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TITLE: Democratic Theory and Constitutional Change in South Africa.

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"Democratic Theory and Constitutional Change in South Africa"

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In the last two years the debate on democracy in South Africa has reached a new intensity. The unbanning of the ANC and other opposition movements occurred at the same time as the Cold War in Europe came to an end. Countries such as Poland, Czechoslovakia and Hungary that had for decades been ruled by totalitarian regimes began to be transformed by popular political pressure. Demands for democratic change also escalated in South Africa during the 1980s. It finally lead the South African government of F.W. De Klerk to announce in February 1990 the unbanning of the ANC, PAC and other opposition liberation movements and the release of Nelson Mandela from jail. The following year the government established the Convention for a Democratic South Africa (CODESA) in order to negotiate a new constitution.

The pace of the changes has caught many political analysts unawares. Craig Charney has suggested that the failure of political scientists to predict the new turn of events indicated wider methodological shortcomings. Much political science analysis of South Africa in the 1980s was still dominated, Charney has argued, by a failure to see politics as an autonomous activity rather than as simply a receptacle for social groups. This often results in crude theories of the state that fail to consider it as an actor in its own right. Moreover many political scientists still have an overly-simplistic view of model building that depend more on comparisons with the metropolitan core of Europe and North American than other developing regimes in Latin American and Asia (1).

These criticisms suggest that new approaches are needed to explain South African political changes. The role of democracy in South African politics especially is still rather poorly understood by analysts despite the fact that it has played a prominent role in political discourse since at least the 1950s. Building a democratic state and society in South Africa is now central to the current South African political agenda, though so far little work has been done to explore this in a comparative perspective.

This paper will therefore examine the state of democratic thinking in South Africa and the conditions that could lead to the creation of some form of democratic regime. In the first part, it will examine the current state of theoretical debate over what democracy is both as an ideology and as a description of a particular kind of political regime. The second part of the paper will then discuss the evolution of debate over democracy in South African politics. Finally, the third part of the paper will look at how a South African democratic transition might occur through a process of political bargaining, taking into consideration similar

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1. Craig Charney, "From Resistance to Reconstruction: Towards a New Research Agenda on South African Politics", Journal of Southern African Politics, 16, 4 (December 1990), pp. 761-770

processes in other regimes moving out of political authoritarianism.

The methodological approach of this paper is one that seeks to learn from the past both in terms of the general formulation of democratic theory and its application to South African conditions. Hitherto social analysts and historians have tended to be preoccupied with the genesis and development of different concepts in South African politics such as segregation, liberalism, apartheid and nationalism. Democracy has frequently been seen as tangential to these other doctrines despite its considerable impact on political debate. The emergence of a new international climate favourable to democratisation following the end of the Cold War offers up the opportunity for a re-evaluation of the South African past in terms of democratic ideas and values (2).

Processes of democratisation, however, tend to be open-ended. The fluid political situation that has emerged since the late 1980s suggests that there are a number of different routes out of the current South African political crisis and it is overly simplistic to assume that modernisation automatically leads to democratisation (3). As James M. Molloy has pointed out in the case of Latin America, there is no particular reason for supposing that either democracy or authoritarian modes of rule are necessarily anomalous, hard though this may be for democratic political activists to accept. Both modes of rule have lived alongside each other for decades in Latin America with cyclical swings from one variant to the other (4).

Democratic discourse in modern societies interacts with other discourses such as liberalism and nationalism. As the final part of this paper suggests, the evolution of democratic discourse amongst the radical intelligentsia may well enhance popular pressure against an undemocratic regime, though this may ultimately take the path of authoritarian nationalism

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2. This is in accord with the view that the chief function of historical research is not to reveal innate historical laws but to debunk historical myths which the present may have about itself. See the recent article by Charles Maisels, "Picking up the relics on the long path back", The Times Higher Education Supplement, June 12 1992.

3. See for example, Charles Simpkins, The Prisoners of Tradition and the Politics of Nation Building, Johannesburg, SAIRR, 1988, p. 1.

4. James M. Molloy, "The Politics of Transition in Latin America" in James M. Molloy and Mitchell A Seligson (eds), Authoritarians and Democrats: Regime Transition in Latin America, Pittsburgh, University of Pittsburgh Press, 1987, p. 236; see also Guillermo O'Donnell, "Reflections on the Patterns of Change in the Bureaucratic Authoritarian State", Latin American Research Review, 13, (1978), pp. 3-38.

rather than democracy. It would be foolhardy indeed to see democratisation in South Africa as part of some inherent paradigmatic process (5). When political outcomes are successful they are due mainly to human agency rather than the operation of inexorable historical laws.

The role of democratic theory:

The role of human agency in the democratisation process in fact starts at the level of theory. Democracy serves as both a set of normative values by which to judge the operation of a political system as well as the empirical description of a particular system's behaviour. As a set of normative values, democracy as a term has been considerably devalued in political discourse by its continual misusage. In the course of the nineteenth century it spread world-wide as a result of European imperial expansion. By the mid-twentieth century it became the effective yardstick of good state behaviour, or more particularly of good state *intentions*. As John Dunn has cryptically remarked, democracy has become "the moral Esperanto of the present nation-state system, the language in which all Nations are truly united" (6).

Democratic theory has been continually dogged by a major internal contradiction. In its original form in Classical Greece it meant rule by "the people" even if this did exclude women and slaves. The idea of direct popular government exerted a continuing hold on democrats when the idea of democracy began to revived in European political thought in the eighteenth century Enlightenment. Jean Jacques Rousseau saw direct democracy in small egalitarian communities as one possible ideal, though he considered that it would be impossible to accomplish and preferred the other more viable alternative of arbitrary and unlimited personal rule (7). This has not stopped Rousseau's social thought from being subsequently interpreted as providing the moral justification for "pure" democracy by a citizenry that felt it could dispense with legislators.

However, as societies in Europe developed from the eighteenth century onwards it became impossible to give anything more than a token gesture towards the basic democratic principle of direct popular rule. Democratic theory increasingly veered towards the notion of democratic representation by which a group of people elected

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5. For a strong attack on paradigmatic thinking in the social sciences, specially in third world and developing settings see Albert O. Hirschman, "The Search for Paradigms as a Hindrance to Understanding", World Politics, 22 (March 1970), p. 338.

