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Faculty of Humanities
School of Social Sciences

Proportional Representation and its Effects on South African Democratic Accountability: A Case Study of South African Local Government

Master's Research Essay

Submitted to the Department of Political Studies in the School of Social Sciences at the University of the Witwatersrand

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On the 15th of March 2023

Johannesburg, South Africa

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Declaration

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Abstract

Despite South Africa having six elections since the end of Apartheid, amounting to a period of nearly 30 years, the electoral system in the Republic is yet to be entrenched. The established electoral arrangement of proportional representation (PR) has never been constitutionally codified, a factor contributing to the almost continuous debate on its merits within Democratic South Africa. Over these past decades, electoral commissions have been established to judge the current system: specifically on the principles of *fairness*, *inclusiveness*, *simplicity*, and *accountability*. It is this last value of accountability, especially democratic accountability, that has been at the forefront of the discussion on the merits of South Africa's electoral system. This research paper, like many studies before it, is concerned with the purported advantages and disadvantages of the current PR system, and how it either benefits or hinders accountability to the electorate. However, what differentiates this study, is its additional analysis of the electoral system found at the South African local governmental level, which harbours a mixed-member system, that is somewhat similar to the proposed alternative for a new national system. Nevertheless, this paper in its analysis found little evidence that the mixed member system at the local level manages to merge the democratic virtues of greater accountability to a constituency with the fairness of PR. Instead, it was hampered by unresponsive ward councillors, apathetic municipal councils, and general party interference. However, the research did find potential areas for reform at the local level: to help better differentiate its two types of elected representatives, and to make them more responsive to local forces, thus more accountable. If a national mixed-member system is to be implemented, these concerns should be noted. This paper utilised a mixed-methods approach in conducting this research, as well as employing a theory-testing case study analysis of local government.

Key Words: Electoral Systems, Proportional Representation, Representatives, Responsiveness, Democratic Accountability, Local Government

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List of Abbreviations

ACDP	African Christian Democratic Party
AIC	African Independent Congress
ANC	African National Congress
COPE	Congress of the People
DA	Democratic Alliance
EFF	Economic Freedom Fighters
ETT	Electoral Task Team
FFTP	First Past the Post
FF Plus	Freedom Front Plus
IDEA	Institute for Democracy and Electoral Assistance
IFP	Inkatha Freedom Party
ISI	Inclusive Society Institute
ISS	Institute of Security Studies
HSF	Helen Suzman Foundation
MAC	Ministerial Advisory Committee
MMC	Multi-Member Constituency
MMS	Mixed Member System
MP	Member of Parliament
NCOP	National Council of Provinces
NP	National Party
PR	Proportional Representation
SMC	Single Member Constituency
STV	Single Transferable Vote

Section One: Introduction

Rationale

At the end of 2021, an Afrobarometer report revealed the latest round of survey data on South Africa. The surveys asked an assortment of queries, ranging from beliefs and feelings regarding COVID, to overall public opinion on the state of democracy and its institutions. It was found that *66 per cent* of the sample group were either 'not at all satisfied' or 'not very satisfied' with the way democracy works in the country. It was also found that *47 per cent* of the same group felt that South Africa is a democracy with major issues, and just over a tenth of the sample (*13 per cent*) believed that the country was not a democracy at all (Afrobarometer 2021, 37). In reflecting on this data, it seems that South Africans are losing trust in their country's democracy: the question then is why? This paper will attempt to analyse the electoral and party structures found within South Africa and how they have affected, both negatively and positively, the country's democracy.

South Africa has a proportional representation electoral system that creates a very representative legislature in a very fair manner, but this arrangement also significantly centralises power in the Republic within the domain of the political party: taking downward accountability away from the voter and placing it upwards with the party's command structure. The paper will focus on the impact that this party-first system has had on the legislature and its accountability to the public. Furthermore, the paper will also analyse how the electoral system has affected other aspects of our democracy: namely representative government, party transparency, and the role of independents. The research will also consider the local government context of the country and whether their political narratives tell a similar story to that of the national.

South Africa's democracy is still relatively young, the system that was negotiated almost thirty years ago reflected what was needed to move away from Apartheid, yet new challenges have arisen in the past three decades, challenges that seem to stem from corruption and abuses by leaders that seem to lack a sense of accountability to the public.

Research Question

In consideration of the above, the research paper will broadly consider the overarching research question of whether *a change to the national electoral system can deepen democratic accountability in South Africa?* Further sub-questions stemming from this are: firstly, *to what extent has proportional representation hindered or assisted democratic accountability in South Africa?* Proportional representation was adopted by a young democratic South Africa in the hope of rectifying a system that blatantly ignored large sections of the population. A proportional system would provide political participation to the voiceless, but is this new voice heard or is the system effectively a broken loudspeaker? Secondly, the paper will also consider *if accountability can be improved under a proportional representation system.* The South African system places the power of appointing Members of Parliament (MPs) in the hands of the parties, only relying on voters for their proportional share. Can this system be improved to increase downward accountability? And if so, what changes are to be done, whether that be in electoral reform, or changes to party mechanisms? Lastly, the paper will also ask *whether local government is more democratically accountable than the national or provincial governments?* Local government faces different obstacles than the national government, and its operations and mechanisms are quite different as well. To what extent is the local experience of democratic accountability different to that found at the higher levels of government, especially when it concerns electoral systems? By analysing these questions and any additional sub-questions that

might arise from this discussion, it is hoped that insights can be gained into the link between an electoral system and political accountability.

Literature Review

Before the paper engages in the more nuance theoretical arguments on accountability, or on the wider electoral discussion in South Africa, the paper will first analyse some scholarly debate, especially in how it relates to electoral systems and their reported benefits and weaknesses. The South African context will naturally result in some divergence from global trends, but it is only proper to first understand those trends before localising our perspective. The following literature review will first analyse general electoral systems, with further consideration done on proportional representation, as it is a core component of this paper. Moving on from this, a brief discussion will be held on the South African electoral system (a more thorough analysis will be done in Section Three), with the review concluding with a brief look at the local government context in South Africa and its relationship with accountability (likewise a more detailed analysis will be found later in the paper in Section Four).

