since the Arusha Declaration - to support the measures taken against economic saboteurs. Hundreds of suspected saboteaurs were arrested and locked up without the usual legal safeguards, many on mere suspicion or because they were found with this or the other item of consumer goods in short supply. A draconian piece of legislation called the Economic Sabotage (Special Provisions) Act, 1983 was rushed through parliament legalising arrests and lock-ups retrospectively (Shaidi op.cit.:353). The Act created Anti-Sabotage Tribunals outside of, and parallel to, the judicial machinery established under the Constitution. Nyerere justified the tribunals by castigating ordinary courts, likening them to football grounds where the lawyers play their matches twisting the truth and letting the swindlers go scot free.

The Economic Sabotage Act was in breach of all basic notions of the rule of law. All known principles of procedure and, what the lawyers call with veneration, natural justice, were set aside. No defense lawyers were allowed; there was no bail and no appeals. The tribunals were empowered to hand down very severe sentences and order confiscation of property. Significantly, while there were no appeals to the ordinary judicial hierarchy, a convicted person could plead for pardon and mercy to the President. The Tribunals were presided over by judges sitting with two lay persons and decisions were by the majority. Some of the persons who sat on these tribunals were the members of parliament, the very people who had participated in passing the legislation in the first place thus breaching the fundamental principle of separation of powers underlying the rule of law. In absence of procedure and defence lawyers, the police prosecutors reigned supreme in the hearings before the tribunals.

The `economic sabotage' law was criticised - with diffidence, to be sure - by some legal circles, particularly the Law Society. This made little dent. What eventually motivated the repeal of the law was the protests of the diplomatic corps (many from Scandinavian countries, Tanzania's foreign `benefactors') and adverse foreign press publicising a few "scandals" in which foreign tourists had been arrested.

Here is a revealing instance of the government seeking legitimacy during an ideological crisis not through the Rule of Law but in total violation of it, while using law as an instrument to convey state force. When there was eventual restoration of some semblance of the `rule of law', the immediate cause were the protests of foreign missions rather than because of the injustices committed against hundreds of innocent Tanzanians. Yet it is significant that Sokoine, who was behind the `operation' against economic saboteurs, was a very popular leader overshadowing even Nyerere. When he died in a car accident, thousands of people from across the political and social spectrum spontaneously turned up to pay their last respects at the parliament buildings where his body lay in state.

Another illustration comes ten years later. This has now become famous as the `Mrema phenomenon' (Mwaikusa:1992). In his 1990 presidential campaign Nyerere's successor to presidency, Mwinyi, promised to re-establish accountability in the operations of the government. By this time much of the glamour of ujamaa had worn out as Mwinyi's government adopted liberalization policies dictated by the World Bank and the IMF (Kiondo, 1990). Liberalisation by itself could barely revamp legitimacy with the large majority who saw the material disparity between

them and the rulers becoming blatant every day. Embezzlement, theft and corruption ruled the roost. IMF was demanding austerity and internal cleaning of the house. Under the circumstances, Mwinyi made accountability his election slogan.

On being re-elected Mwinyi appointed Mr Augustine Mrema, a former security man and an outspoken backbencher in the parliament, his Minister of Home Affairs. Mrema undertook the cleaning up exercise with gusto disregarding all law and legal procedures as he heard complaints, investigated suspicions, arrested suspects, summoned lawyers, judged cases and handed down sentences and orders dissolving marriages and dividing matrimonial assets; reprimanding the incalcitrant and awarding compensation against those found "guilty" by him. He re-invigorated the extra-legal, and probably unconstitutional, vigilantes called sungusungu to arrest the galloping crime rate, particularly in urban areas (more on sungusungu below). In the course of this campaign Mrema became a household name. When legal circles through the Law Society attempted to question Mrema's methods, they were quickly snubbed by readers'letters in the newspapers. Mrema's colleagues in the cabinet perhaps felt uneasy not because Mrema's methods ran contrary to the rule of law (which they themselves are used to disregarding in any case), but because he interfered in their jurisdictions, and maybe, with their piece of the cake (Mwaikusa, op.cit.:10-11). Yet Mrema was god-sent to refurbish the declining legitimacy of the government in the eyes of the popular masses. No wonder, a few of his colleagues, including the Prime Minister, dared contradict him.