6. John Dunn, Western Political Theory in the face of the Future, Cambridge, C.U.P., 1979, p. 2.

7. Judith N. Shklar, Men and Citizens: A Study of Rousseau's Social Theory, Cambridge, C.U.P., 1987, pp. 132-3

representatives to perform on their behalf the activities of government. It was this notion of representative government which defined the Victorian notion of democracy. John Stuart Mill in his essay Representative Government in 1861 saw the representative principle embodying the most morally acceptable form of modern polity for it cultivated active as opposed to passive mental qualities in a group of people. Representative government was a moral ideal that entailed the whole people of a country ultimately exercising "controlling power" over their legislators. It was a power which the people "must possess in all its completeness. They must be masters, whenever they please, of all the operations of government" (8).

Mill was rather doubtful of the longer-term implications of representative government since he feared that it could lead to the majority part of any population dominating a minority. This would mean that democracy would "not even attain its ostensible object" since it would lead to power being given to "a majority of the majority; who may be, and often are, but a minority of the whole" (9). The continued extension of the franchise was also likely to mean that representative government would have a "natural tendency" towards "collective mediocrity" since it would entail power being placed "in the hands of classes more and more below the highest level of instruction in the community" (10).

Mill's theory of democratic representation was of major importance for later analysts in political science for it tried to reconcile rule by an elite with some form of democratic accountability (11). Mill favoured a system of plural voting to ensure that the voice of an educated minority was heard in a democratic parliament and he also championed the extension of local government as an educational training ground for schooling the majority population into the ethics of "good government". There were, though, elements of his thought that pointed to the development of structures of political participation beyond the national parliament into areas such as the workplace and local government (12).

This theme of participatory democracy extended into twentieth century political thought, particularly via the theorists of Guild Socialism such as G.D.H. Cole and A.R. Orage and pluralists such as J.N. Figgis and the young Harold Laski. Mainstream democratic theory in Europe and North America, however, tended to became increasingly undermined by theorists of social control who were concerned with extending

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8. Ibid., p. 228.

9. Ibid., p. 258.

10. Ibid., pp. 265-66.

11. Carole Pateman, Participation and Democratic Theory, Cambridge, C.U.P., 1970, p. 32.

12. Ibid., p. 35.

the powers of the central government. Mounting class conflict in the years before and after World War One lead a number of democratic political theorists into receptualising the role of the state. The ideas of late nineteenth century liberal idealists such as T.H. Green and Bernard Bosanquet revised the negative idea of liberty, which had been prevalent in the period of high Victorianism, into a doctrine of positive liberty that could be secured though state action geared to promoting the "common good" (13). This doctrine was disseminated among groups of liberals, Fabians and Social Democrats and helped underpin the idea of the welfare state (14).

In the United States, the growth of political science in the 1930s and 1940s at the time of the New Deal also reinforced this elitist conception of democracy. The Austrian theorist Joseph Schumpeter had a considerable influence on this emerging political science discipline with his magnum opus Capitalism, Socialism and Democracy that was first published in 1942. Here he attacked what he called the "classical doctrine" of democracy for failing to understand empirically how electorates behave. The classical doctrine had its roots in the eighteenth century notion of theorists such as Rousseau that there was a "common good", though this had been developed by nineteenth century utilitarian theorists into a rational basis for democracy. Schumpeter argued that this notion failed to account for the fact that the range of different goals and values within an electorate made it impossible to agree on a common good through rational argument. As societies developed industrially it was impossible to sustain the notion of a "general will" because of the growing divergence of interests. Governments themselves were also able to contrive in many instances a "manufactured will" (15).

Schumpeter considered that democracy should be understood as being less an ideology than a political method intelligible in terms of an empirical theory. This he defined as an "institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote" (16). This "empirical" theory had a major impact on sociology and political science over the following twenty years or more, though critics pointed out that it also contained normative

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13. See for example Stefan Collini, "Hobhouse, Bosanquet and the state: philosophical idealism and political argument in England, 1880-1915", Past and Present, 72, (1976), pp. 86-111.

14. Peter Clarke, Liberals and Social Democrats, Cambridge, C.U.P., 1978.

15 Joseph Schumpeter, Capitalism, Socialism and Democracy, London, Allen and Unwin, 1943, esp. pp. 250-68

16. Ibid., p. 269.

dimensions and focused on a narrow range of features of democratic government that were then dominant in a number of societies in the West (17). It encouraged political scientists such as Robert A. Dahl and Seymour Martin Lipset to focus upon democracy as less of a system of values than as a method of social control over political elites. Indeed, Dahl rechristened modern democracy "polyarchy" and argued that elections and political competition did not "make for government by majorities in any very significant way, but they vastly increase the size, number, and variety of minorities in making policy choices" (18).

This redefinition tended to reinforce a conservative and elitist theory of democracy. Schumpeter's original conceptualisation of elitist democratic theory owed much to his idealised conception of the pre-war British governing class. He considered that this class, trained as it was in public schools, had a particular acumen for coping with the stresses of mass politics given its general level of education and culture. It appeared to have performed far better than the German ruling class which led Germany into the disasters of the Third Reich (19).

Schumpeter's model, however, was used by his followers in the 1950 to sustain a rather different set of objectives. It accorded with the Cold War climate in which many liberal social scientists perceived an "end of ideology" in western societies. Western liberal democratic societies were seen to be not only cohesive and free of any major conflict over values but also to exemplify the positive virtue of political apathy and non-participation, which was functional to the democratic process by reducing the level of electoral demand on governments (20). This approach shifted the focus away from the potentiality of individual citizens to the needs of the political system as a whole. Empirical theorists generally failed to consider that new social movements might arise within the citizenry with fresh demands to make on the political elite. By the 1960s, with the advent of the Civil Rights movement in the US and student activism accompanying the US involvement in the Vietnam War, the empirical theory seemed increasingly incapable of explaining political change

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17. David Held, Models of Democracy, Oxford, Polity Press, 1987, pp. 164-5.

18. Robert A. Dahl, A Preface to Democratic Theory, Chicago and London, University of Chicago Press, 1956, p. 132.

19. Herbert Doring, "Schumpeter's Britain - Forty years On", West European Politics, 6 1 (July 1983), pp. 5-19

20. W.H. Morris Jones, "In Defence of Apathy", Political Studies, 11 (1954), pp. 25-37.

in western democracies, let alone in post-colonial societies of the developing world (21).

