Political Culture in the New South Africa

7 September 2005
Sunnyside Park Hotel, Parktown, Johannesburg
South Africa

Foreword

THE AMERICAN POLITICAL SCIENTISTS GABRIEL ALMOND AND SIDNEY VERBA HAVE, MORE THAN anyone else, attempted to define the term political culture. According to them:

> Political culture is the pattern of individual attitudes and orientations towards politics among the members of a political system. It is the subjective realm that underlies and gives meaning to political actions.[1]

Although this definition captures succinctly what political culture is, it falls short in differentiating between the political culture that exists at an elite level and the political culture that exists among the citizens of a given system.

The new South Africa inherited a complex political culture that has been shaped by the culture of both liberation movements and the apartheid system. When corruption issues are discussed nowadays, these deliberations sometimes elicit the belief that corruption is a recent phenomenon. One should not forget, however, that patronage politics played a large part in the development of Afrikaner nationalism; in the pre-1994 era Bantustans existed on an irrational economic and politically illegitimate basis and were therefore built largely on subsidies and rent of every kind.[2]

Additionally, the African National Congress (ANC) brought with it the culture of a liberation movement. Its war situation led to a need-to-know culture in which trust and loyalty superseded all other qualities: such networks of loyalty bear the risk of transmuting easily into networks of patronage. This political context promotes the dichotomous perception of 'we and they' and the conviction that if you are not with the liberator, you are considered to be against it. Granted, this type of culture was certainly necessary for survival in the hostile political and social apartheid environment, but it is outdated in the new democratic dispensation and is not conducive to the enhancement of mutual tolerance and compromise, or to the generation of lasting coalitions. However, to analyse South Africa's political culture means not only to look at the culture existing within and among political parties: one must also scrutinise public policy and decision making. A crucial question that needs to be asked is: Does black economic empowerment facilitate nepotism and patronage, and what measures are needed to prevent these side-effects?

A democratic political culture starts with the individual, and particularly with the political leaders. As political scientist Tom Lodge has pointed out:

> [...] the quality of leadership matters more in new democracies than in established political systems where democracies are young institutions still fluid and more susceptible to be shaped by dominant personalities.[3]

If we accept this premise, we need to ask: How ethical are South African politicians and what kind of oversight do they provide? The list of scandals emerging since 1994 has become elaborate and bears the names of the 'who's who' of South Africa's liberation struggle. Equally pertinent in this context, we need to ask: What kind of peer review mechanisms exist? Is there a level of tolerance and acquiescence in certain modes of behavior?

Looking at the political culture in today's South Africa also means to leave the elite level and to see what kind of impact it has on citizens. The survival of any political system depends on the support of both the political elite and the population; an agreement needs to exist between elites and the broader society that a democratic system is the best, albeit imperfect, form of government.

But South Africa's emerging competitive political culture is slowly being undermined. Where a dominant party appears to be permanently entrenched in power, voters who might otherwise support the principle of competitive political pluralism become torn between the pragmatic need to secure some influence with the governing party and the principled need to keep government on its toes.[4] In consequence, opposition voters become disillusioned and begin to withdraw from any political engagement – and this is what is happening in South Africa today.

In South Africa's 2004 election, only 75% of eligible voters registered to vote (5% less than in 1999), and only 76.7% of the electorate bothered to vote (89.3% in 1999). The seriousness of the situation becomes more evident when one compares the level of voter turnout among the entire voting age population over the three elections: while 86% voted in 1994, in 2004 only 57.8% came to the polling stations (71.8% in 1999).[8]

Against this background the state of political culture in South Africa needs to be discussed seriously and in all its facets.

This seminar report is based on a conference held by the Konrad-Adenauer-Stiftung and St Augustine College of South Africa in Johannesburg in September 2005, and aims to contribute to the establishment of a democratic political culture in South Africa.

Fortunately enough, the political sphere in South Africa does still allow for the critical discussion of shortcomings in the country's democratisation process. Or to use the words of Jonathan Hyslop:

> Scandal happens in South Africa because there is a relatively lively media, a public sphere, and a public discourse which does not always allow legitimisation of corruption.[6]

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NOTES

1   Almond G & Verba S, *The Civic Culture*. Princeton, 1963.

2   Hyslop J, cited in: Sole S, The state of corruption and accountability, in Daniel J, Southall R & Lutchman J (eds), *State of the Nation. South Africa 2004-2005*. Cape Town: HSRC Press, 2005, pp 86-112.

3   Lodge T, cited in: Jacobs S & Calland R, Thabo Mbeki: Myth and context, in Jacobs S & Calland R, *Thabo Mbeki's World*. Scottsville: University of Natal Press, 2002, p 5.

4   Schlemmer L, *Can South Africa's Democracy Survive its History and Political Culture*, Helen Suzman Foundation, 2002, p 12.

5   Piombo J, Politics in a stabilising democracy: South Africa's 2004 elections, *Strategic Insights* III(5), May 2004, <www.ccc.nps.navy.mil/si/2004/may/piomboMay04.asp>.

6   Hyslop J, Political corruption, *WISER in brief* 2(2), Wits Institute for Social and Economic Research, December 2003, p 12, <www.wiserweb.wits.ac.za> (13 August 2005).

7   Former KAS resident representative in Johannesburg. Author of 'Südafrikas Politische Kultur: Vom Befreiungskampf über die Transformation zur demokratischen Konsolidierung', *KAS-Auslandsinformationen*, September 2005.

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List of abbreviations

ACDP	United Christian Democratic Party
ANC	African National Congress
BEE	Black economic empowerment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
Cosatu	Congress of South African Trade Unions
CRC	Convention on the Rights of the Child
DA	Democratic Alliance
DP	Democratic Party
FF+	Freedom Front Plus
HRC	Human Rights Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ID	Independent Democrats
IFP	Inkatha Freedom Party
ILO	International Labour Organisation
ISA	Ideological state apparatus
MP	Member of Parliament
MPAEC	Mandela Park Anti-Eviction Campaign
MPL	Member of the provincial legislature
NAM	Non-Aligned Movement
NAP	National Action Plan for the Promotion and Protection of Human Rights
NEC	National executive committee
NGO	Non-governmental organisation
NNP	New National Party
NP	National Party
OECD	Organisation for Economic Cooperation and Development
SABC	South African Broadcasting Corporation
SACP	South African Communist Party
Sanco	South African National Civics Organisation
Scopa	Standing Committee on Public Accounts
TRC	Truth and Reconciliation Commission
UCDP	United Christian Democratic Party
UDHR	Universal Declaration of Human Rights
Unesco	United Nations Educational, Scientific and Cultural Organisation
US	United States

Public perceptions of South Africa's political culture

ANNIE CHIKWANHA

INTRODUCTION

Over the past decade, South Africa has gravitated towards a tradition of liberalism and individualism. Rights have become very important to most people, as demonstrated through the support of the Freedom Charter, support for a free economy, liberal attitudes towards homosexuality, women's rights and equality for all citizens. This can be attributed to the success of South Africa's political institutions that were involved in the transition process and which have been largely responsible for shaping the country's contemporary political culture, such as the Truth and Reconciliation Commission, the Constitutional Court, independent watchdog agencies (for example, the Human Rights Commission), as well as those institutions set up to encourage and facilitate citizen's participation in politics and public affairs.

Since the key elements in South Africa are liberty, equality and democracy, Afrobarometer was interested in examining what South Africa's had to say about the current political culture.

AFROBAROMETER PROJECTS AND METHODOLOGY

Afrobarometer is an independent, non-partisan research institute that seeks to measure the temperature of democracy on the African continent. It has gone through several rounds of surveys, conducted every two years, in 18 African countries. The first round, from mid-1999 to mid-2001, surveyed 12 'reforming' African countries, with good coverage of West (Ghana, Mali and Nigeria), East (Uganda and Tanzania) and Southern Africa (Botswana, Lesotho, Malawi, Namibia, South Africa, Zambia and Zimbabwe).

The second round of surveys, conducted from mid-2002 to late-2003 saw the addition of Cape Verde, Kenya, Mozambique and Senegal, with the aim of achieving good coverage and balance between former Lusophone, Francophone and Anglophone countries. Afrobarometer is currently involved in a third round of surveys, which has been expanded to include two more Francophone countries – Madagascar and Benin. I would have ideally liked to present the South African data in the context of the other countries

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Annie Chikwanha is a member of the Afrobarometer Network PP team.

surveyed, but due to time constraints I will confine myself to the South African findings only.

The project is coordinated by three core co-partners: the Institute for Democracy in South Africa (Idasa), the Centre for Democratic Development (CDD-Ghana) and Michigan State University (largely as a technical partner). Afrobarometer is in the process of grooming a new partner in East Africa. There are also 16 national partners through which we work, and these include non-governmental organisations, universities and commercial research companies, especially where we encounter capacity problems or have trouble finding a suitable partner in a particular country.

METHODOLOGY

A standardised instrument is used: that is, we ask the same questions adjusted for local conditions in all countries. The field work is conducted by the national partners' research teams, with Afrobarometer supervising to ensure that the same questions are asked so as to be able to make reasonable comparisons.

Personal, face-to-face interviews are conducted, totalling well over 21,000 interviews with citizens in all these countries per round. National representative samples are selected across all the countries. Major variations (ethnic and linguistic differences) in all the countries are captured by stratifying by region or province (sometimes even by district). The second level of stratification is by rural and urban.

In South Africa we follow the Census Bureau's current stratification, so the data presented herein, particularly the 2004 findings, come from the current census breakdowns.

All questionnaires are translated into local languages (in South Africa we translated the questionnaire into 11 local languages). Interviewees select the language they would like to be interviewed in.

PUBLIC OPINION AND POLITICAL CULTURE

What does public opinion have to say about political culture and how do we establish a link between the two?

Opinions make it possible to map out the political philosophy of South Africans – in this case, on how governmental, political and economic life should be organised and carried out. They provide insights on a set of ideas that South Africans share about how they are being governed, for what ends and for what means.

Afrobarometer uses public opinion measures to assess political culture from several different angles by:

- asking people their views of the overall authority and legitimacy of the democratic political system (this lets us know that people share these beliefs);
- measuring attitudes towards democracy;
- measuring the degree of trust and confidence placed in the occupants of the system;

- assessing the quality of governance;
- measuring the extent to which citizens enjoy their civil and political liberties; and
- assessing people's commitment to compliance with the laws.

Many other links can be established here, but this paper will focus on the above mentioned and data presented will be confined to these areas.

DEMAND FOR DEMOCRACY

Since we started conducting surveys in 1995 (not as Afrobarometer but as the Public Opinion Service in Idasa, which asked some of the same questions currently asked in the Afrobarometer surveys) we have found that South Africans have developed a culture of commitment towards democracy by consistently rejecting authoritarian rule.

We ask several questions to tap into this area and two of them are as follows:

> **Rejection of authoritarian rule**
> *Some people say that we would be better off if we had a different system of government. Would you approve or disapprove of …?*
>
> A. *Military rule.*
> B. *One-party rule.*
> C. *One-man rule.*
> D. *Return to the system of rule we had under apartheid.*
>
> **Unwillingness to live under an 'effective authoritarian regime'**
> *If a non-elected government or leader could impose law and order, and deliver houses and jobs, how willing or unwilling would you be to give up regular elections and live under such a government?*
>
> ** Very unwilling, unwilling, willing, very willing*

As can be seen from Figure 1 (*over page*), the majority of citizens (over 60%) continue to reject military rule. The same applies to strong-man rule and one-party rule. We are, however, seeing a downward trend here and more investigation is needed into what is driving these trends. A rather disturbing finding is that only 38% of people are unwilling to live under unelected government; that figure should be much higher.

Still tapping into the culture of the commitment to democratic rule, we ask:

> **Support for democracy**
> *Which of these three statements is closest to your own opinion?*
> A. *Democracy is preferable to any other form of government.*
> B. *In certain situations, a non-democratic government can be preferable.*
> C. *To people like me, it doesn't matter what form of government we have.*

Figure 1: Demand for democracy over time
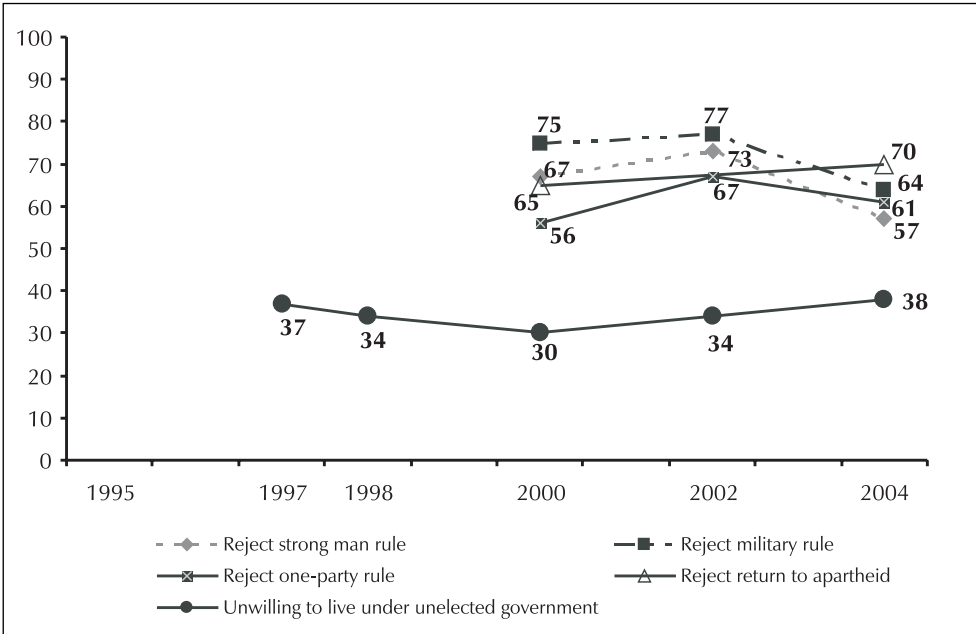
Commitment to democracy

Sometimes democracy does not work. When this happens, some people say that we need a strong leader who does not have to bother with elections. Others say that even when things don't work, democracy is always best. What do you think? Which statement do you agree with most?

A. Need strong leader.

B. Democracy, always best.

Figure 2 shows that those who say democracy is preferable has remained more or less stable over an eight-year period; there is a healthy commitment to having a democracy.

The figures are, however, somewhat disturbing when we look at the number of people who are the committed democrats in South Africa: that is, those who reject all forms of authoritarian rule outright and express a higher commitment to democracy. We arrive at these figures by computing all three forms of rejection to authoritarian rule (one-man rule, one-party rule and military rule) with those who are at the same time committed to democracy – and that figure is very low (*see Figure 3*). This is a worrisome trend.

We asked more questions that demonstrate a support for democratic preferences:

Support for democratic institutions

Which of the following statements is closest to your own view, A or B?

• *We should choose our leaders through regular, open and honest elections (rather than: Since elections sometimes produce bad results, we should adopt other methods for choosing this country's leaders).*

Figure 2: Demand for democracy over time
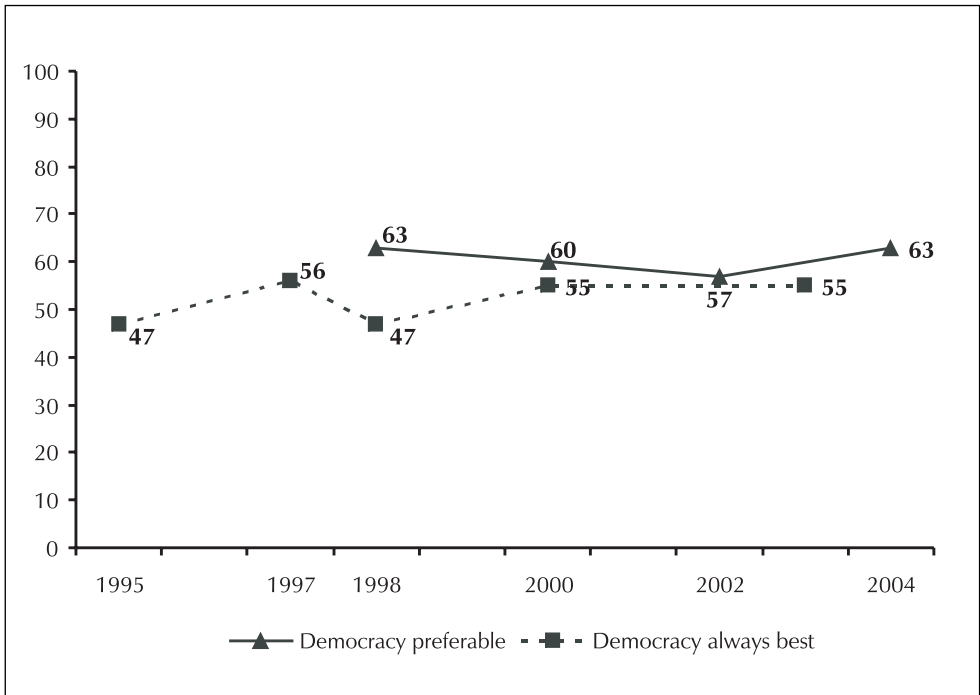
Figure 3: Demand for democracy – 'committed democrats' (over time)
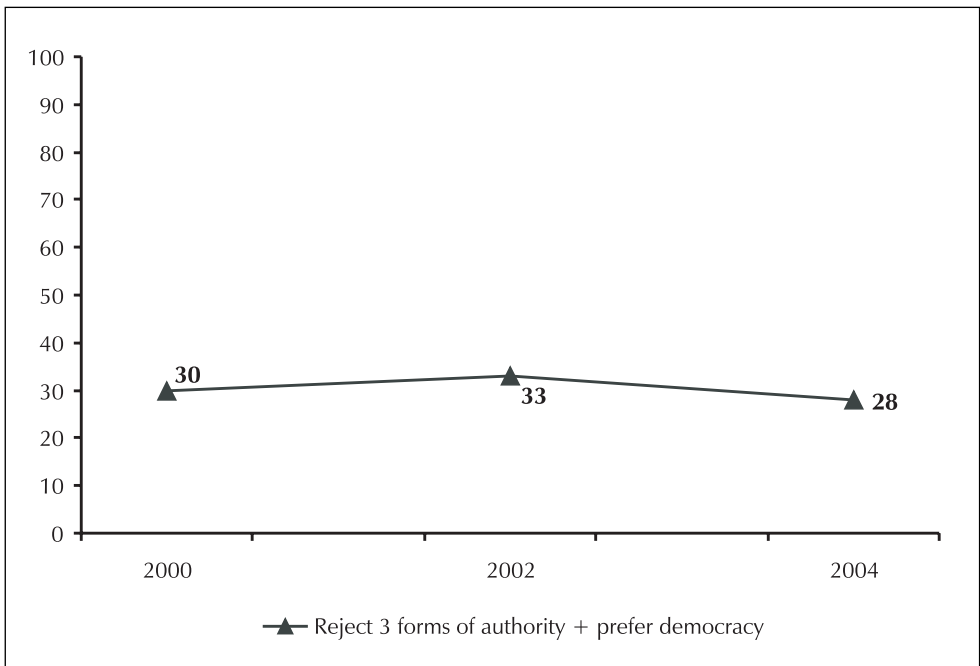
Figure 4: Support for democratic institutions (over time)
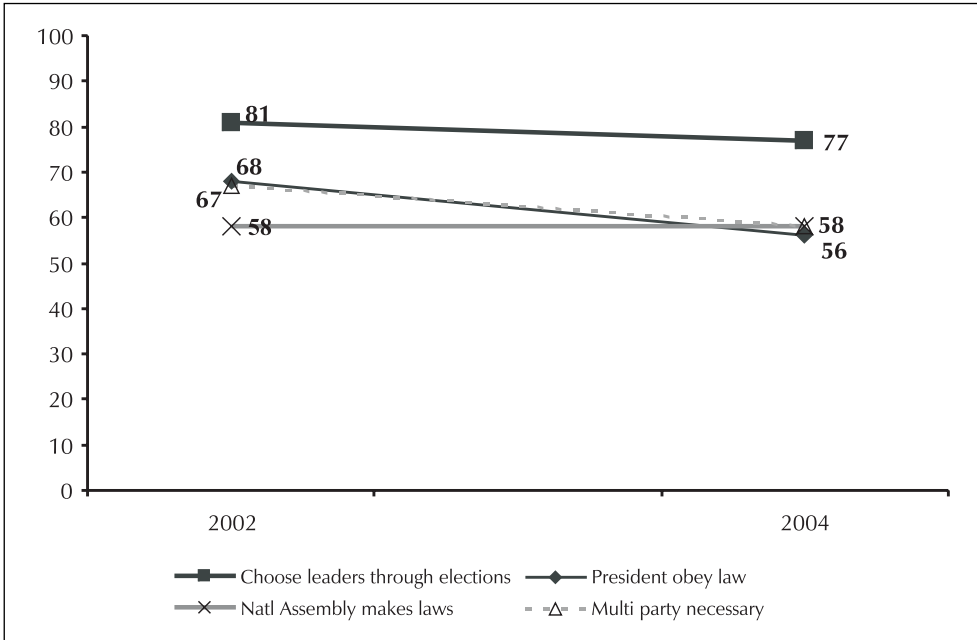
- *The President must obey the law, including the Constitution, for example by serving no more than two terms in office (rather than: The President should be able to serve as many terms in office as he wishes) [In 2004: President must always obey the laws and courts, even if he thinks they are wrong (rather than: Since the President was elected by everyone to lead the country, he should not be bound by laws or court decisions that he thinks are wrong).*

- *The members of the National Assembly represent the people; therefore they should make laws for this country, even if the President does not agree (rather than: Since the President represents all of us, he should pass laws without worrying about what the National Assembly thinks).*

- *Many political parties are needed to make sure that people have real choices in who governs them (rather than: Political parties create division and confusion; it is therefore unnecessary to have many political parties in this country).*

As can be seen in Figure 4, support for democratic institutions has remained at a very healthy level over a two-year period. We will have to wait for next year's survey in order to have three points, and thereby to ascertain whether a downward trend is emerging.

MEASURING THE PERCEIVED SUPPLY OF DEMOCRACY

So, South Africans are committed to democratic governance but are they getting what

they are demanding? This takes us to the supply side, and we ask several questions here. Bear in mind that these results are over a ten-year period and that we wanted to capture the South African mood after a decade of democracy. The euphoria ushered in by the elections itself is therefore an important factor that needs to be considered.

Freeness and fairness of elections
On the whole, how would you rate the freeness and fairness of the last national
elections, held in 2004?
* Completely free and fair
* Free and fair, but with minor problems
* Free and fair, with major problems
* Not free and fair

Extent of democracy
In your opinion, how much of a democracy is _____ (insert country name) today?
* A full democracy
* A democracy, but with minor problems
* A democracy, but with major problems
* Not a democracy

Satisfaction with democracy
How satisfied are you with the way democracy works in _____ (insert country name)?
* Very satisfied, somewhat satisfied, somewhat dissatisfied, very dissatisfied.

Figure 5: Supply of democracy over time
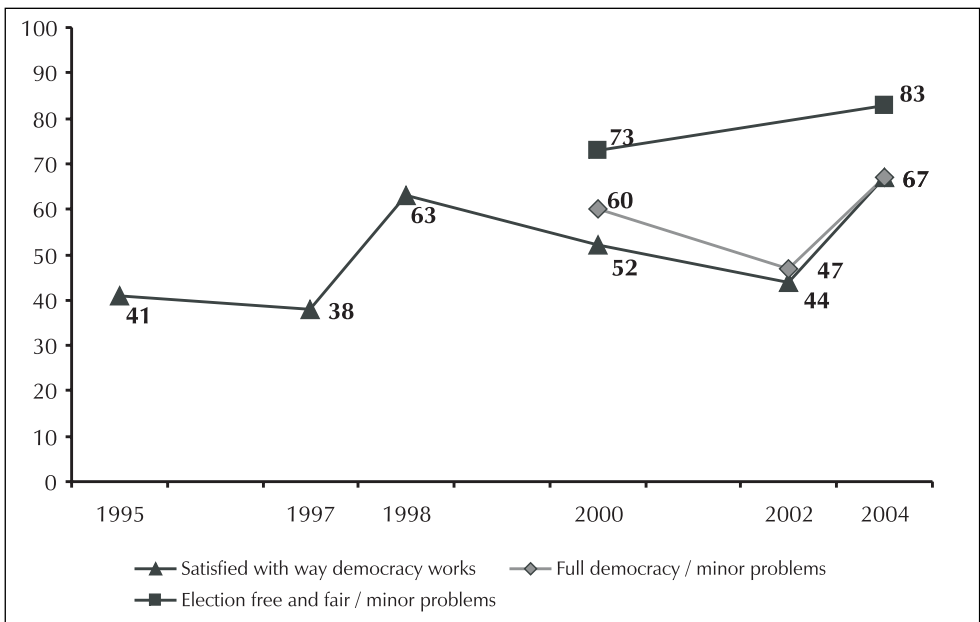
Figure 5 shows that a year after the advent of democracy, less than 50% of citizens were satisfied with the way that democracy works in South Africa. This is followed by a sudden upward trend in 1998 and a rather sharp decline to 52%, and again to less than 50% by 2002. But in a period of just two years the number of people who say they are satisfied with the way democracy works is up to an all-time high of 67%.

Similarly, there is an upward trend from 2000 to 2004 among those who say South Africa is a full democracy with minor problems, and those who say that elections are free and fair, but with minor problems. However, it is important to look at what happened in 2002 when the data took a dip.

NATIONAL IDENTITY

We would like to believe that many of these issues are undergirded by aspects and issues of national identity. In order to tap into these issues we pose the question:

> *Please tell me whether you agree, neither agree nor disagree, or agree very strongly with these statements:*
> - *It makes you proud to be called a South African*
> - *You would want your children to think of themselves as South African.*
> - *Being South African is a very important part of how you see yourself.*
> - *People should realise we are South Africans first, and stop thinking of themselves in terms of the group they belong to.*
> - *It is desirable to create one united South African nation out of all the different groups who live in this country.*
> - *It is possible to create such a united South African nation.*

The number of citizens who say they are proud to be called South African has over the period 1995 to 2004 declined steadily from over 90% to 82%. Likewise, those who want their children to be South African started at a high of 92% in 1998 and decreased to 83% in 2004. Those who say that South Africa is an important part of how they see themselves has also declined from a high of 91% in 1997 to 83% in 2004.

Those who say we should put South Africa first started at a low of 82% in 1997, shot up to 89% in 1998 and declined steadily thereafter to 82% in 2004. Those who say that a united South Africa is desirable started at 83% in 1997, shot up to a high of 86% in 1998 and declined to 79% in 2004; while those who say a united South Africa is possible started at a relatively low 67% in 1997, peaked at 79% in 2002, and dropped to 75% in 2004.

Although there is a downward trend, there is convergence on all these issues. Even when we disaggregate the data by race, we find that the different racial groups are coming together with regard to issues of national identity.

TRUST IN INSTITUTIONS

In order to ascertain how much trust there is in the system in South Africa, we ask this

Figure 6: Trust in institutions

question on a number of institutions. As can be seen from Figure 6, there is a fair amount of trust invested in institutions, with the president and government broadcasting service being the most trusted institutions.

The least trusted institution is the opposition political parties, followed by the police and then local councils. A reasonable amount of distrust is, of course, healthy as it keeps politicians on their toes.

CONTACTING INSTITUTIONS

We then asked whether South Africans make use of these institutions. Do they contact and interact with them and do they channel their grievances through these institutions, especially the elected institutions? Our data shows that there is minimal use of these institutions (*see Figure 7, over page*).

As can be seen from Figure 7, local government councillors are the most contacted (17%), followed by political party officials (11%), members of Parliament (MPs) (5%) and government ministry officials (5%). Note, however, that figures 6 and 7 pertain only to the latest data from the October/November 2004 survey results. These figure are, however, not very different from previous surveys results. We could therefore say that South Africans do invest some trust in their institutions, with some reservations, of course.

TOLERANCE

How tolerant are South Africans of opposing views? Are they likely to resort to violence for political ends? To answer this we ask the question:

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Figure 7: Contacting institutions
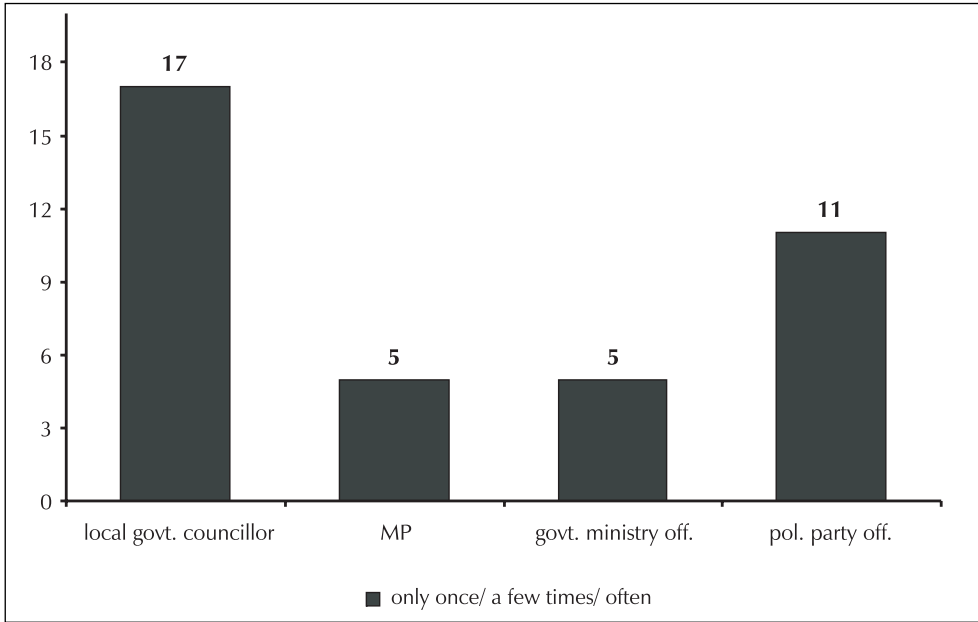
Which of the following statements is closest to your view?
A: The use of violence is never justified in South African politics today.
B: In this country, it is sometimes necessary to use violence in support of a just cause.
* Agree very strongly/Agree

As can be seen in Figure 8, most South Africans report a strong rejection of resorting to violence for a just cause. It is only in Mpumalanga (40%) and Limpopo (36%) where a fair number say that violence is sometimes necessary.

ASSOCIATIONAL ACTIVISM

How much time do South Africans spend in associational activities where they can build trust relations? We believe that such horizontal relations translate into vertical trust relations into institutions. We also believe that these are critical institutions where people are socialised on political issues and where they learn political activism. We ask interviewees if they are active members of a religious group, a professional or business associations, a trade union or farmers' association, and a community development association.

As can be seen from Figure 9, the majority of people who are active members, are active in religious organisations. This is followed by citizens in the Eastern Cape and Limpopo who are members of community development associations; but these figures are very low, 12% and 11% respectively. Other than that, across all areas the percentage of activism in the associations mentioned is below 10%.