Electoral Systems

Although countless variations exist, each the product of the social-historical context of its host nation, there are arguably four main categories of electoral formulas that are used within democracies: Majoritarian, Semi-Proportional, Proportional, and Mixed Member systems. First, there is what Pippa Norris (1997, 299) refers to as a Majoritarian system, which either requires a party/candidate to win via an absolute majority to gain a seat or through obtaining a plurality – usually via the First Past the Post (FPTP) method. In this system, the winner takes all, even if they do not obtain a real majority, instead, their plurality advantage affords them a 'manufactured majority'. The consensus with this system is that it creates a strong and effective

government, that is able to act deliberately and decisively (Norris 1997, 301). In addition, other systems that fall under the Majoritarian umbrella include the French Second Ballot Runoff system and the Alternative Vote mechanism that is used in the Australian House of Representatives. These two systems, by essentially transferring votes away from the least popular candidates, foster an electoral system that creates a majority of general preference, which is held to be vital for effective government.

Besides the Majoritarian, there are also the Proportional electoral systems. These gained popularity in the twentieth century, which André Blais, Agnieska Dobrzynska, and Indridi Indridason associate in part with the growing trend of democratisation following the century prior (2005, 182). The authors also argue that Proportional Representation (PR) found greater adoption in then-present non-plurality democracies where there was already a foundation of a multi-party framework which resulted in less resistance to a multi-party proportional system (2005, 190). This argument counters the previously accepted notion from Carles Boix, who maintained that the adoption of PR was due to the growing rise of socialist parties, with PR implementation being a means of unifying the factious anti-socialist vote (Blais, Dobrzynska, and Indridason 2005, 183). PR formulas take the shape of either a fully proportional system where the vote is given to a party which in turn appoints seats via a closed-list system (as in South Africa). Or the system is semi-proportional, often in the form of a Single Transferable Vote (STV), where the electorate vote in a multi-member constituency, usually along with a preference system (Norris 1997, 303). Lastly, there are what are called Mixed-Member Systems (MMS), which are formulas that in various manners provide both seats appointed by a constituency as well as seats appointed via a PR vote. This method attempts to merge the fairness of Proportional Representation with the greater accountability provided by Single Member Constituencies (SMC) (Norris 1997, 304). Globally 14 per cent of electoral systems are deemed to fall within the MMS category, with some notable examples including Germany,

New Zealand, and Japan (IDEA 2015). Regarding a nearby example, the Zimbabwean legislature contains elements of a MMS system, as although the bulk of the assembly (210 members) is appointed via SMCs, 60 seats of the body are reserved however for only women, to be derived via PR provincial party lists (Zimbabwe Electoral Commission n.d.). Having such a mixed system arguably allows for the best of both worlds with direct accountability alongside the positives of PR, which will now be dealt with in more detail.

Proportional Representation: The Pros and Cons

This research paper will be dealing primarily with the South African electoral system, which is one of Proportional Representation. Thus, it is only proper to further dwell on the literature on this system, analysing both the strengths that it offers, as well as its weaknesses. PR, if anything, is seen as the most democratic and the fairest of electoral systems, rejecting the 'winner takes all' sentiment of majoritarian systems. Robert Sugden (1984, 32) points out two main principles of PR: the first being the 'right to be heard', by creating a government of the whole people; and the second being the elimination of any double-counting of majorities, having the majority being real, and not just nominal. Ultimately Sugden (1984, 32) aligns PR with the principle of 'free association', arguing that the citizen should be at liberty to choose the constituency to which they belong. The virtue of PR lies in this recognition: that of constituencies beyond that of the regional. In a Majoritarian system, regional minorities are almost always cast aside due to their numerical disadvantage. In a PR system, those votes, which would have gone unheard, are now included, which as Douglas Amy notes (1995, 22), allows for minority representation without creating any special seats or districts to cater to these groups. This has the additional advantage of creating stability and legitimacy for the political system by including voices that would have been silenced in government with a majoritarian system.

Furthermore, it is noted by Dankwart Rustow (1950, 109) that due to the significant likelihood in PR of minority votes materialising into governmental seats, voter turnout is thus increased as now there is a near certainty of governmental representation. Norris (1997, 309) demonstrates this by highlighting that from a sample taken in 1997 from various democracies, the average turnout from the majoritarian systems was *65 per cent*, whereas it was *75 per cent* for the PR systems. In addition, Norris specifically notes that this trend was stronger in developing nations. This is a trend that was also found recently by the Institute for Democracy and Electoral Assistance (IDEA), which evaluated global election trends in 2016 (Solijonov 2016, 37). Furthermore, PR systems with closed lists, where seats are appointed by the parties also provide an opportunity for the diversification of a legislature in both promoting ethnic minorities as well as improving women's representation in these bodies (Norris 1997, 306).

However, nothing is perfect, especially in politics. Where PR systems have advantages in representation and fairness, they fall behind in other elements. Amy (1995, 22) for one notes that PR, by representing more of the electorate, could arguably 'balkanise' politics, fragmenting the voters into competing factions that fail to compromise. This notion is concurred by Gianluigi Galeotti (1994, 359) who contends that the more proportional the government the less effective it becomes. This he holds, when coupled with strong political parties, would have proportional fairness as a merely 'vacuous aesthetic virtue'. Galeotti also refers to prior scholars such as Karl Popper and George Stigler, emphasising the point that the democratic system is not supposed to appease voter representation, but rather that it should be the means of dismissing unwanted political figures (1994, 362).

Similarly, Rustow echoes these sentiments, maintaining that a PR system, with its subsequent multi-party makeup, fosters a weak government, as it creates disunity, infighting, and a general lack of action in the legislature. He notes that when considering implementing such a system of almost exact representation, one has to consider the potential loss of other desirable qualities

for a government (1950, 110). It is especially noted that the primary function of government is not to have a 'fair' or 'just' system, but to have one that can best determine and exercise the country's policies (Rustow 1950, 112). Instead, Rustow (1950, 116) favours a majoritarian system in that it will effectively create two large and competitive factions (those in office and those who are not) that wield real and consistent power. Ultimately Rustow (1950, 116) states: "Proportional representation will thus create a situation where everyone has his will represented exactly but where no one's will is carried out".

Lastly, it should also be noted that with the increased representation of PR, also comes the possibility of an increased likelihood of extremist parties gaining a foothold in government. In a majoritarian system, these groups would mostly fail to gain a seat unless they hold geographical sway in some part of the polity, but in a PR system, their chances of gaining a seat rapidly increase (Norris 1997, 305).