In the last twenty years political scientists in the west have begun to recognise that a new theory of democracy is needed to explain changes both at the national and global levels. The rise of free market liberalism in the late 1970s and 1980s has dissolved the old corporatist consensus that underpinned the older elitist theory of democracy. Some analysts have seen a continuing role for theories of direct and participatory democracy, though this will require control over the role of money and the manipulation of voters through the media (22). The rise of human rights discourse at the international level also suggests that democratic theory will have to be recast in terms of a global theory of democracy incorporating certain basic democratic rights and demands. This faces the difficult task of reconciling the cosmopolitan demands for a universal code of human rights with the demands for national self-determination (23).

The increasingly contested nature of democratic theory has lead some analysts to question the conclusions of the political sociologists on the social and economic preconditions necessary for *democratisation*. Scholars of political modernisation in the late 1950s and 1960s tended to link democratic transformation with indices of industrialisation, education, wealth and education. The passage to democracy appeared to be interlinked with a society's shift, in Weberian terms, from traditional to legal rational authority. This Eurocentric approach lead to a gloomy forecast for democratic transformation in developing states in Asia and Africa. The transformation that would occur in these states would, Lipset wrote in 1959, lead to a situation in which "an educated minority uses a mass movement expressing leftist slogans to exercise effective control, and holds elections as a gesture toward ultimate democratic objectives,

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21. For criticisms of the empirical theory see Graeme Duncan and Steven Lukes, "The New Democracy", Political Studies, 11 91963), pp. 156-77; Lane Davis, "The Cost of Realism", Western Political Quarterly, 17 (1964), pp. 37-46; Jack L. Walker, "A Critique of the Elitist Theory of Democracy", American Political Science Review, 60 (June 1966), pp. 285-95, 391-92 all repr. in Henry S. Kariel (ed), Frontiers of Democratic Theory, New York, random House, pp. 188-247

22. Erkki Berndtson, "American Democracy in the 1990s: the End of the Cold War and its Impact on Democratic Theory in the United States", paper presented to the ECPR Joint Workshops, University of Limerick, Ireland, March 30-April 4 1992, p. 13.

23. See the discussion in Carol C. Gould, Rethinking Democracy, Cambridge, C.U.P., 1988, pp. 307-28.

and as a means of estimating public opinion, not as effective instruments for legitimate turnover in governing parties" (24)

In the course of the 1970s and 1980s a number of analysts became dissatisfied with this gloomy prognosis for developing societies. It did not appear to fit the facts for some countries with military or authoritarian regimes, such as Argentina, Brazil and the Philippines, which did manage to undergo democratisation, albeit after considerable periods of political conflict. Democratic theory has appeared to provide no ready-made answers as to why some regimes democratised and others did not. Critical or revisionist analysts of elitist democratic theory have thus begun to look at the strategies employed by those seeking a democratic political transformation rather than underlying theories of democracy per se (25). For some political scientists this means that the main focus of attention is bargains forged at the elite level since it is almost never the actual crusaders of democracy who forge the final democratic compromise (26).

Attention has turned in recent years towards the bargaining strategies involved in the democratisation process. Giuseppe Di Palma has pointed out in a recent study To Craft Democracies that leaders of states may move away from authoritarianism to bargaining over a new democratic political for the most cynical of political purposes. Attempts to suppress internal opposition may well have failed to stem an escalating crisis and this in turn leads to growing divisions within the ruling regime. The splits may be of an institutional nature or be generational in origin. They can be enough though to force the regime to seek a new political

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24. Seymour Martin Lipset, "Some Social Requisites of Democracy: Economic Development and Political Legitimacy", American Political Science Review, L111 (March 1959), p. 101.

25. Dankwurt A. Rustow, "Transitions to Democracy", Comparative Politics, 2, 3 (April 1970), pp. 337-363; Myron Weiner, "Empirical Democratic Theory and the Transition from Authoritarianism to Democracy", PS, (Fall 1987), pp. 861-66

26. "...the passionate dissidents from authoritarian rule and the crusaders for democratic principles, the Tom Paine of this world, do not create democratic institutions", Huntingdon has written "that requires James Madisons. Those institutions come into existence through negotiations and compromises among political elites calculating their own interests and desires". Samuel Huntingdon, "Will More Countries become Democratic?", Political Science Quarterly, 9, 2 (Summer 1984), p. 212.

equilibrium necessitating bargaining and negotiations with opposition groups over a new constitution (27).

It is such situations like these, Di Palma has suggested, that group behaviour becomes increasingly unpredictable. While the hardliners on both sides may keep rigidly to their positions, the solidarity of the group will be undermined as its actions become contingent on perceptions of the other parties to the conflict. If the ruling regime does finally decide to opt for political bargaining rather than falling back onto traditional methods of repression, it is because the older certainties have gone. The bargain's open endedness makes it ultimately a less costly option (28).

Di Palma's innovative study is useful for its focus upon the voluntaristic nature of political bargaining processes. However, it tends to adopt a top-down approach which neglects the social forces that are pressuring the ruling regime from below. While elites may strike a bargain in isolation from mass pressure, this needs to be empirically confirmed rather than theoretically asserted (29). The approach can be complemented by more historical analysis of the growth of democratic intelligentsias and the way these have shaped the formation of democratic political discourse. It is this dimension which is of such importance in understanding the nature of political conflict in South Africa and the degree to which it represents a struggle for democracy.

The development of democratic discourse in South Africa:

The development of democratic thinking in South Africa has tended to be submerged in analyses of South African liberalism. This has led critics to characterise the mainstream liberal tradition in South Africa as essentially undemocratic and prone to making accommodation by the early twentieth century with the ideology of segregation (30). In response, some liberal historians such as Rodney Davenport have pointed out that the South African liberal tradition

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27. Giuseppe Di Palma, To Craft Democracies: An Essay on Democratic Transitions, Berkeley and Los Angeles, University of California Press, 1990, p. 34.