Figure 8: Use of force or violence for a just cause
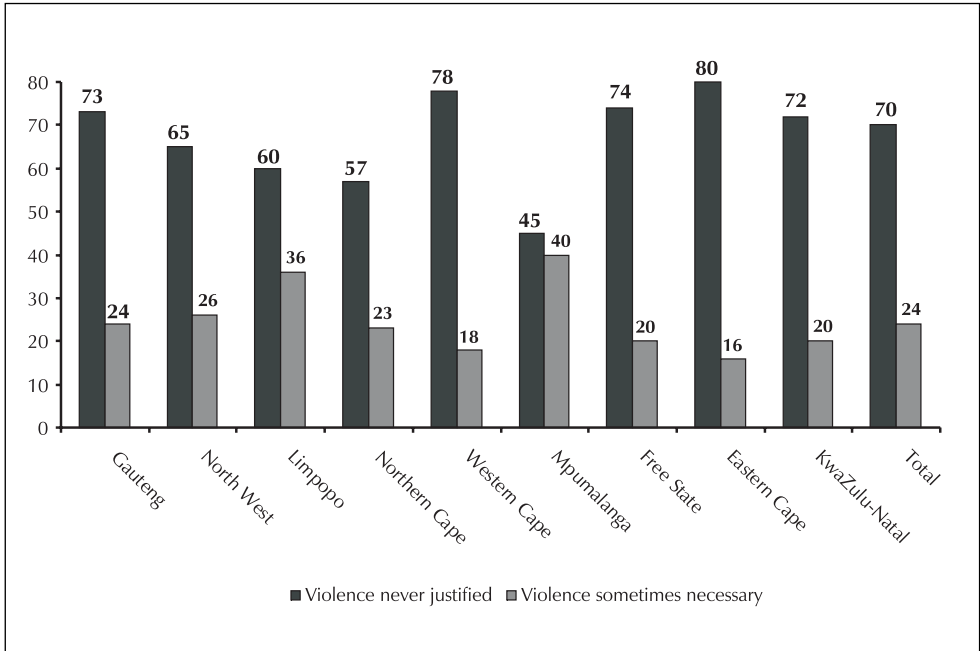
Figure 9: Membership in organisations
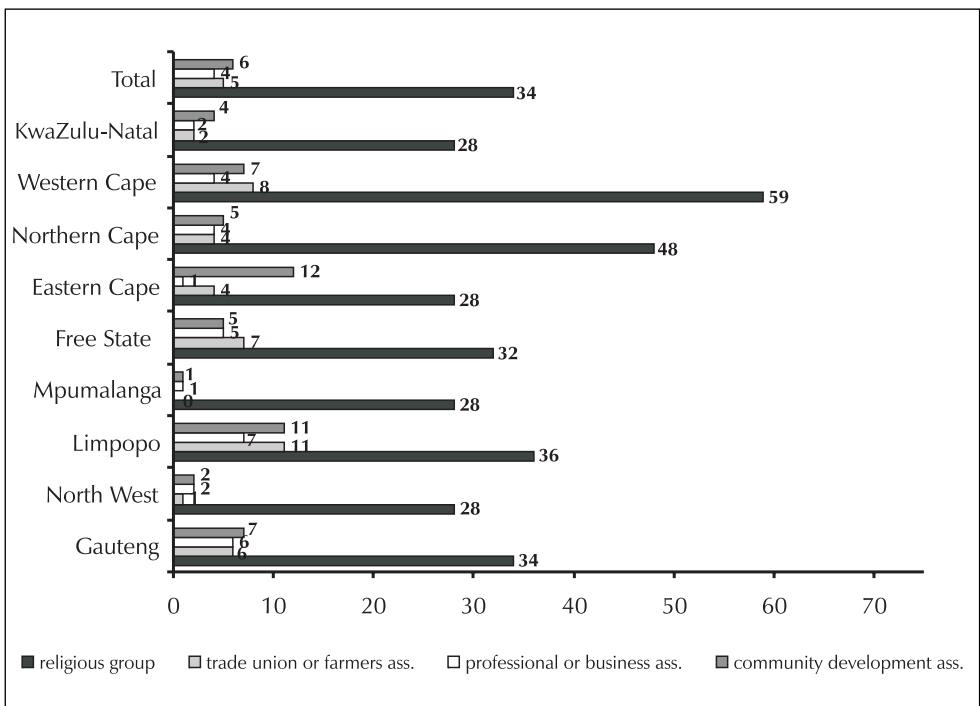
Figure 10: Knowledge of leaders

People did, however, express knowledge of the different types of leaders when asked:

> *Can you tell me the name of: your member of Parliament, your local government councillor and the deputy president? (See Figure 10)*

Most South African citizens across all the provinces were able to identify the name of the deputy president, but MPs are an unknown group by their constituents, with local government councillors faring a bit better. We have more information on assessments of MPs and we ask citizens, for example, how much time their MP spends in their area and what they think is an adequate amount of time for an MP to spend in their constituency.

CRITICAL CITIZENS

We then try to ascertain whether South Africans are likely to become critical citizens by asking the following question:

> *Which of the following statements is closest to your view?*
> *A: As citizens, we should be more active in questioning the actions of our leaders.*
> *B: In our country these days, we should show more respect for authority.*

We find from Figure 11 that South Africans are more likely to be critical citizens. They agree that they should question actively the actions of our leaders, but less so in

Figure 11: Question leaders versus respect authority
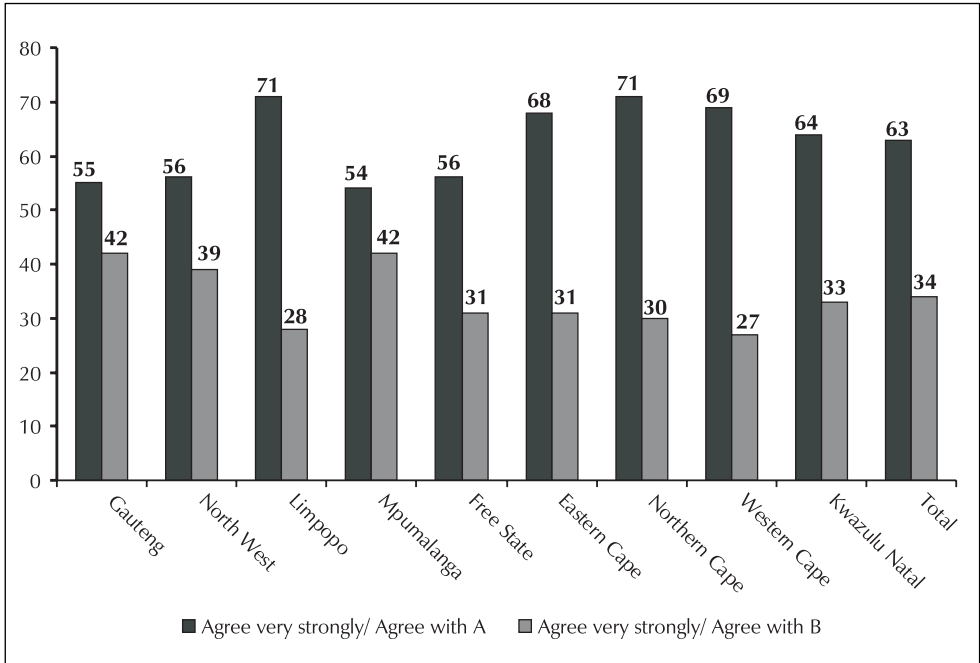
Mpumalanga (54%), the Free State (56%), North West (56%) and Gauteng (55%) where the figures are lower. More worrisome, however, are the number of people who say we should show more respect for authority.

COMPLIANCE WITH THE LAW

In terms of compliance with the law, we ask the following question:

> *For each of the following statements, can you tell me if you agree. (Often / Always)*
> * *Courts make binding decisions.*
> * *People must obey the law.*
> * *People must pay taxes.*
> * *People are treated unequally.*

As can be seen from Figure 12 (*over page*), South Africans are mostly law abiding. There is, however, dissatisfaction with the level of equal treatment in the system, with Limpopo recording the highest figure in this regard (60%).

PARTISANSHIP

We ask South Africans what they think about the question of non-partisanship and pose the question:

Which of the following statements is closest to your view?
A: Since everyone is equal under the law, leaders should not favour their own family or group.
B: Once in office, leaders are obliged to help their home community.

Figure 12: Compliance with the law
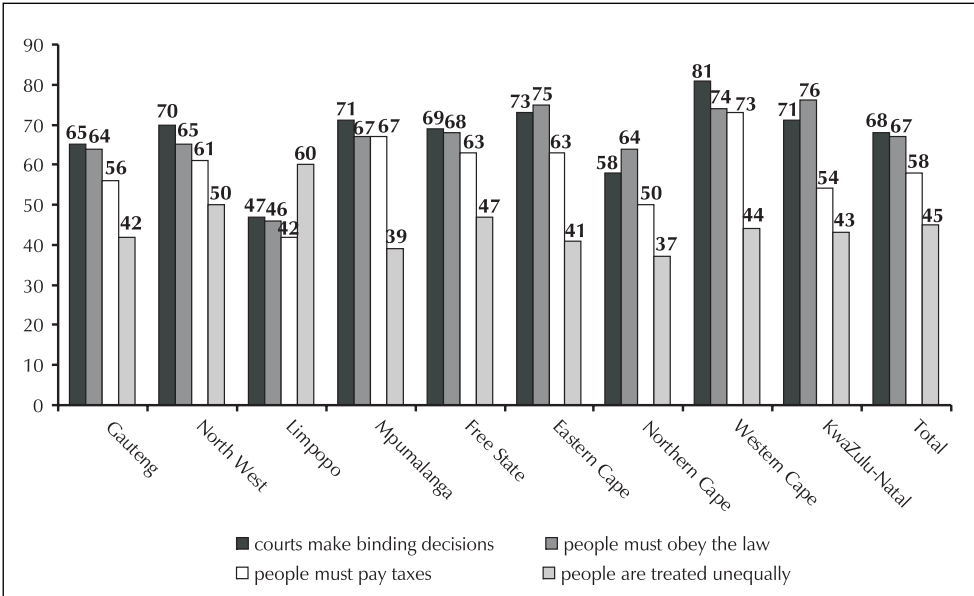
Figure 13: Leadership must be non-partisan
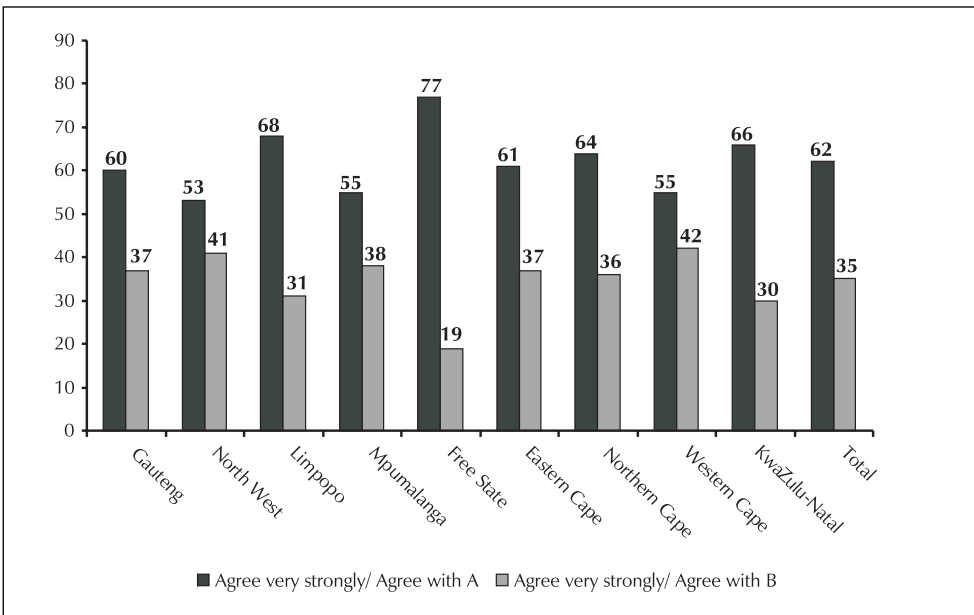
According to Figure 13, South Africans express a preference for the value of equality and that leaders should not favour that their own family or groups. But there is still over 30% who believe that once in office leaders are obliged to help their home community; except for the Free State which reported the highest aversion to nepotism and the highest desire for equality.

INDIVIDUAL RESPONSIBILITY FOR WELL-BEING VERSUS GOVERNMENT

When we tend to the issue of individual responsibility for well being versus government responsibility for people's well being, we ask the question:

> *Which of the following statements is closest to your view?*
> *A: People should look after themselves and be responsible for their own success in life.*
> *B: The government should bear the main responsibility for the well-being of people.*

We see from Figure 14 that South Africans are no more socialistic than other African citizens when the data is compared. South Africans largely feel that people should be responsible for their own well being, although a good third of the citizens expressed that government should bear the main responsibility for people's well being. We need to bear in mind, however, that those who say people should be responsible for their own success in life probably expect a favourable platform from which they can achieve this. This is understandable because it is difficult to achieve success in the absence of an enabling framework provided by the government.

Figure 14: Individual responsibility for well-being vs. government
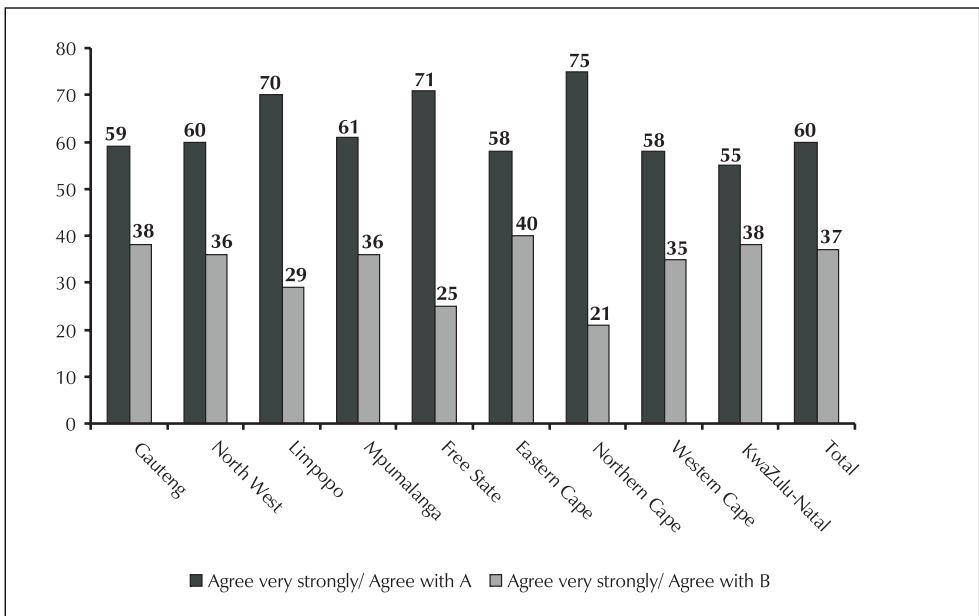
Figure 15: Political knowledge
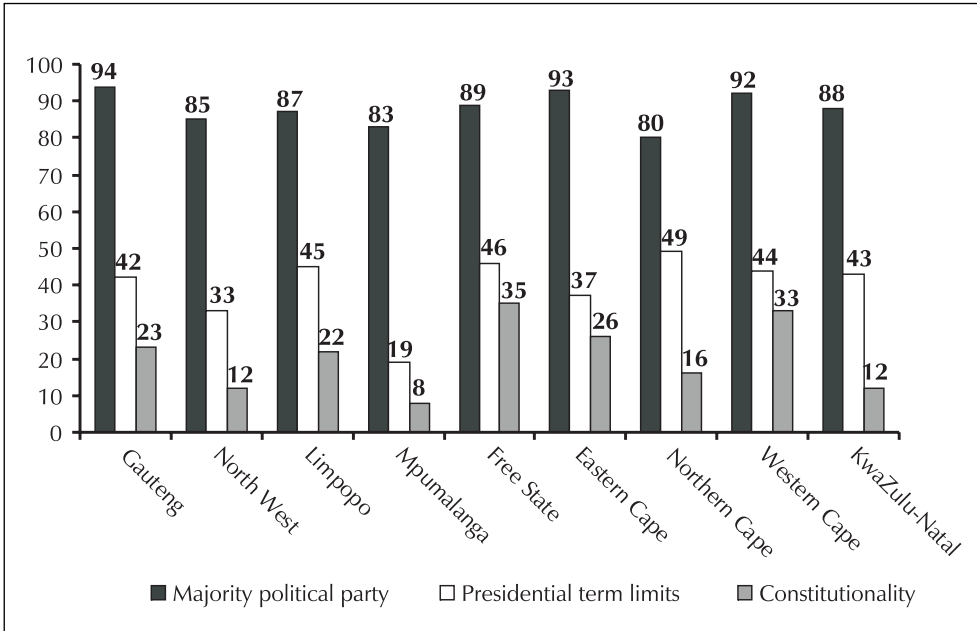
POLITICAL KNOWLEDGE

South Africans are generally knowledgeable to some extent about political issues. We ask the following questions:

- *Do you happen to know: Which political party has the most seats in Parliament?*

- *Do you happen to know: How many times someone can be elected president?*

- *Do you happen to know: Whose responsibility it is to determine whether or not a law is constitutional?*

As can be seen from Figure 15, many respondents were able to identify the majority political party in the country; however, less than 50% were able to identify the number of presidential term limits, and even more people did not know whose responsibility it is to determine whether or not a law is constitutional. This indicates some areas that need to be targeted in terms of civic education and so on.

VOTING

Lastly, for this discussion, we ask the question:

> *With regard to the most recent 2004 national elections, which statement is true for you? You voted in the elections?*

Figure 16: Voted in last election
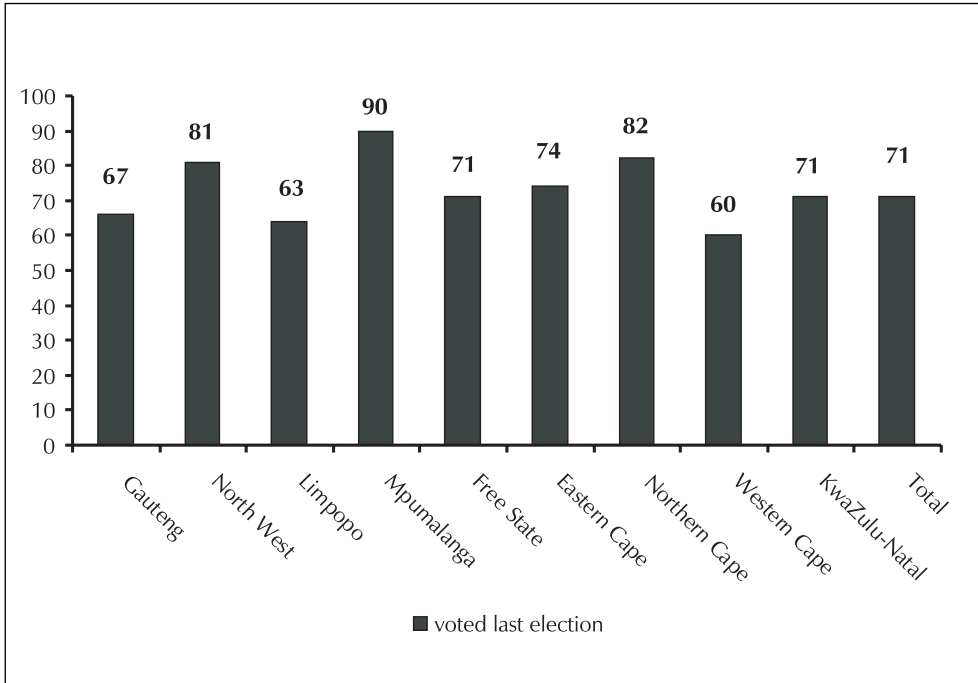
Figure 16 shows that the average across all provinces for voting was 71%, with Mpumalanga having the highest figure (90%) and Western Cape the lowest (60%).

CONCLUSION

In summary, our data reveals the following about political culture in South Africa:

• South Africans vote more but participate less in other ways.

• South Africans have more faith in their institutions than those in other African countries.

• There is an adversarial culture due to distrust of authority and mistrust in government.
• South Africans are no more socialistic than other Africans.

• There is political tolerance, free discussion of ideas, the selection of rulers without oppression and religious diversities are tolerated.

• South Africans stress equality and following the rules.

• There is a cultural value of equality in South Africa. South Africans believe that no person is better than anybody else.

So why are there sometimes conflicts? Conflict is difficult to eradicate completely, but conflict also points to the tensions that exist and compete on the South African political arena, such as those between modern liberalism, modern conservatism and populism.

Understanding culture and rights in South Africa today: Moving beyond racial hegemony in national identity[1]

KRISTINA BENTLEY

INTRODUCTION

The African National Congress's (ANC) 2005 National General Council was presented with a discussion document entitled 'The National Question'.[2] This document sought to "examine whether we can triumphantly proclaim that the new, and long sought after, South African nation has emerged". What this document is concerned with, therefore, is *national identity*, which its author proclaims to be "the central political question of our time". The document then goes on to argue, however, that the National Question in South Africa is "principally about liberation of the African people". What it is not about is the "rights of minorities or ethnically motivated grievances". At its most basic level, this document therefore conflates race with culture, and foregrounds the interests of the demographic majority.

I believe that this approach is mistaken. Undoubtedly race in South Africa is the primary vector of inequality, especially economic inequality. Furthermore, racial tensions continue to manifest themselves in various ways, in particular when scarce resources are in contest. However this is not indistinguishable from inter-cultural conflict and tension. And while economic inequality and the attendant poor servicing of rights that it entails is indeed an important factor that can undermine national identity, it is not consonant with it. And so the policy document is mistaken in passing off pressing questions about race and inequality, as questions about rights and multiculturalism.

What this paper seeks to do is to examine what cultural rights are by reflecting on the rights of cultural, religious and linguistic communities. This raises a different set of issues around rights and identity than the ANC policy document does; and what I want to argue for is that we take the debate a step forward, while still acknowledging the crucial role that race has to play in identity formation. Race is not culture, and therefore no special cultural rights or exemptions should stem from one's belonging to a particular 'population group'. I do not mean to say that I think that black economic empowerment (BEE) and legislation aimed at employment equity are mistaken, but rather that these are a different matter to protection under the heading of culture.

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The paper outlines some of the legal instruments and theoretical concepts underlying the notion of the communal rights of cultural, religious and linguistic communities in South Africa, and situates them within the global debate on multiculturalism and conflicts of rights. It then seeks to identify some of the possible areas of conflict related to these rights, and to question whether our response to them, to date, has been adequate.

BACKGROUND TO THE CULTURAL, RELIGIOUS AND LINGUISTIC RIGHTS OF COMMUNITIES

The rights of peoples or communities in respect of the exercise of their culture (or ethnicity as it is more commonly referred to in international law),[3] religion and language are sometimes seen to constitute a "neglected and forgotten category of human rights […] they are treated as the 'poor relatives' of other human rights."[4] Indeed, while cultural rights are enumerated with economic and social rights in the 1966 Covenant on Economic, Social and Cultural Rights (*see Appendix 1*), they are quite frequently referred to either only cursorily, or not at all when the rights in that covenant, and other related instruments, are under scrutiny. It is worth noting, however, that the cultural, linguistic and religious rights of peoples or communities are quite distinct from social and economic rights, both in their genesis and their content. These rights fall into a separate category sometimes referred to as 'third generation rights'[5] (as distinct from 'first generation' civil and political rights, and 'second generation' economic and social rights) owing to their collective nature, as well as to their association with the 'third (non-aligned) world'.[6]

This does not mean that these rights are of a lesser sort – their collective nature and their later arrival in the human rights family does not mean that they deserve less protection, nor that they are of lesser importance to their holders. There are two important considerations to be taken into account: a *moral* one, and a *contextual* one.

The moral consideration is that these rights, like all human rights, are always and everywhere the same, and so in the same way that other fundamental human rights (such as the right not to be tortured) ought to be honoured equally in all circumstances (even where they are not constituting human rights violations), so too the rights of communities to freely exercise and enjoy their culture, practice their religion and speak their language ought to be equally respected and supported in all countries and societies. The contextual consideration is that differences of culture, religion and language exist to differing degrees and have different significance attached to them in different countries and societies, and so the extent to which these rights require protection will vary from place to place.

However, the notion of the collective rights of cultural, religious and linguistic communities is a frequently contested one, precisely because of the varying resonance that it has in different parts of the world. But it is not a category of human rights that is only applicable to a limited number of countries in the developing world, with minority or indigenous communities, as is sometimes supposed. Indeed, as Bryan Barry notes, with the possible exception of Iceland "all countries are ethnically mixed"[7] to some extent. So this category of human rights is as universally relevant as any other.

South Africa is a paradigm case of diversity, and therefore the relevance of the rights of distinct cultural, linguistic and religious communities here is especially pressing. It is

axiomatic that the assertion of distinct claims of culture, and the possible conflicts of value that these entail, has the potential to be divisive. However, it is increasingly being recognised that depending on *how* diversity is dealt with in any given state, difference need not translate into division. As Janusz Symonides remarks, "culture and respect for cultural rights have also been recognised as an essential element in the resolution of conflicts".[8]

THE RECOGNITION OF CULTURAL, LINGUISTIC AND RELIGIOUS RIGHTS IN SOUTH AFRICA

In South Africa we are privileged to enjoy a rich multiculturalism that is both wide and deep. It is wide in the sense that the range of diversity of South Africans – in terms of race, culture, religion and language – is vast; and deep in the sense that our diversity as South Africans is not a superficial matter, but rather many of these elements constitute essential aspects of people's identity, and therefore may require protection and recognition.

It would be impossible to compile an inventory of the cultural, religious and linguistic elements that would cover all aspects of every South African's idea of what these should include. Part of the importance of recognising and respecting people's (as individuals and as collectives) rights to the various aspects of these is recognising their freedom to decide, and debate, what the elements of their culture, religion and languages are.[9] What constitutes them? Which elements are essential and static, and which are fluid and subject to change over time? No attempt is made here to embark on such an exercise, as it is taken as given that the existence of a diversity of languages, cultures and religions in South Africa is sufficiently well known for these not to need to be inventoried.

The recognition of the breadth and depth of this diversity, as well as the need to safeguard it, are woven into the fabric of South Africa's human rights dispensation. The main features of the law protecting these rights are outlined here. These are backed up by a number of international instruments, some of which have been received into South African law, which are also briefly outlined in Appendix 1.

THE CONSTITUTION AND THE NATIONAL ACTION PLAN

The Constitution of the Republic of South Africa, 1996, is frequently hailed as one of the most progressive and comprehensive in the world, especially in respect of the human rights that it enshrines in the Bill of Rights in Chapter 2. The most important of these for the purposes of the rights of cultural, linguistic and religious communities are sections 9, 15, 30 and 31.

Section 9 of the Constitution contains the equality clause, which guarantees the right to be treated equally before the law, and prohibits discrimination on the grounds of, *inter alia*, "ethnic or social origin [...] religion, conscience, belief, culture, [or] language". Section 15 guarantees the (individual) right to freedom of religion, belief and opinion, while section 30 does the same for the use of the language of one's choice and participation in the cultural life of one's choice, in so far as these are consistent with the other provisions of the Bill of Rights.[10]

The rights of 'Cultural, Linguistic and Religious Communities' (collectively) are enshrined in section 31. There are two distinct rights recognised by this section. The first is the right of communities to actively enjoy, practice, and use their culture, religion or language. The second right is that to "form, join and maintain cultural, religious and linguistic associations and other organs of civil society". Section 31(2) stipulates that both of these rights are subject to the other provisions of the Bill of Rights, which precludes communities from collectively exercising their right in a way that interferes with the rights of others, either individuals or collectives. The problem of conflicts of rights is referred to below, but it is important to note that this limitation on communal rights of cultural, linguistic and religious communities implies that the rights of individuals will often 'trump'[11] or outweigh those of communities when they come into conflict.

Other important, *supporting* rights – supporting in the sense that they provide the necessary conditions for the free enjoyment, practice or exercise of the rights outlined in section 31 – are enshrined in sections 16, 17 and 18. Section 16 enshrines freedom of expression, including that of the press, information and ideas. Most importantly for the rights under discussion here, section 16 protects the freedoms of artistic creativity, and those of academic freedom and scientific research, both of which are regarded as integral to the exercise of cultural rights. Section 17 enshrines the freedom of assembly, and section 18 the freedom of association.

There are also *related* rights – those which may impact on the free exercise of the rights in section 31 in certain circumstances – in sections 14, 21, 22, 24 and 29. Section 14 enshrines the right to privacy, section 21 the freedom of movement and residence, and section 22 the freedom of trade, occupation and profession. Section 24, which enshrines the right to a healthy and protected environment, has enormous resonance for some cultural communities, and may therefore be critical for the exercise of their communal rights. Similarly, section 29, which enshrines the right to education – and in particular the right to establish one's own institutions to this end – is deemed to be of importance to the practices of some cultural, linguistic and religious communities.

Chapter 9 of the Constitution establishes the State Institutions Supporting Constitutional Democracy, one of which is the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. The functions of the commission, as outlined in section 185, are: to promote respect for these communal rights; to promote peace, tolerance and national unity among communities; and to make recommendations on the establishment of community councils. The commission has the necessary powers that it requires to "monitor, investigate, research, educate, lobby, advise and report on issues" concerning the rights of these communities; and to carry out its functions. The commission also has the power to report on any matter within its area of competence to the Human Rights Commission (HRC). The commission's composition must be representative of the cultural, religious, linguistic and gender composition of South Africa. The Constitution also makes provision for more detailed national legislation in this regard (*see Appendix 2*).

Section 235 of the Constitution refers to self-determination in its national sense, but also makes provision for the recognition of the right of self-determination of linguistic and

cultural communities within South Africa. This right is subject to limitation; for example, such communities do not have the right to secede, nor to violate the laws of the country.

The National Action Plan for the Promotion and Protection of Human Rights (NAP) of 1998 is South Africa's response to the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights. The Vienna Declaration recommends that states draw up a national action plan to identify the steps that need to be taken to promote and protect human rights. This is necessary because, as (then) President Nelson Mandela says in the Foreword to the NAP:

> The experience of South Africans and of all peoples everywhere has taught that in order for the rights and freedoms embodied in constitutions to be realised, they must become part of the everyday reality of citizens' lives, and the institutions protecting them must be deeply entrenched.

One of these institutions is the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, as laid down by the Constitution (*see Appendix 2*).

The NAP makes specific reference to the freedom of culture, religion and language. Two of the challenges identified by the NAP that are relevant to this paper are:

- affirming diversity while at the same time building a common nation; and
- promoting tolerance and respect.

The NAP goes on to identify the establishment of the commission as one of the ways to address these challenges.

In addition to the domestically enacted legislation, South Africa also has a number of obligations under international law pertaining to the rights of cultural, religious and linguistic communities. These are outlined in Appendix 1 of this paper.

CELEBRATING DIVERSITY: NATION BUILDING AND DEVELOPMENT

DIVERSITY AND IDENTITY: RACE AND ETHNICITY

Identity in South Africa is a complicated matter. The most obvious vector of identity in any country or society is race, but this has of course taken on added significance in South Africa due to the recent history of racism and discrimination.

Related to race – and indeed largely commensurate with it in South Africa – is economic and social class, which can prove equally divisive, as "people on opposite sides of the socio-economic divide [are often] incapable of understanding and empathizing with one another".[12] However, neither of these aspects of identity capture what it is that is understood by the notion of 'culture' or 'ethnicity' (although these are of course frequently inaccurately conflated with race).[13] Furthermore, while race *may* still constitute a ground for discrimination where this is deemed to be fair (as in the case of

affirmative action measures which are aimed at redressing past inequalities), no such discrimination is permissible on the grounds of class. As Bryan Barry remarks (paraphrasing Ernest Hemingway):

> [If] indeed 'the very rich are different from you and me' […] it is very different from the kind of thing that is usually thought to be worth protecting under that head […] [I]t is not a legitimate objection to redistribution to claim (even it is true) that your 'culture' depends on the possession of great wealth, any more than it would be a legitimate objection to the abolition of slavery to claim that your 'culture' depends on the ownership of slaves.[14]

This is an important point to note, as it discounts cultural claims that rely on discrimination based on imbalances in power and resources, and so presumably claims of gender discrimination as an aspect of culture would also be questionable in this regard.

Gender is an important aspect of identity, and one that has been the source of much discrimination. This is not just the biological difference between men and women, but of course the social and cultural significance that is attached to the fact of being male or female, or indeed homo- or heterosexual. The complex interplay between gender and culture is not one that can be ignored, although it may not, on its own, constitute an aspect of identity that creates a community.

Culture and ethnicity are difficult to define, let alone enumerate, and furthermore there is a distinctly *subjective* aspect to the notion of culture. Is not one's culture what one believes it to be? However, there is the external ascription of culture to people; for example, beliefs about people's ways based on their religion or language. Furthermore, the notion that culture is to be *protected*, and that it is therefore exempt from outside interference, is a powerful one; and one which is sometimes mobilised to defend certain practices that are thought to discriminate against members of a group, or others who are not members of the group, in the name of 'tradition'.

These claims have to be carefully weighed, as the rights of communities in this regard do not entail the waiving of the rights of others – to put it another way, no right amounts to a right to do wrong. However, outside of the world of abstract principles, things are not so simple, as it is precisely in the course of everyday moral and political life that conflicts between people arise, and many of those conflicts entail claims of rights. How does one resolve such claims when they constitute a conflict between the rights of a community and those of an individual? Should the one outweigh the other?