The Mrema phenomenon, like the Sokoine one, once again testifies to the argument of this paper that the rule of law as such has little authority (or legitimacy) in the perceptions of the rulers and the ruled alike. Personal popularity of the Nyereres, Sokoines or Mremas do not seem to depend on their adherence or devotion to the rule of law or restoration of individual rights but on the popular perception that they were trying to restore (social) justice. In other words, the pronouncements of these leaders (to deliver social justice?) seem to strike or evoke a certain chord in the worldview of the people in spite of the relevant practices being utterly violative of the rule of law. The following anecdotal presentation of one incidence by Mwaikusa (op.cit.:12) with respect to Mrema symbolises and bears out the proposition being advanced here.

> Law has ceased to be just what comes out of the legislature, assuming that term has not changed meanings. Wife-beating, for example, is an offence, by implication, since the Magistrates Courts Act 1963 came into force on 1st July, 1964. That position was clarified further by a provision in the Law of Marriage Act 1971 emphasizing that position `notwithstanding any custom or customary belief to the contrary'. Yet in 1991, even married women (including those active in the Women's League - UWT) appeared ignorant of that legal position, that is, until Mrema promulgated it. He directed all Sungusungu patrolling at night, upon hearing any woman being beaten by her husband (or man) to simply break into the house and arrest the wife-beater (or woman beater) at once. This `new law' thrilled Dar es Salaam women and UWT organised a rally (which was attended by a few thousand) in praise and support of Mrema. They did not seek to obtain the statutorily required permit for their rally, apparently because Mrema never said that they needed one.

If my proposition on the cleavage between the perceptions of the people on `equality' and `justice' and the premises of the rule of law based on `equal rights' has any validity, then it has far-reaching implications on the issue of the construction of counter-hegemonic strategies and ideologies. It is to this that we turn in the next section.

VI Counter-hegemonic Ideologies

The rights debate in the West in relation to strategising counter-hegemonic struggles and constructing counter-hegemonic ideologies has given rise to a number of different positions and perspectives within the left (see, for instance, Bartholomew & Hunt, 1990, Fudge & Glasbeek, 1992 and Herman, 1993).

Most of these, however, may be reduced broadly to two basic perspectives. One perspective sees the rule of law as a forceful ideology both for struggling against the existing hegemony as well as a necessary organising principle during socialism. Another perspective accepts the role of the rule of law in organising and legitimating the resistance and struggles against capitalist hegemony but warns that law must be transcended for it has powerful capacity to co-opt and disarm a people's struggle.

Didi Herman summarises the disagreement between what he calls `rights critiques' and `rights defenders' in liberal democracies as `between those who characterise `rights' as abstract, individualistic, disempowering and obfuscatory ... and those who say rights struggles may be all these things, but they can also, perhaps, simultaneously, be empowering, necessary, foci of resistance ... '(op.cit.: 25). Within the rights defenders and rights critiques there are no doubt greater or lesser differences of emphasis and nuances. Herman himself shows great sympathy for rights critiques but takes the position that the struggle for rights has, for instance in the case of gay community, helped to place their concerns on the mainstream agenda and, even, in the construction of their identities. The latter clearly goes beyond the rights struggle being the foci of resistance (anti-hegemonic, see the discussion below) to actually giving rights a (central?) role in the construction of counter-hegemony. Whatever the positions, there is a clear admission of the power of the rule of law ideology not only in mobilising consent of the ruled (disempowering) but also in mediating class struggle in the interest of subaltern classes, (empowering?) groups and communities or, what are now loosely called `social movements'.