28. Ibid., p. 43.

29. See the criticisms in Daniel H. Levine, "Paradigm Lost: Dependence to Democracy", World Politics, 40 (April 1988), pp. 377-394

30. Martin Legassick, "The Rise of Modern Liberalism: Its Assumptions and Social Base", London, ICS seminar paper, 1973; Paul B. Rich, White Power and the Liberal Conscience, Manchester, Manchester University Press, 1984. See also Saul Dubow, Racial Segregation and the Origins of Apartheid, London and Basingstoke, The Macmillan Press, 1989, stressing that many white liberals favoured social control rather than segregation *per se*.

really contained more than one strand. There was one sub-branch which was quite Whiggish in its nostalgia for the slow and evolutionary methods of the British model of parliamentary government and another sub-branch that veered towards a democratic discourse based upon notions of right derived from the French and American revolutions (31).

The first sub-branch of Whiggish liberalism tended to dominate political debate in the circles of the English-speaking white and black intelligentsia in the years before World War Two. Until the removal of the Cape African electorate from the common roll in 1936 the Cape liberal tradition that stretched back to the middle nineteenth century still had concrete embodiment in South African politics. For the following decade, a considerable part of black political leadership was persuaded to accept the alternative experiment in African political representation through the Natives Representative Council and the white "natives representatives" in the Senate and House of Assembly (32). Many African leaders continued to uphold Whiggish liberal ideas. James Calata, for example, president of the Cape African Congress, failed to refer to democratic demands at all in his address to the Congress in July 1938. Instead he referred to the centenary of the 1828 Proclamation freeing Cape Coloured labour as "the 'magna Charta'(sic) of the Hottentots system of government which equalised all His Majesty's subjects without regard to colour or race". He looked confidently to the "steady rise of liberalism" in the cities helped by the press and the Joint Council movement (33).

By the middle of the Second World War, a more militant nationalist consciousness began to intrude into ANC politics. The 1942 ANC document African Claims was a landmark in the emergence of a democratic as opposed to a liberal consciousness in the Congress leadership. The document was the product of a committee chaired by Z.K. Matthews. It was formed

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31. Rodney Davenport, "The Cape Liberal Tradition to 1910" in Jeffery Butler, Richard Elphick and David Welsh (eds), Democratic Liberalism in South Africa: Its History and Prospect, Middletown (Conn), Wesleyan University Press, 1987, p. 29. Some analysts have pointed to a basic philosophical distinction between the American revolution which gave more importance to liberty and the French revolution which stressed equality. See George Sabine, "Two Democratic Traditions", The Philosophical Review, LX1, 4 (October 1952), pp. 451- 474.

32. Mirjana Roth, "The Natives Representative Council, 1937-1951", Ph.D Thesis, University of the Witwatersrand, 1987.

33. Alfred Xuma Papers, Church of the Province Archives, University of the Witwatersrand, ABX 380704 James Calata, Presidential Address read at the Conference of the Cape African Congress held at New Brighton, Port Elizabeth, on Monday 4 July 1938.

to apply the principles of citizenship announced in the 1941 Atlantic Charter, signed by President Roosevelt and Winston Churchill, to South African conditions. The document considered that African people came under Point 3 of the Charter which proclaimed the "right of all peoples to choose the form of government under which they live". This meant that Congress now rejected the trusteeship principle that Africans were the wards of white colonial trustees in South Africa and instead demanded full citizenship rights in a single South African society. The document contained a Bill of Rights that outlined the nature of these citizenship rights that were demanded for all adults in South Africa. They included a universal franchise as well as economic and social rights such as equal pay for equal work, the right to belong to trade unions and to strike and the right to equal health and medical care (34).

African Claims was a major statement of liberal democratic principles that was in advance of much of white liberal discourse at this time in South Africa. Many white liberals in the course of the 1930s reacted negatively to the tide of fascism in Europe and advancing Afrikaner nationalism in South Africa. When they did consider the issue of extending democratic structures in South Africa they urged mechanisms to prevent rule by an unchecked majority. In 1938 the historian Arthur Keppel Jones urged a quasi-consociational system of "estates" each of which would have "absolute rights guaranteed against the other, and none of which can exercise any functions of sovereignty without the separate consent of the other" (35). He urged that the NRC's powers should be extended to make it a legislative rather than an advisory body so that matters of common interest would have to pass both the NRC and the white parliament with neither body being able to over-ride the other (36).

These sentiments were in keeping with the more general philosophical drift of white South African liberalism articulated by R.F.A. Hoernle in his 1939 Phelps Stokes lectures South African Native Policy and the Liberal Spirit. Hoernle was centrally concerned in defending what he termed the "liberal spirit" in South Africa from nationalist attack. He argued that liberalism would probably best be able to survive if some process of complete racial separation occurred so that liberal values could be fostered in each racial group. Hoernle had virtually nothing to say about how democratic accountability might be fostered within this process of racial separation. His lectures reflected how a considerable part of

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34. African National Congress, African Claims in South Africa, Johannesburg, 1943.

35. Arthur Keppel Jones, "A Positive Plea for Democracy", The Forum May 9 1938 and "The Majority Steam Roller", ibid, 30 1938

36. Arthur Keppel Jones, "A Federal Constitution in South Africa", The Forum June 6 1938

the white liberal establishment in the South African Institute of Race Relations and the Joint Council movement tended to avoid direct involvement with organising movements for popular democratic political mobilisation. Instead they concentrated upon welfare work and assistance in forming economic bodies such a cooperatives and trade unions (37).

The timidity of the white liberals encouraged a steady drift of African elite opinion into a more radical democratic camp by the post-war years. In the absence of a focused liberal voice on democratisation, it became increasingly difficult for the leadership of the ANC to avoid responding to more radical voices from the Congress Youth league that called for active measures of popular resistance against segregation and apartheid. This became evident in the wake of the removal of the moderate President of the Alfred Xuma in 1949 by the Youth League activists and the approval by the Congress of the *Programme of Action*. It motivated Z.K. Matthews to seek an alternative strategy to the old Whiggish one of deputations, petitions and parliamentary lobbying, particularly as his son Joe had been an active member Youth League member at Fort Hare before becoming a member of the South African Communist Party. In 1953, following the failure of the Defiance Campaign to alter the direction of government policy, Matthews suggested that the ANC take the initiative in organising a Congress of the People (COP) in order to pass a people's charter of rights. He appears to have conceived the idea as a way of convening a popular gathering to reaffirm their support for the basic liberal democratic demands of <u>African Claims</u>. The suggestion was quickly taken up by the ANC leadership who were keen to regain the momentum of the Defiance Campaign the previous year. In the event it was the white radicals organised through COD who did most of the organisation of the Congress as well as dominating the committee that produced the first draft of the Freedom Charter. Z.K. Matthews became disaffected from the increasingly radical drift of the COP and did not even attend the Kliptown meeting in June 1955 that passed the <u>Freedom Charter</u> (38).