The South African Electoral System

The current South African PR electoral system is the result of the negotiation process that occurred at the dawn of its democratic era. Before this, the country had a majoritarian system with single-member constituencies that it inherited from the United Kingdom (Pypers and Pothier 2015, 2). After Apartheid it was believed that South Africa needed a system that both respected the diversity of the nation, but that also recognised the spatial history of the nation, and how this would impact constituencies (Mitchell and Gouws 2005, 358; Lodge 2003, 72). Initially, the ANC was not set on a PR system, it favoured the Majoritarian system, but the party's views changed in light of two realities: first, it had to provide concessions to its negotiating partners, as the NP favoured a proportional system that would garner it more electoral support in the elections. And secondly, after realising that it would gain a comfortable majority regardless of the electoral system, the ANC decided to support a PR framework that would be beneficial to minority parties (Lodge 2003, 72; Mitchell and Gouws 2005, 357).

The system born from this period, had the national legislature divided into two chambers: the upper chamber would become the National Council of Provinces (NCOP) which would have 90 members, consisting of 10 representatives from each province. The lower chamber would become the National Assembly which would contain 400 members appointed from closed party lists. The voters would elect the members via a two-tier PR system with parties providing both a national closed-list that would appoint 200 members and provincial closed-lists that would according to the population of the provinces, appoint the remaining 200 members. Furthermore, the seats are allocated according to the share of votes a party receive using the Droop quota (Ferree 2018, 3). The provincial legislature would be appointed similarly, with the voter receiving two ballots, one for the National Assembly and one for their respective provincial legislature. The nature of having closed lists and leaving their selection to the party was expected to ensure party discipline over the appointed members, and allow strong control over MPs.

New Electoral Proposals

The benefits of having a closed-list PR electoral formula have been listed as the following: it provides an inclusive system, it is very proportional, it is relatively fair, it allows for greater diversity in MPs, and it avoids the wasting of votes. However, it is also argued that it has created a very impersonal system, one that is very party-centric, and that the system is devoid of any real voter accountability (Faure and Venter 2003, 5). It is this last factor that is of concern to many scholars, in that our electoral system lacks any sense of real accountability, creating MPs more answerable to party bosses than to the people they are supposed to represent.

Murray Faure and Albert Venter are strong proponents of this argument, and it is because of this lack of accountability that they support electoral reform that would improve accountability to voters while maintaining general proportionality (2003, 14). They prefer a mixed-member system, which would divide seats in the National Assembly into roughly two different sets, the

first 200 being elected from single-member constituencies, and the second 200 from national closed party lists to restore proportionality. The constituency seats would be allocated by receiving a plurality of votes in the geographic area, these seats would also provide a free mandate to its occupants and allow for floor-crossing as these members represent a constituency and not a party. The constituency would also have the power to recall their representative, further strengthening the vertical ties between the governing and the governed (Faure and Venter 2003, 16). In turn, the PR seats would be treated in a compensatory manner in order to restore general proportionality of the Assembly, which would result in seat allocation favouring the smaller parties that lack geographic strength. This would essentially result in the existence of a two-tier member system, with half of the members being appointed by constituencies and who can act more independently from their respected parties (who would more than so represent the major parties due to the nature of a majoritarian system) and those remaining who are appointed by the parties and who would be dependent on their respective parties (who would more than so represent the minor parties due to the preference for proportionality) (Faure and Venter 2003, 17).

Another interesting model, this one proposed by the Inclusive Society Institute (ISI) in 2021, is essentially an overall rework of Parliament, eliminating the two chambers in favour of a unicameral parliament with 600 members. The system would attempt to harness greater accountability by having 400 members elected from majoritarian SMCs, with the remaining 200 members elected from national closed party lists (2021, 17). The increase in MPs would help to ensure general proportionality as well as greater accountability by reducing MP to voter ratios. The increase in cost would be somewhat alleviated by the elimination of NCOP. It would also provide simplicity by utilising current municipality boundaries for the SMCs, providing further demarcation where size warrants it. However, the ISI (2021, 22) ultimately favours a

mixed-member system almost identical to that proposed by the van Zyl Slabbert Report of 2003, which will be discussed in detail in Section Three.

Local Government and Accountability

The Constitution of South Africa mandates the creation of three distinctive yet interdependent spheres of government within the nation, to exist at the national, provincial, and local levels. While both the national and the provincial spheres have similar electoral systems based on proportional representation, local government contains a unique and intriguing mixed-member system (*Municipal Structures Act* 1998, sec. 22; de Visser 2009, 12). In light of this situation, the paper will examine the impacts that this mixed system has had on local democratic accountability in Section Four, and hopefully acquire some insights that apply to the other governmental spheres.

During the transition process in the 1990s, it was deemed imperative to create a new and universal sphere of local government that was to be established from 'wall-to-wall' in the country, shifting away from the often-confusing amalgamation of Apartheid-era local governments and quasi-independent Bantustans. The new configuration had two separate systems for the local sphere: a single-tiered metropolitan system created for the densely populated urban centres, and a two-tier district and municipal system created for the rest of the country (de Visser 2009, 8). Local government, both in its metropolitan and in its municipal/district form would be mandated by the Constitution in Section 152 (1), with the following goals: providing democratic and accountable government, delivering services to communities, promoting social and economic development, creating a safe and healthy environment, and encouraging local involvement and participation in government (*The Constitution of the Republic of South Africa* 1996). Furthermore, from this directive Jaap de Visser (2009, 10) places a further emphasis on an additional three core features of local government: first in it leading the integration and coordination of developmental activities from

both state sources and non-state sources; second, it being a means for leading and learning in regards to finding local solutions and fostering local political leadership; and third, it being a tool for greater democratic development and wider participation from the public.

It is this last characteristic that is of interest to the paper: the role that local government plays in fostering democratic accountability and public participation. First of note, is the existence of ward councillors at the local level. Ward councillors are elected from a majoritarian system from each of the wards located within a municipal area, with a simple majority of votes being sufficient for election. Unlike their PR-derived companions, councillors hailing from individual wards do not have to represent a political party or be listed on party lists and can run independently in a ward as long as they have been nominated by at least fifty residents and voters of the said ward (de Visser and Steytler 2016, 20). In addition, the Municipal Structures Act of 1998 in Section 72, outlines the power of local government in creating ward committees in each comprising ward, with it being chaired by the respective ward councillor (*Municipal Structures Act* 1998). Although these committees do not have any true executive or legislative authority, they are empowered to determine and analyse public perceptions and opinions, which in turn can be made aware to the municipal council and its councillors (Sikhakane and Reddy 2011, 95).