The third position is constructed on a different plane. This is the debate about what is called `popular' or `community justice' (Santos, 1977, 1982 & 1992:131-42)[]. A number of proponents of `informal justice' see in it a potential for constructing a counter-hegemony within but, against, the overall hegemony of the dominant system. Others argue that `popular justice' in that sense is impossible; it is not an alternative form, rather an expression of the dominant form on a different level (Fitzpatrick, 1992). Santos (1992) takes a position somewhere in between. He sees legal pluralism or popular justice as a contradictory phenomenon. He argues that the most durable forms of popular justice have emerged in the transitional periods, i.e. in revolutionary moments. They are important forms of counter-hegemonies but their durability depends on the sustainability of the transition itself. What one must examine is really the concrete forms - their historical and temporal specificity in the world system. ` ... legal pluralism and community justice have no fixed political content. They may serve a progressive or a reactionary politics' (ibid.:138).

In Tanzania "legal pluralism" has manifested itself particularly at the level of the continued application of customary law (Rwezaura, 1988). However, as has been shown again and again, this is the customary law as reconstructed by the state law rather than as an alternative to it (Shivji, 1985). But at the same time, as opposed to received and statutory law, it does have greater affinity and organic linkage with the communities and in this regard there is a need to look at it more closely. The question to ask is: What kind of legitimacy does the customary law (however reconstructed and co-opted by the state) command when compared to the received law? Does this legitimacy pertain to all oppressed groups and divides along class and gender lines within the society? This is particularly relevant in the case of rural societies where customary law has its widest application and where the system is known to be biased against the female gender.

As for popular justice, Tanzania established primary courts in the `60s. These were conceived as `popular courts' in which lay people participated with magistrates with some training in law. Decisions are made by majority. In practice, these courts have proved to be as corrupt and have little legitimacy with the people. It must be remembered that the initiative came from the state and primary courts had little to do with alternative or community based forms of justice.

The other example has been the spontaneous rise of the traditional army called sungusungu (Campbell, 1989). Originally these emerged as a result of the failure of the state to maintain `law and order' and protect rural pastoral communities from rampant cattle thefts. Very hastily the state co-opted them and turned them into patrols in the streets of towns and cities. It is also true that these vigilante groups degenerated into using very inhuman methods of punishment. A number of cases of this kind have reached formal courts which in turn have severely censored the methods of sungusungu (for discussion of cases see Shivji, 1990d:16,19).

What remains uninvestigated is really the models of communal justice in some of the ethnic groups of Tanzania which are least integrated in the dominant system. I have in mind such communities as Maasai, Hadzabe etc. One knows that these communities have not completely accepted the formal system of justice and have their own dispute-settling processes. What kind of ideologies inform such processes? How do they generate consent and therefore legitimacy? These would be some of the issues for research and investigation.

But apart from these various models of justice as potential models for constructing counter-hegemonies, the question which is directly relevant to the concerns of this paper is whether the rule of law ideology (constitutionalism, etc.) can serve as a counter-hegemonic ideology or, for that matter, it has a role, in counter-hegemonic struggles.

I propose that in the debate on the ideological sources of legitimation of people's struggles (and by the same token in the debate between rights defenders and rights critiques) it will be helpful to make a distinction between anti-hegemonic struggles/ideologies and counter-hegemonic struggles/ideologies. By anti-hegemonic ideology I mean an ideology of resistance. That is to say a form of articulation and consciousness around, and through, which groups, movements and classes mobilise and legitimise their resistance against oppression. By counter-hegemonic, I mean, those ideologies which contest actually existing hegemonies by positing an alternative ideological project which is seeking a hegemonic role in its own right. From the standpoint of popular classes in a capitalist/imperialist dominated society, the counter-hegemonic ideological project is arguably linked with the social project of liberation and emancipation. In life, the two forms od struggles evidently cannot be separated. Yet it seems to me it helps to separate them analytically for understanding different social perspectives and projects and identifying the sources for the construction of both the ideologies of resistance (anti-hegemonic) and the ideologies of transformation (counter-hegemonic).

In the case of Tanzania and Africa I have argued elsewhere (Shivji, 1994 and 1989b respectively) that the rule of law ideology (constitutionalism, rights etc.) may have a limited anti-hegemonic role. Even in its limited role as an anti-hegemonic ideology, rights ideology needs to be reconceptualised in a fashion that would place on the immediate agenda the liberatory and emancipatory concerns of the popular forces. In this way, anti-hegemonic struggles can be linked with counter-hegemonic strategies.