COD's role was significant in the early 1950s in steering the ANC leadership in the direction of the model of national liberation. Some Youth Leaguers such as A.P. Mda had talked in general terms of this in the 1940s, but the COD intellectuals gave it a coherence it had not previously had. The atmosphere in COD was strongly shaped by the more general debate which had developed in Communist Party circles following the outlawing of the Communist Party of South Africa in 1950.

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37. For an analysis of Hoernle's thought and its impact see Paul B. Rich, <u>Hope and Despair: English Speaking Intellectuals and South African Politics, 1986-1976</u>, London, British Academic Press, 1992, esp. chap two.

38. For a detailed analysis of this see Paul B. Rich, "The Congress of the People and the Freedom Charter", paper presented to the AFSAAP annual conference, University of Western Australia, Perth, 1-4 December 1991.

Between 1950 and 1953 when the party was reformed underground as the South African Communist Party (SACP) an extensive debate took place over whether the political struggle in South Africa was really a class or a national one. Much of the initiative for this was taken by the party's former members in the Transvaal such as Michael Harmel and Rusty Bernstein who tended to have closer links with the Youth League radicals in the ANC compared to the more Cape-based leadership of the CPSA. This resulted in a compromise formula that the South African struggle was one of "colonialism of a special type". This went a considerable way towards acknowledging the nationalist demands of the CYL though it angered some of the more purist party members who saw the situation in terms of class struggle (39).

The SACP position also incorporated, alongside the "colonialism of a special type" formula, the more traditional Leninist notion of a "two stage" struggle with the first stage leading to "bourgeois liberal democracy" before the second stage of advance to full-scale socialism. This strategy reinforced the generally pragmatic outlook that prevailed in COD towards the Congress of the People. Bernstein in particular warned his colleagues against trying to impose ideological blueprints which might have been possible "in other times before the opposing forces have presented themselves so forcibly". To do so now "would be to isolate ourselves from the forces that are already in action for democratic advance and to attempt to superimpose our ideas, our visions, on what they have already tried and found to be unworkable. *We have to work with what we have*" (emphasis added) (40).

"Working with what we have" still indicated a rather manipulative outlook. The Marxist theorists in COD tended to view themselves as having a role as the ideological vanguard of a South African revolution necessitating general popular mobilisation. However, the death of Stalin in 1953 lead to a slow thawing of Soviet views on national liberation struggles in the course of the 1950s. The SACP appears to have felt that it could afford to ally itself with nationalists in the ANC and other bodies in the Congress alliance and steer them in the direction of radical social democratic political demands (41).

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39. David Everett, "Alliance Politics of a Special Type: the roots of the ANC/SACP Alliance 1950-1954", Journal of Southern African Studies, 18, 1 (March 1991), pp. 19-39.

40. Carter Karis Collection, Reel #2D C2:30/2 L. Bernstein, "The Road to Liberty", speech at 1953 COD conference.

41. Stephen Ellis and Tsepo Sechaba, Comrades Against Apartheid: The ANC and the South African Communist Party in Exile, London, James Currey and Bloomington, Indiana University Press, 1992, p. 27.

The Freedom Charter passed at the Congress of the People at Kliptown in June 1955 illustrated this drift of democratic thought. The first draft of the Charter emerged just two days before the Kliptown meeting from a committee of the National Action Council of the COP that included COD activists such as Joe Slovo. Piet Beyleveld, Lionel Bernstein and Rica Hodgson. The first draft of the Charter had a vision of close popular control over the organs of government. "The bonds between the people, the organs of public opinion and their elected representatives", it declared, "should be close, and consultation between the people and their representatives should prevail at all levels and at all times" (42). This was changed by the final draft to the more representational notion that South Africa was a "democratic state, based on the will of all the people". This vision of democracy was closely linked to a wider programme of economic and social change involving wide-scale nationalisation. The Charter was essentially a populist democratic statement in which the "national wealth" of South Africa including banks and "monopoly industry" should be "restored to the people".

The language of the Charter has had a profound impact on the evolution of democratic discourse in South Africa. It contained many principles which were basic to liberal values such as a universal franchise, equality before the law and the abolition of racially discriminatory legislation. However, there were also features of it which marked a major ideological break with the precepts of Whiggish liberalism. Democracy was seen in Congress circles as part of a wider vision of a new South African political order that broke with the past. It appeared that the existing political system would not extend political rights to Africans and this necessitated the construction of an alternative formulation. In the 1950s this was frequently termed a "multi-racial society" though this subsequently became changed to the idea of a "non racial society" and a "non racial democracy". These developments had a considerable impact on black political debate.

The notion of "non racial democracy" had rather a tutelary quality to it. The concept embraced a vision of the future that entailed changing popular attitudes towards race. Albert Luthuli, one of the most prominent exponents of this democratic ideal, expounded this as part of a wider utopian vision on global lines. "...in trying to build a new homogeneous democratic South Africa, he declared in 1958, "colour and race should not come into the scene. It should not come into the scene in any part of the world; for men should be bound together by certain values which they cherish" (43).

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42. Treason Trial Mss, Church of the Province Archives University of the Witwatersrand, AD1812 Eg4.1 draft of the Freedom Charter, n.d.

43. Albert Luthuli, "Our Vision is a Democratic South Africa" address to The Congress of Democrats, Johannesburg, 1958, rep. in The Road to Freedom Is Via the Cross, London, African National Congress, n.d. p. 52.

This utopian democratic language developed at a time when the ANC had no political leverage with the state. There appeared to be no avenues by which any of its ideals could be realised within existing governmental structures. For liberals committed to evolutionary and reformist change, this drift of thought was a profound political challenge. The government's assault on civil and political liberties as it tried to achieve its apartheid vision appeared to be undermining the very idea of constitutional government. As Alan Paton wrote to Leo Marquard at the end of 1956, "I really cannot believe that we are living in a constitutional era". It was essential, he felt, to try and mobilise a body of opinion to counter this and to reaffirm its belief in constitutional goals of limited government:

> By all means let us affirm our faith in constitutional government - perhaps that is what we have failed to do - but do let us realise the real nature of the authority under which we are living now. My own view is that massive evolutionary changes must come, and to my mind a non-racial body of opinion devoted to the ideals of democracy is the only force which will be able to guide such an evolution without allowing it to fall into the hands of evil men (44).