It is noted by Koma (2010, 113) that of the three spheres, local government is aptly situated to foster greater citizen participation as well as to respond to the demands and needs that may arise from local sources. For many citizens, it is usually local government that serves as their first and main method of contact and interaction with the government. Section 19 of the Constitution declares that every citizen has the freedom to make political choices and to participate in the political process, and it is often through the mechanism of local government that this is achieved (*The Constitution of the Republic of South Africa* 1996). Nevertheless, as maintained by Sikhakane and Reddy (2011, 86) realising this, and fostering greater democratic

accountability remains at times a serious issue, being dependent on good governance, accountable politicians, and an efficient civil society. Another aspect of note and an arguable element of accountability that is somewhat unique to the local sphere (this is not to say exclusive) is the occurrences of local protests and movements of public mobilisation. These events are often the consequences of failure in service delivery, as well as being caused by strong sentiments of dissatisfaction with local officials – often regarding fraud and severe corruption. It is due to this that Reddy (2016, 4) contends that there is more accountability at the local sphere than at either the national or the provincial level, as the local sphere is often the subject of these protests.

In concluding this segment, the issues and challenges that face local government should be briefly noted. Some of these include the more predictable problems, such as funding issues, lack of fiscal discipline, and cases of legal non-compliance and intervention – especially when concerning the district councils and the provincial governments. But a severe issue that has plagued many municipalities, and which importantly heavily negates accountability to the public is the issue of politicisation. This is the practice of basing local governmental appointments, not on merit-based procedures but on political factors (Reddy 2016, 2). It should be noted that the politicisation of local government officials is not necessarily ill in itself – the election of ward councillors is based on political grounds – however, when the appointment of municipal functionaries is made not on qualification or from the consent of the public, but due to political patronage and nepotism, then issues regarding efficiency and public accountability are more likely to surface. And as noted by Reddy (2016, 5), it is often in the case of local government where the worse ramifications of these practices are encountered. These arguments and perceptions will be expanded upon in Section Four of this paper.

Research Methods

This research project will be utilising a mixed-methods approach to the proposed study, with the usage of both quantitative and qualitative datasets in attempting to answer the research questions. A mixed-methods approach is defined by Christopher Lamont (2015, 135) as research that combines both quantitative and qualitative methods, usually to provide an extra degree of complementarity and triangulation between the data from the respective approaches. Moreover, the paper will primarily be focused on desk research of both primary and secondary source documents. It will be referring to primary data including survey data produced by – but not limited to – research institutions such as Afrobarometer, the Institute of Security Studies, and from prior electoral reform commissions such as the van Zyl Slabbert Report. The proposed paper will also use secondary sources to obtain and apply theoretical arguments regarding representation, electoral systems, accountability politics, party dominance, and other relevant areas of research. These secondary sources will consist of journal articles, academic books, and trusted internet sources (such as blogs and 'grey literature' produced by technical organisations), with their usage providing the academic grounding for the paper. The goal being, that divergent types of data will help to identify and address issues that both independently reflect upon the research questions and that potentially reinforce the assertions of one another. For example, this paper aims to emphasise the existing levels of public dissatisfaction directed at elected officials via both quantitative electoral and survey data obtained from the public, as well as qualitative deductions from various theories, which might help explain the occurrence of public discontent and possible ramifications of it.

The research will also include a theory-testing case study analysis approach, to assess the validity of the responses to the above research questions. The paper will analyse the South African proportional representation electoral system, and to what extent it has resulted in either weakened or improved democratic accountability. The research will be centred on a 'most-

similar case comparison', which is the design approach of analysing cases that have similar independent variables, except for one (George and Bennett 2005, 104). The purpose is to determine how the dependent variable (democratic accountability) is affected by a different core independent variable (electoral system). The paper will be conducting a case analysis of local government in South Africa. The factors contributing to this case study selection lie in part with both cases sharing similar independent variables. The South African electoral system, whether local or national, share similarities in procedures, and mostly contain the same competing political parties. In addition, the local system also deals with the same electorate as the national – although segmented during local elections. However, a key factor that has led to this case study selection lies in the fact that local government contains a mixed-member system with majoritarian elected ward councillors, unlike the 'purer' PR system at both the national and provincial levels. Furthermore, at the local level, ward councillors have been elected independently from a party, whereas this was not previously possible at the other levels – Parliament has passed the Electoral Amendment Bill which will allow independents to run in the 2024 elections, which will be discussed in Section Three. In light of this, the proposed paper will consider the effect that this divergent independent variable of electoral systems has had on democratic accountability within the local sphere of government and whether it has resulted in similar, or divergent outcomes when compared to both the national and provincial levels.

Paper Outline

Section One: Introduction

The first section of the paper will be the foundation of the project and include the rationale for the research, the literature review, research questions, sub-research questions, and the methodology of the research.

Section Two: Accountability and Representation

The second section will analyse various theories on democratic accountability, how it is and has been defined; and specifically, how it has evolved over time. The section will also consider why it is such a crucial element for an electoral system. In addition, the section will analyse ideas around representation and how to determine the role of a representative.

Section Three: The Electoral Debate

The third section will recount the history of the South African electoral system and the process that led to the adoption of the current proportional representation system. It will also analyse the reported weakness and strengths of the system and related proposals. Furthermore, it will recount the recent amendment process which will allow independents to contest in upcoming elections.

Section Four: The Local Government Perspective

The fourth section will be a comparative analysis of the South African electoral system. Analysing the system at the local level and comparing it to that at the national and provincial levels. This section will attempt to uncover similar and dissimilar variables and link perceptions of accountability within both arrangements.

Section Five: Conclusion

The final section will reflect on the research of the above sections and make a summary of the conclusion reached from it. The paper will lastly provide possible solutions to the problems found during the analysis of the research questions and will make possible research recommendations.

Significance

This paper aims to better understand the underlying links between electoral systems and accountability. The South African electoral system that this paper will analyse was deemed unconstitutional by the Constitutional Court, a decision that some argue strongly reflects desires in the nation for better representation in the decision-making bodies of the Republic. Although changes were made to correct the issues found by the Court, the system still heavily resembles the old PR structure. South Africa's PR system has contributed significantly to the transition away from Apartheid, and in helping to heal some of the wounds caused by disfranchisement. However, ignoring the lack of accountability between the voter and the member of Parliament will only contribute to the increased levels of dissatisfaction within our democracy. In the coming election, the electoral system will be tested, and we will only then be able to decern on its success and failures, an endeavour already being anticipated by the Reform Consultation Panel of post-2024. Nevertheless, this eventuality provides us with an ideal opportunity to not only improve our electoral system for future elections but to foster a new and more robust democracy that will be more capable of handling the potential multitudes of challenges that the Republic could face in the coming decades.