There are a number of approaches that a state can adopt in this regard. On the one end of the scale, there is the approach that holds that the state should not interfere at all in the group's practices, even if they do threaten the rights and equality of members of the group. This is a *libertarian* approach, as it is characterised by freedom constituted by non-interference. On the other end of the scale, there is the more *communitarian* approach, which regards uniformity as a good to be pursued, and so this approach holds that the state should insist that the ways and practices of all communities should conform to a shared national ideal and set of principles. On this approach, the state has the power, and

indeed the duty, to intervene in cultural practices to ensure that all individuals are treated equally, and to insist upon uniformity.[15] However, between these two extremes are a range of alternatives, and South Africa's approach – which regards the rights of individuals and groups as being worthy of equal consideration – is one example.

The idea that tolerance for traditional practices, and understanding about the equal rights of individuals, can be promoted through dialogue is a promising and potentially unifying one. However it is by definition an approach that has to grapple with difficult issues of conflicts of rights that fall between the ideal of non-interference in communal practices on the one hand, and respect for the equal rights of individuals on the other. So this refers back to the point that there is a sliding scale of options, with total non-interference on the one end and forced uniformity on the other; but that an approach in the middle of this scale which promotes dialogue and understanding as a way to address these is perhaps the most constructive approach, even though it is more demanding.[16]

In South Africa – where these claims are articulated daily by those with powerful and passionate interests in seeing their practices continue without interference – the matter is one which is both sensitive, and almost impossible to resolve to everyone's complete satisfaction. For example, the claims of traditional leaders in this regard cannot simply be neutralised with reference to political theory, no matter how influential its proponents are. Rather, ways have to be found for these types of issues to be aired, discussed and debated. The aim here is not nation building via consensus and uniformity, but rather via deliberation.

It must be noted, however, that dialogue and understanding are themselves sometimes products of the demands of particular structural contexts. It is important not to romanticise negotiations and dialogue, as the contexts in which they occur can harbour unequal power relations that ultimately lead to biased outcomes. The framework in which dialogue occurs must be premised on equality; but not just formal equality, which regards everyone as equally able to articulate their own views, interests and rights. Rather, efforts must be made to empower those who may perhaps be marginalised by a pre-existing imbalance in power and authority, and so concessions need to be made in order to promote a more substantive, inclusive notion of equality to ensure that all who have a stake in the outcome of the negotiations are heard.

The idea of what is known as 'deliberative democracy'[17] – which emphasises dialogue and understanding, rather than the attempt to reach consensus – provides a way to achieve a notion of national identity that does not require uniformity. The following section explores this idea.

NATION BUILDING AND CIVIC NATIONALITY

Diversity in South Africa is, as has been noted, both wide and deep. Andrea Baumeister makes the useful distinction between *first* and *second level diversity*, which is applicable to the South African case. First level diversity acknowledges differences in culture, belief and background, but nevertheless regards all citizens as having the same relationship to the state. This level of diversity does not seek to assimilate different groups, but rather allows for a degree of diversity in terms of language and culture.

South Africa, however, may be described as having second level diversity: while all citizens have equal rights under the Constitution, in South Africa we also afford special rights – rights that alter the relationship to the state – to certain groups of people on the basis of their culture, language or religion. As Baumeister describes this relationship: "[S]uch deep diversity is associated with demands for distinct institutional and legal frameworks and typically entails claims for corporate cultural rights."[18] So, for example, the Recognition of Customary Marriages Act 1998, the Traditional Leadership and Governance Framework Act 2003, Communal Land Rights Act 2004, and Pan South African Language Board Act 1995 contribute to this separate legal framework, and the Chapter 9 Commissions form part of the "distinct institutional framework" to support the "claims for corporate cultural rights".

How then is it possible to have some kind of unified national identity – to embark on an exercise of nation building – in a situation of such deep diversity? The United Nations Educational, Scientific and Cultural Organisation's (Unesco) Universal Declaration on Cultural Diversity, 2001, may provide an answer. The declaration begins with the statement that "the cultural wealth of the world is its diversity in dialogue". The introduction by Unesco director-general Koichiro Matsuura notes that the declaration was adopted unanimously in the wake of the events of 11 September 2001. It continues:

> It was an opportunity for states to reaffirm their conviction that intercultural dialogue is the best guarantee of peace and to reject outright the theory of the inevitable clash of cultures and civilisations. Such a wide-ranging instrument is a first for the international community. It raises cultural diversity to the level of 'the common heritage of humanity', 'as necessary for humankind as biodiversity is for nature' and makes its defence an ethical imperative indissociable [sic] from respect for the dignity of the individual […] The Declaration can be an outstanding tool for development […] [and] it lays down not instructions, but general guidelines to be turned into ground-breaking policies by Member States in their specific contexts.

The declaration therefore emphasises two main points: first, that diversity can be managed and celebrated through dialogue, and that such dialogue provides the key to ensuring that diverse people need not be divided people. Second, the declaration emphasises the connection between the recognition and celebration of cultural diversity and the goal of development.

As article 3 of the Declaration describes this connection:

> [c]ultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.

This point is worth noting as it is analogous to the contemporary discourse on the connection between gender mainstreaming and development, which recognises that

without the full and active participation of all members of society, economic development and therefore rights and well-being, are necessarily stunted.

So how can the recognition of cultural diversity contribute to nation-building? The answer lies in considering what concept of a *national* identity, if any, people hold.

Bryan Barry, in considering the problem of ethnic divisions and discrimination, argues that a formal (legal) conception of nationality is insufficient to generate the level of "equal concern and respect" for other citizens with whom one does not identify in any other way.[19]

Yet Barry is not arguing that homogeneity, or attempts to create a homogeneous national identity, is the solution. On the contrary, what is required is a more *inclusive* notion of national identity, which would entail empathy for the fate of others and an ability to identify with them. And the way to achieve this and realise a sense of solidarity, is by the sharing of institutions and a reduction of material inequalities. He makes the point that what is frequently seen as a cultural difference is in fact one of material circumstance. While it is true that the very rich and the very poor may have difficulty in empathising and identifying with one another; this is not a matter of cultural diversity,[20] as noted above.

So the success of a liberal democracy, Barry argues, depends on citizens having certain attitudes towards one another – most importantly that they regard everyone's interests as counting equally, and that they are able to identify a common good and are prepared to make certain sacrifices for that common good. Barry labels this *civic nationality*, in contrast to *formal nationality* (as embodied in a passport) and *ethnic nationality* that can prove divisive due to its demonising of "the other".[21]

Barry in fact insists that his definition of civic nationality does not explicitly include reference to culture, but nor does it exclude it. Rather, culture on this account of nationality is one facet among many that make up the complex identities of every individual. The idea here is that identity is not a "constant sum game" that requires one identity be supplanted by another; rather identity has an "additive" quality to it, which is analogous to the ability to learn to speak more than one language.[22] So while there must be a certain degree of overlap in people's identities in order for the required level of 'mutual recognition' and empathy with one another to exist, this does not entail expunging differences. The important point to note is that what democracy requires in order for it to succeed, is for this mutual recognition to exist. So to paraphrase Barry, "being an Indian–South African or a Jewish–South African is a way of being a South African, not an alternative to it".[23]

Such mutual recognition can only come about through dialogue and debate, not only between citizens of different cultures but also between citizens who share aspects of identity, such as race, class, ethnicity, language or religion, about what their ways really are. The importance of this dialogue is two-fold. First, it is important for establishing the principle that no one group or person has a monopoly on the truth about culture and identity, but rather that this is a constantly moving picture in which any number of diverse peoples may play a part. Second, dialogue among and between diverse peoples is certainly the most effective (and probably the only) way to promote the sort of tolerance and understanding, which Barry labels as mutual recognition, that civic nationality requires.

The ANC policy document cited at the beginning of this paper is mistaken precisely because it fails to engage with these nuances of national identity. By conflating race with culture, and by confusing economic inequality with cultural recognition, it comes dangerously close to promoting ethnic nationality rather than civic nationality. It misses the point of a deliberative approach to the formation of national identity. I must reiterate that I am not arguing that material justice is not important and to deny its pressing importance for overcoming racial discrimination; nor am I denying the very pressing nature of racial tension and inequality in South Africa. What I am saying is that these pose a different (although related) set of questions and are not primarily about culture or even national identity.

MOVING BEYOND RACE: AREAS OF POTENTIAL CONFLICT

This section briefly outlines some of the areas of potential conflict that are generated by a lack of civic nationality. These arise out of difficult questions that the communal rights of culture, language and religion raise, but that demand consideration with a view to understanding how they may be overcome.

UNPACKING THE CONCEPTS: CULTURE, LANGUAGE, RELIGION, COMMUNITY AND HUMAN RIGHTS

The concepts of culture, language and religion are multidimensional and quite open-ended, in the sense that the need to be inclusive (in order to give effect to equality in this regard) means that an endless succession of each of these may be asserted for consideration. There are also racial and class dimensions to these issues that cannot be overlooked, and so a deeper reflection of what these categories comprise in the South African context is necessary. However this should not be just an inventory of all the cultures, religions and languages currently being asserted in South Africa, but rather we should provide an analysis of what ought to be considered, and how they ought to be protected and promoted. Furthermore, the intersection of the communal rights of culture, language and religion pose difficult problems for the individual rights of members of those communities. What about members of a religion, or language who wish to opt out of all or some of the community's practices? Or what about people who qualify to be members on one of the grounds of a culture, but not another?

The concept of 'community' is similarly difficult. What should count as a community? Are all communities equal? What about the gay community? What about those communities whose values conflict with other communities? Incidentally, there is no constitutional reason why the gay community should not be recognised and included in the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (*see Appendix 2*) in terms of the demand of gender representivity. Indeed how would the commission counter a claim of discrimination on the part of the gay community in South Africa in terms of section 9(3) of the Constitution? A further problem is: who should speak for communities? Community leaders? Or should community members be consulted? Many would claim that community leaders should

represent them, but this is in conflict with the demands of equality, and it seems to project on to communities an existing set of values upon which they are all assumed to agree. Why should dissenting voices be silenced in this way?

Again it seems as if deliberation may be the only constructive answer. While these issues are not unique to South Africa, they are nevertheless ones which must be engaged with for the ultimate goal of national unity. We must also avoid the temptation of falling into lazy categories of racial classification as a substitute for other qualitative questions about rights and identity.

EDUCATION, LANGUAGE AND IDENTITY

Education constitutes an important area of self-determination for distinct cultural, religious or linguistic communities. However, education administered by the state can also have an important role to play in nation building by ensuring that children from diverse backgrounds learn about one another, and one another's ways and traditions, in a way that promotes respect, tolerance and understanding. In post-apartheid South Africa this has proven to be a difficult path to tread.

There have been numerous instances of conflict in schools and universities that ostensibly have language or culture as their cause, but which in fact appear to be racially motivated. In particular, language has been used as a criterion for excluding children of a certain 'cultural' or 'linguistic' (read racial) background from attending a particular school that has traditionally been dominated by a different 'cultural' or 'linguistic' (but in reality racial) group.

This illustrates again how a conflation of race and culture both muddies the debate and displaces rights (in this case the right to education) with other interests that are couched in the powerful language of rights. As has been argued in this paper, while cultural rights are not a lightweight matter, and deserve equal protection, a proper analytical understanding of what they entail would preclude their being deployed to violate the rights of others.

These are difficult and perplexing problems but they are ones that need to be grappled with at the earliest opportunity. The potentially damaging nature of these conflicts in their effect on the youth – and the potential for these prejudices based on difference to be carried forward to future generations – cannot be ignored. And here again, an approach that deliberately puts aside a racialised script may prove to be the most helpful way to promote a sense of civic nationality which foregrounds all people's interests equally.

DIFFERENT VALUES AND CONFLICTS OF RIGHTS: WOMEN AND CHILDREN'S RIGHTS

Another difficult area for communal rights of culture and religion in particular, but possibly language too, is reconciling the practices of the community with the individual rights of group members when they are in conflict. Given the tension in South Africa between, in particular, the rights of women and certain traditional practices, this is an especially pressing area. The newly enacted legislation affecting the powers of traditional

leaders[24] will have to be monitored and evaluated over time, especially insofar as the equal rights of women members of these communities are concerned.

Furthermore, different communities may hold different ideas and have different practices regarding the treatment of children,[25] some of which may be in conflict with South Africa's obligations in terms of the United Nations Convention on the Rights of the Child, 1989 (*see Appendix 1*). The types of conflicts that may arise are restrictions on educational content, the withholding of vital medical treatment, or even notions about the appropriateness of certain types of work for children. The ongoing debate about virginity testing on girls and circumcision rites for boys practised in certain communities are poignant examples of this issue. Again the approach to be taken here is to facilitate dialogue and understanding with a view to reconciling the rights of (individual) children with communal cultural practices.

THE RIGHTS OF INDIGENOUS COMMUNITIES

According to Nigel Crawhall, in considering the threat to the identity of Khoe[26] and San people as a result of threats to their languages,

> South Africa, which has taken a leading role in setting a standard for democracy and human rights in Africa and around the world, may find itself facing some difficult challenges from a people whom it forced dangerously close to the edge of extinction. Dealing with aboriginality means dealing with other aspects of the apartheid-generated framework by which we understand identity in South Africa. Racial concepts of 'coloured', 'white' and 'African', and the labels we use for ethnic and language groups all become tinged with doubt when Khoe and San people are allowed to tell their story.[27]

Crawhall is particularly concerned that the debate around rights and culture in South Africa has been displaced, as its focus is primarily on 'cultures' that are part of a ruling (black) elite. Therefore, land restitution "primarily affects land expropriated from people classified as 'native' or later as 'Bantu' or 'African.' This leaves most Khoe and San people without legal recourse for their losses despite the similarities of their experience".[28] Crawhall argues that in order to prevent the demise of these indigenous languages, claims over resources, in particular land, need to be taken seriously, which is in keeping with ILO Convention 169 dealing with the rights of indigenous people in independent countries (*see Appendix 1*). The details and merits of this argument cannot be explored here, but it is an important area to note.

IMMIGRATION AND XENOPHOBIA

South Africa has a long history of immigration from many parts of the world. Since the demise of apartheid, South Africa has become a destination for many immigrants from other parts of Africa where there are ongoing violent conflicts, such as the Great Lakes

region. Other immigrants to this country are economic refugees (a category not usually recognised as being eligible for refugee status, but important to note nonetheless) from Zimbabwe and Malawi for example. While an influx of refugees is not a problem that is unique to South Africa, it is one that inevitably creates tensions, even in situations where jobs and resources are not scarce, as they are in South Africa.

An increasingly worrying trend is rising xenophobia among South Africans towards immigrants who have fled war and poverty in their own countries. It is necessary to take note of recent Constitutional Court judgements upholding the equal rights of immigrants[29] and to consider the threat to South Africa's nascent national identity if discrimination of this kind is not confronted in respect of immigrant communities.

CONCLUSION

This paper began by identifying what I thought was a mistaken emphasis in the ANC discussion document on 'The National Question'. It has been argued that while the salience of race in questions about justice and national identity in South Africa should, quite correctly, be emphasised, national identity cannot be based on the idea that one race has more cultural legitimacy than others, particularly by virtue of its majority status. To follow this route is to stray down the dangerous path of ethnic nationality. What is really required are robust deliberative mechanisms to encourage a sense of civic nationality, wherein South Africans feel a sense of shared fates and interests. This must be coupled with, but not conflated with, efforts to address the material inequalities between races in South Africa that stem from our past, and that fuel division and enmity.

And this brings me to the point in the document that I think correctly emphasises precisely this goal. The document identifies as one of the elements of national identity to be pursued "[a] sense of community. There should be a kindred spirit among all South Africans – a sense of 'I am my sister's and my brother's keeper'".[30] This is precisely the content of civic nationality, but it cannot be achieved in a climate that emphasises the racial and cultural identity of one group, and which conflates the economic with the political, the racial with the cultural, and rights with interests.

APPENDIX 1: INTERNATIONAL INSTRUMENTS

The aim of this paper is not to give a detailed inventory of every international instrument as it relates to communal rights, but rather to indicate, and briefly explain, those that have relevance in South African law.

Section 39(1)(b) of the Constitution creates the obligation to take account of international law in the interpretation of human rights, and in addition South Africa has some specific obligations under international law relating to the rights of cultural, religious and linguistic communities.

South Africa is undoubtedly a leading democracy in terms of its recognition of these rights in the Constitution and in South African law. However, it is important to understand the global context in which such rights are asserted, as many of the difficulties

presented by deep multiculturalism in South Africa are ones that are experienced in other countries, and so the international experience is one which contains important lessons.

In the post-1994 era since South Africa's first democratic elections, there has been a concerted move towards accession to the major human rights treaties and conventions, in keeping with the avowed priorities of the government in promoting and protecting the human rights of all.

The provisions of the Universal Declaration of Human Rights (UDHR) are so widely accepted that they are regarded as forming part of customary international law.[31] The UDHR has as its core the belief that human rights are informed by the norms of *equality* and *universality*. The former rests on the belief that human rights are normatively those of all people, and all people are normatively regarded as being of equal worth and dignity; and the latter rests on the assertion of a "common standard of achievement for all people's and all nations". The UDHR recognises cultural diversity, but it does not conceive of this as being in conflict with basic human rights norms. The articles of the UDHR that relate specifically to cultural rights are articles 1 and 2, which establish the equal worth of all people in terms of their rights and human dignity, article 18 which asserts the freedom of religion, and article 27 which establishes cultural rights, and makes specific reference to the arts and sciences.

South Africa is also a party to the two 1966 International Covenants on Civil and Political Rights (ICCPR), and Economic Social and Cultural Rights (ICESCR). It is interesting to note that the former is more relevant to the communal rights under consideration here in two ways. First, it contains a greater number of relevant provisions (despite what their names might indicate) and second, while both have been signed by South Africa, only the ICCPR has been formally ratified, which makes it a legally binding part of South African law. The ICCPR recognises the right of (national) self-determination (article 1.1), as well as equal worth (article 2.1). Article 18 guarantees the freedom of religion, while article 22 guarantees freedom of association. Article 27 is particularly worth noting as it guarantees the *communal* rights of ethnic, religious and linguistic communities. While South Africa has not ratified the ICESCR, article 15 of this covenant reiterates article 27 of the UDHR which recognises cultural rights.

It is curious that these rights receive so little attention in this particular instrument. As Symonides notes, while they are "enumerated together with economic and social rights, they receive much less attention and quite often are completely forgotten".[32] This relates back to the point about these rights being regarded as the 'poor relatives' of the human rights family, but it also highlights South Africa's notable commitment to these as a specific category of human rights, in the ways described in the section of this paper on 'The recognition of cultural, linguistic and religious rights in South Africa'.

As far as regional human rights instruments are concerned, South Africa is bound by the African 'Banjul' Charter on Human and People's Rights of 1985. The Banjul Charter retains all the standard basic human rights clauses, but it also has a distinctly 'liberationist' flavour in that it emphasises the struggle against colonialism and apartheid in its preamble. It is also mindful of the more collective conception of rights that is often associated with non-Western cultural traditions in that it includes the rights of 'peoples' (as collectives) as well as the rights of 'humans' (as individuals).

Article 17 formulates the right of every individual to freely take part in the cultural life of his/her community. Article 18 of the Banjul Charter also emphasises the family as "the natural unit and basis of society", as the family is regarded as "the custodian of morals and traditional values recognised by the community" (sections 1 and 2). However, article 18(3) goes on to indicate that the state also has a duty to ensure that discrimination against women is eliminated, and to protect their rights.

The Banjul Charter also differs from other human rights instruments in that it contains a chapter on the duties of the individual, including a duty of tolerance in article 28 – this is "the duty of individuals to preserve and strengthen positive African cultural values in their relations with other members of the society, in the spirit of tolerance, dialogue and consultation".[33] The Charter also includes particular duties towards the family, and in the case of children, to respect their parents. There is thus implicit within the Banjul Charter the idea of the retention of 'traditional' norms, including some hierarchical ones.

Also of significance, although not binding under international law as a ratified treaty or convention, is the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992. The declaration was "[i]nspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities" and considers that "the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of states in which they live".

Article 1 of the declaration creates the responsibility on the part of the state to "protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and [to] encourage conditions for the promotion of that identity" and to "adopt appropriate legislative and other measures to achieve these ends". Other articles worth noting for the purposes of this paper are article 4(4), which creates the duty on the part of the state to "take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory"; and article 6, which stipulates that "states should cooperate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence".

Unesco has adopted "a number of impressive standard-setting instruments concerning cultural rights" as "by its constitution, [it] is obliged to give fresh impetus to the spread of culture".[34] It is not possible to outline here the more than 30 instruments in this regard that have been developed in the past 50 years, however, it is important to note that these

> [c]onventions, declarations, and recommendations adopted by UNESCO protect and develop the rights to education, to cultural identity, to information, to participation in cultural life, to creativity, to benefits from scientific progress, to the protection of material and moral interests of authors, and to international cultural cooperation.[35]

Most importantly for the purposes of this paper, it is necessary to note the Universal

Declaration on Cultural Diversity of 2001. This was developed in the aftermath of 11 September 2001, as a response to the potentially divisive nature of cultural, religious and linguistic diversity, to propose a model of "intercultural dialogue [as] the best guarantee for peace". This idea is explored as a means to further the rights of cultural, religious and linguistic communities in South Africa from the perspective of promoting a broader national culture of tolerance and understanding through dialogue in the section of the paper on 'Celebrating diversity: Nation building and development'.

International Law that is aimed specifically at protecting the rights of potentially vulnerable categories or people, such as women, children, and indigenous communities, is also worth noting. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979 was intended to overcome the ongoing "extensive discrimination that continue[d] to exist",[36] in spite of the numerous human rights instruments that preceded it that held the equality of women to be an implicit facet of human rights.

Article 3 asserts women's normative equality in all areas of life, including culture. Article 5 places on state parties the responsibility of taking measures to "modify social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". Article 16 places a duty on the state to act against discrimination against women within marriage and the family, and to ensure that men and women have equal rights within marriage and the family.

South Africa signed and ratified CEDAW without reservations in 1995, and since then efforts have been made to equalise the position of women in law. However, the role of the family – and the customary inequalities therein – remain a complicated matter, and one which has not been entirely resolved. As Tomasevski notes:

> [CEDAW], as much as any other human rights treaty, lays down human rights norms which are necessarily worded in abstract terms. Human rights treaties are negotiated during protracted and sometimes conflictual intergovernmental meetings. In the case of the Women's Convention, 'the drafters had to face the difficult task of preparing a text applicable to societies of different cultural characteristics and traditions. The ways in which discrimination against women manifested itself varied from one culture another. The Convention therefore represents a constructive compromise.'[37]

South Africa reported for the first time to CEDAW in 1998. The report noted the establishment of the Office on the Empowerment of Women in the Office of the President, the Office on the Status of Women located in the Office of the Deputy President and the Commission for Gender Equality, all of which are aimed at gender mainstreaming in South Africa and giving force to the equality of women. However, South Africa's representative also noted "that continuing deep entrenchment of patriarchy and customary, cultural and religious practices contributed to widespread discrimination against women in South Africa".[38] The problem of conflicts of rights, in particular insofar as these are constituted by a conflict between the rights of individuals and communities, is beyond the scope of this

paper, but it is important to note here that very often these conflicts of rights are generated by different conceptions of gender, and different views about women's equality. This is inevitably a matter of grave concern in the South African context.

Also worth noting here is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003. Article 5 commits state parties to eliminating "harmful practices" against women, and article 17 asserts the right to a positive cultural context, which also creates the duty on the part of the state to promote women's participation in this regard.

As far as children's rights are concerned, the most important international law stems from the United Nations Convention on the Rights of the Child (CRC) of 1989. South Africa signed and ratified this convention in 1995, and so it is also binding in South African law. As far as communal rights of culture, language and religion are concerned, the CRC establishes the principle of non-discrimination in article 2, and article 14 recognises freedom of religion. Article 24(3) creates the duty on the part of state parties to abolish traditional practices that may be harmful to the health of the child. Article 30 establishes the communal rights of culture, language and religion in respect of children. Article 31 relates to more specific rights in this regard, as it states that:

> states parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts [and] states parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Another increasingly acknowledged area of communal rights is that of indigenous people or 'first' peoples. The most important instrument in this regard is the International Labour Organisation (ILO) Convention (No. 169) Concerning Indigenous and Tribal People's in Independent Countries, which was adopted in 1989. The convention revises ILO Convention 107 of 1957, and applies to

> tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws and regulations, and to those peoples of independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographic region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.[39]

The convention is based on the basic tenets of *respect* for the identity of indigenous peoples, and their *participation* in decision making about their rights and well being, as well

as in the elective and administrative bodies of their country. The state therefore has duties in this regard, as well as the duty to consult with indigenous peoples on legislative or administrative measures that may affect them. Indigenous peoples also have the right to determine their own developmental priorities and have control over their own economic, social and cultural development. The convention is especially concerned with the land rights of indigenous peoples, and their access to land that is of cultural significance to them. The convention also provides for the right of equal educational access for indigenous peoples, including their right to be taught in, and use, their own language where possible. Similarly with health care, indigenous peoples have rights of access, but also the right to have their own traditional methods of healing recognised, preserved and developed.

Importantly for the purposes of this paper, the convention obliges states to "promote […] respect, tolerance and understanding of indigenous peoples, through educational measures providing an accurate and non-biased depiction of the past and values of these people". This has particular resonance in the South African context, given that the history of the Khoe and San communities, especially insofar as their identity under apartheid is concerned, is a highly contested matter. South Africa is not yet a party to this convention[40] but given its importance in the South African context, this may constitute an area of advocacy as the cultural and linguistic identities of these communities have not received the attention they deserve, both during the apartheid era and in the post-apartheid era since 1994.

APPENDIX 2: THE COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL RELIGIOUS AND LINGUISTIC COMMUNITIES ACT, 2002

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act was passed on 30 July 2002 in order to give effect to the sections of the Constitution outlined in 'The recognition of cultural, linguistic and religious rights in South Africa' section of the paper. In particular, the act's purpose is to provide for the composition of the commission, and to provide for the convening of a National Consultative Conference. The act, in recognising the diverse nature of South Africa and the "divisions of the past," also states that "the Commission, in fulfilling its constitutional task should play a key role in assisting with the building of a truly united South African nation bound by a common loyalty to our country and all our people".

More specifically, some of the duties of the commission, laid down in section 4, are to:

- promote respect for and protect the rights of cultural, religious and linguistic communities;

- promoting and develop peace, friendship, humanity, tolerance and national unity among and within these communities on a free and equal basis; and

- fostering mutual respect among such communities.

The term of the commission is five years, and in terms of section 24 of the act, the commission is obliged to convene two National Consultative Conferences during each term, the first one within 12 months of a new term. The current commission was appointed at the end of 2003, and the first of these conferences took place from 29 November–3 December 2004.

Yunus Carrim remarks that the commission "is the outcome of two imperatives". First, it was a response to the need to include the minority white, right wing in a sustainable transition; and second, it is necessary to reconcile the diversity of "ethnic and racial identities in South Africa" through a process of nation building.[41] The commission is therefore, at its inception, charged with developing strategies to reconcile and encourage participation in a broader debate about national identity, citizenship, and the scope and limits of toleration. This is an onerous responsibility, especially in the light of the fact that it is to be done in a way that accords equal recognition to the rights of all communities with distinct cultural, linguistic or religious identities.

But as Carrim goes on to note, the commission does not bear this responsibility alone. The commission's work is supported by, and presumably must be in support of, the Human Rights Commission and the Commission for Gender Equality, as these bodies have overlapping jurisdiction on questions of human rights. This is in keeping with the constitutionally defined system of cooperative government in South Africa, but also the greater imperative of "the expression of diversity as part of national unity, which is at the heart of the constitution".[42] Carrim points out that the Commission will also have to establish and clarify its relationship with the National House of Traditional Leaders, insofar as this body "also deals with cultural questions and is made up of different language groups"; and the Pan South African Language Board.[43]

The other supporting legislation in South Africa relating to these communal identities cannot be discussed in any detail here, but it is also aimed at reinforcing the rights of distinct communities. These include the Pan South African Language Board Act, 1995 and the Traditional Leadership and Governance Framework Act, 2003.

NOTES

1 This paper draws in part on a concept paper 'Awards to Recognise those Contributing to the Rights of Cultural, Religious and Linguistic Communities' commissioned from the author by the Commission for the Rights of Cultural, Religious and Linguistic Communities in 2004.
2 Available at <http://www.anc.org.za/ancdocs/ngcouncils/2005/nationalquestion.html>.
3 In most of the literature and the international instruments that deal with the topic of these rights, 'culture' is used as an umbrella term covering communal or group rights of ethnicity, religion and language. (See Symonides J, Cultural rights, in Symonides J (ed), *Human Rights: Concept and Standards*. Aldershot: UNESCO/Ashgate, 2000). However, there appears to be no discernable material difference between the use of this as an umbrella term, or as an interchangeable one with ethnicity, as culture is broad enough to encompass both meanings. As far as possible, the convention of using culture as an umbrella term will be followed here, with 'ethnicity', 'religion' and 'language' being used to denote more specific rights.
4 Symonides, op cit, p 175.
5 Steiner HJ & Alston P (eds), *International Human Rights in Context*. Oxford: Oxford University Press, 2000, p 355.

6 Third generation rights are therefore consonant with ideas articulated by the Non-Aligned Movement (NAM) that asserted a 'Third World' of countries in addition to those that comprised the rival 'First' (NATO) and 'Second' (Communist) World blocs of countries during the Cold War. The term 'Third World' was coined by French economist Alfred Sauvy in an article in the French magazine *The Observer* of 14 August 1952. The idea of the Third, Non-Aligned World was articulated at the Bandung Conference in Indonesia in 1955, and was followed by the first meeting of the NAM in Belgrade in 1961. See <http://en.wikipedia.org> and <http://newsvote.bbc.co.uk>.

7 Barry B, *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Polity Press, 2001, p 78.

8 Symonides, op cit, p 176.

9 Indeed Leslie Green points out that "[m]any cultures incorporate as part of their fabric disputes about what their ways really are" (Green L, Internal minorities and their rights, in Kymlicka W (ed), *The Rights of Minority Cultures*. Oxford: Oxford University Press, 1995, p 270).

10 This means that this right is limited by section 9, the equality clause.

11 This term is that of Ronald Dworkin, drawing an analogy with a deck of cards, where some suits have greater weight than others, which makes them "trumps." See Dworkin R, Rights as trumps, in Waldron J (ed), *Theories of Rights*. Oxford: Oxford University Press, 1984.

12 Raz cited in Barry, op cit, p 79.

13 Carrim Y, Advancing nation-building: The Cultural Rights Commission, in Maharaj G (ed), *Between Unity and Diversity: Essays on Nation-Building in Post-Apartheid South Africa*. Cape Town: David Philip Publishers, 1999, p 259.

14 Barry, op cit, p 79.

15 An example of this approach in practice is the recent decision by the French government to ban all religious symbols in state schools including the wearing of head scarves by female Muslim learners.

16 It is of course much easier for the state to waive responsibility for the internal affairs of communities (one extreme of the scale), or to insist on total uniformity without regard to the differences between communities (the other end of the scale).

17 The primary exponent of this approach is German political theorist, Jürgen Habermas, but his ideas – and the debates that they have stirred up – have generated a huge body of literature on the subject over the past decade.

18 Baumeister A, Habermas: Discourse and cultural diversity, *Political Studies* 51, 2003, p 742.

19 Barry, op cit.

20 Ibid, p 79.

21 A notion of ethnic nationality is what was mobilised with such tragic results in Rwanda and the former Yugoslavia.

22 Barry, op cit, p 81.

23 Ibid, p 82. Barry makes this comment with reference to Irish- and Italian-Americans.

24 The Traditional Leadership and Governance Framework Act, 2003 and the Communal Land Rights Act, 2004.

25 See Bentley K, Can there be any universal children's rights?, *The International Journal of Human Rights* 9(1) March 2005.

26 The spelling of this word follows that used by Crawhall N, San and Khoe rights, identity and language survival in South Africa, in Maharaj G (ed), op cit.

27 Ibid, p 34.

28 Ibid, p 43.

29 In *Khosa and others v Minister of Social Development and others CCT13/03*, the equal entitlement of permanent residents to receive social grants was upheld; while in *Lawyers for Human Rights and another v Minister of Home Affairs and another CCT18/03*, the detention of illegal immigrants at ports of entry in terms of the Immgration Act was held to be in contravention of their human rights to freedom and security of the person, and the rights of detained persons.