Efforts were made in the late 1950s to form a body of opinion behind constitutional political evolution such as the Multi Racial Conference at the University of the Witwatersrand in November 1957 (45). In the late 1950s, furthermore, a realignment of liberalism occurred following the defection of a small group from the United Party and the creation of the Progressive Party in 1959. At the same time the Liberal Party began to move away from its previous parliamentary focus to embrace other political methods. In 1960 the party finally embraced a universal adult franchise (46).

A period of re-assessment began to occur within South African liberalism. One of the liberal grandees from the Cape, the former Natives Representative Donald Molteno, attacked Hoernle's vision of racial separationism. He stressed that it was more importance for liberal aims to be realised through pressures for a progressive democratisation of South African society than to hope that these could be achieved by collaborating with state policies of racial segregation or apartheid. He dismissed Hoernle's three alternative strategies

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44. Leo Marquard Papers, Jagger Library, University of Cape Town, BC587.E2.25, A. Paton to L. Marquard 4 December 1956.

45. Paul B. Rich, "Doctrines of Change" in John D. Brewer (ed), Can South Africa Survive?, London and Basingstoke, The Macmillan Press, 1989, pp. 295-6.

46. Janet Robertson, Liberalism in South Africa, 1948-1963, Oxford, Clarendon Press, 1971, p. 197.

for liberalism of *parallellism, separation* or *assimilation* as politically impracticable (47). Molteno though was still unwilling to support a universal franchise and looked back rather nostalgically to 1936 when the All African Convention, formed to fight the destruction of the Cape African franchise, was still willing to accept a qualified franchise (48). Molteno went on to chair the Molteno Report for the Progressive Party that recommended a qualified franchise, though he failed to gain any major African representation of the committee for even moderates such as Z.K. Matthews, Alfred Xuma and Paul Mosaka declined to sit on it (49).

The internal logic of South African political debate on democracy had thus gone a long way to isolate the Whig liberals even before the banning of the ANC and PAC in 1960 destroyed what was left of the political middle ground. The model of national liberation increasingly set the agenda of political debate and even spread to the Liberal Party in the form of the small and quixotic African Resistance Movement. In exile the ANC moved to a strategy of guerrilla struggle in order to forcibly overthrow the South African state. The document Strategy and Tactics of the African National Congress that was passed at the 1969 Morogoro congress emphasised the theme of national mobilisation as opposed to extending democracy and illustrated that the movement had now taken on all the trappings of a third world national liberation movement. The document stressed the need for a "scientific revolutionary strategy" that demanded the "maximum mobilisation of the African people as a dispossessed and racially oppressed nation". There was a special role for the working class in this struggle for it was "inconceivable for liberation to have meaning without a return of the wealth of the land to the people as a whole". "National emancipation", therefore, meant more than "formal political democracy" since "to allow the existing economic forces to retain their interests intact is to feed the root of racial supremacy and does not even represent the shadow of liberation" (50). The document appears to have sustained the view the capitalism was inextricably linked to racism, though the ANC subsequently moved to a more pragmatic position on this by the 1980s.

Inside South Africa, the debate among liberals over democracy continued even after the voluntary liquidation of the Liberal Party in 1968 when the Prohibition of Political

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47. Donald Molteno, Toward a Democratic South Africa, Johannesburg, SAIRR, 1959.

48. Donald B. Molteno, The Betrayal of Natives Representation, Johannesburg, 1959, p. 15.

49. Davis Scher, Donald Molteno, Johannesburg, SAIRR and Donald Molteno Memorial Committee, 1979, p. 83.

50. Forward to Freedom: Strategy and Tactics of the African National Congress, Morogoro, African National Congress, n.d (1969), p. 16.

Interference Act made multi-racial political parties illegal. By this time many liberals had become disillusioned with the Whig model of parliamentary government and its capacity to underpin the rule of law. As a recent study has shown, Alan Paton had begun to move by this time towards championing an American constitutional model based on a separation of powers, a Bill of Rights and a Supreme Court (51).

More detailed and specialised debate on the nature of a post-apartheid constitutional dispensation took place in the early 1970s when a series of study commissions were established by the project backed by the South African Council of Churches called the Study Project on Christianity in Apartheid Society (SPRO-CAS). The report of the SPRO-CAS Political Commission South Africa's Political Alternatives in 1973 stressed the need for a two-phased strategy of devolution of power away from the central state to local, regional or communal levels. The report was an important document for democratic liberal thinking since it emphasised the need to limit the central government's powers in a post-apartheid polity. It had a rather different emphasis to the Charterists in the ANC who tended to urge strong state control of the economy in order to fulfil egalitarian goals of wealth distribution. Its advocacy of "open pluralism" did not gain the support of the one radical figure on the Commission, Rick Turner, who refused to sign it and wrote an alternative vision of communal socialism in his book The Eye of the Needle in 1973 (52).

The phased process of devolution of power suggested by South Africa's Political Alternatives indicated a new direction for South African liberals who were anxious to move out of the Whig tradition. Various federalist ideas began to be debated over the course of the next decade. Some observers hoped that these might lead to a quasi-functionalist process developing based upon small-scale and localised bargains which would progressively undermine the monolithic control of the central state (53). Most of these negotiations, though, did not involve the township and trade union movements but focused more on ethnic groups like Inkatha and the proposal by the Buthelezi Commission for a Natal based option of consociational power sharing (54). Moreover, the format of the

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51. Michael Black, "Alan Paton and the Rule of Law", African Affairs, 91, (1991) p. 71.

52. Hope and Despair, esp. chap. four.

53. I. William Zartman, "Negotiations in South Africa", The Washington Quarterly, Autumn 1988, pp. 141-58; Samuel P. Huntingdon, "Reform and Stability in a Modernizing, Multi Ethnic Society" in Peter Collins (ed), Thinking About South Africa, Hemel Hempstead, Harvester Wheatsheaf, 1990, pp. 67-96

54. Roger Southall, "Buthelezi, Inkatha and the POlitics of Compromise", African Affairs, 80, (1981),

debate on federalism tended to occur within small gatherings and conferences of professionals, usually academics, and failed to impact on the radical black intelligentsia in the townships (55).