Section Two: Accountability and Representation

On Democratic Accountability

At the height of the American Revolution, Richard Price, a noteworthy republican of his time and advocate for the American endeavour, noted that if the government was:

> …subject to no control from their constituents, the very idea of liberty will be lost and the power of choosing representatives becomes nothing but a power, lodged in a few, to choose at certain periods a body of masters for themselves and for the rest of the community. (1991, 25)

This exact issue, posed by Price over two centuries ago, is paramount to this paper, the idea of an unaccountable and uncontrollable legislature and how it can negate citizen power and liberty. It is a concern, because if the citizenry truly is powerless, then very little stands between us and the possible abuses from those within our legislatures. Representatives, as human beings, are subjected to their own desires and interests, often hidden from the wider public, which can lead them to the situation where they, as Manin, Przeworski, and Stokes (1999, 41) put it, 'shirk' their responsibilities, usually at the cost of serving the electorate. But if this paper truly aims at digesting the electoral system around the discourse of democratic accountability, in both analysing the practical limitations of representatives, and the more normative arguments for citizenry control, it first needs to elaborate on what is meant by this term, and why it is of great importance.

First 'democracy' and how it pertains to 'accountability'. The term was coined by the Greeks, stemming from their word *'demokratia'*, which can be translated as meaning roughly 'the rule of people' (Dahl 2020, 25). In this literal understanding, the idea could be understood as the direct and immediate governorship of a polity by the whole of the public, a notion probably better ascribed to the ideas of 'direct democracy', 'pure democracy', or even 'true democracy'.

However, possibly due to the practical limitations of such an experiment, especially considering large polities, as well as concerns regarding the competence of a public to rule themselves directly, democracy has often been conflated with notions of indirect control via a representative government, or in other words, a republic (Dahl 2020, 34).

It is via republics that the idea of democracy will be consulted within this paper, that being the indirect means of a representative government, and how to ensure the accountability of democratic standards in a condition of indirect control. But what are these standards specifically? The democratic theorist Robert Dahl outlines five standards of equality required for a democracy to exist (2020, 49). First is the element of the *effective participation* of a polity's members in the deliberation process of a government, with a republic this can be seen as the appointment of representatives in a legislature. Second, is the principle of *voting equality* being established and encompassing all members of the polity. Third is the idea of an *enlightened understanding* existing among all members regarding the choices and situations before them, an element that will be raised later in the section regarding the idea of epistemological concerns with representatives. Fourth is the standard of members having *control of the agenda* in the deliberative body, a crucial element considering the indirect nature of representative democracy. And fifth is the *inclusion of all adults* as citizens of a polity and thus entitled to the rights bestowed by the prior four standards.

Moving on to 'accountability', on a technical aspect, the term can historically be understood to involve the practices of 'scrutiny' and 'sanction' as cognitive acts performed upon representatives or leaders. Jason Maloy, writing on democratic accountability and its relation to the early American colonies, argues that the sanctioning element of accountability makes it different from other ideas of representation that involve practices of selection and trust, as sanction confers authority and maintains accountability via rewards and punishment (2008, 7). For Jane Mansbridge (2009, 32), accountability revolves around the idea of having the power

to reward or sanction an agent operating on your behalf. Accountability is thus understood in its power of delegating authority to agents – rejecting any idea of sovereignty existing outside of the 'demos' – and having the capacity to monitor, scrutinise, and ultimately sanction those agents when their conduct as members or as a body, mismatches the interest of the sovereign. In the end, it is the method of scrutiny and sanction that is often in debate, with different answers arising depending on the epoch in question.

The History of Accountability

According to Maloy (2008, 25), the prospect of accountability only achieved real relevance in democratic thought with the ancient Greeks – mostly with the Athenians – who maintained the importance of scrutiny and sanction as institutionalised acts. It was in the '*Ekklesia'* that the citizen was empowered to participate by voting for officers who in turn were made accountable by institutions of accountability. One noteworthy example was the practice of ostracism, which Jon Elster asserts was used upon lawgivers as both a method of ex-ante control (in dissuading bad policy suggestion or just unfavoured public action) and ex-post accountability (in punishing behaviour that led to unfavoured results) (1999, 270). It is even noted by Maloy, that Aristotle, who notably doubted the merits of democracy, consistently placed significance on accountability as a means of ensuring the power of the 'demos', which without would most likely fall to the influence of an oligarchic elite (2008, 28).

After Athens, the discourse on accountability was furthered by the model generated by the Roman Republic before it was upended by the Principate – although elements of it would remain even after Augustus. Where the Greeks upheld a more popular, and perhaps even more democratic notion of the practice of accountability, the Romans relied on a more fiduciary approach, through the entrenchment of it in law, and the establishment of competing bodies to curtail abuse. Guardianship and trust would become key, with authority being delegated and not alienated as the key difference (Maloy 2008, 30). For emphasis, a child is entrusted to a

guardian, not because their will or independence is forcefully revoked, but because such an arrangement is seen as being beneficial to their well-being, so too does the logic run for guardianship. However, this relationship that seems to erode any control that the ward might wield upon a guardian depended upon legal processes, and thus the guardian was held legally accountable for the ward's protection and to act in accord to their real interest, in essence, to act as if the ward acted for themselves. The nature of guardianship or trusteeship, and how it relates to the dynamic between a representative and a constituency will be further dealt with later in this section, but what this segment wishes to highlight is the Roman incorporation of legal mechanisms to ensure accountability to a certain duty.

This fiduciary relationship, however, would not resolve the question of sovereignty or what it implies. For some of the thinkers during the Reformation, specifically the Huguenots, sovereignty ultimately belonged to God alone, with any temporal leadership, whether that be the Pope, King, or even the people, acting only as a means of realizing this sovereignty upon the Earth, acting merely as a guardian, and thus justifying popular resistance to these agents when they are perceived to have broken allegiance or have deviated from the true source of sovereignty. This is elaborated further if we consider a central argument from Jean Bodin, that the true sovereign is the only unaccountable force in society, to whose will, all are to be held accountable too (Maloy 2008, 36). If the leaders of a polity were not deemed the real sovereign but just as trustees acting upon its name, then these agents were thus not beyond reproach and any attempt of holding them account – presumably to the true sovereign – was justifiable. The significance here is the attempt of removing the power of the sovereign from the ruler to some other, often higher, stratum. By the time of the English Civil War, the nature of the sovereign would see a similar detachment from the ruler, although being redirected to a more temporal location. It was the stance of many parliamentarians that sovereignty was with Parliament, as

it represented the people, and thus the regicide of King Charles I was justified in his abuse of the power that was entrusted to him by the English people (Maloy 2008, 41).