30 <http://www.anc.org.za/ancdocs/ngcouncils/2005/nationalquestion.html>

31 This means that a state does not have to be a party to an instrument for it to be deemed to be binding.

32 Symonides, op cit, p 175.

33 Ibid, p 184.

34 Ibid.

35 Ibid, p 185.

36 See the preamble to Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW).

37 Tomasevski K, Women's rights, in Symonides J (ed), *Human Rights: Concept and Standards.* Aldershot: UNESCO/Ashgate, 2000, p 234, citing UN Doc. RS/CEDAW/1992/WP.1 24 March 1992.

38 See the Report of the Committee on the Elimination of Discrimination Against Women, Nineteenth Session, p 59.

39 Introduction to International Labour Organisation (ILO) Convention (No. 169) Concerning Indigenous and Tribal People's in Independent Countries, 1989.

40 Only 14 countries – Argentina, Bolivia, Columbia, Costa Rica, Denmark, Ecuador, Fiji, Guatamala, Honduras, Mexico, Netherlands, Norway, Paraguay and Peru – are at present parties to this convention, but the increasing recognition of its importance means that its potential as an international human rights instrument is yet to be developed.

41 Carrim, op cit, p 258.

42 Ibid, pp 262-263.

43 Ibid, p 262.

Political culture and the challenge of elections

FREDERIK VAN ZYL SLABBERT

INTRODUCTION

Political culture refers to the norms, values, standards and practices that have to do with the competition for abuse and use of power. In order to have an idea of what competition for power is about, it is useful to take the concept of stability and how stability is maintained in a society.

Stability can be placed on a continuum from repression to consent, and if stability is dependent exclusively on repression, one has a repressive political culture. One need only look at the police, the army and the rights and freedoms of the average citizen in such a culture to ascertain the level of oppression. At the other end of the continuum is consent or consensus whereby there is a buy-in into the political system from people, organisations, movements, diverse groups and civil society. There is democratic competition for control, use and/or abuse of political power.

LIBERAL DEMOCRACY

In terms of the question of political culture and elections, before the transition in South Africa, the dominant political culture was one of white minority domination using a constituency system, versus what Pallo Jordan gently called 'liberatory intolerance'. In other words, society was polarised between revolt and repression, between the struggle for liberation and the drive for domination.

When, at the time, I began talking to the African National Congress (ANC) in exile and to some ANC members in 'incile' about democracy, elections and culture, ANC members had a look of sadness on their faces, and would say that we must first worry about victory, about liberation and the freedom of the people.

As it turns out, there was no victory: there was no defeat of the enemy, there was no victorious and vanquished group after a successful military struggle. There was, instead, a negotiated settlement. And part of the difficulty we face today is precisely that the negotiated settlement left the society – financial, commercial, industrial organisations, etc. – largely intact. But part of the negotiated settlement was also the belief that once a true

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democracy was established, the majority would win elections and could then impose its will on the minority. One problem with this, however, is that the constitution which was finally negotiated was for a liberal democracy.

Based on my own exposure to the ANC, the movement did not want a liberal democracy for the country. This is because liberal democracy is not about majoritarianism; its distinctive feature, rather, is constraint on the abuse of power.

Chapter 9 of our Constitution deals with, for example, the Constitutional Court, the Human Rights Commission, the Traditional Review Service Commission – all institutions within the context of a bill of rights that constrain the freedom of decision making of the majority. It is precisely when the majority become irritated with those constraints that we can anticipate a shift in the political culture.

Work has been done on Latin American transitions,[1] and the one thing that scholars make clear is that the critical moment in an emerging democracy is when the party that won the founding election is confronted with defeat at the subsequent election, or when there is political succession. Under such circumstances, the temptation to change the rules of the game becomes almost irresistible. We have seen politicians in our region succumb to such temptation. I do not think that South Africa is quite at that point, but the whole Mbeki succession saga is part of this dilemma. Against this background, let us look at elections within the context of a liberal democracy.

ELECTIONS AND LIBERAL DEMOCRACY

I was chairman of a Cabinet task team appointed in 2002 by Minister Mangosuthu Buthelezi to investigate and explore alternative electoral systems to that provisionally adopted in 1996 with the certification of the election process.

As we progressed consulting with various parties on the possible options, it was made quite clear to the Electoral Task Team (ETT) that the government of the day had no intention of changing the electoral system. When I realised this, I cut short the proceedings, gave half the money back to our funders and presented a report that encapsulated the proceedings of a one-day conference on electoral models for South Africa,[2] hosted by the Konrad-Adenauer-Stiftung (KAS) in September 2002. The KAS Seminar Report and recommendations are still available, as are the minority and majority reports.

The minority report simply confirmed the status quo, which is a closed list proportional representation (PR) system. Under the closed-list PR electoral model, local committees or branches of the various political parties put forward possible candidates, but it is the party bosses who determine which candidates will get in the lists (and in what position), and it is on that basis that members of Parliament (MPs) are chosen.

Such a system is not altogether bad: it deals with issues of illiteracy, and it is equal and inclusive. The problem, however, is that since there are no constituencies there is no way of getting in touch with voters and there is therefore no accountability.

The ETT's majority report dealt with the problem of accountability, or rather lack of it, under the current electoral system. It recommends that South Africa adopt a multiple-member proportional (MMP) system, but that there must be a constituency base.

Although this system sounds complex, it means in essence that the country is divided into 70 constituencies and that each constituency cannot have less than three or more than seven representatives. Those representatives must, however, be recommended from that constituency; they come on to a list, but they are accountable to a particular constituency.

One can have a closed list system (i.e., local party bosses still determine who get on to the list) initially. But at least the MMP system is closer to voters and it could eventually lead to a more open (i.e., every person is involved in selecting the candidate) MMP system.

I was, however, told by a very reliable source that only one or two Cabinet members, with the exception of Minister Buthelezi, actually read the report. To add insult to injury, when we started off the ETT process Professor Glenda Fick of the Wits Law Department went through the certification process of the 1996 Constitution with a fine-tooth comb. When she got to the clause dealing with floor crossing, a long-reasoned argument by Justice Chaskalson explained very clearly why floor crossing was not only inappropriate in the closed list proportional system, but immoral.

However, with the split of the New National Party from the Democratic Alliance in 2004, the Western Cape was to the ANC like a ripe plum ready to be taken, as was KwaZulu-Natal. Suddenly those who governed discovered the extraordinary virtue of floor crossing; however, they were challenged in the Constitutional Court by Bantu Holomisa. Holomisa was certain that this was a done deal; that floor crossing would be dead in the water. But the Constitutional Court deliberated for one day and then announced that there is nothing unconstitutional about floor crossing.

ELECTORAL OBSCENITY

Consequently, we now have what I call an electoral obscenity – proportional representation on a closed-list system with floor crossing. One can no longer be sure that the party one voted for will stay in Parliament as voted for. In addition, individuals within that party can, according to their own conscience – and it will always be a matter of conscience – decide to switch allegiance to another party.

Historically speaking, floor crossing has generally followed the gravy train, where the jobs and opportunities are. There may of course be rare exceptions where an MP believes, as a matter of supreme principle, that s/he has no other option but to cross the floor.

In the old days, however, even in the old apartheid days, if an MP crossed the floor there was an outcry. The MP had to resign and a by-election was held in that MP's constituency, so that s/he could go back to Parliament (or not, as the case may be) as a newly elected representative of another party – but always with the voters' endorsement. So although floor crossing is not new, its present application in South Africa makes voters feel alienated and powerless; they cannot influence what is happening.

LOCAL LEVEL

There is, however, one level where the electoral system in South Africa is different, and that is at municipal local government level where there is a combination of the PR system

and the ward system. It is going to be very interesting to see whether this discontent about, among others, poor service delivery that everybody is talking about will be reflected in the upcoming local government elections.

THE FUTURE – PARLIAMENTARY RITUAL?

Given the issues that I have raised, what is the future of government and opposition in South Africa? Who will manage the whole issue of the Tripartite Alliance – who will be in charge? Can the South African Communist Party (SACP) and the Congress of South African Trade Unions (Cosatu) afford to break away and form a workers' party?

I do not think the Alliance will split. I think most communists will hang in there, but the questions will be more around who manages the Alliance from hereon and dealing with the deep-seated ideological issues.

How do you deal with the fact that a movement which is deeply committed to democratic centralism and a national democratic evolution now has to adjust to the realities of a liberal democracy, a market economy and globalisation? Thabo Mbeki has to try and deal with it, but his Alliance partners want delivery on promises made; and in the meantime government and opposition in Parliament will go through a 'parliamentary ritual', as we are seeing now.

BROADER CONTEXT

In the broader African context, through the Goree´ Institute in Dakar, Senegal I am involved in a project to try and promote an 'African electoral commission', which is aimed at finding commonality on how to run free and fair elections in the subregion. We had a very successful conference in January that was attend by some 16 African countries, and I was surprised at the drive that came from the bottom up, from non-governmental organisations and the like who began to share principles for fair and free elections. There was a felt need for creating such an electoral commission to try and get some kind of consensus on how elections can be fair and free in the African context.

The one dilemma I see, as Wole Soyinka put it so neatly, is that the African Union can be seen as a collection of tyrants, dictators and peace makers and they are not going to reach consensus on what free and fair elections are all about.

NOTES

1   See for example, O'Donnell G & Schmitter PC, *Transitions from Authoritarian Rule. Tentative Conclusions about Uncertain Democracies*. Baltimore and London: The Johns Hopkins University Press, 1986.
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This paper was withdrawn and does not form part of this publication.

The Tripartite Alliance and the challenge of social movements

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INTRODUCTION

The year: 2005. South Africa has been beset with on-going tensions within the house of the 'holy trinity'– the African National Congress (ANC)/South African Communist Party (SACP)/Congress of South African Trade Unions (Cosatu) Alliance. The lightning rod for these tensions is President Mbeki's decision to fire Jacob Zuma as deputy president of the country. The firing has brought to the fore problems that have been simmering below the surface for some time. At the heart of the 'troubles' is the feeling by the SACP and Cosatu that they have been increasingly marginalised by the Mbeki Presidency. These feelings have been exacerbated as Mbeki has sought to build an imperial presidency that has visions of Bonarpatism, all the time emasculating debate and rewarding sycophancy.

Trespassed into this struggle is the rise of the new social movements, especially what I would call community movements. These movements represent a challenge to this authoritarianism, de-politicisation and technisation of political issues by Mbekism; and simultaneously a challenge to the 'holy trinity' of the Tripartite Alliance, which sees itself as the repository of all knowledge and exudes a mentality that all debate is to be contained within its self-imposed walls. In fact one of the reasons why Cosatu and the SACP have assumed a more critical posture of the post-apartheid transition is that their control of the 'left flank' has been eroded by the rise of community movements.

2005. For the first time since 1994, uncertainty is in the air, debate is everywhere and the possibility of a future beyond the confines of neo-liberalism beckons.

THE 'ALL-KNOWING' FATHER

From the time of his gaudy inauguration as president, Thabo Mbeki has increasingly assumed more and more executive power. The President's Office now employs some 400 people. Increasingly, government and social policy formulation happen in the executive. Without any constituency-based system, Parliament is further emasculated. Provincial premiers are also appointed from the Union Buildings.

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The ANC is in an alliance with its old 'liberation partners', Cosatu and the SACP. Cosatu brings to the table the notion that it is the saviour of 'the revolution' because it is the representative of the working class – the most exploited layer of South African society. It also assumes the status of the redeemer because the organisation carried the burden of internal resistance when repression and bannings forced the United Democratic Front and allied groupings to be on the defensive.

And then there is the third part of the trinity, the SACP, the Holy Ghost. It fights no election, its senior members represent the interests of the ANC in Parliament, and it is scathing of anything that arises to the left of the party. As the vanguard party it assumes the role of the Sanctifier – the one who makes holy.

 The all knowing father operates as a traditional patriarch who lays out policy, and the rest of the household are there to implement pronouncements from on high. A document titled *The State and Social Transformation*, written by Mbeki or his close associates in 1996, laid out how the relationship between civil society and the state is to be viewed:

> […] the issue turns on the combination of the expertise and professionalism concentrated in the democratic state and the capacity for popular mobilisation which resides within the trade unions and the genuinely representative non-governmental popular organisations.[1]

What is clearly implied in this is "to draw a clear distinction between the government or party experts who 'know' and the mass of the people who are supposed to apply this knowledge. He leaves no room for popular *political* participation outside of the state or the ruling class".[2]

John Stuart Mill – writing (with disgust) of the way the relationship between the ruling class and the poor was envisaged in the early days of modern capitalism in England – elaborated: "The lot of the poor, in all things which affect them collectively, should be regulated for them, not by them […]. It is the duty for the higher classes to think for them, and to take responsibility for their lot […]. The rich should be *in loco parentis* to the poor, guiding and restraining them like children".[3] This is the approach of Mbeki.

In ANC South Africa the state and party blurs into one, and the president becomes the 'keeper of the national interest'. Those who challenge the wisdom of the state or the president, challenge the people. Civil society must not simply be demobilised, it must become a conduit for decisions of the party in order to counteract those opposed to change. The class character of this approach:

> is reflected most clearly in the relegation of the political and civil life of the people to being flag-waving supporters for those in power who speak of the 'people'[…] the masses are depoliticised, they are made to be 'unpolitical', only to be brought back at scripted events to legitimate the political élite. The party becomes administrative, encouraging an administrative mentality rather than a humanist programme […]. And in practice, when the civil rights come in conflict with the political life of the country, they are trumped. The loyalty of the opposition is decided in advance (for

in the end loyalty to the party trumps opposition) and mass action becomes, by
definition, disloyalty to the 'nation', the 'revolution', and so forth. And as the
administration sees threats everywhere, the by-word becomes, those who are not for
us are against us.[4]

The party presents itself as the only legitimate agent of change. It "expels the people from
history" and, through nationalist rhetoric, claims that the party incarnates the will of the
people and that, therefore, to oppose it is to oppose the nation. So "these men who have
sung the praises of their race […] proclaim that the vocation of their people is to obey, to
go on obeying and to be obedient to the end of time".[5]

   The ANC has been able to undermine progressively Cosatu's influence on the
transition in the following ways:

• Corporatist pacts have impacted on Cosatu's ability to take direct mass action.

• Increasing job losses have forced Cosatu into defensive battles; battles exacerbated by
  the notion of 'international competitiveness' becoming 'common sense'.

• More and more union officials have joined capital and the state as functionaries. This
  'drain' has been reinforced by a discourse that there is no alternative to the
  'normalising' of capitalism in South Africa.

• The increasing decline in waged employment, the rise of temporary, casual workers
  who are paid poverty wages and are not unionised, has challenged the 'representivity'
  of organised labour as the lynchpin of advancing the interests of the poor.
  Unemployment spirals.

Sometimes Cosatu is the most revealing about its marginalisation:

> It is like a broken CD that just keeps repeating itself. The Alliance, including
> COSATU, is generally sidelined from the process of policy formulation and
> transformation for most of the ten years of governance. Then, six months before
> elections, without even a Summit to formally endorse the elections strategy of the
> Manifesto, we get drawn into election taskteams that work efficiently to mobilise the
> base and rally the troops. In the victory celebrations, the public hugging follows. Yet
> a few months down the line, the reality of being sidelined returns, leading to public
> disagreements over key policy directions.[6]

Unions have largely remained within the confines of collective agreements. Where
workers have tried to challenge agreements that push back the gains made in the 1980s –
with bosses citing international competitiveness as the rationale, for example, at
Volkswagen – their own union has sought to impose more onerous working conditions.
Hal Draper's words here are prescient:

> It is the pattern of all countries that, as soon as the bourgeoisie reconciles itself to the fact that trade unionism is here to stay, it ceases to denounce the institution as a subversive evil that has to be rooted out with fire and sword to defend God, country and motherhood, and turns instead to the next line of defence: domesticating the unions, housebreaking them, and fitting them into the national family as one of the tame cats.[7]

All this is done in an ideological environment emanating from the government, which holds that future prosperity will derive from South Africa's position on the world market, and future prosperity will emerge from South Africa's global competitiveness. In the interim, intensification of work and low wages must be endured for the national interest. For those who resist, the state's form of engagement has increasingly become overtly repressive.

To return to the notion of Mbekism – the ANC, as the 2004 election results show, remains the party of liberation in the minds of the masses. But Mbeki, by his elevation above the party and Parliament, and his attempt to build an 'imperial presidency', opens up vulnerability, because sovereign power "requires the consent of the ruled. In addition to force, the sovereign power must exert hegemony over its subjects, generating in them not only fear but also reverence, dedication and obedience through a form of power that is soft and supple. The sovereign power must constantly be able to negotiate the relationship with the ruled".[8]

Mbeki has proved increasingly incapable of this. His stance on AIDS, the prevarication on Zimbabwe, the inability to reach targets set out in the Growth, Employment and Redistribution (GEAR) programme, the large-scale rejection of the New Partnership for Africa's Development by African intellectuals and civil society, the use of state power to demonise would-be challengers for his crown, have all held Mbeki up to scorn and ridicule. Debate – such an important part of the internal 'struggle heritage' – has evaporated, with Mandela's words on Mbeki's assumption of the presidency of the ANC in 1997 prescient: "He may use his powerful position to settle scores with his detractors, to marginalise or get rid of them and surround himself with yes men and women."[9] In large part due to this kind of leadership, the ANC for the first time faces a 'succession struggle' and factionalism at provincial level festers.

THE LOCAL STATE AS COLLECTOR OF TITHES

The relentless concretisation of the precepts of the ANC's 'market democracy' has resulted in

> a fundamental shift away from the 'statist' service delivery models of the past where the state subsidised and delivered municipal services (in an overtly racially biased manner), towards a 'neo-liberal' service delivery model where the private sector (and private sector principles) dominate. In the latter model, the state acts as a service 'ensurer' rather than a service 'provider' and municipal services are 'run more like a business', with financial cost recovery becoming the most effective measure of performance.[10]

These developments saw the costs of basic services escalate, which, in turn, caused increasing cost-recovery mechanisms such as disconnections of water and electricity to occupy the attention and energy of the local state, as opposed to delivery in the first instance.

Some councils, like the eThekwini Unicity (the municipal government of the greater Durban area), had proposed moving people out of the already deteriorating apartheid ghettos that served as rental accommodation for some of the poorest of the city's residents, and into a central area of 'poorhouses'. It is presumed that once relocated, their water and electricity consumption could be monitored, while the houses that they occupied for over three decades could then be upgraded and sold at a profit.

In Cape Town, for example, residents of Mandela Park in Khayelitsha obtained housing mortgages from banks. An organisation called Servcon was set up jointly by the banks and government to educate the mortgage holders on how to budget so they could meet the required payments. Escalating unemployment, and the fact that the homes were structurally defective – forcing residents to put their own resources into repairing faulty wiring or cracks in walls – resulted in many residents defaulting. The banks, with the support of both Servcon and the government, began a process of 'right-sizing', in which defaulters were forcibly moved to accommodation that was accurately described by the Mandela Park community as 'dog-kennels'.[11]

Commodification and the cost recovery prerequisites of neo-liberalism were creating a new kind of apartheid that involves, in David Harvey's evocative phrase, 'accumulation through dispossession'. As Harvey notes:

> [T]he World Bank treated post-apartheid South Africa as a showcase for the greater efficiencies that could be achieved through privatisation and liberalisation of the market. It promoted, for example, either the privatisation of water or 'total cost recovery' by municipally owned utilities. Consumers paid for the water they used rather than receiving it as a free good. With higher revenues, the utilities would, the theory went, earn profits and extend services. However, unable to afford the charges, more and more people were cut out of the service, and with less revenue the companies raised rates, making water even less affordable to low income populations.[12]

In spite of these developments, most close observers of the South African transition could not envisage any real challenge to the ANC-led transition outside of corporatist structures.[13] By the beginning of 2000, however, the neo-liberal transition had squeezed and spewed out the poor, but was also starting to mobilise them. The 'poors' – as they came to be known in the South African vernacular – had opposed the water and electricity cut-offs and evictions, the consequence of the privatisation of public services, but had done this without any grand ideology. They were actors on a local stage, squaring off against home-grown villains like Operation *Masakhane* (Let Us Build), which supposedly aims to normalise local governance and the provision of local services by convincing people with no money that they must pay for these services.

As the ANC's assault on the poor resulted in more and more evictions, disconnections and retrenchments, a variety of new community movements began to arise. Hesitantly at first, these movements surfaced to challenge the water and electricity cut-offs, the evictions, and the lack of land redistribution. These movements, based in certain communities and evincing particular, mainly defensive, demands, were not merely a natural result of poverty or marginality but a direct response to state policy. What had started to develop in a series of mobilisations was reminiscent of what Manuel Castells, writing on Latin America, came to call "militant metropolitan dwellers".[14] What distinguished these community movements from political parties, pressure groups, non-governmental organisations and the trade unions was mass mobilisation as the prime source of social sanction.

The rise of community movements saw the emergence of the family as a fighting unit, unlike union membership, which is based on the individual worker. In fact, many of those involved in community movements accept the conditions of the sweatshops and low wages without much of a fight, and attempt to 'top up' or supplement their wages by not paying for services. They organise militantly around this issue, and the state is directly brought into the conflict. They act much like Hobsbawm's 'city mob' which he describes as "the movement of all classes of the urban poor for the achievement of economic or political changes by direct action – that is by riot or rebellion".[15]

These movements concentrate on fighting in their own locality and are often animated by the immediacy of the situation. When the challenge to water cut-offs or evictions does come, it is fought with intensity and long-standing animosities are often forgotten as the struggle intensifies.

The poor are not passive victims of social policy, however. The metropolitan militant who does not pay for water or electricity, who squats and occupies and tries her or his luck, often succeeds in snatching income from the state and protects this income in collective struggle when the state or parastatals attempt to reclaim it.

In South Africa, it is the local state that has become the focus of attacks. It is the entity that advances the water and electricity disconnections, evictions and the loss of jobs through privatisation. A majority of the councillors are elected through wards, making them both accessible to communities and open to direct attack.

The state in the hands of the ANC remains committed to strengthening and extending the market. Self-policing mechanisms like pre-paid meters are extending their reach. The self-disciplinary powers of pre-paid water and electricity meters tied into personal debt and increasingly precarious, casualised work or long periods of unemployment is a powerful instrument of social control. The local state encourages individualised responses by tempting people to 'come in and make individual agreements' to service mounting arrears. The commodification of basic services, the selling of flats and the installation of body corporates attempt to distinguish between the strong and able and the weak and marginalised. The politics of market self-regulation builds on the very poverty and debt that apartheid bequeathed.

The market attack has hurt in the first instance casually employed and unemployed men and women. Community movements offer a collective response – stopping evictions, re-connecting basic services, spreading 'the word' to areas unorganised, broadening the

reach of de-commodified zones, making 'illegality' common sense. It is here that the brutality of the ANC's neo-liberal offensive is experienced and it is here that it is fought. Many members of community movements accept the harsh conditions of work, with their poverty wages, so that they can have some cash for education, clothing and food. But they fight militantly to avoid paying for basic services, reconnecting illegally, burning the water meters, fighting hand-to-hand battles to prevent evictions. This does not mean that these movements have hegemony over areas. Far from it. What they have done is contested these spaces and they should be seen as "ambiguous spaces where the marginalised are (momentarily) located at the centre of power, where certain power relations are confronted, while others are (re)inscribed".[16]

It is significant that the most sustained and successful overt resistance to the neo-liberal offensive has been 'sparked' at the level of the community in Phiri, Orange Farm, Mandela Park, Chatsworth, Diepsloot and Clare Estate.

Cosatu has called the community movements a "motley crew" acting in a "side-show".[17] This is true; but it is their strength rather than a weakness. And unlike the leviathan's of national labour bureaucracies, they move 'like butterflies and sting like bees'. And when under attack by municipalities trying to evict or cut water, they have shown themselves to be tough, brave and composed of thousands. But these same thousands are grannies and children, single mothers and the unemployed, priests and sometimes even gangsters who disappear into their normal lives after the crisis is over, leaving a relatively small core of two dozen or so trusted people to tend to the affairs of the movement. And because of the immediately conflictual and episodic nature of relationships, uncontrolled by corporatist scripts, it is difficult to co-opt these movements.

The movements, while lacking ideological direction, certainly know their enemies: it is the mayor, local councillor (whatever his or her party) and their armed henchmen, most immediately; and in the distance, they probably can see Pretoria's hand and know that, in turn, the councillors are also pawns in the game, with budgets tightened and Municipal Financial Management Act threats made by Trevor Manuel and his treasury enforcers.

UNDERSTANDING THE MOVEMENT

One should not idealise the movements either; there is a vibrant internal critique going on. For example, the local community movements have found it difficult, and sometimes even being reluctant, to build links with other communities; and as repression has taken its toll, they have turned inwards to more centralised forms of leadership. Nigel Gibson, relying on Fanon, points to the dangers of local organisation where the possibility exists that:

> the 'mirage' of their 'muscles of immediacy' takes the place of a 'chain of reasoning', so that in the local area there is a process toward authoritarianism, and concomitantly a narrowing of discussion. Rather than confronting problems through deepening dialogue, tactics become strategy and theory is reduced to slogan and rhetoric. There is an unrealistic sense that […] all that is needed is more action.[18]

Rebecca Pointer, for example, in looking at the Mandela Park Anti-Eviction Campaign (MPAEC) points out that:

> [P]atriarchal power relations continue to shape the MPAEC and struggles in Mandela Park […]. While the MPAEC consisted mostly of women, in meetings that I attended most of those who raised their hands to speak were men, and most of those chosen to speak were men […]. Mandela Park activists claim to be 'revolutionary' in their thinking, and want to overturn the systems that create oppression. But this is predominantly viewed as attacking the State, capitalism, privatisation, and so on; not as an attack on their own oppressive thoughts and actions.[19]

And there are multiple contradictions that run through these movements. In Kennedy Road, Clare Estate the militancy displayed in the fight for decent housing and the removal of the councillor is matched by the zealous support for the toxic dump on the door-step that has the hand of the World Bank. It is from the dump that people eke out a living and it is out of the dump that people see a possibility of the World Bank handing out scholarships. But as Raj Patel points out, one of the reasons for this is that the World Bank consulted; the environmental activists waited at a distance for the people to consult them.[20]

Things go backwards and forwards. In Chatsworth a couple of years ago Diwali (the Festival of Lights) was turned into a festival of no lights, with a focus on electricity disconnections. Today Diwali has turned to a celebration of the 'mother-land': India. With Bollywood and a resurgence of 'ethnic pride' mixed with religious defensiveness, so the retreat from re-thinking Diwali in 'multicultural' neo-liberal South Africa.

A counter-hegemonic metanarrative will not happen as some teleological unfolding; there will be zig-zags and retreats into reaction. Nigel Gibson challenges:

> While resistance to privatization begs a reevaluation of what we consider 'rights' – i.e., by pitting the human rights of the poor who do not have access to basic services against the 'rights' of private property – it also raises the larger question of political self-organization in post-apartheid South Africa. The issue is not only whether struggles for basic human rights effectively challenge the validity of the 'people's government' (i.e., the ANC), but whether such organizations have the ability (perhaps by connecting back to the dreams of the anti-apartheid period?) to open up new spaces and prefigure forms where alternative ideas of post-apartheid South Africa can be organized and discussed. For, in the context of everyday survival, do the people have space to think about and discuss issues of human rights and responsibilities? Or do concrete constraints such as the reality of a reactive politics (namely fighting an eviction or electric cut-off) always demand immediate, and therefore uncritical, acts (such as uncritically forming a united front) at the expense of having a *discussion* about politics? What then is the relationship between immediate and future goals? And, more fundamentally, can a community, which comes together for basic needs, also be considered a genuine democratic space – one that does not import principles

and procedures, but organizes according to the principles embedded in the direct actions of resistance? After all, these actions (electricity reconnection, demand for toilets) are not only inherently *force*, but also because they involve thought are also *reason*. The question is how is that thinking concretely expressed? How to get beyond the ideological duality that sees actions (such as organizing shelter and dealing with local governments) as separate from thought (i.e., thinking about the meaning of homelessness and envisioning alternatives).[21]

While it is too early in the movements' history to substantially address Gibson's central questions, these movements have become the cornerstone of the challenge to the neo-liberal turn of the ANC. In the demand for de-commodified basic services, they have presented an 'alternative common sense' to the government's drive of marketisation. The nature of the meetings of community movements which are held on a weekly or fortnightly basis does challenge a vision of democracy that limits political participation to the ballot box every four or five years. As yet, though, given the local nature of struggles and demands, there is little discussion of a macro picture, of an alternative post-apartheid South Africa. They have created their own story line, which is not subsumed under Mandela, Mbeki and *the* liberation struggle. While the challenge might be temporary and momentary they have left "a trace in the memory of those who have lived and witnessed the drama of collective action [...] evoked in songs, poems, tactics and strategies", lingering in the air and beckoning future confrontations.[22] They live visually in the community hall in Mandela Park, in the upturned pipes bringing water meters to Phiri, in the wooden cross marking the place in Phoenix where those who came to disconnect his family's electricity shot Marcel King in the head.

The words of Latin American writer Eduardo Galeano have resonance:

> On the woof and warf of reality, tangled though it be, new cloth is being woven from threads of many radically different colours. Alternative movements don't just express themselves through parties and unions. They do that, but not only that. The process is anything but spectacular and it mostly happens at the local level, where across the world a thousand and one new forces are emerging. They emerge from the bottom up and the inside out. Without making a fuss, they shoulder the task of reconceiving democracy, nourishing it with popular participation and reviving the battered traditions of tolerance, mutual assistance, and communion with nature.[23]

A NEW SUBJECTIVITY?

But the movement of the 'poors' also heralds the potential of a militant subjectivity. Zizek points out that slum dwellers globally represent:

> the rapid growth of a population outside the law, in terrible need of minimal forms of self-organisation [...]. One should resist the easy temptation to elevate and idealise slum-dwellers into a new revolutionary class. It is nonetheless surprising how far they

conform to the old Marxist definition of the proletarian revolutionary subject: they
are 'free' in the double meaning of the word, even more than the classical proletariat
('free' from all substantial ties; dwelling in a free space, outside the regulation of the
state); they are a large collective, forcibly thrown into a situation where they have to
invent some mode of being-together, and simultaneously deprived of support for
their traditional ways of life […]. The new forms of social awareness that emerge
from slum collectives will be the germ of the future […].[24]

In recent times community movements have made concerted efforts to break out of their
areas and mobilise broader and broader layers of people. Scenes reminiscent of Fanon's
Wretched of the Earth unfold:

the oral tradition – stories, epics and songs of the people – which formerly were filed
away as set pieces are now beginning to change. The storytellers who used to relate
insert episodes now bring them alive and introduce into them modification which are
increasingly fundamental. There is a tendency to bring conflicts up to date and
modernize the kinds of struggle which the stories evoke, together with the names of
heroes and the types of weapons. The method of allusion is more and more widely
used […]. The contact of the people with the new movement gives rise to new
rhythm of life and to forgotten muscular tensions, and develops the imagination.
Every time the storyteller relates a fresh episode to his public, he presides over a real
invocation. The existence of a new type of man is revealed to the public. The present
is no longer turned in upon itself but spread out for all to see.[25]

It is probably worth noting the role of intellectuals in the context of a conference that sees
the contribution of the intellectuals who follow the fortunes of the elite. The rise of the
'poors' presents its own challenges to intellectuals. There is a tendency in the movement
to demand participation and on that basis both access and an opportunity to 'voice'
critique. The good thing about this is that it forces one to take a position on water and
electricity disconnections and evictions. At the same time it puts one at odds with the
ruling class.

In *Representations of the Intellectual,* Edward Said motioned to the need for this
tendency:

Exile is a model for the intellectual who is tempted, and even beset and
overwhelmed, by the rewards of accommodation, yea-saying, settling in. Even if one
is not an actual immigrant or expatriate, it is still possible to think as one, to imagine
and investigate in spite of the barriers, and always to move away from the
centralising authorities towards the margins, where you see things that are lost on
minds that have never travelled beyond the conventional and the marginal.[26]

But there is a challenge for intellectuals of how to be engaged with local movements but
at the same time to look beyond. Following Said a little longer, opens us up to part of the

task of the intellectual which "is explicitly to universalise the crisis […] to associate that experience with the sufferings of others".[27]

It would seem that those intellectuals who have gravitated towards social movements – some of the most brilliant minds and courageous fighters – are coalescing into the notion of Samir Amin's idea of the intelligentsia in the periphery who are

> not defined by the class origin of its members. It is defined by: (i) its anti-capitalism; (ii) its openness to the universal dimension of the culture of our time and, by this means, its capacity to situate itself in this world, analyze its contradictions, understand its weak links, and so on; and (iii) its simultaneous capacity to remain in living and close communion with the popular classes, to share their history and cultural expression.[28]

The struggles of 'the poors' have exposed the limitations of the traditional language and forces of resistance – 'the people', 'the patriotic bourgeoisie', 'the all-knowing father of the nation', 'the vanguard' – as next to worthless. Eleven years into post-apartheid South Africa, an emancipatory politics is emerging outside the disciplinary gaze of the totalitarian democracy of the 'holy trinity'. Despite the attempts at localised forms of inquisition, repression and co-optation, its voice keeps growing, breaking out of inherited spatial places and refusing to bow down to state imposed ideas of the boundaries of democratic participation.