The top-down quality of the constitutional engineering that was suggested in South Africa's Political Alternatives rather distanced it from the radical black intelligentsia that was beginning to emerge in the townships in the late 1970s and 1980s. The rise of the Black Consciousness movement indicated a search for a strategy of black self-reliance and a break with the paternalistic liberalism that was still evident in organisations such as the SAIRR. In a number of respects this was another phase in the evolution of black nationalist consciousness in South Africa and the debate on whether to seek integration into a common South African society or search for a separate African political and cultural identity. Given this central focus of concern, BC ideologues failed to find a strongly democratic voice, and the offshoots of the movement such as the Black Consciousness Movement of Azania and AZAPO appropriated the language of "national democratic revolution" from the Congress Alliance (56).

It was the emergence of the UDF after 1983 which gave a renewed impetus to the democratic discourse of the Freedom Charter. The Front reflected a broad range of popular opinion, though Tom Lodge noted the general absence of businessmen and traders on its national executive. Its leaders tended to be representative of the intellectual middle class who had become active in organising movements of the poor. Though it had a socialist wing, the general tone of UDF activists was populist in a manner that hearkened back to the Congress Alliance of the 1950s. The central thrust of much UDF rhetoric was "national democracy" which did not mean "bourgeois democracy" but a rather romantic conception of the popular will that was often linked with a "voluntaristic" conception of political struggle (57). Some UDF leaders championed direct as opposed to indirect democracy as their ultimate aim for South Africa. Murphy Morobe, the Acting Publicity Secretary, declared for instance in May 1987 this would ensure "mass participation rather than passive docility and ignorance, a momentum where ordinary people feel they can do their job themselves, rather

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55. For muted criticism of this approach see Terence Beard, "Constitutions and Constitutional Change", Reality, 10, 3 (May 1978), pp. 10-14

56. Robert Fatton, Black Consciousness in South Africa, Albany, State University of New York Press, 1986, p. 130; see also Nigel Gibson, "Black Consciousness 1977-1987: the Dialectics of Liberation in South Africa", Africa Today, 35, 1 (Ist Qtr. 1988), pp. 5-26

57. Tom Lodge, "The United Democratic Front: Leadership and Ideology", paper presented at the African Studies Institute, University of the Witwatersrand, 24 August 1987, p. 14.

than waiting for their local MP to intercede on their behalf" (58).

The demands of the Freedom Charter also provided the basis for a political identity to some of the youth movements that began to spring up in the townships in the 1980s and which were loosely linked to the UDF. Charles Carter has shown how the Alexandra Youth Congress (AYCO) leaders adopted the Freedom Charter in 1983 as a guiding policy document. This provided them with a political flag that distinguished their movement from rivals such as the Ditshwantsho tsa Rona. The precepts of the Freedom Charter underpinned a dogma based upon the "national democratic strategy" which was a concept that was taken for granted. This also encouraged an outlook of democratising the *means* as well as the *ends* of political struggle. As one AYCO newsletter pointed out, the "struggle for national democracy has to be democratic in process" (59).

The radical intellectuals who expounded the Charterist creed at the local level have emerged as a relatively cohesive group. Carter has shown that the AYCO membership spanned a fairly wide age group which in 1986 ranged from early teens to mid thirties (60). This tends to refute Eric Hobsbawm's thesis that radical youth intelligentsia are politically volatile and short-lived because the career prospects of their members lead them out into other pursuits. This may have been true of western student radicals. It does not necessarily accord with a developing society like South Africa where many black students face inferior education facilities and poor educational prospects rendering them effectively a *lumpenintelligentsia* (61).

The ANC leadership that has returned from exile since 1990 may face some difficulty in building up a cohesive mass movement particularly as the radical intelligentsia in the townships has been used to operating on its own initiative. The return of the exiles has opened up a number of divisions on generational and ideological grounds that may not be easily resolved. The manner in which these divisions are handled is crucial to the way the democratisation process develops.

A democratic transition?

58. Murphy Morobe, "Toward a People's Democracy: The UDF View", Review of African Political Economy, 40 (December 1987), p. 83.

59. Charles Carter, "'We are the Progressives': Alexandra Youth Congress Activists and the Freedom Charter, 1983-85", Journal of Southern African Studies, 17, 2 (June 1991), p. 206.

60. Ibid., p. 214.

61. Eric Hobsbawm, "Intellectuals and the Class Struggle" in Revolutionaries, London, Weidenfeld and Nicolson, 1973, pp. 243-4.

The previous analysis indicates that the theme of democracy in South African political discourse has a comparatively recent history which is characterised by an uneven pattern of development given the periodic waves of state repression. The ideals of democracy may have started to become a dominant feature in South Africa political culture, though they remain strongly contested between liberal advocates of western-style representative democracy and more radical concepts of "national democratic struggle". Democratic ideals are stringly linked with wider forces of class and nationalism in the society's politics. There is no unambiguous trend towards democratisation.

The liberalisation of policy by the De Klerk government since 1990 has, nevertheless, acted as a major test of the ANC's commitment to wide-ranging democratisation. Formally, its rhetoric has remained close to the Freedom Charter. Its 1988 Constitutional Guidelines for a Democratic South Africa championed basic human rights for all South Africa citizens in an "independent, unitary, democratic and non-racial state". These extend beyond "first generation" political rights to "second generation" economic and social rights as well a Bill of Rights and an affirmative action programme to eradicate racial discrimination (62).

Some analysts have doubted the sincerity of this commitment. For George Fredrickson and Marina Ottaway, the alliance with the SACP and its basic identity as a liberation movement lead it to have questionable democratic credentials since no other African liberation movement has succeeded so far in introducing a recognisably democratic political system (63). For radical analysts such as Mike Morris and Doug Hindson there is a danger that the ANC leadership will be seduced into making a political deal with the central government whilst ignoring local structures as the grass roots. A 50% solution for Morris and Hindson risks escalating the present phase of political violence in South Africa which has emerged from the liberalisation of apartheid and the removal of the state's monolithic and authoritarian control over the fault lines of South African society (64).