With the development of placing sovereignty with the people, the discourse of accountability shifted to an analysis of how to best enforce such a will – a will that constituted countless and often contradictory voices and interests. The notion held by the Levellers – a populist group during the English Civil Wars – was that in order to maintain freedom and popular consent, regular elections were to be held. However, in addition to these electoral methods of accountability, they were to be supplemented by non-electoral methods that would ensure that the people of the shires, cities, and boroughs, were able to recall their representatives, to make laws to punish those who betrayed their trust, and to ultimately replace representatives in Parliament (Maloy 2008, 46). What is noteworthy, at least for the scope of this paper, is the idea of non-electoral tools of accountability, which seems to have mostly dissipated in importance over the centuries of political thought. Such non-electoral methods proposed by the Levellers would have included regular audits, ad hoc impeachments, and even legal liabilities codified into law. The rejection of these tools was mostly justified by beliefs that they might prove dangerous in time, but in the end, it was held that they were unnecessary in light of popular control and regular elections (Maloy 2008, 172). However, the significance of this epoch was the move away from the power of discretionary trust, and towards a view of popular agency.

Thus far we have determined that accountability has included the ideas of popular control via citizenry participation; that sovereignty belonged to the people, or at least that it is not held by some temporal ruler; and that to best respect that sovereignty regular elections were to be held. In expanding this section to some contemporary authors, to highlight some current thoughts on accountability, we find Manin, Przeworski, and Stokes (1999, 50) who stress the need for independent means of information sharing between representatives and voters to help ensure

accountability. This is based on the assertion that the accountability of government is dependent on whether the citizenry can discern if the government is acting in its best interest or not, with the tools of sanction and selection only being effective if the voters truly know the activities of their representatives (Cheibub and Przeworski 1999, 225). Likewise, John Ferejohn (1999, 131) notes that accountability is reliant upon institutional structures, as responsiveness depends on these mechanisms, and thus without their proper implementation accountability falters. Finally, for John Dun, understanding the affiliation between the voters and the representatives is also essential, or rather it is paramount to understand the relationship of the ruled and the rulers, and accountability is thus the attempt to mediate between these two memberships and not being led into a false sense of security in believing democracy to be not a method of being ruled over. As he quotes,

> One could think of accountability in this sense as a relation of power or force between citizens and their rulers – an interactive game, the payoff structure of which, more or less effectively, rationally sanctions the behavior of the latter through the threats and offers that it is open to the former to make and execute. (Dun 1999, 335)

Most of these arguments seem to indicate that the voter is at a disadvantage when it comes to knowing or perhaps even understanding the information on, and available to, the government and its legislature, a notion quite important in the discussion around the idea of representation.

In the contemporary epoch, the discourse on accountability has often bordered on the discussion on elections and representatives. This is because representation concerns the makeup of the legislature and the nature of the members acting within it, and how similar they are, in either interest or in personal likeness, to those who elect them. Regarding the models of representation, Mansbridge (2003, 515) lists the following: the traditional method where the representative attempts to remain faithful to campaign promises made, which she calls

Promissory Representation; the system based upon retrospective voting with representatives appointed based on prior activity, which is called Anticipatory Representation; and a selection model where voters choose a candidate who they believe will instinctively act in accordance with their interest without any external pressure, this is called Gyroscopic Representation, but also as the Selection Model in some sources (Mansbridge 2009; Fearon 1999). In the first two models, accountability is primarily achieved via electoral features, with representatives either needing to remain true to their promises after an election or anticipate constituency demands for an upcoming election. In the case of the gyroscopic model, accountability is more intrinsic and based upon a belief of similar perceptions and interests, these representatives do not have to be sanctioned to be accountable, they are simply "like gyroscopes, rotating on their own axes, maintain a certain direction, pursuing certain built-in (although not fully immutable) goals" (Mansbridge 2003, 520). The paper will now focus on the idea of representation, with a more thorough analysis of it, and why it is of significance to democratic thought.

Defining Representation

A simple answer to the question posed in this section: *what representation is and how is one to represent*, can be made with some acknowledgement of dictionary entries for the term. Merriam-Webster defines 'representation' as either one that is in likeness to another, as acting on behalf of another, or as standing for a group of others (Merriam-Webster 2023). If the Latin root of the word is taken into account, then it is to make something absent present again (Pitkin 1967, 8). Hanna Pitkin in her writings is firmly aware of how often the term can cause confusion and be used in different manners to bring about different political solutions. Even though it might be difficult to distinguish, with different 'photos' being taken by different thinkers, Pitkin still asserts that "there is something there, in the middle in the dark, which all of them are photographing: and the different photographs to gather can be used to reconstruct it in complete detail." (1967, 11).

The first significant ‘photograph’ that Pitkin makes note of, is a formal aspect of the term, which regards the arrangements that initiate it, which she calls the ‘Authorisation’ view of representation. Perhaps best advocated by Thomas Hobbes, the authorisation view is based on someone (usually a ruler) being given authority to act on behalf of the wider public and represent them as a whole. This is an authority that did not belong to the representative before, as it was given in full to them, and thus the represented are deemed responsible for its consequences as if they performed it themselves (Pitkin 1967, 39). The second view, which is a familiar argument that has been raised by Mansbridge and others, is the ‘Accountability’ view of representation, which holds that a representative is ultimately someone to be held accountable to the will of those they are representing (Pitkin 1967, 55). Unlike the Authorisation perception, which emancipates the representative from the consequences of their actions (as their actions are binding on the represented) the Accountability view holds that the representative, due to their position of power over a group of people, now has special and unique obligations to the said group who like in the Authorisation view, has given authority to a person to represent.

Moving on from the more formalistic conceptions, Pitkin then introduces the ‘Descriptive’ perception of representation, which asks what is meant by being a representative. In this view, a representative ‘stands for’ something, being a reflection (like a mirror) of the thing or people that it should represent. A legislature and its members are thus understood as playing the role that a map does for a country, not being a replica or an exact duplicate of the nation itself, but instead acting as a descriptive force for something real that cannot easily be present itself (Pitkin 1967, 66). How to achieve this seems to be equally conflicting as it is to define representation. One proposal is to appoint representatives by lot, with the goal of choosing the most ‘mediocre’ of the people as they would be the closest to a rough sample of the nation, and so would better represent the nation as a whole (Pitkin 1967, 74). Another argument is for

voters to elect representatives that best ascribe to their own likeness, or in other words, who they identify most with, so as to create a degree of similarity between the electorate and elected (Pitkin 1967, 79). However, the fact that a representative often represents multiple individual persons does seem to make this a more difficult ideal to achieve – although homogeneity in constituencies and proportional representation might better allow for such a realisation. A key element of the Descriptive model is that representatives relay information about the thing they are representing, providing a general, although not perfect, picture of the state, people, and interests that are not able to be present themselves.