The rise of social movements will become increasingly crucial in the transition. This is especially in the context of the possibility of increased tensions in the Alliance. Tensions? The fault-lines are probably going to occur around the succession race for the presidency. Mbeki has not, and probably cannot, anoint a successor. Zuma is immensely popular and that popularity will grow. His continuing as deputy president of the ANC gives him incredible room to manoeuvre given that he now has relative autonomy from the government and its policies. But Zuma will find himself in a quagmire over the corruption scandals and minus the patronage and prestige of state power. Cosatu and the SACP do not have the clout to put forward a candidate from their own ranks.

In this fluid political environment social movements have an immense opportunity to posit a new politics.

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Between fundamentalism and pluralism: The political culture of the South African religious sector

ANTHONY EGAN

INTRODUCTION

For a complex series of historical and structural reasons, the very important religious sector in South Africa[1] finds difficulty adjusting to the new, secular political culture. The various strategies religions have adopted include sectarian fundamentalist withdrawal or opposition to the new status quo, a kind of 'pluralist' quietism and occasionally multi-level pluralist critical engagement. It is the latter direction, I shall suggest, that the religious needs to take to be an effective part of the political culture of the new South Africa.

DEFINING TERMS

Before examining the issue of how the South African religious sector might contribute to a revitalised democratic culture, it is apposite to present my understanding of the terms *culture*, *fundamentalism* and *pluralism*.

As opposed to an elite (and elitist) 'high' definition,[2] I suggest that culture might be best understood for our purpose as a 'complex' of meanings, values, beliefs and practices, rooted in and influenced by history, containing normative elements for a community, including its psychology, cosmology and philosophy, constructed and reconstructed by a community to provide it with a workable and coherent structure.[3] In a complex modern or postmodern democratic state, the democracy itself is a culture, but within it often exists distinct cultures.[4] The religious sector in such a state is likewise a culture containing within it often very different cultures, for example, Calvinism, Sunni Islam, Catholicism and Reform Judaism.

Mary Douglas's typology of strong and weak 'grids and groups'[5] helps clarify the sense of the difference of cultures, where 'grid' refers to top-down authority and pressure on the individual exercised by society, and 'group' refers to more informal interpersonal 'norms' of relating between individuals in society. Drawing on this typology[6] one might find four types of society:

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- **Type A: Strong Grid/Strong Group** – hierarchical, ordered, with a strong sense of belonging and stable sets of relationships.

- **Type B: Strong Grid/Weak Group** – competitive, individualist, self-centred, often with market-exchange relationships.

- **Type C: Weak Grid/Weak Group** – isolated individualism, unstructured, transitory relationships, without fixed roles.

- **Type D: Weak Grid/Strong Group** – 'sect'-style collectivity, emphasis on insider/outsider distinctions, authoritarian.

Religious and political cultures fall into these categories, both geographically and institutionally.

Fundamentalism and pluralism of various kinds fit into such types. Fundamentalism in its many forms[7] appeals to the absolute and unchanging truth of certain beliefs rooted in authoritative authority of certain (religious or political) texts and persons. It is manifested in the extremely conservative adherence to the orthodoxy and orthopraxis of such beliefs, normally allowing for little or no development of tradition.

Where development within a (religious/political) tradition is either allowed or acknowledged, even within a 'conservative' discourse, a shift occurs towards pluralism, the acknowledgement of and dialogue between different – sometimes quite conflicting – voices within the discourse. Sometimes at the extreme of pluralism, the overarching 'metanarrative' of a tradition may collapse: in theoretical terms this is called by some *postmodernity* or the *postmodern condition*.[8] Ironically, this may result in the collapse of dialogue so important to pluralism – the 'That's your opinion!' position – and may lead to a plurality of fundamentalisms.

A liberal democratic society (which, I hope, South Africa is) is, theoretically, committed to dialogical pluralism. Unfortunately, some sections of our society, including the religious sector, have slipped into a kind of fundamentalist and sectarian way of thinking.

SITUATING THE PROBLEM

Let us consider a few elements of the problem.

THE AMBIVALENCE OF THE PAST

The role the religious sector played in the struggle for democracy in South Africa was profoundly ambivalent.[9] The dominant religion in South Africa, Christianity, has had a very complex political history.[10] While sections of 'prophetic Christianity'[11] gave their all for the struggle – very often expressing ideological and partisan preferences – large sections of the churches were either neutral or supportive of apartheid.

Marxist reflection on the role of state, ideology and society might clarify this tension. Religion and the church, it has been suggested, is a key element in civil society; a key player to be brought into a ruling class' hegemony or Ideological State Apparatus (ISA). On the ISA , Althusser[12] asserts what he calls a "duplicate mirror-structure of ideology" which simultaneously ensures:

1. the interpolation of 'individuals' as subjects;
2. their subjection to the Subject [i.e. God];
3. the mutual recognition of subjects and Subject, the subjects' recognition of each other, and finally the Subject's recognition of himself [sic];
4. the absolute guarantee that everything really is so, and that on condition that the subjects recognise what they are, and behave accordingly, everything will be all right: Amen – '*So be it*'.

The individual "is interpolated" moreover "as a (free) subject in order that he shall submit freely to the commandments of the Subject"; that is, in order that he shall make the gestures and actions of his subject 'all by himself'. "There are no subjects except by and for their subjection. That is why they 'work all by themselves'."[13] Religion is thus a misrepresentation, an ideology, the reproduction of the relations of production and of relations desired for them.[14]

This is all very well and may be valid where organised religion is wholeheartedly part of the ISA. But the development of 'prophetic religion' in South Africa shows that cracks in the institutions sometimes become rifts and occasionally cause rents in the fabric of religious institutions.

Latin American sociologist Otto Maduro[15] suggests that though the dominant class may play a dominant role and have a hegemonic strategy of domination in the church – articulating an at best ambiguous and at worst overtly conservative discourse – an alternative discourse sometimes arises to challenge that hegemony and create an alternative, liberating hegemony. Sections of the clergy and laity can become the organic intellectuals[16] of the subordinated. Thus, one needs to qualify Althusser's pessimism about the ISA.

We should also be realistic about the levels of involvement of religion in a historical political struggle such as South Africa's. A former activist and national chaplain to the Young Christian Students (YCS) commented:

> A common danger facing socially committed Christians is that of expecting too much or too little of the institutional church in a process of social transformation. Both attitudes, it seems to me, are rooted in an inadequate grasp of the nature of the church as being both a theological reality as well as an institution among other institutions of civil society. Those who expect too much lay demands on the Church which it could never realistically meet. The Church is not a liberation movement, a political organisation, a trade union, or for that matter, simply an extension of the ideological apparatus of the state. Those who expect too little, on the other hand,

fail to grasp the significance of the power relations embodied in the practices, symbols, structures and theology of the Church for the whole process of transformation.[17]

The church, he says:

> [...] like all other sectors of civil society, is also located in a system, that of a vast web of differentiated social structures and roles [...] whose role is not communicative competence but technical control. The system is coordinated through the media of money and power (Habermas). The system is the steering mechanism of society in the sense that those who wield money and structural power seek to take over large areas of life world whenever possible in order to reconstitute them in the interests of state and economic control.[18]

To this we must add the complexities of interpretation of religious language (theology), where authoritative texts and persons succeeded or failed in opening up their denominations to the project of liberation. Such tensions played out in starkest relief during this period – and continue in the present.

STRUCTURAL – AND OTHER – TENSIONS IN THE PRESENT

In the present context, South Africa's political culture has shifted from authoritarian 'democratic' oligarchy to a modern, liberal democracy.[19] Similar shifts have, however, not happened significantly within the religious sector. One way of considering the structural nature of religious culture would be to place religions along a continuum of 'network' to hierarchy (*see Figure 1*).

Figure 1: Structures of religions

Network   Hierarchy

	1	2	3	4	5	6	7

1. **Absolute Network:** Completely autonomous network of small religious communities (probably non-existent).
2. **Strongly Autonomous Network:** Strong autonomy but communities linked by a limited structure running finances and administration (not doctrine or worship).
3. **Autonomous Network:** Strong autonomy but with a more influential financial/administration coordinating structure.
4. **Semi-Autonomous Network/Hierarchy:** Strong localised autonomy but with a clear leadership that coordinates and to some degree inspires/directs.
5. **Semi-Autonomous Hierarchy:** Leadership exists but its powers over local community is limited.
6. **Non-Absolute Hierarchy:** Clear hierarchical structures and leadership, strong emphasis on unity tending towards uniformity, but not absolute as such.
7. **Absolute Hierarchy:** Complete hierarchy where everyone has a specific position and where all doctrine and worship is uniform and subject to highest personal authority (probably does not exist).

Such a model – which one might see as a more complex 'internal' expansion of Douglas's grid/group typology – might further explain why religions are culturally organised internally from smallest units (parishes) to national-level denominations. Given that institutions, particularly traditional religious institutions, tend to be conservative in structure, it is often structurally difficult for such institutions to adapt to a new culture.

At another level, one has seen the haemorrhaging of the 'vanguard' of the activist leadership of the religious sector to government – or into well-deserved retirement. This, combined with the changing global and local political environment that has made the 'liberation' discourse of the past seem irrelevant, has resulted not only in a crisis of leadership in many (not necessarily all) religions but also in the (hopefully temporary) 'loss' of a contemporary theology.

The strength of early contextual theologies was that it provided a religious challenge to 'church and state' alike. Such new theologies as exist – notably a theology of reconciliation – still remain at a level that are both theologically, and politically, naïve.[20] There are, however, some positive signs of development, though it is still early days.

THE EFFECT OF THESE DEVELOPMENTS

What we are seeing emerging in contemporary South Africa among the religions mirrors a number of the 'flight or fight' options proposed in the theologian Richard Niebuhr's book *Christ and Culture*.[21] Put into a multi-faith context, they might be represented as follows:

- *Religion Against Culture:* Religious beliefs and practices stand in opposition to the new secular, liberal culture of South Africa. A strict, often fundamentalist, position is taken against such elements as liberal abortion laws, gay rights and the secularisation of the political process. Religions only react *against* these new developments or – in broader questions regarding corruption, inefficient bureaucracy and controversial social or foreign policies – address them in such a way as to see them as a manifestation of nasty, 'secular humanist' political culture.

- *Religion Above Culture:* Religions withdraw from the political culture, considering themselves 'above' such unsavoury matters and focus instead on an inward-looking, pietistic concern for their members. In effect they give up on the wider environment, refusing to 'get their hands dirty'.

- *Religion of Culture:* A few – mostly individual religious persons, sometimes former activists now within government – accept the political culture of the new South Africa uncritically. In effect their faith is tailored to, and wholly adopts, the agenda of the new order.

Of course, there are exceptions. We see a number of religious persons and organisations that fit more closely into Niebuhr's preferred model, *Religion and Culture in Paradox*. It

is to these we shall turn, for they offer the best way in which religion may take a more politically and theologically constructive role in the new political culture.

THE CHALLENGE

Niebuhr's preferred option, what I have renamed *Religion and Culture in Paradox*, acknowledges that, given the nature of religion and the pervasiveness of secular, liberal culture, religious persons cannot really opt out of society and be true to themselves and their beliefs.

At the core of all religions is ethics – right behaviour, however it is articulated – and the belief that in some way or other the task of the religious person or group is to change the world for what their faith considers the better. Since a sectarian fundamentalism that seeks to create the world in its religious image is, practically speaking, impossible in a liberal democratic *Rechtstaat* – and fundamentalist withdrawal ultimately constitutes giving up the possibility of developing a more ethical community – the only realistic proposition for religion today is the path of *critical engagement* with political culture.

Such engagement – whether by fundamentalist, traditional, 'liberal', pluralist or even post-modern religions – entails two (often interlinking) elements: dialogue and activism. Neither of these is new to South Africa, except in forms and issues rooted in an underlying assumption about the nature of the new South Africa.

The underlying assumption, I would suggest, is that we live in an (albeit imperfect) liberal-constitutional democracy, rooted in a Bill of Rights envied by many countries and the Rule of Law. This is not to deny that there a problems (theoretical or practical) in both, or that, indeed, without public vigilance and engagement these great leaps forward from apartheid cannot be eroded or constrained. What is important is that this constitutes a common ground for engagement and helps shape dialogue and activism.

THE SHAPE OF DIALOGUE

The shape of dialogue can be seen in the way in which the religious sector has both encouraged and confronted the new democracy. Often drawing on organisations – ecumenical and denominational, old and new – the religious sector has encouraged the building of new democratic culture, highlighting areas that need improvement.

For example, the contribution of such groups as the Catholic Parliamentary Liaison Office, the South African Council of Churches and the South African Catholic Bishops' Conference with other religious groups and civil society in highlighting private mercenary activity on the continent, contributed to our legislation prohibiting South Africa from engaging in mercenary activity or participating in foreign armed forces. Less visible has been regular communication between religious leaders and key players in government.

Naturally, not all the outcomes have met with the theological or moral approval of the religious sector, but at least there has been – and continues to be – dialogue, sometimes augmented and/or facilitated by the conventional religious means of public statements in the media. Long may the pressure continue in areas of concern such as AIDS care,

Zimbabwe, poverty relief and person-focused economic policy, and opposition to corruption.

SHAPE OF ACTIVISM

Less well-formed is the shape of activism. On one level, this is not new: activism under apartheid was the preserve of a minority within prophetic religion. Given that it operates often on (sometimes crossing) the borderlines of legality, it is perhaps not surprising. Although there is ample evidence of a historical-theological connection between prophetic religion and violence in South Africa,[22] this has been thoroughly discouraged by religious leadership.[23] More acceptable and common has been non-violent protest action. Similarly, I hope it is not too impious to observe that bishops, imams and rabbis tend to march more readily over issues that directly affect their faiths. Yet even here there are some signs of hope. A sprinkling of activist clergy can still be found in the new social movements, while religious people of different backgrounds participate in the movements of the 'poors', sometimes even giving these movements a quasi-religious aura.[24]

CONCLUSION

This paper has almost of necessity focused on theoretical models and fairly superficial overviews, some of it drawn as a participant observer.

In the course of preparing this paper, I found that very little work has been done on this subject, in contrast to the voluminous work done on similar themes in the United States. Perhaps it is too soon to analyse in greater detail the questions raised herein and proposal made. My hope is that it may open up ideas for debate, perhaps stimulating further research in theology as much as in politics.

NOTES

1 I am trying to deal with *all* religions in South Africa – Christian, Muslim, Hindu, Jewish, 'new age' and African traditional religions, though I shall refer often to developments (partly as a participant observer) within Christianity. Their importance lies in the fact that the country, though a secular liberal democratic state, remains statistically among the most religious in the world. See Erasmus JC & Hendriks HJ, Religious affiliation in South Africa early in the new millennium: Markinor's World Values Survey, *Journal of Theology for Southern Africa* 117, 2003, pp 80-96; and Hendriks HJ & Erasmus JC, Religion in South Africa: The 2001 Population Census data, *Journal of Theology for Southern Africa* 121, 2005, pp 88-111.

2 For example, Arnold M, *Culture and Anarchy*, R Soper (ed), Ann Arbor: University of Michigan Press, 1965.

3 Kroeber AL & Kluckhorn C, *Culture: A Critical Review of Concepts and Definitions*. New York: Vintage Books, 1963.

4 Some might argue that these constitute 'subcultures'. I do not use the term, in fact dislike it, since it is often misrepresented as an 'aspect of a culture'. I see this as mistaken, since it appears to imply an element of subordination rather than contestation or dialogue. I hope such an objection can be clarified through my examination of internal variations within religions and the complex relations between religion and the state.

5 In, *inter alia*, Douglas M, *Natural Symbols: Explorations in Cosmology*. London: Cresset Press, 1970.

6 Here I am following a model developed in Gallagher MP, *Clashing Symbols: An Introduction to Faith and Culture*, (reved). London: Darton, Longman & Todd, 2003, pp 29-34.

7 Sim S, *Fundamentalist World: The New Dark Age of Dogma*. Cambridge: Icon Books, 2004 sees contemporary fundamentalism operating in most world religions, in economic neoliberalism, in theocratic and secular power politics, and in extreme nationalist and racist political movements.

8 Lyotard JF, *The Postmodern Condition: A Report on Knowledge*. Manchester: Manchester University Press, 1984.

9 Cf Chidester D, *Religions of South Africa*. London: Routledge, 1992: esp pp 222-261

10 Elphick R & Davenport R (eds), *Christianity in South Africa: A Political, Social and Cultural History*. Cape Town: David Philip, 1997. This is equally true of the other faiths and – within segmented faiths like Christianity and Islam – even within denominations.

11 Walshe P, *Prophetic Christianity and the Liberation Movement in South Africa*. Pietermaritzburg: Cluster Publications, 1995.

12 Althusser L, *Lenin and Philosophy, and Other Essays*. New York: Monthly Review Press, 1971, p 181.

13 Ibid, p 182.

14 Ibid, p 183.

15 Maduro O, *Religion and Social Conflicts*. New York: Orbis, 1982, pp 113-145.

16 Gramsci A, *Selections from the Prison Notebooks*. London: Lawrence & Wishart, 1971.

17 Langefeld CFH, An Emerging Ecclesial Practice: A Socio-Theological Study of the Theory and Practice of a Church Youth Group in the period 1980-1988, MA (Theology) thesis, University of Natal, Pietermaritzburg, 1993, pp 15-16.

18 Ibid, p 29.

19 Some critics of today argue more for a 'democratic oligarchy'.

20 Cf., for example, Botha J, Appeals to religious authority in the South African Constitutional Assembly, *Scriptura* 4, 1998, pp 309-334. An intriguing 'sideshow' to this has been the 'theology' expressed in Parliament. A significant number of MPs have used religious language in their rhetoric, with few exceptions without theological sophistication, often highly partisan and fundamentalist in tone.

21 Niebuhr HR, *Christ and Culture*. New York: Harper & Row, 1951.

22 Chidester D, *Shots in the Street: Violence and Religion in South Africa*. Boston: Beacon Press, 1991; Chidester, *Religions of South Africa*, op cit; Villa-Vicencio C (ed), *Theology and Violence: The South African Debate*. Johannesburg: Skotaville Press, 1987.

23 Although few religions explicitly rule out resort to force as a means, it is (at least theoretically) almost always regarded as a last resort pursued with a view to minimising harm, particularly to non-combatants. Non-violent action is almost always seen as holding the moral high ground.

24 In a number of research reports of the study, Globalisation, marginalisation and new social movements in post-apartheid South Africa, Centre for Civil Society/School of Development Studies, University of KwaZulu-Natal, various publications process, this theme also emerges, though a systematic study of this phenomenon has yet to be completed. Desai A, *We are the Poors: Community Struggles in Post-Apartheid South Africa*. New York: Monthly Review Press, 2002; and Desai A, The new tools of liberation in South Africa: Interview with Ashwin Desai, *Z Magazine* 16(3), 2003.

The challenges of corporate governance in South Africa

PHILIP ARMSTRONG

> Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals […]. The aim is to align as nearly as possible the interests of individuals, corporations and society.
>
> *Sir Adrian Cadbury, Corporate Governance Overview,*
> *World Bank Report 1999*

INTRODUCTION

One of the problems with corporate governance is that it is full of misconceptions, based on the angle from which one comes and on one's self-interested objectives. Corporate governance in numerous ways personifies many of the challenges we are seeing in South African society today and, regrettably, often tends to exemplify some of the less desirable attributes of corporate behaviour. I do want to make it clear from the onset, however, that my presentation is based on my own personal opinions and does not represent the views of my employer or any other bodies with whom I might be associated.

DISTINCTIONS

A number of distinguishing factors need to be made regarding corporate governance and the 'King Report on Corporate Governance in South Africa':

- Corporate governance is not about corporate regulations – that is a *sine qua non*; all boards should be adhering to the law.

- The King corporate governance initiative in South Africa (probably the only one of its kind in the world) was a private sector–lead initiative that had no government mandate or commission. However, the process used to write the report embraced the public sector and official authorities, as well as a wide frame of reference and consultation.

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- The King corporate governance review was not driven by a debacle on the magnitude of, for instance, Enron – although we have certainly had our fair share of LeisureNets, Macmeds, Regal Treasuries and so forth.

- Importantly, the King Report is only a set of principles and not prescribed guidance; however, the various regulatory authorities have seen fit to adopt or take aspects of the code and make it mandatory. This is probably correct.

STAKEHOLDER APPROACH

The King Report recognises that business does not operate in isolation of society and attempted to integrate the opposing interests of business and society. The Report therefore comprises the conventional standards espoused by the Organisation for Economic Cooperation and Development through its international benchmark principles on corporate governance, which is based on the four pillars of transparency, accountability, responsibility and fairness.

A key feature of the King Report is its corporate citizenship angle. This urges business to look at the following:

- *Community engagement* – understanding the communities that business works with and its effect on them, and to define its relationships with them.

- *Environment, health and safety* – is it sufficient to apply the minimum standards of law in this regard or should business be doing more? And if so, to what extent?

- *Human capital* – which is critical to the economic development of South Africa.

- *Organisation integrity* – an essential component that needs to be taken more seriously than it is at present.

THE CURRENT DEBATE

> A key lesson from the recent scandals is that the checks on the system simply have not worked. The honor code among CEOs didn't work. Board oversight didn't work. Self-regulation was a complete failure. But one thing has worked: law enforcement.
>
> *Eliot Spitzer, New York State Attorney*

> You can't prosecute your way to a healthy corporate culture.
>
> *Deputy US Attorney General James Corney,*
> *Chair of the President's Corporate Fraud Task Force*

> The areas in which law will be necessary are two: disclosure and the ability of
> shareholders to exercise their ownership rights. Without sufficient disclosure, the
> investor is unable to make sensible and informed judgements about the issues.
>
> *Alastair Ross Goobey, Former Chairman,*
> *International Corporate Governance Network*

The current issues rest on the axis between mandatory legislative intervention (United States [US] approach) and voluntary, self regulation through the process of 'comply or explain' (United Kingdom [UK] approach).

An alternative position, however, is to take a more balanced approach and to say that corporate governance is about disclosure and transparency and that these must give shareholders, the investing public and others, the information necessary to have the ability to monitor and measure constructively whether corporations are standing by what they say, as well as the legal means to take the necessary actions where there are shortcomings.

CORPORATE GOVERNANCE IN SOUTH AFRICA

South Africa is, of course, part of the global community; but the corporate governance environment here faces many challenges in terms of integrating sometimes heavily biased societal priorities, such as black economic empowerment (BEE), with issues of the more conventional investor (read: profit and financial returns).

South Africa therefore tends to be influenced by four key international issues:

- *UK Corporate Law Reform*
  - Proposed adoption of 'enlightened shareholder value'
  - Codification of directors' duties and proportionate liability for auditors
  - Recommending 'enabling' provisions to corporate regulation

- *European Union (EU) Company Law Programme*
  - Seeking more consistency across EU markets
  - Focus currently on corporate governance reporting and disclosure
  - Concerned with implications of transatlantic listings and US law

- *United States*
  - Concerns with extraterritorial implications of Sarbanes-Oxley
  - SEC focus on shareholder voting rights, e.g. directors removal
  - Heavy enforcement of prosecutorial authority, e.g. Spitzer Blitz

- *Institutional investors*
  - Looking inwardly at own standards and conduct
  - Greater level of cross-border cooperation, e.g. Nestlè
  - Activism being contracted to specialists, e.g. GO (UK/US)

There is a high level of awareness regarding corporate governance in South Africa. It is probably more widely pronounced and spoken about here than anywhere else in the world, with the exception, of course, of the UK and the US. However, South Africa faces many challenges when it comes to corporate governance.

VALIDATING, SUBSTANTIVELY, CORPORATE GOVERNANCE

Is regulation enough? Is it about having more laws, putting more directors in jail and sanctioning more companies; or is it more about compiling conventional standards and flexibility for business enterprises both large and small? The challenge is the limited role of the regulators and the market framework that acts as the monitors, and this needs to be addressed to make the 'comply or explain' approach of the King Report truly effective.

ENHANCING CAPACITY FOR MORE EFFECTIVE TRUSTEE ENGAGEMENT

Another challenge in the South African environment is a technical one. South Africa has, for example, a number of pension funds which comprise at least 50% employee representatives, but the trustees are not really equipped to handle the technical and very sophisticated issues around investment management. In other words, we do not have a pension fund environment here that is very aware of its fiduciary responsibilities to the fund members whose money is being invested. This is not necessarily their fault; it is a structural issue, but one that needs to be addressed if we are to see a more active governance environment and if we are to achieve more direct nexus with beneficiaries.

INSTITUTIONAL INVESTOR ACTIVISM

Institutional investors tend to vote with their feet; but there is a massive conflict by virtue of their operation and close links with the banking sector. For example, you canno have an investment manager going into a company to bid for its R100 million pension fund, while other members of the team go to the company's shareholder meeting and beat up management. It is unlikely, in real politik, that the investment manager will be awarded the funds to manage. In other words, the 'incentive' structure in the market to support shareholder activism is in many ways misaligned in South Africa by reason of the history of the industry.

ROLE OF ASSURANCE PROVIDERS AND ADVISORS

Another challenge rests on the role of the auditing profession and, I might add, other professional advisors. Up until more recently, the auditing profession has largely regulated itself, but developments overseas have encouraged our policy makers to introduce a more independent oversight body. However, an emerging market like South Africa's also highlights the question of resources to undertake audits of increasingly complex

commercial transactions and standards by which this must be undertaken – witness, for example, the new International Financial Reporting Standards. Also, other professional advisors such as investment banks and lawyers (unlike the auditors) who are retained by management to assist in transaction techniques are, I would suggest, not always conducive to the best interests of prudent corporate governance.

MARKET INTERMEDIARIES

There are also increasing concerns – both in South Africa and internationally – relating to market intermediaries and the way they exercise the votes they hold on behalf of others, such as nominee companies and unit trusts – often voting in favour of management without question or a proper evaluation of the implications. Since the market in South Africa in this area is not quite as large as, for example, the UK or US, it is largely ignored or seen as insignificant, but it has important implications for corporate governance in South Africa.

CHALLENGES OF BEE

Another problem has to do with the BEE environment, which is a very vexed issue. I am not criticising the concept of BEE; what I am concerned about, however, is the measure of compromise and concession that we seem to accommodate. Additionally, good governance says, on the one hand, that share options should not be given to non-executives but, on the other hand, that it is okay to give share options to certain categories of (BEE) non-executives. However, the concept of share options is a management incentive – so who is being incentivised when non-executives participate in a management incentive? Whose interests are they likely to protect and where do shareholders, particularly minority shareholders, stand?

Then there is the issue of entrenched positions by entitlement. All directors should come up for review every third year, but very often these BEE positions ensure that a certain tranche of directors will be there indeterminably. This is not to say that they cannot be there; however, like all directors they should be put through a process of evaluation – and there are numerous issues around that which one has to explore.

SOME OTHER CHALLENGES

- Board independence seems to be improving, however, there are still many issues in this regard. Many claims are being made but we are not seeing the substance of it, certainly in the stakeholder reporting area which I think would interest civil society.

- Law enforcement is weak and takes too long (for example, in the LeisureNet and Macmed cases). The result is that there is an attitude in South Africa that you can get away with things either because nothing is going to be done about it or because by the time something is done, it is 10 years too late.

- Shareholder engagement in South Africa is mostly absent, unless there is a self interest involved.

- There is a high level of perceived corruption generally in our society.

- There is a lack of propensity to criticise. Although shareholders have rights which they are free to exercise and express at shareholders' meetings, some corporate leaders view these interventions as rude and unnecessarily intrusive (without due account of their fiduciary duty of accountability).

- Many of the more experienced directors are those who were brought up in the sanctions, apartheid environment that was characterised by discreteness, secrecy and autocracy. The new echelon of directors coming in, however, need to allow a more open environment and need to understand issues around transparency and ethics. They also need to be made aware that those issues are not there to prevent them from doing their jobs but, rather, that it is shareholders' money they are paying themselves with, and that it is shareholders' money they are spending in their investment and capital expenditure decisions.

- I have sat in many a boardroom where the issue is not whether gifts should be received but whether or not a certain gift is a 'good gift'. In governance terms, the whole issue of accepting gifts is a slippery slope.

- Political donations are another challenging area and boards must be aware that, at the end of the day, it is shareholders' money that is being donated. Although political donations may be a necessary feature of our political environment, boards need to be sufficiently aware of the connections and obligations that it might enforce.

- In terms of executive remuneration, the issue is not necessarily about how much directors are paid but whether or not they can justify earning bloated salaries. In the South African Airways Coleman Andrews case, for example, the issue in governance terms is not so much the amount he was paid, but rather who authorised the payment. Who signed the contract in the first place that allowed the significant sums paid to him? He simply took what was due to him contractually. We need to see more of this kind of debate.

- Lack of consistency is another area of concern. There are companies which, in a South African environment, are aware of how they need to behave but which, when operating in other parts of Africa, do not always do our reputation justice. This is due to lack of regulation, enforcement capacity, and choice in those other countries. These are, of course, generalisations and one would need to narrow this under criticism and scrutiny. However, when the topic was raised at a similar forum the other day, a large South African corporate threatened to sue the institution concerned.

CONCLUSION

In emerging market terms, South Africa's position vis-à-vis corporate governance is not perfect, but by comparison South Africa probably ranks among the best. The question is whether we should be satisfied with that or not?

In my opinion, there are many challenges facing South Africa in the political, economic and social spheres. The authorities clearly recognise those issues and have to prioritise the demands appropriately.

Significant steps have been taken to improve the corporate governance environment in South Africa since the advent of democracy, and this should be commended. As South Africa establishes its status as a leading emerging market, we are entering a phase where the more sophisticated elements of corporate governance are going to test both companies and policy makers – particularly in relation to consistency of application and enforcement.

Civil society can play an important monitoring role, but it must recognise that companies, like people, have to make choices in this complex world we find ourselves in, and the key is whether these choices are made responsibly and in the best interest of the company as a whole.

A culture of transparency in South Africa: Negotiating the obstacles[1]

HENNIE VAN VUUREN

INTRODUCTION

> We have built something unique on the southern tip of the African continent. Out of the ruins of a despotic, corrupt state […] we have, in less than a decade, constructed a nation with institutions and values that took other peoples decades and centuries to mold. The trick is to make these institutions and values work, and not let them buckle under any pressure.
>
> *Mondli Makhanya*[2]

Corruption – the abuse of entrusted power for private benefit – is the antithesis of representative, accountable and transparent government. It entrenches elites, undermines human rights, slows economic growth and importantly hits the poor the hardest – impeding public service delivery and preventing job creation. It is also by no means a South African, or for that matter African, phenomenon. With an estimated annual cost to the global economy of R6.5 trillion,[3] corruption straddles illegal activity to include social grant fraudsters in Limpopo to boardrooms in London and political office in Washington.

A democratic South Africa has not been blind to the harms associated with corruption, and over the past (short) 11 years South Africa has developed an advanced framework of laws, strategy and institutions that have a mandate to combat corruption. Specialised anti-corruption institutions have been set up, together with state institutions, which are mandated by the Constitution to support constitutional democracy.[4] South Africa has developed a bold new piece of anti-corruption law, which complements existing legislation that promotes an open, accountable democracy. However, despite the fact that political will does exist to tackle corruption, the implementation of anti-corruption measures presents a serious challenge.

Corruption poses a major challenge at provincial and local government level, negatively affecting the capacity of the public sector to deliver services to the poor. At a national level, almost R2 billion was lost in 2003 to corruption in Social Welfare; the Labour Ministry may have lost as much as R1 billion of the money allocated to skills development; and the Road Accident Fund, which has long been susceptible to fraud and

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corruption, may have lost R1 billion in the past year as well. The private sector, a major source of corruption, may be losing as much as R50 billion a year to white-collar crime such as fraud and corruption.