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62. "The ANC's Constitutional Guidelines for a Democratic South Africa" repr. in Mike Robertson (ed), Human Rights for South Africans, Cape Town, O.U.P., 1991, Appendix 2

63. George M. Fredrickson, "African Americans & African Africans", The New York Review of Books, September 26 1991; Marina Ottaway, "Liberation Movements and Transition to Democracy: the case of the A.N.C.", Journal of Modern African Studies, 29, 1 (1991), pp. 61-82;

64. Mike Morris and Doug Hindson, "South Africa: Political Violence, Reform and Reconstruction", Review of African Political Economy, 53, (1992), pp. 43-59.

The evidence in the last two years appears to suggest that there is considerable basis for both sets of concerns. The ANC has tried to re-emerge as the authentic liberation movement of the African people in South Africa whilst also showing signs of moving towards an elite bargain made at the political centre. It started with some advantages compared to its rivals despite its long period of exile. In 1988 the government banned the UDF and forcing many of its supporters to merge into The Mass Democratic Movement (MDM). This led the African trade unions organised in the Congress of South African Trade Unions (COSATU) to take a for more prominent part in the black political opposition movement. The MDM began to stress socialist goals, though it hardly got off the ground before the ANC was re-legalised (65).

The ANC felt that it could afford to ignore the UDF and started to incorporate some of the local cadres into its own organisation. The role of former UDF organisers in the township struggles of the 1980s tended to be down-played on the grounds that they were less experienced than those trained in exile (66). The ANC leadership felt that it had to reduce the influence of the hard-liners whether in the trade union movement or *Umkhonto* as it undertook a diplomatic offensive to gain international backing for negotiations with the Pretoria government for a new constitution (67). Some radical supporters, though still fear that the leadership might prefer a civil rights strategy to one of revolutionary transformation (68).

Radicals in South Africa perceive signs that ANC leaders might abandon its commitment to democracy in a political deal with the central government for a phased handover of power. To some critics, such as Daryl Glaser, the democratic agenda is in danger of being swamped by an "authoritarian sub-discourse of national democracy" which distrusts the autonomy of organisational activity and intellectual debate within the

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65. Alan Fine and Eddie Webster, "Transcending Traditions: Trade Unions and Political Activity", South African Review 5, Johannesburg, Ravan Press, 1989, pp. 256-274; Anthony W. Marx, "South African Black Trade Unions as an Emerging Working Class Movement", The Journal of Modern African Studies, 27, 3 (1989), pp. 383-400

66. Ottaway, op cit., p. 72.

67. "South Africa: the ANC's Diplomatic Offensive", Africa Confidential 23 June 1989.

68. John Battersby, "ANC's new tack tests South African Dialogue", Christian Science Monitor November 23-25 1990"; "South Africa: Back on Track", Africa Confidential 9 November 1990

movement (69). Glaser though has been attacked for placing too much faith in the "correct" socialist path which would produce the conditions necessary, via equal citizenship, for a fully flowering democracy. "Only the maturation of the South African policy", Patrick Fitzgerald has written,

> brought about by manifold processes of proactive effort can create the democratic institutions, consciousness and political culture required. A sphere of civic freedom must however be woven out of the history and political, social and cultural reality of the existing society. It cannot be wished for or analyzed into existence. This underlines the need to seek out sustainable discourses of democracy within the indigenous experience" (70).

Any such sphere of civil freedom may take a considerable period of time to mature. Fitzgerald is on unsure ground by linking the ANC's democratic commitment in the 1988 Constitutional Guidelines to the "long tradition of South African resistance politics" as opposed to the more immediate need to respond to the crisis in Eastern Europe (71). As this paper has tried to show, the democratic element within this tradition is comparatively recent, dating back really to the 1950s and the Freedom Charter. Even then, it became superseded by exile and the drift into liberation movement politics.

If a democratic bargain is to be crafted it may need a considerable period of habituation for it to become legitimised, perhaps even a whole generation. It is during this habituation period, Rustow has suggested, that more authentic democrats emerge for "the very process of democracy institutes a double process of Darwinian selectivity in favour of convinced democrats" (72). Radical South African democrats may have to be satisfied with a process of democratisation that is initially limited to the central government and the result of an elite bargain between two rather authoritarian political organisations. It may be only at a later date that a wider democratisation process can occur as the local level as the various radical intelligentsias get brought into a wider process of democratic government: a similar pattern in fact to English democratisation in the decades after the 1867 Reform Act.

One alternative to this would be some form of pact made between rival parties at the elite level that would guarantee

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69. Daryl Glaser, "Discourses of Democracy in the South African Left: A Critical Commentary", ROAPE Conference Paper, 1989

70. Patrick Fitzgerald, "Democracy and Civil Society in South Africa: A Response to Daryl Glaser", Review of African Political Economy, 49, (Winter 1990), pp. 105.

71. Ibid., p. 99.

72. Rustow, op. cit., p. 358.

the democratisation process. Di Palma has suggested that a pact of this sort acts as a form of *garantismo* since it would spell out the constitutional rules required for a constitutional process of democratisation and so short-cut the process of habituation (73). In South Africa such a pact would have to centre on the powers of the police and security forces and their capacity to destabilise black society through "black on black" violence. The Boipatong massacre has, for the moment, halted any process of familiarisation between the National Party and ANC leaderships and has introduced a major problem of political credibility for De Klerk if he choses to try and restart the negotiations. It may still be the case that some form of international role, possibly through the United Nations, will be required to buttress such a pact that limits the role of the security forces.

For the moment, therefore, the tentative democratisation process in South Africa has run into the ground. The protracted debate on democracy has not been able to exert a decisive impact on political outcomes. Living in the interregnum, a number of alternatives remain open for the bureaucratic authoritarian state has not been dismantled. Much of the old National Security Management system remains intact, particularly through informal networks centred on Afrikaner ethnic ties (74). It is impossible to discount a continuation of the strategy of radical state restructuring from above that commenced in the late 1970s involving the incorporation of sections of the black elite and the re-negotiation of class relations. This process could be potentially escalted into a more wide-ranging model of a "revolution from above". This would be the logical alternative to the democratisation processes described here as the state itself acts a decisive actor by pre-empting popular revolution through instigating one of its own (75). The dynamic of this kind of revolutionary change, however, is another story.

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73. Di Palma op. cit., pp. 86-90

74. Annette Seegers, "South Africa's national Security Management System, 1972-90", The Journal of Modern African Studies, 29, 2 (1991), pp. 253-273

75. Ellen Kay Trimberger, Revolution From Above, New Brunswick (NJ), Transaction Books, 1978.