As for the construction of counter-hegemonic ideologies, liberal democracy, within which the rule of law and constitutiopnalism are located, does not hold out a vision of social emancipation and fundamental reconstruction of neocolonial societies like Tanzania. I share the view of Samir Amin (op.cit.) which posits popular democracy linked to a project of social emancipation based on a ruling bloc of popular forces as a possible alternative. This is at the level of counter-hegemonic ruling bloc but does not address or answer the question of counter-hegemonic ideology. Socialist ideology, I believe, still provides the vision of social emancipation but it needs a number of systematic shifts from what were once believed to be its axioms. And this brings me to the issue of where does one seek out the elements for these shifts and for the reconstruction of an ideology of social emancipation. There has been some debate on this among African intellectuals and activists, albeit still in an tentative stage.

Unlike the `60s and `70s when Leninist vanguard party of the proletariat was seen by radical Africal intellectuals and activists as an axiomatic organisational form of liberation, in the `80s there has been a shift to learning from the organisational forms of resistance and struggle of the people themselves rather than give a priori answers (see, for instance, Nyong'o, 1987). In a similar vein, there is a need to learn from the perceptions and forms of consciousness of the people in the process of constructing counter-ideologies. Here too there are no a priori answers. This is the point that Wamba has underlined in an important article (Wamba, 1991a).

Wamba argues that `people think' and in the process of both resisting and surviving four centuries of despotism from slavery to neocolonialism, African people have constructed cultures and forms of consciousness of survival and struggle. There have been cultural forms of accommodation as well as resistance. In any project of social emancipation and the constitution of counter-hegemonic ideologies, the point of departure has to be people's forms of consciousness. The argument, if I understand it correctly, is not for a return to some form of authenticity or traditional ideologies as if these had been frozen and are available for use. It is not even for tailing spontaneity. Rather, what is being highlighted, is the paucity of the distinction drawn in the traditional Marxist discourse between `knowledge' and `ideology' - knowledge being the monopoly of the intellectual while ideology being the characteristic form of consciousness of the people. Wamba is urging a shift away from the discourse where the resistance of the people was seen as `spontaneous rebellion' while the prescription of the intellectual was counted as a `revolutionary strategy'. This does not entail a simple celebration of the past but rather its critical evaluation for the future. Distinction must be drawn between revolutionary aspects of African traditions and their reactionary aspects. There have been cultural forms of accommodation to domination as well as those of resistance. What is often offered by the colonialists to us as `traditions' are forms of accommodation. `It is common practice of despotisms to erase from sanctioned historical knowledge the stories and story tellers of true resistance.' (Wamba, 1991a:224). To sum up Wamba's (ibid.:223) argument, let me quote a critical passage from his article:

> The fundamental thrust of African hopes has tended to be based on Western or Eastern generated emancipatory projects for humankind (ranging from marxism, liberalism,, theology to science/technology) now already in crisis where they first emerged, thrived and helped at least some of their countries to dominate Africa even more. The African contributions to human emancipation have not been reiterated: instead, they have often been denied. Basic African cultural institutions, which have made African people continue to survive despite centuries of white oppression, have been viewed theologically, almost as sinful, anti-civilizational, etc. Why should the duplicate of those emancipatory projects, in Africa, bring anything more than increasing devastation? The cultural foundation of demands for more of the same as a promise to African self-emancipation needs to justify that conviction. Is not this Europeanization - printed on us with hot irons - which makes us so unable to `leave this Europe where they never cease to define human beings and fail to recognize whenever they met them?' - paraphrasing Fanon. [ibid.:223] [footnotes omitted]