What is the missing link between creating an effective framework for combating corruption and the apparent unending boom in back-handers paid across the country?

With the advent of democracy, and set free of a system that waged war against its own people, we have for the first time a press that headlines allegations of corruption (largely) without fear and intimidation. However, an issue that seldom gets the attention it deserves is how the past continues to influence political culture today.

This should not be seen as an attempt to deflect from the present but rather as an imperative step to a lasting culture of transparency in South Africa. If the Constitution is the foundation on which we are building a culture of integrity, then the bedrock on which it should rest continues to largely illude us. It is argued that only by a real attempt to face up to the culture of secrecy, central control, venality and inequality that sadly continue to permeate (although not dominate) our political culture will we be able to secure the kind of society we envision in the Constitution. As Justice Malala[5] points out, our apartheid-era past "remains powerfully within us".

This paper will attempt to examine some aspects of the past as they present real challenges to transparency today. We will, however, also take stock of some of the advances made over the past decade. The paper focuses on the following:

- *The legacy of a culture of secrecy and centralisation:* We will focus on apartheid not only as a corrupt system but rather the climate it created for grand corruption. This includes the lasting impact this has on securing access to information, the protection of whistleblowers and political corruption post-1994.

- *The culture of profit in South Africa:* How a legacy of inequality and private sector involvement in corruption continues to impede transparency.

This is not meant to be an exhaustive study but rather indicative of some of the factors that continue to impact negatively on a political culture of transparency in South Africa.

THE LEGACY OF A CULTURE OF SECRECY AND CENTRALISATION

CORRUPTION UNDER APARTHEID

> South Africa (in 1987) is one the few countries in which there is no control whatsoever over foreign capital […] any foreigner can, with no restrictions, either bring money into South Africa – whether it is hot or not, does not matter – bring it in, or take it out. There is no restriction whatsoever on the flow of capital […].
>
> *General Tienie Groenewald, former head of South African Military*
> *Intelligence, during an off-the-record briefing to a*
> *right wing United States (US) Republican think-tank in 1987.*[6]

Is South Africa a fundamentally more corrupt society today than it was 10 years ago, prior to the advent of democratic rule? This question is regularly asked in the debate about the nature and extent of corruption in South Africa. It is often informed by those wishing to prove that a majority government has been unable to stem the tide of corruption, not recognising that, idiomatically, one cannot compare apples with rotten apples. It also points towards the inability to see the linear nature of South African history, as the country emerged not out of a revolution but rather out of a negotiated process of change. This process has not provided a clean break with past practices and institutions, as described by Frene Ginwala, the former Speaker of Parliament (1994–2004):

> In South Africa we inherited an intrinsically corrupt system of governance […] .To survive, it created a legal framework that was based on and facilitated corruption. It has taken years in Parliament to repeal old laws and introduce even the basic legal framework that would enable us to deal with corrupt bureaucrats, politicians and police. The private sector also operated in a closed society and profited by it. There were partnerships with international criminals, and the corruption that was built into the system is very difficult to overcome.[7]

White supremacy in South Africa has always been premised on notions of greed and corruption. Ideology has often been misused as a pretext for what constitutes corrupt behaviour. The first attempt by Europeans to 'settle' at the Cape was a decision of the Dutch East India Company – a forerunner of the modern day multinational corporation – which required a replenishment station that would aide its business forays to the East and to Indonesia in particular. The success of the station at the Cape of Good Hope required the subjugation of local inhabitants – to the benefit of the company's Dutch headquarters. The subsequent British colonial administrations were no less subtle when wars were raged and people subjugated (both black and white) in order to acquire access to the country's wealth of minerals and land. The Boer-controlled states, such as the Transvaal Republic (which was eventually defeated by the British in 1902), were also not free from corruption.

Historical texts indicate that: "One of President (Paul) Kruger's three sons was his private secretary. A son-in-law of his, C.F. Eloff, was a businessman who was granted several (government) concessions, namely business monopolies of one kind or another."[8] Writing in 1899, Hillegas notes that "Eloff was several times a millionaire".[9] At the time reference was also made to a secret 'third Volksraad' (a second Volksraad, or Assembly, existed to represent 'foreign' whites), which was an undercover group of businessmen who secretly controlled the economy and of which the aforementioned Eloff was said to be a 'member'.[10]

Following the bloody South African War (1900–1902), the Union of South Africa's, under British imperial rule, cemented a white-dominated political system for the next 50 years. The two former British colonies and the Boer 'free' states constituted the provinces and territory of this new state. A white Parliament was elected with an upper house (senate) that included representatives of the majority black, coloured and Indian South

Africans. The nascent white state, with the approval of its imperial overlords in London, systemically used power to corrupt. The 1912 Land Act placed 80% of the country's land in the hands of 20% of the population. This served two purposes: to ensure white domination of the agricultural sector; and to ensure that black South Africans were forced to move to the cities where labour was in short supply in the country's mines. This situation suited the emerging mining companies – including the forerunners of the latter-day De Beers and Anglo American. These crony capitalists were the beneficiaries of political patronage resulting from the convergence of interests between the business and political elite in the country.[11]

Aside from the oppressive and racist nature of the apartheid state (and the preceding colonial administrations), it could be argued that the premise on which it was built was corrupt not only in its constituent parts (where there was open abuse of resources), but was also an example of state technocrats meticulously designing a framework within which power and money were used almost exclusively to the benefit of a small (racial) minority.

The National Party (NP) deviated from the system of British colonial rule in that it wished to swell the ranks of those who benefited from the oligarchy to include working poor and unemployed white Afrikaans-speakers. However, it had no intention of extending it beyond this group. In doing so it would call into question the reason for its own existence (arguably also the reason for the demise of the (N)NP in the post-apartheid context).

What differentiates the apartheid state from latter-day states that are typified by a politics of patronage (such as Zimbabwe in recent years) is its efficiency in ensuring that those who benefited from the system were not only the top leadership and their families; hundreds of thousands of individuals would be afforded access to state grants, free education and job reservation at the expense of the majority, ensuring that the patrimonial network was comparatively massive. It was a system, however, that relied on a number of key tenets for its survival, namely:

- blind acceptance of party authority from beneficiaries of the system;

- successful repression of those who questioned its legitimacy, both within and outside of the network; and

- an acceptance that apartheid's beneficiaries were not allowed to become 'too greedy' – the creation of an elite within the group could eventually result in the alienation of working-class supporters.

The failure of all three aspects would be the ultimate undoing of the apartheid state and its race-based politics of patronage.

Indeed, as freedom of political association, movement and the press were increasingly curtailed by state machinery, so too were other checks and balances hemmed in. One example is that "[…] the Auditor-General's reports stopped routinely detailing malfeasances after 1967".[12]

A key tenet of the oppressive apartheid state was secrecy. This manifested itself in the creation of secret organisations, such as the *Broederbond* – a group of white, male Afrikaner Nationalists that numbered 12,000 by the late 1970s, all loyal members of the NP. The *Broederbond* members were the invisible hand directing NP policy, thereby holding enormous influence over government policy implementation. In such an environment – custom-made to invite the abuse of power and state resources – the idea of transparent, accountable government is a non-starter. Established in 1918 and operating through front organisations such as the Federation for Afrikaans Culture (FAK), the *Broederbond* – which sought to ensure domination of South Africa by white Afrikaans-speaking members of the NP – could count among its membership (which was secret at the time and controlled through a cell-like structure) every NP president from DF Malan to FW de Klerk, including three state presidents.[13] In addition, most Cabinet members, military leaders, heads of Afrikaans-speaking universities (including rectors and professors) and the South African Broadcasting Corporation were *broeders*. Leaders of white Afrikaans clergy, teachers and established farmers also featured prominently among its membership.

In their book, *The Super-Afrikaners*, Ivor Wilkins and Hans Strydom exposed for the first time this sinister organisation that had become the preserve of the wealthy and powerful among the white Afrikaans elite. In 1968 the first chairman of the *Broederbond*, HJ Klopper, proclaimed at the organisation's 50th anniversary: "Do you realise what a powerful force is gathered here tonight between four walls? Show me a greater power on the continent of Africa! Show me a greater power anywhere, even in your so-called civilised country!"[14]

Of course this 'power' also meant that *broeders* were often made aware of forthcoming large government procurements, and where universities and harbours were to be built (an advantage for property speculators), and efforts were made to stack the public service with *broeders* who shared similar values of racist nationalism.

Hyslop[15] argues that as the establishment began to lose its discipline over its followers in the late 1970s, a scramble for personal enrichment emerged at the highest levels. He suggests that "[…] as the economy stagnated the country seems to have shifted dramatically from a low corruption–high growth to a high corruption–low growth scenario".[16] Consider some of the well-publicised examples:

- The late 1970s saw the Info Scandal (also known as 'Muldergate'), involving well-placed members of the NP political elite who creamed off cash intended for the creation of the government-fronted *Citizen* newspaper, and which ultimately led to the fall of President BJ Vorster.

- As the state entrenched a culture of secrecy during the 1980s, almost R4 billion (approximately the same US$ value at the time) was spent annually by the Department of Defence through its 'secret fund'.[17] Some of the details of how these funds were squandered by state operatives living the high-life emerged in the Truth and Reconciliation Commission (TRC) proceedings in the late 1990s. One such example

is the involvement of officials in the Department of Defence in mandrax and ivory smuggling from Angola.

- Money was pumped into various front organisations for the state both in South Africa and abroad. Some of these organisations were designed solely with propaganda in mind. This, however, extended to the creation and extensive funding of sinister organisations in the 1980s that were designed to carry out assassinations and gather intelligence for an increasingly paranoid state.[18]

- The NP government spent billions of rands to build up a strategic fuel reserve intended to act as a buffer against a dwindling supply of oil as a result of international sanctions. Opposition political parties within the white system of governance argued that this was used to enrich officials.[19]

- Another fertile ground for corruption was the 'homeland' system of government into which billions of rands were pumped to create a picture of a divided but ethnically harmonious country. By way of example a "[…] government commission reckoned that several hundred millions of rands (channelled to the Department of Development Aid, which provided financing to the homelands) had been lost to fraud and nepotism in the 1980s through awards of contracts to spouses, payments to firms for fictitious projects and so forth".[20]

- The manner in which business, particularly the largest corporations, benefited from apartheid meant that although they may have occasionally voiced objection, business was, by and large, an accomplice to a corrupt system of governance. Moreover, the international sanctions campaign meant that the South African private sector, almost exclusively in the hands of a white elite, became reliant on both state protection and a level of secrecy. Front companies were often created to ensure that goods could be exported without revealing their South African source.

- As the imperial presidency of PW Botha was in decline, a series of scandals were revealed in 1989 spreading light on a "[...] R650 million foreign exchange fraud and various other multimillion Rand scams. These implicated Cabinet ministers [...] MPs, several government departments and multiple rungs of the state bureaucracy".[21]

DEALING WITH THE PAST – WHAT NOW?

The South African 'miracle' – when one demystifies the images of overnight transformation to a rainbow nation – is the story of compromise over conflict. Already well before the final negotiations were concluded, two competing claims were being made for what would be done to deal with the 'past' in what would hopefully be a peaceful 'future'. The NP favoured the option of blanket amnesty for all apartheid era crimes while the liberation movements, understandably, wanted individuals to account for their role in

perpetuating what the United Nations has classified as a crime against humanity. It is a matter of historical record that the TRC (established in 1996) did not focus on financial crimes that took place under apartheid. Rather, the focus of the TRC was on the thousands of applications for amnesty that were submitted and the public hearings focused on gross violations of human rights. The loss of life inflicted as a result of apartheid across the political divide was the focus of what had become a cathartic national process (although with strong religious overtones).

To understand the backdrop against which apartheid era crimes took place the TRC also included a number of special hearings focusing on the media, business, prisons, the faith community, the legal system and the health sector. Although some of the hearings only touched the surface of the way in which various professions – including South African and foreign businesses – were propped up by the apartheid regime, it started to shed some light on the sectoral responsibility for apartheid.

Some critics of the TRC argue that it did not go far enough in holding senior members of the former government, security establishment (and business community) to account. The TRC was, of course, meant to display restorative justice and was not the Nuremburg-type trials that had taken place in Germany after the defeat of the Nazi regime.

In sacrificing the 'lower' and 'middle managers' of apartheid (the policemen, soldiers and others who were rightly implicated), the top end of the apartheid elite were left to while away their days in holiday homes along the country's coastline (such as PW Botha who retreated to his villa in the aptly named resort town of Wilderness). Many of these individuals, including leaders in business, have never accounted for all their crimes nor did they apply for amnesty for offences they might have committed – refusing in some instances even to cooperate with the TRC.

However, where does this leave the question of how to deal with corruption under apartheid more than 10 years into the democratic project?

On a process level, civil society is now compiling a research report on corruption under apartheid for the National Anti-Corruption Forum, which will attempt to focus on some 'unfinished business' and propose possible action by state institutions.[22]

Equally important, however, is the need to address the impact of such corruption and secrecy on political culture in South Africa today. By the early 1990s the territory of South Africa was under effective military rule. State institutions were policed by technocrats who had little interest in transparency; they were cogs in the wheel of hierarchical machinery that favoured 'upward referrals' as opposed to democratic accountability. At the same time large parts of the liberation movements (particularly those outside the country) had been forced to develop a culture of secrecy. This was often a prerequisite for survival in the wake of assassinations and infiltrations by state agents.

It would surely be naïve to think that this culture of secrecy which permeated political life for so long simply dissipated in a decade? The nature of our transition has meant that many of the functionaries who enforced such secrecy in the past (in the apartheid state, 'homelands' and within the liberation movements) find themselves running a constitutional democracy today. To some extent this makes the strides we have made in giving life to constitutional democracy more extraordinary; however, it also underscores

the need to be aware of the way in which history no doubt still shapes the present. This often manifests itself through networks of corrupt individuals who continue to do 'business' as South Africa always has. A good example thereof maybe the 'Oilgate' party funding scandal that the *Mail & Guardian* broke earlier this year. It perhaps exemplifies some of the problems of the past that haunt us:

- It is often alleged that party funding was a source of great corruption under the NP regime. By 2005 we have no legislation governing disclosure of the sources of private funding of political parties, despite scandals affecting almost all major political parties in the past 10 years. Comparing this to the imagery of South African suburbia, we have built an anti-corruption framework that is as solid as an electric fence around the front of a middle-income home. However, by not legislating in favour of disclosure we leave the back-door open and never fix the massive hole in the fence through which any neighbourhood rogue can climb and steal the family silver.

- The supplier of oil to controversial South African oil company Imvume (that is alleged to have acted as an ANC fundraiser) is the Swiss-based natural resources giant Glencore, headed by controversial businessman Mark Rich. During the 1980s and early 1990s Rich was in fact the biggest supplier (by volume) of oil to apartheid South Africa – in contravention of economic sanctions and international law.[23]

ACCESS TO INFORMATION AND WHISTLEBLOWERS

Two key aspects of promoting a political culture of transparency is access to information and whistleblowing. Protecting whistleblowers and securing citizens access to information is a demonstrable example of political will. Importantly, the South African Parliament has legislated in favour of both.

Although whistleblower legislation is likely to come under parliamentary review in 2006 as part of a process of tightening it up, South Africa was one of the first countries in the region and on the continent to put in place such laws. However, giving life to legislation requires action – and it is argued that the apparent shortcomings in implementing such legislation rest in part with the legacy of secrecy that was described in the previous section of this paper.

ACCESS TO INFORMATION

The Promotion of Access to Information Act (2 of 2000) gives voice to the constitutional requirement for an open democratic system. It ensures that public bodies cannot hide behind a veil of secrecy in order to conceal information that should be in the public domain. A major challenge is that some government departments resort to the onerous process of requiring applications in terms of the legislation when they may be aware that this is not needed. As a result, it could be argued that the spirit of the law has not permeated all levels of the public and private sector.

A study on access to information released in September 2004 and conducted by the Open Society Institute in five transitional democracies (Armenia, Bulgaria, Macedonia, Peru and South Africa) found that South Africa fared the worst in terms of successful access to information requests, despite its law being regarded as the 'gold standard'.[24] Local journalists and non-governmental organisations participated in the study, and of a total of 96 requests for information to government bodies submitted, only 23% were fulfilled.

The Presidency fared the worst, with two-thirds of requests not receiving a reply within the stipulated 30-day period. The remaining third either met with oral refusals to provide information or were not accepted by the Presidency in the first place. Other agencies that fared badly were Eskom (the state electricity monopoly), the Independent Development Trust and the Department of Health and Environment. In comparison, provincial premiers, the Department of Education and (surprisingly, given its history of secrecy) the Department of Defence fared much better, with more than half of the requests being fulfilled.

The act has, however, been used successfully by various bodies to gain access to information, including the Open Democracy Advice Centre. The South African History Archive (based at Wits University) used the act to gain access to a number of boxes of military files that were used during the TRC process and then promptly reclassified as 'secret'.

WHISTLEBLOWING

While South Africa has a law that is designed to protect whistleblowers,[25] it often appears that the prevailing political culture is out of step. While it sets the correct political tone for political leaders to support whistlebowing, it is a new phenomenon in South African political culture. Historically the *impipi* or equally descriptive *veraaier* has not been a celebrated figure in South Africa. This may well inform the inherent mistrust of those who are prepared to 'talk-out'.

The South African Law Commission is undertaking an extensive process of reviewing this act, as many whistleblowers have paid a large personal price for what should be a public benefit. In addition, the Public Protector launched an investigation into provisions of the act in August 2004 as whistleblowers appear to be coming under increasing fire. This comes at a time when prominent whistleblowers have been hounded out of their jobs.

Although a remedy is available for individuals who have been wrongfully dismissed, this is a lengthy process that, in many cases, badly affects their personal lives. Recent prominent cases include officials at Statistics South Africa who were allegedly intimidated when they made allegations of corruption against the statistician-general (the allegations were later disproved by the Public Service Commission, which investigated the matter). Other examples include an auditor, Glen Chase, who received a letter recommending that he be fired after blowing the whistle on John Block, a former MEC for transport in the Northern Cape Province.

The need to support whistleblowers is exemplified in the case of John Muller, a traffic official in Mpumalanga who blew the whistle on Baleka Mbete's (now the Speaker of Parliament) alleged illegal attempt to gain a driver's licence. Muller, who made the disclosure in 1997 prior to the passing of the act, was not able to find permanent employment after his dismissal following this incident. He died in early 2004 as he reportedly could no longer afford the expensive medical treatment he required due to an ailment that may have been brought on by stress.

One of the many remedies proposed to tighten up provisions of the act includes the necessity to ensure that whistleblowers can make confidential disclosures. However, in the long term South Africa needs to nurture a culture of celebrating individuals who blow the whistle and not ostracising them as 'damaged goods'. This requires a political culture that creates and environment conducive to whistleblowing.

THE CULTURE OF PROFIT IN SOUTH AFRICA

THE WEALTH GAP AND GREED

Inequality remains the hallmark of South Africa. The size of the divide means that two distinct groups are created: the majority who aspire to live a better life and those in the top tier who aspire to climb even higher as they fear the thought of living like the majority.

This sort of instinct leads to a form of 'short-termism' that encourages corruption and greed, particularly among the elite. Much is spoken of moral regeneration, and elected leaders should be exemplary in this regard and scornful of those who aspire to fabulous wealth. This may be one of the largest structural problems that must be tackled in order to break effectively the cycle of greed and corruption in South African.

THE ROLE OF THE PRIVATE SECTOR

South Africa is awakening to the changing discourse on the nature of corruption, to focus not only on private–private corruption but also on the role of bribe payers from the private sector. This has, in part, been brought home in the somewhat one-sided debate on the role of elected representatives in the arms deal. There is no doubt that these officials should be held to account, but the same applies to the large corporations implicated in the bribery, such as Thales, EADS and BAE.

With the exception of ongoing investigations into EADS (formerly Daimler Aerospace) by the Munich State Prosecutor, there is no indication that willingness exists on the part of the other Organisation for Economic Cooperation and Development (OECD) member states to implement the much-touted OECD Convention that criminalises the bribery of foreign public officials.

However, South African business has as yet not clearly taken ownership of the need to tackle corruption in South Africa, focusing rather on fraud, in terms of which business is seen as the victim of criminal action. This fails to recognise the role that South African business has played in sustaining corrupt practice, while both benefiting from it and being

negatively affected by it through its harmful impact on the economy. A string of recent cases such as those involving Leisurenet and Regal, the Enrons of South Africa, prove this point.

As Kevin Wakeford, the former chief executive officer of the South African Chamber of Commerce, states:

> We know that we have our own problems within the private sector […] if one just looks at complaints coming through the Chambers [of Commerce] about the activities of certain companies. Then, let's call it the level of awareness within the private sector of delinquency, I think is growing, it is not dissipating.[26]

White-collar crime is legislated against in a similar manner to public sector corruption in the Prevention and Combating of Corrupt Activities Act. The reason for this approach, which includes a blacklisting provision, is clear when considering recent reports by the Scorpions that place the economic impact of white-collar crime above that of all bank heists combined.

> Business Against Crime [BAC] puts the figure at around R48bn/year, or 3% of SA's gross domestic product, and estimates that 3% to 5% of losses in most companies can be put down to crooked employees – with the largest losses attributed to top management crooks [despite the fact that] police, forensic experts and analysts say most corporates would rather prosecute shoplifters and petty criminals to the maximum but give golden handshakes to directors who've lifted millions from them.[27]

Supporting this assertion, Justice Minister Penuell Maduna told a conference on white-collar crime in Gauteng in November 2003 that:

> White-collar crime is costing the South African economy between R50 and R150 billion a year, with 82% of businesses being probable victims. It accounts for 30% of all business failures, and consumes 2-5% of a healthy company's economic turnover.[28]

Given the role of business in sanctions-busting and dealings with the apartheid state in the past, it is likely that much of the political culture of the day has had a profoundly negative impact on good corporate governance.

South Africa has made a positive historic contribution to the global debate on corporate conduct, if at times only by default. The Sullivan Principles for business conduct were, for example, developed as a response to the role of international business in propping up the South African apartheid regime. Since 1994 South Africa has taken on a more proactive contribution to the debate.

The Institute of Directors in Southern Africa established the King Committee on Corporate Governance in 1993, which produced the first 'King Report on Corporate

Governance' in November 1994. This report was recognised internationally as the most comprehensive publication on the subject, embracing the inclusive approach to corporate governance.[29] Clearly, many of the country's over one million small- and medium-sized enterprises, as well as large non-listed entities such as De Beers and others, all need to embrace the principles of King II or develop a similar (but enforceable) code in order for them to become socially responsible and for ethical practice to become the hallmark of South African business.

The nature of ownership of the economy is also changing, albeit at a rather slow pace. The government has made a firm commitment to seeing broader ownership of the economy by black South Africans, and targets have been set to achieve this in sectors such as mining and finance over the next 10 years. These targets, achieved through frameworks agreed to by government and industry (particularly the finance and mining sectors) complement the proposed Black Economic Empowerment (BEE) Act and broaden the focus of the current policy framework from employment equity to include ownership equity. This process is a necessary requirement to right the wrong of inequity that exists within the economy, which is still controlled by 'white business' (although the management structures of some of these businesses are transforming). It is, however, argued that key factors still inhibit real change within business to bring it in line with a political culture that promotes transparency. These include the following:

THE CONCENTRATION OF CAPITAL IN THE HANDS OF THE FEW

Since the end of 19th century individuals and families – who have become fabulously wealthy, largely with the assistance of the state – have dominated the South African economy. Perhaps key among the assistance given by the state was the brutal system of labour practice that it sanctioned, which allowed a small group of industrialists to become exceptionally wealthy at the cost of working class South Africans. Examples include the likes of Cecil John Rhodes (mining), the Oppenheimer family (De Beers and Anglo American) and later, under the rise of Afrikaner nationalism, the Ruperts (tobacco, etc.). These individuals remain wealthy and their fortunes have grown over the past 10 years.

The 2005 Forbes listing of the world's billionaires includes three South Africans: Nicky Openheimer and Family (No. 72: net worth $6 billion); Johann Rupert and Family (No. 272: net worth $2.3 billion); and Donald Gordon (No. 413: net worth $1.6 billion).[30] In May 2004 the *Sunday Times* published the (until then unpublished) results of the World Wealth Report 2003, compiled by Cap Gemini and Merrill Lynch in the US, which shows that the Oppenheimers have, for example, seen their wealth rise from R11.6 billion in 1996 to R30 billion in 2003.[31] What is equally instructive is that the report adds that the numbers of 'ultra-millionaires' (those who are worth more than $30 million, or R200 million) have grown from 150 in 1994 to over 700 in 2004.[32]

A GOOD SIGN THAT THE ECONOMY IS GROWING?

Cosatu spokesperson Patrick Craven points out that: "These figures are shocking, especially

as they come just after a United Nations Development Programme Report which shows there are 22 million South Africans living in poverty."[33] Concentration of ownership in the economy therefore remains in the hands of a few. This underscores the need both to ensure broader ownership of a strong private sector that stimulates economic growth and job creation, and build in checks to ensure that the influence the wealthy have over public policy is not disproportionate to that of the majority of South Africa's poor electorate. The multiracial nature of the 'ultra-millionaires' is no doubt welcomed as a new-found source of legitimacy by those who were part of this exclusive club prior to 1994. The imperative now, however, is to lower the levels of poverty, not swell the ranks of the ultra-rich.

EXPANDING THE BENEFICIARIES OF BEE

There is concern at present that a few politically well-connected individuals are in a position to clinch many deals linked to efforts to ensure black empowerment and broader ownership of the economy. Many of the leading black business people distinguish themselves from earlier generations of South Africa's multi-millionaires/billionaires in that they have 'struggle credentials,' having fought for South Africa's freedom, and many were incarcerated to ensure the end of apartheid. However, there is a growing perception among ordinary South Africans that it is always the same names that are heard when a new major empowerment deal is announced, and many of these individuals are well connected to the leadership of the ruling party. This is not to say that the African National Congress (ANC) as a party is acting corruptly. It does, however, point towards a tendency for leaders of traditional ('white') business to seek out well-connected individuals as partners and those that have clinched similar deals in the past. This argument should, however, not detract from the fact that these individuals have considerable business acumen and were it not for apartheid, may have been leaders of industry a long time ago.

Former Minister of Minerals and Energy Affairs Phumzile Mlambo-Ngcuka has spoken of the "BEE gentlemen" in this regard, although there is a smattering of women such as Bridgette Radebe, wife of the Minister of Public Works, Jeff Radebe. Names that feature prominently include Patrice Motsepe (brother of Bridgette Radebe), Tokyo Sexwale (the former Premier of Gauteng), Saki Macozoma (Member of the ANC National Executive Committee [NEC]), and Cyril Ramaphosa (one-time contender for the presidency and member of the ANC NEC). Each of these individuals has shares and assets to the value of approximately a R1 billion or more. However, in this process of deal-making, which is sometimes based on debt, efforts are too seldom made to ensure that workers – or, for that matter, communities based around some of the industries in economically depressed areas – are given shares in companies (such as South Africa's mines) in a more significant way.

According to Kevin Davie of the now defunct *ThisDay*, in four large deals concluded in 2004, 14 individuals gained stakes with an average value of R535 million (a cumulative value of R7.5 billion).[34] These deals involved Standard and Liberty (banking/finance), Harmony and ARM (gold mining), Sanlam (insurance/finance) and MTN (mobile

telephony). The MTN deal raised the ire of unionists as 30% of top management benefits from 70% of the deal.[35] This has seen five directors gain options in the company worth R2.1 billion. Of the five beneficiaries of this BEE deal, two are white (Robert Nisbet and Santie Botha) and have benefited to the tune of a combined value of more than R500 million. As Davie argues, how whites can get this rich in the name of BEE begs description. He adds that with R7.5 billion (a lot of money in anybody's language), 7,500 new millionaires could have been created, capital of R100,000 could have been provided for 75,000 people or 750,000 small-scale entrepreneurs could have been funded to the value of R10,000 each.[36] Yet only 14 individuals benefited from the four deals mentioned above.

In order to ensure that the majority of South Africans continue to support the process of economic transformation and that the process sustains its credibility as a means to both grow the economy and significantly de-racialise its ownership, it is imperative that policy makers in government and business reassess the current approach that appears skewed towards the cream of the ultra-millionaires. Not to do so creates the belief among both the electorate and foreign investors that South Africa – which has achieved so much in terms of setting standards to combat corruption – somehow continues to favour a form of crony capitalism, which has arguably been the hallmark of the South African economy since the gold-rush in the late 19th century. It is therefore important, now, to ensure that the transformation of the economy is tied to a new more ethical – and equitable – approach to making money.

CONCLUSION

Political culture is not static, although its evolution is heavily influenced by history, as this paper has attempted to argue. In doing so the paper has not exhaustively dealt with all issues facing efforts to combat corruption in South Africa. Some of these relate to political culture, such as the role of the media and civil society in promoting openness and accountability within a dominant party system. This includes the impact of old struggle allegiances between civil society and the ruling party, which makes it difficult to critique government actions. Equally important are the commercial constraints placed on the media that impact on its ability to investigate political corruption. Others issues focus in turn on the role of Parliament in exercising effective oversight, given the role that party leaders have in appointing, or removing, back-benchers critical of the executive. Another important issue is the role of the executive in allowing institutions (the judiciary, police, National Prosecuting Authority, Scorpions, etc.) to combat corruption without unnecessary interference (it has faired relatively well to date), while intervening where institutions are failing (that is, corrupt local governments) or ensuring that they are adequately resourced to do the job.

When looking at the full picture, South Africa through a solid legal and institutional framework has undeniably made huge strides in countering corruption that many so-called developed democracies have taken decades to perfect. However, the paper does attempt to underscore the continuum between the past and present in political culture.

To ensure that corruption is tackled effectively it is necessary for the linear nature of corruption to be understood. How are systems replicating themselves and what lessons must we be learning from the past? The year 1994 did not yield a new country – only a new phase in the struggle to make democracy a reality for the country's people. In order to look forward to a political culture that entrenches values enshrined in the Constitution, we would be wise to look over our shoulders to see if we have truly managed to shake off the past.

NOTES

1 This paper draws heavily on Van Vuuren H, *Draft Transparency International National Integrity Systems Study for South Africa*, March 2005, <www.transparency.org>, <www.ipocafrica.org>

2 Makhanya, editor of the *Sunday Times* wrote in his former capacity as editor of the *Mail & Guardian*.

3 According to a 2004 World Bank study, the cost of global corruption is US$1 trillion.

4 For example, 'Chapter Nine' institutions such as the Auditor-General and Public Protector. Other specialised agencies are found in the South African Police Service, National Prosecuting Authority (the Directorate of Special Operations [Scorpions] and the Asset Forfeiture Unit) and the Special Investigations Unit (now re-branded as the Cobras).

5 Former editor of the now defunct newspaper *ThisDay*.

6 *Noseweek Magazine* 15, April/May 1997.

7 Remarks by Frene Ginwala, Speaker of Parliament, to the Global Forum II, opening Session, 28 May 2001, The Hague. <www.gca-cma.org> (18 November 2003).

8 See Marais D, Patronage in South Africa, *SAIPA* 25(2) South Africa. 1990.

9 Ibid: Quoted from Hillegas HC, *The Boers in War*. New York: Appleton and Co, 1899.

10 Ibid: Quoted from Nathan M, *Paul Kruger: His Life and Times*. Durban: Knox Publishers, 1941.

11 See Van Vuuren H, South Africa Case-Study. Paper commissioned for the Kenya Meeting on New Anti-Corruption Governments. Government of Kenya, TI-Kenya & Transparency International, Nairobi, Kenya, 11-13 October 2004.

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13 Wilkins I & Strydom H, *The Super-Afrikaners*. Johannesburg: Jonathan Ball Publishers, 1980.

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15 Hyslop J, *Political Corruption: Before and After Apartheid*. Wits Institute for Social and Economic Research (WISER) Annual Workshop, University of the Witwatersrand, Johannesburg, 14-18 July 2003.

16 Ibid.

17 Ibid.

18 See reports of the Truth and Reconciliation Commission for some of these details.

19 Ibid.

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22 This followed a resolution of the 2nd National Anti-Corruption Summit in Tshwane. The Institute for Security Studies' Organised Crime and Corruption Programme is authoring the report (with the backing of a civil society reference group consisting of religious leaders, the labour movement and leading civil society organisations) that will be presented to the cross-sectoral National Anti-Corruption Forum in the last quarter of 2005.