Moving on, a connected view to the Descriptive model is the more symbolic perception of representation. The 'Symbolic' view understands representatives as being a sign for something else, not describing as in the prior case, but symbolising it as a national flag would do for the unity of a nation, or a head of government would be for the policies of a national government (Pitkin 1967, 93). When the Springbok Rugby team won the 2019 Rugby World Cup, they represented the nation of South Africa in their victory, standing for the nation, without necessarily describing the nation or the interests of its people. If anything, this form of relationship hinges more on the emotional and psychological responses of people than rational criteria, but as subjective animals, we cannot completely reject it either.

The last perception on representation that is important to Pitkin's analysis is representation as 'acting for' and not merely 'standing for' the represented. This is referred to as the 'Substantive' view of representation, and it is concerned not wholly with the formal arrangements that exist around representation, or with the characteristics or the identity of the representatives, but with the prospect of acting for others and what that means (Pitkin 1967, 114). As noted earlier, representation at its root can be understood as making something present which is not present, and as the physical and perhaps optimal presence of a whole people is

impractical or rather impossible, representation should thus mitigate such a conundrum. But the Substantive view does not hold this as merely describing the people as a map would do, but to act in their stead as they are not able to do so themselves. There are two perceptions on how this is to be achieved: either via the 'Mandate' model, which holds the representative to act in complete subjugation to the wishes of their constituents; or with the 'Independent' model, which asserts that there should exist a level of autonomy for the actor, who should be able to deliberate on what is best for the constituency (Pitkin 1967, 145). Arguments for the former lie in the notion that it is only possible to represent the interests of the people if their will is followed to the letter, treating the representative more as a servant or as a delegate. If deviation occurs from the constituency's will, then the representative is not truly making them present, but rather enforcing their own subjective will. For the latter, the Independent view, the representative is seen more as a trustee, or as an expert sent to solve complex political questions that will require actions that will not always be clear to the constituency. A representative needs to be able to independently act in order to achieve the real interest of those they represent, as the wider voter base might not be privy to certain knowledge or expertise that better illuminates the situation (Pitkin 1967, 146).

Although all these views of representation falter on some element: the formalistic perceptions do not concern themselves with what it means to be a representative, the Descriptive and Symbolic perceptions fail to tell us what makes a good or bad representative, and to completely ignore the former perceptions in favour of a substantive view, could possibly create a disconnect between the normative and the actual aims of representation. Thus, for Pitkin, a representative incorporates all the aspects already mentioned, and both the mandate and independent arguments for the Substantive view. A representative acts in the interest of those they represent, ultimately being responsive to them, while being independent and able of discretionary action that is in the end, in the interests of the constituency, with the overall goal

of avoiding conflict between the representative and the represented (Pitkin 1967, 209). As put by Pitkin (1967, 218):

> The representative is, typically, both special pleader and judge, an agent of his locality as well as a governor of the nation. His duty is to pursue both local and national interest, the one because he is a representative, the other because his job as representative is governing the nation. That dual task is difficult, but it is neither practically nor theoretically impossible.

The act of representation is to ensure that the people are part of government without needing them to literally be there, or that their interests are constantly at the forefront. Rather, it is to have the representative responsive to the represented and their desires and interests. And this is to be formalised, being institutionalised to avoid arbitrary neglect in determining the interest of those that are made present (Pitkin 1967, 222; 1967, 234). Representation is to ensure that people are present in the will of the government, even if, it is somewhat complex in realising it.

Why Power to the People?

If we are then to take Pitkin's arguments to heart, in understanding representation as realising the interest of the people in a manner that is both responsive to them and conducive for good government, a natural question will then be: *why should we?* Representation theory, and wider approaches to democratic accountability, have been tasked with creating principles and institutional structures that shift power ultimately towards the people, eroding ideas of non-popular sovereignty. However, the question exists as to why should political power, or 'Kratos' belong to the people, or 'demos', at all? From the representation theory perspective, one could say it is to ultimately promote the interest of the people, but more needs to be said as to why making them present is most conducive to their well-being.

One answer to this question is that the rationale behind accountability to the 'demos' lies in popular control in its own right, with the commitment being to a moral sense of democracy (Maloy 2008, 9). In this view, a government might be more prone to engage in 'just' policies, so long as it is controlled by those who would have been subjected to it. This might have been the case for our long-ago democratic predecessors, where the 'liberty of the ancients' resided in controlling the sovereign, and having a share – even if minimal – in the deliberations and actions of that sovereignty, no matter if that control led to what might be today deemed as abuses of individual liberty (Nippel 2016, 206). On the other hand, it is asserted by Goodhart (2011, 52) that what is desirable in a society are the rights that are essential and integral to democratic theory: guarantees of fairness, personal liberty, economic security, and political participation are paramount in preventing domination and oppression. And it seems to be his perception that in materialising these rights, democracy needs to be enshrined and kept accountable to the populace. For Craig Borowiak (2007, 998), the assessment of why accountability is important is much simpler: "to be accountable is to garner legitimacy; to be unaccountable is to be in the company of tyrants". However, it seems he recognised that accountability existed on two axioms: one that places importance on representative mechanisms and that kept the people at least somewhat distant; and another that was uncomfortable at the excessive concentration of power, instead relying on a vigilant and active public to ensure accountability. The divide here seems to be somewhat linked to an epistemological argument, which will be analysed later in this section. It is of my mind, that a significant argument in understanding the worth of democratic accountability lies under a republican view of it, intertwined with its conception of freedom.

Liberty as Non-Domination

In the modern world, liberty is dominated by the legacy of Isaiah Berlin, being encompassed by one of his *Two Concepts on Liberty.* Berlin outlined freedom as either being 'negative': in it being realised via a state of non-interference; or 'positive': in it being the self-actualisation or self-mastery of the individual (2002, 169; 2002, 186). More can indeed, and probably should, be said about these conceptions, but that is not the scope of this work, the reason for its brief mention is in its contrast to the Republican notion of freedom, which is of importance to the discussion of accountability. It is to this topic that the paper will now turn.