Conclusion

The reminders and cautions by Wamba are extremely important in the current period as we are engulfed by the rebirth of liberal democracy which is being incessantly drummed into our ears by the intellectuals of the West and forced down our throats by imperialism and their agencies. It is in this context that I have tried to show the fragility of the rule of law (one of the central concepts of liberal democracy) as a legitimating ideology. I have gone further and tried to show that the failure of that ideology to take roots is not simply because of the prevalence of neocolonial material conditions in Africa but also because that ideology is a specific historical and temporal expression of a cultural

form which does not resonate in the forms of consciousness of our people. To illustrate my argument, I examined one of the few ideologies in Africa, ujamaa, which has had some legitimacy, although that too was constructed in the authoritarian context of a dependent political economy. To the extent that it has had some legitimacy, I tried to contrast its main strands with those of the rule of law and the perceptions of the large majority of the people. In conclusion, I have tried to caution that in the African discourse on counter-hegemonic ideologies, we should not be trapped within the proposition propagated vigorously by both the left and the right in the West that the rule of law ideology is the only feasible and desirable alternative. This is not to deny the limited role of the rule of law ideology (and by extension the rights ideology) as an ideology of resistance. Here too I have underscored the need for reconceptualisation and reconstruction of the dominant discourse on human rights and constitutionalism (see, for example, Shivji 1991b) within which a necessary space for anti-hegemonic struggles can be created and legitimised.

I have finally tried to argue that the project of constructing counter-hegemonic ideologies must begin from the elementary proposition that `people think' which in turn means that the task before the African intellectual is to learn, and learn from, people's cultural forms of resistance and accommodation over the last four centuries of despotism. It is in the people's actually existing struggles and consciousness that elements of an alternative ideological and social project are to be found and need to be practically activated and ideologically articulated.

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 The term `hegemony' is used in the Gramscian sense. It is discussed further below pp.
 `Rule of law' in the liberal theory is a composite concept with pretty flexible boundaries. It includes such notions as the rule of law as opposed to arbitrary rule; equality before law; separation of powers; independence of the judiciary; certain basic individual rights - particularly procedural rights; individual responsibility for acts and omissions declared criminal, etc. The term is a useful short-hand for the manner in which the bourgeois juridical world outlook is operationalised both at the level of rules as well as ideology. I use the term `rule of law' in this paper as a composite to mean all these things.
 See the papers presented at the 20th and 25th anniversaries of the Faculty of Law, University of Dar es Salaam (mimeograph).
 Hunt, in the article cited in the text, in my opinion, misinterprets Gramsci's concept of hegemony by abstracting it from the fundamental class. For more discussion see below p.

 For further explication of these terms see below pp.
 This was the form taken by Lugard's indirect rule. Chiefs and native authorities themselves were appointees of the colonial state. So the form was traditional while the content colonial.
 At a seminar in Arusha (1991) on `civil associations'.
 This part is based on Shivji, 1992a.
 This is my own translation from Kiswahili which appeared in the newspaper Mzalendo, date misplaced (1987?). The translation is unedited. I have restrained from polishing it to enable a reader to taste the flavour of the original. To my knowledge, this speech has never been translated nor discussed or referred to in official circles.
 It is significant that the nationalisation of foreign property during the Arusha Declaration period was effected scrupulously by law and the owners given compensation while the property of cooperatives was confiscated without the authority of law and of course without compensation.
 Among other measures, Mwinyi repealed the `leadership code' which had barred leaders from accumulating wealth; initiated privatisation of state enterprises; drastically cut down health and education budgets and abolished price controls and subsidies. Whatever material benefits that the ujamaa rhetoric had put in place were thus all but lost. The rhetoric itself was discarded in favour of `pragmatism' or `moving with the times', to use President Mwinyi's colourless phrase.
 Nor can an argument based on charisma hold. Except for Nyerere, neither Sokoine nor Mrema could be described as charismatic. None of them has the oratorical gifts of Nyerere nor his ideological articulation. Mrema is essentially a policeman with, significantly, a firm belief in order rather than law.
 See the special issue of Social & Legal Studies on `State Transformation, Legal Pluralism and Community Justice', vol.1, 2. (June 1992)
 I am aware that my formulations here could easily get entangled in the long-standing unresolved debate among Marxists on the relation between (national) liberation and (social) emancipation. It is beyond the scope of this paper to enter into that debate. My intention here is simply to illustrate that in the African situation larger social visions of national liberation and social emancipation very much remain on the immediate historical agenda and a discussion of constructing alternative ideological hegemonies outside of this agenda invariably degenerates into an apologia for the status quo.

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