23 See research by the Amsterdam Shipping Research Bureaux.

24 Brummer S, SA denied knowledge, *Mail & Guardian*, 24-30 September 2004.

25 The Protected Disclosure Act (26 of 2000) protects whistleblowers who disclose acts of corruption or other abuses of office in the public and private sector.

26 Interview by author with Kevin Wakeford, October 2002.

27 White-collar criminals robbing SA of up to R150bn a year, *The Cape Times*, 27 November 2003.

28 Ibid.

29 See <www.iod.org.za>.

30 The World's Richest People 2005, *Forbes Magazine*, February 2005 <www.forbes.com>.

31 Philp R, Big boom in SA's super-rich, *Sunday Times*, 9 May 2004.

32 Ibid.

33 Ibid.

34 Davie K, Stinking rich, *ThisDay*, 4 August 2004.

35 Ibid.

36 Ibid.

The main challenges identified by political parties for South Africa's political culture

African Christian Democratic Party

JO-ANN DOWNS

INTRODUCTION

There is a great cry in South Africa for a strong opposition, yet both civil society and the political climate in South Africa make it extremely difficult for opposition parties to operate in a meaningful way. Some of the reasons for this are outlined in this paper, and the plea is that more practical and financial support be given to opposition parties and to their development.

EN ROUTE TO A ONE PARTY STATE:

HOW TO MAKE SURE THAT THERE IS NO VIABLE OPPOSITION IN SOUTH AFRICA

FUNDING

Political parties are funded by The Promotion of Multiparty Democracy Act. The intention of the act is to give financial support to parties represented in national and provincial legislatures. The act should, however, be renamed the Make Sure the African National Congress (ANC) Stays in Power Act. Since all political parties receive funding in a strictly proportional manner, this means that the ANC receives some R40 million while parties like the African Christian Democratic Party (ACDP) receive only R3 million.

The funding idea came from some of the established European democracies that give parties support via government funding; but South Africa added its own twist. In countries such as Germany and Sweden, for example, the system is more equitable in that 60% of the available funding is divided equally between all parties that have gained seats, with the remaining 40% divided proportionally. This system both rewards for good performance and promotes other parties by giving them a reasonable chance at elections to better their performance.

Everyone in South Africa wants a viable opposition yet no-one is willing to make sure that opposition parties have the wherewithal (hard cash) to do so. Unfortunately, those businesses that provide democracy promotion programmes and funding have bought in to this reasoning and donate funds according to representation on a strictly proportional

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basis. If business wants a viable opposition then it should fund opposition parties to a greater level than the incumbent. Elections are about money: the more posters you have, the more people you employ to send out the message, the more money you can pay for advertising, the more the electorate notices you.

ACCESS

All ANC members of Parliament (MPs), members of provincial legislatures (MPLs) and councillors have access to national ministers and government departments. This translates into enormous political leverage, which other parties do not enjoy. If there is a lack of development or infrastructure within an area where an ANC office bearer is operating, it is relatively simple to arrange for those services to be provided. The relevant minister/MEC attends the 'grand opening' with, of course, the office bearer sitting alongside. In this way, taxpayers' money is funding the illusion that the ANC has delivered.

If an ANC office bearer starts a non-governmental organisation (NGO) s/he can, without much trouble, arrange for support and funding. I am, however, personally associated with three NGOs, none of which have received one cent of government funding despite their very worthwhile operations. (Two of these NGOs have been used as models by both local and overseas media and community organisations, and have won numerous awards.)

MEDIA

Electronic media is the most important purveyor of opinion in South Africa, and unless the electorate sees and hears opposition parties in all of their multiplicity they have had their choices arbitrarily narrowed for them.

During the last elections, however, the South African Broadcasting Corporation (SABC) devoted an entire day to the launch of the ANC's election manifesto, while the Freedom Front Plus was given only 45 seconds to do the same.

The daily print media tend to report extensively on government programmes and on a very limited scale on debates in national and provincial legislatures. Ministers' and MECs' press releases are printed verbatim, and no comments from the opposition are included. Many media organisations are scaling down their parliamentary liaison offices and scaling up their government liaison offices. This is a great pity – we can never have a strong opposition with media laryngitis. The SABC, and in particular SABC television, does not give opposition parties enough coverage – opposition parties have to go to extraordinary lengths and beg the media to cover a national party event.

DEMOCRATIC INSTITUTIONAL ARRANGEMENTS

Question time and debating time in legislatures are the pillars of any democratic arrangements; but these are being badly eroded by the ruling party in national Parliament.

These institutional arrangements are one of the few methods opposition parties have to get information, score political points and hold cabinet and the president accountable for their decisions.

Question time in the National Assembly has been shortened and takes place only four times a year. Once again, there is strict adherence to proportionality and questions have to be submitted in writing well beforehand. In the United Kingdom, however, the prime minister submits himself to question time every weekly session and the questions are extemporaneous. In South Africa, in addition to the above, the national speaker has suggested that questions which are vexatious or time consuming be disallowed – what a travesty of democracy. The debating times allocated for smaller parties are also a travesty: a couple of minutes for smaller parties as opposed to hours for the ruling party is not in the interests of multiparty democracy.

A major check and balance in developed democracies is the public accounts standing committee. By convention, this committee is always chaired by an opposition member. In South Africa, however, the opposition chair was driven out and a New National Party chair, which later joined the ANC, was appointed. A member who has never served on a Standing Committee on Public Accounts (Scopa) has now been appointed.

In any Scopa there is institutional memory as well as methods of operating that require experience and knowledge of bureaucratic arrangements. A new chair with no previous experience will take at least a year, if not more, to function effectively. Ministers should welcome intense, serious probing and questioning by Scopa as this can highlight shortcomings and move government departments from mere compliance with the law and financial regulations towards value for money and service excellence.

Some of the provincial legislatures are working well but the controversy over the Zuma affair and the arms deal shows how badly the national Scopa fails in its mandate as the public watchdog over government funds. The primary function of a legislature is effective oversight, the main arm of which is an effective and vigilant Scopa.

FLOOR CROSSING

Floor crossing exposes everything ever joked about when it comes to venal politicians. It subverts our very fragile democracy: the 10% threshold protects the ANC from losing any seats but allows it to cherry pick with impunity politicians from smaller parties.

In a proportional system where politicians answer to party discipline, any disagreement can result in an aggrieved politician leaving and starting his/her own party with no support or mandate; while the nature of the floor-crossing legislation allows for immediate funding and support with taxpayers' money. The party losing seats also loses financially, further eroding an electoral mandate. It is an outrage that parties form during floor-crossing without ever being tested by elections and then participate in making laws for people who never voted for them. In addition, the ANC vacuums up any seat going by promising rewards through its incumbent privileges, in this way increasing its already bloated majority.

Many citizens have decided not to vote, which is a great pity as this affects the opposition far more than it does the ruling party. One cannot escape the conclusion that

the ultimate aim of this legislation is to create a one-party state or to emasculate the opposition, making it ineffective.

INCUMBENT PRIVILEGES

Newspapers constantly feature full-page advertisements of MECs and Cabinet ministers pictured giving out useless information. These are public relations exercises for the party, carried out at the government's and the taxpayers' expense. At *imbizos* and similar functions, T-shirts are given to the poor that have the slogan 'taking government to the people' – and with a logo that just happens to be in ANC colours; all this too is paid by the taxpayer.

The ACDP believes that the people must be heard and has no problem with public participation programmes, which can be a very useful barometer of public opinion and feelings. However, these should not be used as a poor disguise for an ANC rally.

Furthermore, party supporters are most likely to benefit from black economic empowerment tendering, which happens at every level of government. This ensures continued financial support for the ANC.

The ACDP has always supported open cards with political funding, but many businesses have shared with us that they will not fund other parties for fear that they will lose their government business. How can any opposition party compete with that?

POLITICISATION OF THE CIVIL SERVICE

Most senior posts in the civil service are given to party appointees; this happens at all levels of government. This politicisation ensures a continuation of ANC cadres at every level. The civil service must be impartial and able to respond to a possible change of government: appointments should be based on merit and not on party affiliation.

An impartial civil service can be a very important check and balance on a government, and bureaucratic theory properly applied should prevent patronage and the abuses outlined above. This politicisation also causes more people to join the ruling party in the hope of reward and jobs.

OPPOSITION PARTIES BUILT ON PERSONALITY AND NOT IDEOLOGY

There is an unfortunate tendency in South Africa to build parties around 'strong men/women': this happened with the United Democratic Movement (which was hailed as the next big thing), then with the Independent Democrats and recently with the National Democratic Convention. These parties all have one common feature: they were formed around leaders without first having a core ideology – it cannot be discerned whether they are centre or left or conservative.

Without an idea of what informs governance, how can this type of party formulate a credible alternative to an incumbent government? An anti-corruption stance does not make for policy programmes that can govern better than the ruling party. These parties

eventually fall apart when the leader disappoints his/her followers – as all leaders are bound to do. In the end, it is alternative ideas on how best to govern that will ultimately win the support of the electorate.

In addition, the Democratic Alliance needs to stop trying to swallow other parties. We are not in a Westminster system and other ideas such as Christian Democracy have space in South Africa. Every opposition vote counts and we should all be trying to grow our parties.

ATTACK ON CIVIL SOCIETY AND NGOS

The attack by President Mbeki on civil society organisations and NGOs is extremely worrying since civil society provides a necessary check and balance on government. For example, in Zimbabwe it is NGOs such as the Church Leader's Forum that are exposing the worst excesses of the Mugabe regime. South Africa's own organisations, such as the Institute for Democracy in South Africa and the Institute for Security Studies, have supplied much needed research and information.

Many democracy development NGOs and social security NGOs receive overseas funding. This is not surprising in a country that has pockets of poverty. But the social welfare NGOs are slowly being starved of government funding and in order to keep supplying services they need to fundraise.

CONCLUSION

We should challenge the ANC to divulge its sources of funding, particularly those from outside the country. Furthermore, civil society, NGOs and academics should work with the opposition as well as with the ruling party. Unless we strengthen our opposition political parties, we will not have a democratic society; we will go further and further into an authoritarian situation, even if there is lip service to multiparty democracy.

United Christian Democratic Party

ISAAC MFUNDISI

Isaac Mfundisi is national chairman of the UCDP.

INTRODUCTION

There are many definitions of culture, but for these purposes I shall confine myself to culture as a way of life for people or organisations. It is the manner in which people generally conduct themselves or their business, in this case politics.

Government is a product of politics because those who govern have been elected to those positions, or appointed thereto, on the basis of their politics.

CULTURE OF ANARCHY

South African politics is characterised by violence, intimidation and, in some instances, arrogance. There are those who maintain that if they cannot have their way peacefully, they must resort to anarchy, marches and strikes.

All these are measures that were applied by the incumbent government on its journey to the Union Buildings. Strikes and marches that date back to the defiance campaigns of the early 1960s are the hallmark of what is going on in the townships today, where residents complain about poor, or no visible, delivery of services. But instead of engaging the authorities through legal means people tend to take to the streets. It has become second nature, in effect becoming their culture.

CULTURE OF ENTITLEMENT

Culture in a society is invariably attributed to those in the majority. It is the same in politics. The sustained conduct of members of the bigger parties, particularly the ruling party, is viewed as the standard for all politicians.

When a senior member of the ruling party on being questioned how he accumulated so much wealth in such a short time states that he did not join the struggle to be poor, this gives the impression that he is entitled to wealth, by hook or by crook. A culture of entitlement has been cultivated among those who hold high office in politics and even in the government service.

Examples to illustrate such entitlement abound, as evidenced by the use of the word 'demand' by labour federations in their quest for better conditions of employment. With that in mind, take an example of a black empowerment company set to install electricity in some village. Despite the contractual agreements made, the community leaders have their own labour bureaus through which they provide work to unemployed people on a commission basis. This happens even if the contractors have their own employees; they are told they have to employ locals.

DEFIANCE OF AUTHORITY

It has become almost an axiom that some homeowners in black townships are hard put to paying for municipal services and others have even stopped paying their bonds. When banks try to do what they should do in terms of the law, which is to evict such people, their efforts are frustrated and these turn into no-go areas for law-enforcement agencies. The result is that the impotence of law enforcement turns into a powerful catalyst that supports the atmosphere of entitlement. The situation is worsened when organisations with political clout, such as the South African National Civics Organisation, support those who defy the law.

Certainly, the sooner the land restitution programme is finalised the better for landowners and those in need of land. The informal settlements that continue to mushroom do not assist in resolving the problem of land transfer to deserving people, mainly blacks. Such settlements are erected in open defiance of authority, with the aid of some who hold high office in certain political parties. In most cases, those who speak on behalf of squatters are characterised by their defiance of authority; for example, those who have occupied dilapidated buildings in central Johannesburg.

FLEXIBLE LAW ENFORCEMENT

Contradictions in maintaining law and order are evident in the way in which ruling party politicians perform their duties or interpret the law. Take for example the bloody days in the 1990s when the African National Congress (ANC) and Inkatha Freedom Party (IFP) members were at one another's throats in Thokoza. ANC members fled the area and IFP members took occupation of their homes, arguing that the hostels were not ideal for human habitation. The then Provincial Housing MEC Dan Mofokeng did not hesitate to invoke all legislation against unlawful occupation, something that was not done when homeowners boycotted payments and occupied houses for which they refused to pay. Politics prevailed to ensure that the rule of law was more 'flexible' when the interests of ANC supporters were at stake rather than those of the IFP and the banks. The situation has not improved to date.

CULTURE OF COMRADESHIP AND COLLECTIVISM

Even in Parliament, the focus is not on whether something is right or wrong, good or bad. Take, for example, the Oilgate affair. To most people even outside Parliament, the

problem is that taxpayers' money left the source wrongly in the first place because a second payment had to be effected. Part of the first payment landed in the coffers of some political party, which the Public Protector considers to be a private entity. The big question is: if such money landed in the pocket of an individual not necessarily aligned to the ruling party, would the matter have been allowed to die off?

All efforts to uncover the truth are frustrated by a culture of comradeship and collectivism in which the wrongs of colleagues should not be exposed. Politicians in this country need to act in accordance with their conscience and not be bound by party interests.

Despite the fact that the South African Constitution makes it clear that all people are equal before the law regardless of their status, gender, origin or creed, there are still those who believe they should be treated differently because of their struggle credentials.

CULTURE OF RACISM

There is a benign culture of racism that prevails in South African politics. It is known and accepted among ANC members that this country will not have a white president for some time to come, or even to perpetuity. Any party led by a white person is looked at askance. Although it is debateable, there is a perception that the on-going Zuma saga is an example that the leadership of the party in question should come from one ethnic group and not any other.

DISREGARD FOR THE JUDICIARY

In some instances the government seems to disregard the fact that the judiciary should be left to do what it knows best, which is to deliver sentences. The cases of Wouter Basson and former Minister Magnus Malan are relevant here. Although they were both found not guilty, the state is on record as indicating that the findings were not in line with what government expected. Such actions are breeding ground for disregard for the judiciary.

It is therefore not surprising that some who have been found guilty have gone on to say that having been sentenced by judges or magistrates from the previous administration(s) saddens them. Some have even said that the former head of the National Prosecuting Authority was a spy – all this notwithstanding that a credible commission of inquiry has cleared the individual. Such people have said further that since they have come from the 'trenches', they are not prepared to go to jail while others (whom they call by name) remain outside. It is this type of culture that makes politics in South Africa so difficult to fathom.

MAJORITARIANISM

Majoritarianism is another element that bedevils the political scenario in this country. Despite everything that has been achieved, the interest is not in appointing the best person for the job; it is far more important to appoint someone from the majority fold. The obsession with which party is in the majority denies the country better skills.

The question of selective appointments to the public service based on political affiliation is as moot as it is being denied by those who practice it; but evidence abounds that some people have been appointed to positions only once they took up membership of the party in question. This smacks of nepotism to me.

CULTURE OF DENIAL AND DISRESPECT

Politicians here should learn that what they do and say is construed as what all South Africans stand for. In countries with a good record of politics, if a politician is implicated in any crime it is not acceptable for such person to remain in office. Additionally, it does not do political parties any good to take no disciplinary action against such members and hide behind the hackneyed statement that 'we shall allow the legal process to take its course'. This culture of passing the buck is a great let down in our politics.

British Minister Blunkett set a good example by resigning when officials in his department erred by issuing a work permit contrary to regulations. He accepted responsibility and did not leave his officials to face the music. We know of instances in this country where public servants have been made scapegoats while politicians have forged ahead, and even been promoted. Our politicians must rid themselves of the 'denial syndrome' when placed in compromising situations; they must be accountable for their positions and for their actions (or lack thereof).

Furthermore, there is a culture of taking the public, and even members of the opposition parties, for granted. Take for instance the minister who, on being questioned on the quality of low-cost housing replied blandly that she promised a million houses but said nothing about their quality.

This conduct shows a lack of respect for the electorate and for the institution of Parliament. The protectionist conduct of political parties, especially elected representatives in this case, leaves much to be desired.

BIASED REPORTING

Politics is not solely in the domain of the practitioners: there are other interest bodies, such as the media, who influence politics. Some media houses may have a particular agenda or politician to promote, and conversely. In the case of the former, the media will go out of its way to idolise its candidate and to discredit other politicians or political parties.

A case in point is the floor crossing that is currently under way. A Johannesburg-based daily newspaper yesterday published a lengthy article lambasting politicians who leave their parties for others through this ignominious system. The reporter singled out one politician who had left a party, which only saw the light of day through floor-crossing two years ago. According to the journalist, the politician in question made him (the columnist) mad for having left a party whose leader is trying to establish a credible political party.

Such media bias is unacceptable and has a negative effect on South African politics. Journalism, in my opinion, has reached its lowest ebb: there is no objective reporting. The

United Christian Democratic Party maintains that what is sauce for the goose is sauce for the gander, and that no matter how good the intention, if something is achieved through inappropriate means, it is flawed – regardless of who is involved.

RULES OF THE GAME

Politics in this country would do well to rid itself of all those 'untouchable' individuals. These are politicians who enjoy support of some sections of the population to the extent that even when they are at fault there is a temptation in their parties to turn a blind eye. The likes of Winnie Mandela fall into this category. To some, it does not matter that she was found guilty in the Stompie Seipei murder case. It still does not bother such people that she has been found guilty on 34 charges of fraud. Were she to be allowed to stand for election for any office, even that of president of the country, she may be elected despite all the above.

The on-going protests around former deputy president Jacob Zuma indicate that regardless of what an experienced judge may find about the character of a person, there are those who find fault with the judge instead. It is unimaginable that in this age, a reputable organisation can call for the unconditional reinstatement of anyone relieved of their responsibilities in government by the president of a country.

The problem does not lie only with the politicians, members of the public should also see to it that they know and accept the rules of the political game. The conduct of politicians should always be beyond reproach.

THE OPPOSITION

We have a sorry situation in this country because instead of the opposition consolidating their position to measure up to the ANC, the former tend to drift further and further from one another; and some opposition parties make it their business to please the ANC at the expense of other minority parties.

New political parties are formed at every turn. If members are unhappy in one party, instead of shopping around and joining an existing party, they establish their own. This culture does not bode well for the future of politics here – and the situation is exacerbated by the opportunistic and diabolical floor-crossing legislation.

CONCLUSION

Our politicians have a long way to go before they learn that being elected representatives comes with responsibility. They should be more tolerant and not fret at every turn; nor should they rush to establish new parties. Our politicians have to be accountable, both at party level and more so at national level.

Politicians should uphold the values of the political parties they represent; and if they fail to do so during the term of that parliament, the honourable thing is to resign and let the party appoint someone who will espouse their values.

Floor crossing is as fraudulent as it is undignified. Despite the fact that floor crossing has been declared legal by the Constitutional Court, any elected representatives worth the honour of the seats they occupy as a result of a party having been voted for, should resign from such party if and when their views differ from the party that nominated them.

Let us hope that one day the sun will rise when we shall have refined, dignified, qualified and accountable politicians.

Inkatha Freedom Party

MANGOSUTHU BUTHELEZI

MANGOSUTHU BUTHELEZI

INTRODUCTION

I would like to address the impact on political culture in South Africa of political intolerance, floor-crossing legislation and the evolving de facto one-party state. Before I evaluate these factors, it is relevant to state that the dynamics of political culture in the new South Africa have their roots in the struggle for political liberation. In the highly contested struggle for political liberation, democratisation was not the priority of the African National Congress (ANC) and its associates, but rather 'regime change'.

Unquestioned loyalty to the movement and the shaping of a single liberation narrative have defined today's ruling political elite in which state and party are equated; and the line is blurred between them. Unity for the ANC in the struggle was synonymous not only with its internal unity but with the unity of all the liberation movements. The ANC conceived the armed struggle as the lightening rod, as it were, for establishing political hegemony of the liberation. The Inkatha Freedom Party (IFP), however, advocated for diversity of roles within the liberation movement as the basis for political pluralism after liberation.

The ANC's post-liberation pursuit of the National Democratic Revolution has had far reaching impact upon our political culture. As the ANC would not accept the IFP's vision of unity within the liberation movement, expressed in a diversity of roles before 1994, the ruling party today expects uncritical consensus around particular programmes of social action. The ruling party's view is that opposition parties should not be adversarial, confrontational or 'constructive'. If the opposition fails in this test it is often labelled as being counter-revolutionary, regressive, unpatriotic, racist or 'not African'. The latter two labels, I am happy to say, are pejoratives that the ANC have found difficult to pin on me. Nevertheless, the nastiness directed at me from a leading member of the ANC when I said in Parliament that levels of rural poverty are worse now than a decade ago, is indicative of the pitifully low level of tolerance in our political culture. This is despite my statements being underpinned by incontrovertible statistical evidence and a solid body of academic work.

Paradoxically, the majority of ANC supporters remain poor; and yet the 2004 election results reveal that they seem to offer solidarity-based support for the ANC government

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(despite a sharp decline of over a million votes cast for the ruling party) based upon the ANC's liberation credentials, as they define them. This is contributing to the unhealthy solidification of our political culture.

FLOOR-CROSSING

It is, of course, timely that we are discussing political culture during the floor-crossing window period in Parliament. I lost five IFP members of Parliament, and there is currently a case in court against an IFP member in the KwaZulu-Natal legislature who was coaxing other members to defect from my party.

The IFP opposed the 2002 floor-crossing legislation from the get go: it is, I believe, the most undemocratic piece of legislation that has been passed since 1994. It is a clear demonstration of the ANC's hegemonic impulse and poses a dangerous threat to our political culture. The legislation envisaged the removal of opposition parties from office in the Western Cape and KwaZulu-Natal, which were outside the orbit of ANC control.

The rules of floor-crossing legislation have been overwhelmingly stacked in favour of the ruling party, not least due to the stipulation that 10% of a party caucus has to cross the floor. And being so much in the majority, this means that if someone wants to defect from the ANC s/he needs to get about 30 people to defect together to one opposition party at a time – an unlikely scenario. In terms of the IFP, however, only three members would need to defect together.

Now that the ANC enjoys unlimited power in all nine provinces, the opposition faces a huge task in protecting South Africa's political culture. We need to strengthen Parliament's public policy oversight role, but at a time when the principle of separation of powers is coming under increasing strain. If South Africa is to make a successful transition from a procedural to a consolidated democracy, we need to develop an organic democratic culture.

POLITICAL TOLERANCE

Although the institutional framework of democracy has been established in South Africa – including a much lauded progressive Constitution, a functioning Parliament and an independent judiciary – progress towards developing the cultural components of democracy, particularly political tolerance, has been painstakingly slow.

If one defines tolerance as a willingness to allow all groups, irrespective of their political viewpoints, to compete for political power through legal and peaceful means, it is quite clear that neither the level nor the distribution of tolerance in South Africa is conducive to democratic governance. The IFP continues to face an uphill task in countering high levels of political intolerance against it and being designated as a Zulu party.

The IFP's support base is stigmatised by the ruling party and sections of the media as being 'tribal' and 'regressive'. For instance, in certain media an article about the IFP is usually illustrated with a photograph of Zulus in traditional dress. Granted, on cultural

days I dress up as a Zulu, without any apologies; but the use of such pictures to accompany a political article is simple propaganda aimed at discouraging other ethnic groups from joining the IFP. And academics alike do this, and 'analysts' too, despite the IFP being an important actor on the main stage of national politics.

EVOLVING DE FACTO ONE-PARTY STATE

The third and final factor that I would like to consider is the impact upon our political culture of an evolving de facto one-party state. Despite a slippage in real numbers of support, the ANC solidarity-based support, as I have mentioned, suggests that the ruling party does not have to worry about a threat to its power. The ANC may have won 70% of the popular vote in the 2004 general election, but in real terms it is confidently exercising 100% of political power. This means that the one-party state is not a menacing prospect, as many observers keep suggesting, but a disconcerting reality that we all need to come to terms with.

This view, which I share, has been vindicated many times and with increasing intensity. The South African public has been unwilling witness through often biased media coverage regarding a number of blatant subversions of the democratic framework. Oilgate, Travelgate and the arms deal, for example, unravel what our Constitution has tried so hard to establish.

CONCLUSION

The current argument about multiparty democracy in South Africa is therefore not about its relative importance but rather its sheer survival. It is not the self-proclaimed victors of the liberation struggle in the ruling party who keep our democracy alive; it is us on the opposition benches. Our own survival is indeed the survival of multiparty democracy. And we can only survive in a political culture with flourishing tolerance; a culture which only we can assist the ruling party to recreate, maintain and perpetuate.

Democratic Alliance

JOHN MOODEY

LIBERATION MODE

Eleven years ago, South Africans went to the polls to hail our new, true democracy; but 11 years on, liberation movement politics still seem to continue.

We have heard speakers today comment that the African National Congress (ANC) party is taking control of politics in South Africa and that the movement is simply following on. I would argue, however, that at grassroots level the liberation movement is still strong.

Although the ANC is failing dismally in the implementation of its policies and the masses are dissatisfied with poor service delivery (due to the high unemployment rate, many of the poor are even poorer today than they were 11 years ago), the electorate does not punish the ANC at the polls. This goes back to the fact that we are still in 'liberation mode' and that one is seen as betraying the struggle if one does not vote for or support the ANC. Owing to this, the masses would rather refrain from going to the polls (a number of speakers have today pointed out the declining voter turnout) than vote for an opposition party.

WEAK OPPOSITION

In the main, minority groupings make up the opposition. There tends to be some fluidity in this grouping in that there are a number of contesting opposition parties; however, this fragmentation only serves to weaken the opposition, with the official opposition, the Democratic Alliance (DA), capturing only 12.5% of the vote in the last national elections. If we are serious about ensuring that our young democracy grows to maturity, we need to have real multipartyism. The opposition needs to be a viable entity that can truly challenge the 'monster' of the ruling party.

The DA undertook a test of the political culture in South Africa last year: we put forward a black candidate in the Vanderbijlpark by-election. This is a very conservative ward that was previously held by the DA – we narrowly lost the ward to the Freedom

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John Moodey is the Democratic Alliance chief spokesperson on Community Safety, Public Works and Transport and Roads in the Gauteng Legislature.

Front Plus. This proved to us that the DA does not have a confirmed and dedicated group of supporters who will come out and vote for us. We do not have 'broomstick support'; that is, if you take a broomstick, dress it up and put it forward as an ANC candidate in, for example, Limpopo, it will surely win by a large majority. There is a notion in the ANC that they are too powerful to be defeated, and the fact that voters are not punishing them at the polls only reinforces this notion.

TRIPARTITE ALLIANCE

The rumblings within the Tripartite Alliance are interesting to observe. I would like to believe that we will see a fracturing of this alliance, with the South African Communist Party and the Congress of South African Trade Unions contesting elections in their own right – I sincerely hope this comes to pass.

It will also be interesting to see if any independent candidates will contest the upcoming local government elections, especially in ANC strongholds and taking into consideration the mobilisation of communities expressing their dissatisfaction with poor service delivery and unfulfilled promises. We are seeing this more and more, and once again the ruling party is making accusations of 'third force' involvement.

CONCLUSION

We need to recognise that the ANC has absolute dominance on the South African political scene to the extent that it will 'rule until Jesus comes'. It is therefore important that we develop and encourage the emergence of a vibrant civil society which will in turn hold the ANC, or any other ruling party, to account.

Independent Democrats

MASILO HUTAMO

In addressing the main challenges identified by political parties for South Africa's political culture, I think we need to start by identifying what we mean by culture. I believe we need to look at culture from a grassroots perspective. What is the ruling party doing on the ground?

CULTURE OF CAREERISM

Township communities were initially characterised by a culture of raids and all manner of boycotts, with the aim of attaining democracy. However, with the advent of democracy we find now that the African National Congress (ANC) is failing to mobilise the masses on current issues of relevance. Instead of mobilising the people around service delivery, job creation and other aspects that the masses were promised at elections, there is a culture on the ground of careerism.

When people in disadvantaged communities start to question, for instance, the lack of jobs, they gather together and appoint a leader – a poor leader among the poor people. We are finding, however, that those community leaders are often being singled out by the ruling party and are elevated by, for example, becoming councillors, being granted tenders or being given other such opportunities. The result is that the lobby groups created on the ground are being undermined by the ANC.

It is therefore imperative that both established and emerging political parties try to operate strictly on the ground. We need to remind and teach people that it is important to know one's rights and to be open in discussions. We need to create a platform where we can teach people that voting for a party other than the ANC is not a betrayal of the liberation struggle but is actually building on that noble cause.

PAPER POLICIES AND DOMINATION

According to the South African Constitution, there is a host of internationally accepted human rights and guiding principles that are supposed to drive government's

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Masilo Hutamo is leader of the Independent Democrats, Ekurhuleni Caucas.

performance. What South Africa is experiencing on the ground, however, is a massive lack of services. When people question this, they are referred to the Constitution and to the ANC's documents – the policies may be on paper, but on the ground there is no visible service delivery.

It is important that emerging and smaller political parties work together to strengthen the opposition. If not, the ruling party, through the many structures it creates on the ground, as Dr Buthelezi said, is going to end up with a 100% majority, not on paper but in practice. If this happens, the ANC will be free to decide everything; it may even decide to ban other organisations. We can already begin to see signs of this. For example, when a community consent group emerges, the South African National Civics Organisation (Sanco) is revived to stop that group; and when the consent group dies, Sanco is ignored in that area once again. However, in cases where a consent group emerges that supports the ruling party, it is left to exist. This is the type of culture that is being created; however, when people begin to lose hope and when more leaders are enticed away from their communities with opportunities, a time will come when communities will rise, unorganised and without leaders.

CULTURE OF ENTITLEMENT

A culture of entitlement is beginning to exist even among the youth. Members of the ANC Youth League, for example, are now demanding some type of remuneration for their participation in the Tripartite Alliance. I don't know what their contribution is, but they are demanding to be put up as councillors and to be given opportunities by development corporations in the different provinces. We are going to have a culture on the ground where people who join the youth leagues are motivated not by altruism or nation building, but because they are promised opportunities for joining such organisations. This will divide our communities, creating a class of youth who own businesses and who are involved in corporate circles due to their affiliation with a particular political organisation, versus an opposing class of youth who have nothing and will resort to violence.

The opposition in general faces the mammoth task of ensuring that this culture of entitlement is countered, especially among members of the Tripartite Alliance. When one starts to question on the ground, it is frightening to hear the response given by ANC councillors to mostly uninformed communities that this or that belongs to the ANC, that communities have no right to question and that the ANC is doing them a favour.

CONCLUSION

It is important to build a stronger opposition; but for as long as the ruling party is being voted for by the majority of blacks (claiming to be loyal to the liberation struggle) and for as long as other national groups still vote along colour lines, it is going to be difficult to bring everybody together and create a strong opposition that represents everyone – and a political culture that can guide South Africa well into the future.

Freedom Front Plus

PIETER MULDER

I would like to address four general political challenges and three specific challenges.

GENERAL CHALLENGES

THE LINE BETWEEN ANC AND GOVERNMENT

To begin with, where do we draw the line between the African National Congress (ANC) as a political party and as government? The distinction, I would say, is becoming less clear by the day. Most democratic countries have clear rules to ensure that the governing party does not misuse its position of power and its access to taxpayers' money in such a way that opposition parties have no democratic chances. Not so in South Africa.

Examples in this regard include the handling of the Oilgate scandal and the funding of political parties legislation. Other examples of the ANC misusing its incumbency include the South African Broadcasting Corporation's (SABC) broadcasting of the ANC's election campaign launch and manifesto last year that went on for several hours, while the Freedom Front Plus (FF+) received a measly 40 seconds – which we were told to be grateful for.

Should senior civil servants engage politicians in angry political debates in the media? From the FF+'s perspective, the civil service is meant to be neutral and should work for all South African citizens. Should the government (read ANC) be allowed to spend millions of taxpayers' rands on publishing almost weekly reports of its successes with full-page advertisements in the media, while opposition parties must buy advertising space with their own funds? The *Sunday Times* wrote: "Among the biggest challenges facing the media industry is being able to tell the difference between public interest, national interest and regime [meaning ANC] interest. The question is for the future, where does government stop and where does the ANC start as a political party?"[1]

DEMOCRATIC INSTRUMENTS

Good opposition needs good democratic instruments, such as Parliament, question time

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Dr Pieter Mulder is leader of the Freedom Front Plus.

in Parliament, annual departmental reports and a fearless media core. A government that regards the opposition as a nuisance starts to weaken the democracy by gradually paralysing these instruments; and it is the opposition's task to raise the alarm when this starts to happen. A few red lights are already flashing.

During President Mandela's term in office most important political announcements were made in Parliament in Cape Town. By doing so, the importance of Parliament and its supervisory role were acknowledged by the executive authority. My experience at present, however, is that President Mbeki and his ministers are rarely seen in Parliament and most political announcements are now made in Pretoria. Political activities are therefore slowly shifting from Cape Town to Pretoria, in effect reducing the role of Parliament. Owing to this reality, some newspapers have already started to scale down their personnel in Cape Town in order to strengthen their Pretoria offices.

One of the highlights in the activities of the British Parliament is prime minister's question time, which is held on a regular basis. The prime minister is not allowed to prepare for these questions or to know who will be asking questions. Compare this to the South African question time to the president, which has recently been decreased to only four question time opportunities a year.

During these opportunities the president will answer only five questions and these questions must be sent to his office weeks before the time, which effectively excludes questions on issues of the day. Furthermore, the speaker, for example, refuses to allow questions to the president on the government's arms deal.

The independence of the South African media is still praiseworthy and must be guarded jealously. The South African government has had some serious confrontations with the media, holding the usual attitude that criticism of government is unpatriotic. Andrew Kenny wrote: "The curse of Africa is the refusal to tolerate variety and dissent. Throughout Africa it is often a crime to make fun of political leaders and criticism is equated with treason."[2] Let's hope that Zapiro's cartoons continue to appear in the newspaper and that Pieter Dirk Uys is allowed to poke fun at government ministers.

POLITICAL CORRECTNESS

One of my biggest personal frustrations is the current habit of exaggerated political correctness in our society. If you are too honest in public, according to certain people, you are branded as unpatriotic; and a racist pejorative is usually added just to make sure your personal integrity is attacked and not your arguments.

Will this become a permanent feature of our political culture? We are brainwashed to use all the right words at the right places in order to avoid this type of criticism. The result, however, is that we are not being honest with each other and are debating around the bush.

By way of example, the South African Parliamentary Committee for Foreign Affairs, of which I am a member, recently held discussions with parliamentarians of the European Union's Foreign Affairs group. When the discussion turned to Zimbabwe, I realised with shock how political correctness has already influenced us, myself included. Whereas the

South Africans cautiously discussed the issue and touched on the sensitivities of the Zimbabwean situation, the Europeans did not hesitate to compare autocracy in Zimbabwe with real democracy in Botswana, to call the undemocratic bullying of President Mugabe by its name, and to compare Mugabe with Hitler and every other dictator of the past. The Europeans were quite surprised when the ANC members of Parliament objected strongly, at which point the Europeans pointed out aggressively that they had used the same strong language against the previous South African government and that the ANC at that time cheered them on with enthusiasm.

GRIEVANCES OF THE POOR AGGRAVATED BY THE SUDDEN RISE OF A NEW MIDDLE CLASS

Nothing puts as much pressure on a democracy as poverty and an outraged mass whose expectations have not been met.

The ANC government has succeeded within the first ten years of its rule to create a rich middle class of many black government officials, a few business persons and some municipal managers (whose salaries are in the millions). The unusual amount of new BMWs and Mercedes Benzes on our roads attests to this new found affluence.

But the sudden appearance of a new, rich middle class on the one hand with still large numbers of poor people on the other, creates a dangerous situation. This is especially true when figures show that many of the poor are worse off than before 1994. Such disillusionment in the new democracy can in the future be exploited by opportunistic political leaders and could jeopardise the whole democratic system.

Chris Hani said in 1992, before the advent of majority rule: "What I fear is that the liberators emerge as elitists who drive around in Mercedes Benzes and use the resources of this country to live in palaces and to gather riches."[3]

SPECIFIC CHALLENGES

As an Afrikaner leader I am part of the present Afrikaner debates about the future challenges, as seen from that perspective.

FAILURE IS GOOD

There is a popular belief in certain Afrikaner circles that the imminent collapse of South Africa is both predicted and desired. The basis of their thinking is that if everything collapses something of the old South Africa will be reinstituted. Things do not work like that and there is no precedent in Africa of an old regime being reinstated when everything disintegrated.

What does happen is that inflation leaps to 300%, which leads to the economic destruction of the middle class and a take-over by the military strong man as dictator. This is usually followed by a long drawn-out civil war. This negative approach and 'wishful thinking' brings no solutions; the challenge is to get involved and make a contribution.

EVERYTHING IS WRONG

There are also Afrikaners who enjoy it when things go wrong in South Africa. Their personal frustration with the new South Africa plays a role in this. Although they may be justified in feeling frustrated, we need to remember that if the South African ship sinks, we all sink together. By all means stand up for your rights and fight for what you believe in, but the challenge is to remain responsible and balanced.

RACISM

The ideals and future of the Afrikaner cannot be built upon a racist approach; nor can it be built by bullying other people. Afrikaners must not position themselves as the prickly pear (that is, everything they touch is burnt or hurt) in the South African orchard by the way in which they fight for their own cause. However, the rest of South Africa must take notice of Afrikaner requests. To be yourself and to insist on your own language, culture and other minority rights has nothing to do with racism: it merely acknowledges the realities of ethnic and cultural diversity in South Africa, and is in line with trends in the rest of the world.

CONCLUSION

DEMOCRATIC MODELS

One definition of politics is that it has to do with the management of differences. The most popular democratic model in the world today is that of liberal democracy. It is easily wrapped up by the West and exported, for example, to Iraq and to African states as the only democratic model available.

In the simplistic liberal democratic model, like the one offered to Africa by the West, 51% of the population forces their will on the other 49% of the same population. This may be tolerated in a homogenous state where governments replace one another regularly, but in the typical heterogeneous states found in Africa with artificial colonial boundaries, this is a recipe for disaster – the history of Africa proves this. The opposition – which usually has specific ethnic loyalties – does not experience this model as democracy but rather as permanent oppression and domination. This leads to resistance and subversion.

Many Western states, such as Switzerland, Belgium and Spain, have refined and adapted their political models, indicating that other, more advanced, models are replacing the simplistic model. Ethiopia, for example, is currently experimenting with this.

Participatory democracy, or radical democracy, follows upon liberal democracy. This allows for the acknowledgement and empowerment not only of individuals but also of communities. The true culture of democracy surely lies within the spirit of participation, where the basis of individual rights is enclosed in human dignity, and the basis for community rights is found in the acknowledgement of this reality. I believe that the future of democracy in South Africa, and in Africa, lies in the politics of recognition of these community rights.

NATION BUILDING

Against this background it puzzles me that very little is said (or allowed to be said) on what exactly is understood by nation building. It is politically correct to use the term as often as possible, but not to debate it. I think it is time to debate the issues. Is there only one recipe for nation building? Do we have the right recipe for nation building? Is nation building stumbling from one international sports event to the next? Why did nation building fail in several African states? Is successful nation building possible without the consent of all involved?

As an Afrikaner I want to be myself in Africa. Is that too much to ask? If there is a place in the north of Africa for Arabs with their religion and different culture, there should also be a place for me as an African, as a South African, but also as an Afrikaner in the south (even though black intolerance calls me a Euro African).

The trick in a successful society is for minority citizens to be able to feel that they are able to be more than one thing at the same time – to be free to feel American and black, Scottish and British, Moslem and Indian. Surely nation building is subject to the consent of those parties involved.

EXTREMISM AND POLARISATION VERSUS WIN-WIN SOLUTIONS

If we adopt extremism and polarisation we will repeat the mistakes of many other countries, including Zimbabwe, and will be fighting each other for the next 20 years in win-lose political battles. How stupid. Let us pray for wise leaders on all sides; then win-win solutions to Africa's problems are possible. Remember: yesterday is not ours to recover but tomorrow is ours to win or to lose.

NOTES

1   *Sunday Times*, 20 April 2003, p 16.
2   *Sunday Times*, 15 July 1989, p 18.
3   *Beeld*, 29 October 1992, p 17.

Questions and answers

QUESTIONS TO ANNIE CHIKWANHA

Question: Do you see culture as assisting, advancing or hindering the creation of national identity?

Response: I do not think that culture is hindering the creation of national identity. I look at culture as a set of shared meanings and beliefs, in this case about how politics is run in the country. Take, for instance, the question of affirmative action. The responses indicate that many people support affirmative action but we cannot say that it is part of South Africa's political culture because there is contestation on that issue. It is easy to answer your questions if we go issue by issue, but generally speaking I do not think that it is a hindrance.

Question: When you conducted your research, did you specifically look at urban people who can read and write or did your research reach people in, for example, rural KwaZulu-Natal?

Response: I can assure you that every adult citizen of voting age in South Africa had an equal and known chance for inclusion in the survey because of the way the survey is designed. Also, the respondents do not need to be literate because the interviewers read out the questions and capture the responses. I would argue that the findings reflect the views of every South African.

Question: Do your surveys take into account globalisation?

Response: We do capture global elements in the framing of our survey questions. We ask a range of questions besides the ones that I chose to present here today. The first question in the survey asks people to pick their own identity, the one they project the most. In South Africa we are finding now that most respondents do this according to class and profession. When we began our surveys, identity was mostly framed according to ethnic group. I believe that this change in our data over time takes into account global shifts

because professions can be practiced anywhere. I don't think there are boundaries when people move to such a perception of their identity. Additionally, we have found that 61% of South Africans pick up on their national identity as opposed to their ethnic identity: that is, they say I am a South African as opposed to being a Xhosa, etc.

Question: How do you think issues such as national identity and cultural diversity relate to how South Africans see and treat others, not only in South Africa but outside its borders? Were these types of questions included in your surveys?

Response: We do not ask any questions on xenophobia. The closest we ask, in South Africa and not across all the countries, is how well the government is doing with regard to handling the Zimbabwe issue. And on this policy issue government gets the worst rating. It might be interesting to include questions on xenophobia.

Question: Whose political culture are you talking about? I would say that we are really talking about the culture of elite, urban people who live individual, atomised lives in the cities. This fits into the American sociology methodology that has been taken over by the Afrobarometer network. But the majority of people in South Africa are rural and do not form part of this culture that we are talking about. There is a crisis of local government in South Africa which one cannot understand if we do not consider the culture of people in rural areas and how that should then cascade up into the political structures of our country.

Response: Whose political culture is dominating? I would like to argue that because we design our symbols to capture rural people's views it is possible to do further analysis and correlate many of these views, pick out the location of people and compare the views of rural people with urban people. For instance, if we pick out the element of trust in institutions we find that there is a high degree of trust among rural people, not just in South Africa but across all countries. This could be because many of these institutions do not exist in rural areas; they are given positive ratings because rural people do not have to interact with them as often as urban people. We have tended though to disaggregate by race and haven't really started to disaggregate by rural and urban divides. I think we would get a very interesting picture if we were to disaggregate along these lines in South Africa.

QUESTIONS TO KRISTINA BENTLEY

Comment: At the beginning of your paper you mentioned Africans – using the euphemistic term 'majority demographic group' – versus minorities. I find this problematic. The South African political discourse is suffused with dichotomies and we must break from this prison of dichotomies. We are an African country and it is legitimate

and correct to redressing this situation where South Africa was an European outpost in Africa: we need to turn it into a country with an African character. I think that is something that is being lost when one talks about 'demographics'. African culture, African people, were marginalised and if you want democracy to be meaningful in this country, it is not just a question of numbers, it is a question of presence; of changing the institutions and ways of managing this country. Also, we are not talking about imagined communities; we are talking about creating an objective phenomenon.

Response: I agree with you about the problem of dichotomies. I am not suggesting that we put the racial script aside, but that we have to rewrite the racial scripts and start talking about issues of race and identity in very different ways than we do now.

Question: Is there an inherent tension in the notion of civic nationality? On the one hand you have the notion of equality and inclusion, but the very notion of nationality implies inequality and exclusion. On what grounds are you excluding anybody from rights? Is it simply on nationality, in terms of where someone is born?

Response: You have to draw some kind of line for nationality, and inevitably the citizens of a state enjoy certain rights that non-citizens do not. Having said that, though, I think there is potential to make a strong precedence in this country that non-citizens also enjoy a certain degree of human rights. That would hinge on the notion of civic and deliberative nationality.

QUESTIONS TO FREDERIK VAN ZYL SLABBERT

Question: What is national identity and who is an African?

Response: I am extremely cautious about trying to co-opt the concept of national identity for any ideological purpose. Let me give you an idea. President Thabo Mbeki's speech as deputy president with the acceptance of the current Constitution in 1996 was titled 'I am an African'. It was a hugely evocative speech, but one point comes out very clearly: he uses the concept 'African' in its most inclusive sense; in fact he ends by saying "this Constitution that we adopt today can never be used to define the degree of Africanism of any South Africa". So he is saying we are all African.

But fast forward to the broad-based Black Economic Empowerment Act and there you see a list of definitions: it says that a black is a coloured, an Asian and an African. Then you fast forward to that disreputable piece on the 'national question' in *Umrabulo* (edition 21) which say: "Part one of the national question is the economic liberation of blacks in general and Africans in particular." So you can be black but not an African. An African is a black of a special kind, now what is special about it? Are, for example, Mubarak, Buttaflika and Gadaffi, Africans? They don't look very black to me, but are they African? If they are not, how can you start an African Union? The point I am trying to make is that

once you get into this kind of logic you end up in a permanent quagmire of tautologies. The best example of this is Pallo Jordan in that same edition of *Umrabulo*: 'Pan African blood thicker than Atlantic water.' So, if you have the right blood, you are an African. How do you get the right blood? Well, because you are an African – that is a perfectly circular argument.

Comment: Regarding race and racial categorisation. To excise race and how it has been used and abused, could lead us into all kinds of trouble because those who say they don't recognise race can use that as a mechanism to re-entrench racial privilege.

Response: I was fiercely attacked by Mark Orkin in the bad old days for using concepts like coloured, black, white and Asian in my analyses; he said I was perpetuating a culture of racism. When Orkin became head of the Statistics Department I wrote him a note which said something along the lines of: "Congratulations. I look forward with great anticipation to how you are going to present the statistics in the new South Africa without racial references." Well, I invite you to look at the latest Statistics SA publications – so many coloureds, so many whites. But there is no Population Registration Act, so how does Statistics SA know who is coloured, Asian and black? I am told it is by self classification. What nonsense. I understand the legacy part of it, I am not denying that, but I am saying that if you use legislation to racially entitle a minority, which is what apartheid did, and you now use legislation to racially entitle a majority, you must budget generously for a racist future. Are we going to address this problem of voluntary self classification, if there is such a thing, or are we going to attack the attempt to formalise racism in legislation again?

Question: Your deifying of liberal democracy is problematic. Look at the way Tony Blair and George Bush are gerrymandering liberal democracy, even the rule of law has been gerrymandered around liberal democracy. Doesn't that worry you?

Response: I am not deifying liberal democracy. I am simply saying that what I have read about liberal democracy persuades me to believe that our current Constitution is a classic liberal democratic constitution. Some ANC members do not like to be called liberal democrats, but if you believe in the South African Constitution and you accept it as being valid, then you believe in liberal democracy. Now, the dilemma regarding Bush and Blair is absolutely correct. The new danger in America is that the government of the day co-opts the key institutions which have to make that democracy function. Bush is the greatest threat to liberal democracy that America has seen in many years and Blair is going the same way. I call it the 'Putin approach'. Putin doesn't change the constitution – he simply co-opts it. He appoints his own people as judges, etc. You can't accuse him of changing the constitution but it just so happens that the Constitutional Court gives the appropriate decisions that suit Putin, Blair or Bush's designs.

Question: Considering their potential for mass support, why do civic movements not become electoral parties and why don't they get involved in the issue of electoral reform?

Response: I am a passionate supporter of electoral reform and believe we need some mixture of the constituency-based and proportional representation systems. This will force people in public office to be at the service of their constituencies.

It is absolutely true that in their attempts to be pristine, social movements have sometimes not taken the opportunity to be more generous in terms of entering alliances and fighting for things like electoral reform. But I am against community movements becoming political parties, if by this is meant having to follow the rules of constitutional engagement. Right now, given the way the rule of law could and has been gerrymandered by the ruling party, that would be stupid. GEAR was made in the boardroom; it will be defeated in the streets. This does not mean that civic movements should not ally themselves with political parties at particular times. But right now we need a fighting civil society that is militant and is not bound by corporatist and legal scripts. I do not believe that these movements, which have developed out of people's passions and a sense of community, should become political parties, if this means developing a political machine. The power of community movements is the anti-thesis of a machine – it derives from their spontaneity and their ability to be innovative at the level of tactics and strategies.

Question: I am still looking for the invisible hand telling us how to think and how to debate because some of the intellectuals you are referring to are just as intolerant of debate as the master from on high who is now telling us not to debate and what to debate. I want to share an anecdote: I was invited on a trip to Germany in 1996 when Mandela was the president of South Africa. I remember vividly President Mandela walking out of a room having met with investors and announcing at a press conference 'our policy henceforth will be a policy of privatisation'. I did not see Mbeki; I did not see Cabinet – I saw this towering figure walking out and making that policy statement. Have we been self-censoring under the period of President Mandela and are now making up for that?

Additionally, nothing I have heard today has convinced me that we are moving towards a paradigm where the poor, the elected, business, civil society, NGOs and researchers agree on what the problems in this country are and how to address them? Without this consensus I am afraid it is not only Mr Mbeki that will self destruct; we are all self destructing. People say: 'Let's protest about jobs', as if Mr Mbeki sits there not wanting to create jobs. No one is coming up with a movement to protest for development and how that can be achieved, and for me the main issue in the country is development. I am convinced that GEAR has failed, certainly for the poor, but I remain convinced that we cannot do without the private sector – the issue is what you do with the private sector.

Response: I think in one sense you are right to point a finger at Mandela for being the conduit for much of the right turn in macro-economic policy, and you are right that

critique was muted during the Mandela presidency. But there was critique during this period, it is just that nobody was listening. The point is that Mbeki is now in power and has centralised power and emasculated democratic debate in his own party. Right now he is getting away with it but it will not last. He will face a challenge to his economic policy that cannot deliver on the very things that he claims to want to deliver on – in the main jobs. In the face of this failure he gives more doses of the same policy.

The private sector is a culpable party. It has said 'reduce taxes, allow for trade and exchange barriers to collapse and we will provide jobs'. The jobs have not come but the private sector has reaped in record profits.

Clearly it is not just about growth. You can have high growth but that does not necessarily mean it will be redistributed, especially in a country where big capital is not in any form a patriotic bourgeoisie, and the so-called patriotic bourgeoisie is as greedy and avaricious as their white benefactors. Fanon would probably say – Black Skins-White Greed.

I think it is naïve to think policy comes from consensus. Politics is about achieving hegemony. Right now business is dominant but not hegemonic. We need to contest this dominance. This means a direct challenge to businesses handmaiden – Thabo Mbeki. There are different class positions and different interests in South Africa, making it impossible to solve problems by consensus. Nicky Oppenheimer sees a solution to a crisis in a completely different way to somebody who has just been thrown out of her textile job. Classes in South Africa are involved in a titanic fight for hegemony. I am on the side that represents the interests of the poor. Whose side are you on?

My point is that the person who has access to the destruct button is President Thabo Mbeki. For example, he says on television (to paraphrase): "If the people ask me, I will be President of the ANC in 2007." There will be two centres of power in this country – one in Luthuli House and one in the Union Buildings. It is disingenuous to say that the ANC Constitution allows for that. Mbeki is the one that has created a succession crisis.

Question: Is there a realistic chance for civil society organisations to engage constructively with local authorities and local government structures in order to develop a common developmental vision for their locality?

Response: What I can say is that the local government in Durban has, for example, looted resources that were supposed to go to townships to build the International Convention Centre and uShaka Marine World. In this context it is difficult to talk about a local government having a developmental vision. It is difficult to talk about a common vision when your supposed partners are busy destroying the commons.

I do not want to over-rate community movements. They are reactive and defensive, fighting battles for the maintenance of bare life. Community movements, especially given that they have fought electricity and water disconnections and evictions, will find it difficult to sustain themselves. They will face repression and forms of co-optation. However, they will really become a force when the shack-dwellers take to the streets.

There are signs already of this happening albeit that these are sporadic outbursts. But they time is coming – and then you will see South Africa's self-satisfied representational body politic shaking in their 4x4s.

Question: We seem to be reaching the same conclusions but from a totally opposite ideology. Everybody complains about the opposition parties and that they are not effective enough; but the opposition parties have been marginalised not only by the ANC but by the very same structures that you are talking about. Nobody rushes to support the opposition in terms of finances or intellectual capacity, and particularly intellectuals practically ignore opposition parties apart from the DA. In addition to civil society there has to be a viable opposition and there has to be an amalgamation between those groups.

Response: I agree with you and for me it is a key question. But the total straitjacket of the proportional representative system has to change. As I said before, we need a mixed proportional and representative system. Without deifying the British system I was so pleasantly surprised when Robin Cook or Clare Short could oppose the war in Iraq and still keep their seats. In South Africa, MPs have to follow the party whip; what a terrible career to have to be an ordinary MP in the South African Parliament.

QUESTIONS TO ANTHONY EGAN

Question: What role are the churches playing now in relation to Zimbabwe? Some people are advocating sanctions against Zimbabwe and the church seems to be taking the view, which I support, that it would be wrong to impose sanctions on Zimbabwe.

Response: The churches in Zimbabwe are still divided over Mugabe and the whole Zimbabwe issue. Some high-ranking church leaders are still completely supportive of Mugabe (and now members of the ZANU-PF hierarchy are seeking ordination in some churches, perhaps – a cynic might say – to consolidate ZANU power in this sector); others, like Archbishop Pius Ncube, say there must be a non-violent revolution; while still others seem to be hoping that something would happen to put an end to it all. It is a very real challenge.

I think the churches supporting Mugabe and the 'wait and see' crew are plainly opportunistic, while I fear those who support nonviolent revolution are naïve, however holy and principled their stance. As for sanctions, there could be good theological reasons both for and against: for, in the sense that this could weaken Mugabe and possibly (but I wonder how likely) generate a mass revolt; against, that it would only further hurt the masses who are hurting too much already. Selective sanctions against strategic goods (arms, ammunition, vehicles, even fuel) might have an effect – though history has a mixed verdict on the immediate effectiveness of such moves. The point that the churches might debate such an issue is important too. For me, the life blood of a religion is the way in which it can be interpreted and reinterpreted and developed over time. It needs to bring

on board different people of different positions and try to contribute to the public debate and shift political culture.

Question: There seems to be a big move in South Africa towards the privatisation of religion; a displacement of people's genuine political and material interests – a false consciousness, if you like, towards fundamentalist and charismatic churches. Do you agree that there is a stepping inside and a buying into something to put a 'balm on the pain' – that Allah or God or whoever is going to save you in some way?

Response: You are quite right. I think it is a very real problem – and a very real question. If other people were standing here talking, they would probably say that this is the right way to be – Christ above culture or religion above culture indicates the truth of church-state separation, the irrelevance of politics to true faith, which is saving one's soul, etc. But I am here and see things in a far more 'worldly' and 'radical' sense perhaps. Having said this, the emergence of religion as escape is a very real part of religious culture and of South African political culture; as indeed is the mentality of withdrawal – just consider white withdrawal from the political environment. Those who feel that they are no longer part of the mainstream withdraw from the mainstream, either behind protected walls or behind the invisible walls of a conservative faith. On the other hand, we have to be realistic and say that it is not always true that a conservative, or even fairly fundamentalist, faith is necessarily politically reactionary. There are a few very interesting realities; for example, the role of evangelical Christians in bringing down Daniel Arap Moi recently in Kenya. And, as my friend Ashwin Desai has noted in his writings on the new movements of the poor, many evangelical ministers and Christians are grassroots activists in these new, even 'new left'-ish, movements. We must therefore be cautious – and in particular, I must be cautious – that we don't let theological prejudices blind observations of complex political and social phenomena in South Africa today. We have to recognise, however, that religion is a double-edged sword. It can indeed be opium, a narcotic of activism; as much, however, it could be a stimulant to revolution.

QUESTIONS TO PHILIP ARMSTRONG

Question: I want to share some information with you and ask advice. For the past two years I have been tracking a diamond that is actually in the DRC but that has been moving, sold, bought and stolen. My purpose is to see what happens to the revenue from this diamond. It has travelled through Rwanda and Burundi and is now in Zimbabwe. What is more interesting than the diamond, though, are the social relationships. Wherever I go I somehow find a South African company involved in diamonds or in some form of extractive industry, and I find that the working and living conditions of the mine workers are appalling. There is no real trade union movement in Rwanda, Burundi and Congo to speak of. The top heaviness of the state and the collusion of the state in the diamond industry, for example, make it difficult to mobilise in any collective way. The miners have

approached Cosatu, but Cosatu does not seem to want to take up the issue. What does one do in this instance? One would assume that if there is any corporate or social responsibility on behalf of South African companies inside our country, surely this should be extended beyond our borders?

Response: This is the point I was trying to make earlier: that outside of South Africa we very quickly lapse into the double standards that we often accuse multinationals of. Once out of the South African environment, companies believe they are operating in hostile territories; they feel that they are beyond the arm of the law because the legal systems in those countries are either non-existent or hopelessly deficient. I think, however, that the answer is in having some sort of codified structure that sets down what we expect our companies to do and what behaviour is expected of them. I was in a discussion in Paris with some 37 ambassadors and the challenge they were expressing is that in the OECD countries, if there is, for example, a report against a Canadian company in the Sudan, it is judicially investigated; but the South African company thrashing around Sudan runs free. The ambassadors were saying that companies are coming to them complaining: 'How can you sanction us when other renegades can do what they like? Whose side are you on?' So the issue then, is that we need to level the playing field – this will require enforcement and monitoring; not just within the judicial system, because I think that is a flawed concept, but how government might want to encourage a set of standards and reporting mechanisms for dealing with these sorts of issues. It is at least worth the debate.

Question: Why is there a problem of enforcement when we have the necessary institutions and policies? And what kind of enforcement are you talking about – is it legal and is it moral?

Response: When I talk of enforcement I am talking of the effective enforcement of our laws. We have plenty of world class laws but we do not have the necessary capacity for enforcement. I am not necessarily talking about an unwillingness to enforce law. If you look at the history of our judiciary, for example, its main role was to prosecute political and security offences as they were cast in those days. The result is that we don't really have an effective process for commercial prosecution, in my opinion. Take, for example, the Parmalat case in Italy: within six months those directors had been prosecuted, arraigned before the courts and some were already in jail. How long have the Macmed and LeisureNet cases been languishing on for? Ten years later nothing has been done; they can't even find some of the people. The other problem is that boards have a moral obligation. Take, for example, the case of the Boeing chief executive who was dismissed for having an affair with one of his managers, and which information came to the attention of the board through a whistle-blowing incident. There was no rule that said it was an offence contractually, but the CEO's behaviour was, according to the board, contrary to the values of that business and he was out. I don't find that type of attitude pervasive in our boardrooms; there are too many concessionary issues. There is also a

level of complacency, I believe. An amazing amount of work has been done in this country if you think of the challenges assumed in 1994, but we must not become complacent about our indestructibility.

QUESTIONS TO HENNIE VAN VUUREN

Question: Shouldn't we be doing something about strengthening the currently inadequate legislation around whistleblowing? I have noticed that whistleblowers get nailed – not on the actual whistleblowing, which is against the law. In my experience I see that other ways are found, for example, people are transferred or put in untenable situations. You see this in all the provinces, in government and in business as well.

Response: There are numerous examples of whistleblowers being victimised for daring to raise issues of corruption. One of the most disturbing examples is of an official in the Mpumalanga Department of Health, Andrew Tladi, who was trying to uncover corruption in the pharmaceutical industry and the Department of Health a few years ago. He was found murdered in the boot of his car in December last year with a bullet through his head. Although such extreme action remains isolated it exemplifies what is happening to many of our whistleblowers – and underscores why we must ensure that this does not become the norm. The 2nd National Anti-Corruption Summit that took place in March 2005 identified whistleblowing as one of the key areas that requires attention. The Law Commission has been developing recommendations of how to improve the Protected Disclosures Act and better protect whistleblowers since 2002. Reform has been a long time in the making, and I think it is scandalous that these things are happening to ordinary people while completion of the much anticipated review of the Protected Disclosures Act is not prioritised. One of the resolutions of the 2nd National Anti-Corruption Summit was that the commission must hand in its recommendations to Parliament by the end of 2005, and Parliament was encouraged to respond quickly on this matter. We need to create a real, enabling environment for whistleblowing. This also requires whistleblowers to be championed by leaders in business and politics.

Question: It seems to me that to talk about corruption as being part of our political culture, is actually to extend it a dignity it does not deserve. To throw up the banner of culture is a show stopper. Why don't we call it what it is: plain, old fashioned criminal activity? To say that corporate practice and corruption is in some sense 'cultural' is to almost turn this into accepted practice.

Response: Corruption is endemic throughout the world and it is something that we will never be able to root out. I agree that corruption is criminal activity, but I do think it is criminal activity of a special type. It is about the abuse of entrusted power for private benefit. Somebody is given power by a company, by shareholders or by the electorate, and it is the way in which that power is abused. Equally it is a crime that abuses those who

don't have any 'power' in society – the poor. So that is why I do think it is important to separate it from other types of crime.

Question: Is the culture of secrecy all that bad? What kind of secrecy are you talking about here?

Response: The opportunity for corruption grows in more secretive environments. Corruption doesn't leave a dead body in the way one finds at a murder scene – it leaves people who have been disenfranchised of their access to resources. We don't see the immediate physical damage of that transaction because it happens in secret.

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Conference programme

Welcome from KAS and St Augustine College

Public perceptions of South Africa's political culture
Annie Chikwanha (Afrobarometer Network PP)

Understanding culture and rights in SA today: Moving beyond racial hegemony in national identity
Kristina A. Bentley (Chief Research Specialist, Democracy and Governance /HSRC)

Discussion (moderated by Dren Nupen)

Political culture and the challenge of elections
Frederik van Zyl Slabbert (former Head of the Electoral Task Team)

Culture(s) of the African National Congress
Raymond Suttner (Researcher Social and Political Analyst)

Discussion (moderated by Dren Nupen)

The voices from the grassroots – the culture of the new social movements
Ashwin Desai (Honorary Research Fellow, Centre for Civil Society,UKZN)

Between fundamentalism and pluralism: The political culture of the SA religious sector
Anthony Egan (St Augustine College of SA)

Discussion (moderated by Dren Nupen)

The challenges of corporate governance in South Africa
Philip Armstrong (Head Corporate Governance, Edward Nathan Corporate Law Advisers PP)

A culture of transparency in South Africa: Negotiating the obstacles
Hennie van Vuuren (Senior Researcher: Anti-Corruption Strategies, ISS/Cape Town)

Discussion (moderated by Chris Landsberg)

PANEL DISCUSSION WITH POLITICAL PARTY REPRESENTATIVES

The main challenges identified by Political Parties for South Africa's political culture (chaired by Chris Landsberg)

Political party representatives:

Mrs Joann Downs, ACDP
Mr Isaac Mfundisi, UCDP
Dr Mangosuthu Buthelezi, IFP
Mr John Moodey, DA
Mr Masilo Hutamo, ID
Dr Pieter Mulder, FF+

Discussion on deliberations of political party representatives
(moderated by Chris Landsberg)

Participants' list

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Sunday Independent

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