Liberty, in the Republican sense, is freedom from domination, with the latter term being understood by Philip Pettit (1997, 35) as the relationship between master and slave. In a dominating relationship, the 'master' can act arbitrarily and interfere with the choices and even aspirations of the 'slave'. It is unlike negative and positive liberty, in that it focuses on the relationship between parties, but it is like the former on the importance of an absence, and on the latter with the idea of mastery. Domination can indeed occur even in the absence of any active interference, as it is the theoretical possibility of it to occur that is of concern: in other words, what is important is the real possibility for a king or a parliament to act without constraint from the people.

Pettit (1997, 49) maintains that the republican tradition, and its view of freedom, is only achievable via a certain legal framework, where authority is derived from certain laws and rules that create the freedoms of the people. It is only through good laws that people can be free from domination, and destroy any notions for, or possibilities of, dominion. This argument is also relatively non-aligned to true democracy, as it concerns itself not with what the people as a whole desire or their control, but only that they are free from those who would dominate them. Republicanism, in essence, wishes to create an empire of laws, and not an empire of men.

To continue, in relating this sense to the importance of accountability, Pettit (1997, 52) proposes that three elements are present in a relationship of domination. First, an actor must have the ability to interfere; second, if interference occurs, it is of an arbitrary nature; and third, the arbitrary interference is done upon the choices made by others. In preventing such domination, systems of power must be established that outline reciprocal power, which would eliminate the arbitrary nature of domination. As Pettit (1997, 82) states "to enjoy non-domination is to be in a position where no one has that power of arbitrary interference over me and where I am correspondingly powerful.".

In summary, it is from this republican perception that I believe we find sufficient justification for the importance of democratic accountability. Accountability does not only serve itself in its own right, or via beliefs of popular control, or legitimacy, or through the promotion of rights; but actively prevents arbitrary interference upon the citizenry and in turn, empowers the public with real means to influence an out-of-touch assembly. Accountability, justified via liberty as non-domination, also allows for a more effective and perhaps even a more powerful state, where state interference can be justified, so long as it is not practised via a purely arbitrary role, in that such interference is limited by constraints, and conducted with true consent. Furthermore, if we quickly revert our attention to Pitkin's sense of representation, we can make some connections. Remember, for Pitkin, representation is not the complete subjugation of an agent to the people, nor is it the complete independence of a trustee, but rather a responsive relationship between the parties formalised to prevent arbitrariness, which is to ultimately prevent domination and keep the representative responsible to those they serve. Representation as responsiveness allows a people to be free not only by not being subjugated to the wills and whims of a representing elite, but also by having their interests, their true interests, actively communicated to the government, and by institutionalising the power of revaluation when that relationship mismatches from the people's interests.

The Epistemological Concerns of Accountability

In concluding this section on the nature of democratic accountability, and why it is an important yardstick to judge electoral systems, a critique will be evaluated on its possible shortcomings, and possible dangers it might present.

As noted by Borowiak (2007, 1001), a Federalist argument from the nascent United States, was the fear that bringing democratic sentiments to accountability might hinder its effectiveness. Essentially, a government which is accountable to the people as a whole, would not be truly accountable to the interests of the people, but instead, a gap would exist that would be filled by the illusive desires of factions within the populace. There is a similar notion brought up by Edmund Burke, who maintained that representatives were to represent 'unattached interests' which were not similar to personal desires or goals, but fixed and universal interests shared by sectors of society for the benefit of the whole society (Pitkin 1967, 173). In addition, there are other 'gaps' between a representative and the sovereign people to take note of, these include *spatial gaps*, especially true in geographically large republics; *scalar gaps*, the proportion of representative to constituents; *temporal gaps*, which are the difference between representative actions in the past to that of the present and even future; *competence gaps*, defined by governing abilities; and lastly, *epistemological gaps*, which regards possible inadequacies among both constituents' and representatives' knowledge on the exact desires and interests of the constituency (Borowiak 2007, 1000). This notion has been lightly touched upon earlier in the section, specifically in how it might empower a representative with further autonomy due to a lack existing in the knowledge of their constituents.

Nevertheless, this gap, I believe is quite significant, especially in how it relates to popular control and democratic forces in society. To elaborate, this epistemological argument questions whether the people – or even the representative – can truly determine what lies in their best interests, as the arguable purpose of having representatives is that they act in accord with our

interests in the government (Hardin 2000, 113). Indeed, government and its officers often first need to uncover exactly what a people's interest is, with this process believed by some to lie beyond the capabilities of the public who are not exposed to discourse regarding political natures, and how exactly to resolve them. This further begs the question of whether it is even possible to truly know whether our representative is even responsive to our interests, which is why some authors argue for independent sources of information between the elected and the electorate.

However, the argument that an elite might be better versed in knowledge to know a community's interests might be a misleading one. Although the overall arguments regarding epistemological gaps are useful, especially how they can be morphed by factional and populist conflicts, the notion that it is 'the people who do not know what is good for them' is, in my opinion, a more dangerous sentiment. It was noted by economist Friedrich von Hayek that knowledge is divisible: never fully identifiable or attainable by any specific person or body (von Hayek 1945). The interest of the people might be beyond the scope of any learned elite, where theory fails to adequately compare to individual circumstances and perceptions. Instead, the 'epistemological gap' might rather be impaired by the deafening clatter of many demands and cries from the public, which might be further exaggerated by only having a faint connection between representative and constituency.

This connection between representative and constituency has been controversial in South Africa, where over the past two decades a debate has been brewing on the adequacy of the responsiveness between South Africans and their MPs. This section has been concerned with theories around accountability, representation, and ultimately, how responsiveness could cultivate liberty in the sense of non-domination. But does a system of proportional representation hinder or assist this responsivity, and can it bestow upon the electorate a degree

of non-domination? The paper will now turn to this debate, in an attempt to understand the intricacies of our electoral system.

Section Three: The Electoral Debate

The Constitutional Mandate and the Electoral Task Team

There never was a definitive system in place for exactly how elections were to be held in democratic South Africa. At the birth of democracy, the interim constitution only outlined a system for the 1994 elections, and when the final Constitution was enacted in 1996, it only stipulated in Schedule 6, that the following election (which was the one occurring in 1999) be held on the 1994 parameters. The only notable element that would affect the eventual electoral system, as stipulated under Section 46(1)(d), is that the results of the election for the National Assembly, would in general, lead to proportional representation. But perhaps more importantly, the Constitution under Section 46(2), outlined that it resides in the power of Parliament to determine how to appoint the members that would comprise the National Assembly (*The Constitution of the Republic of South Africa* 1996). And so, Parliament would pass the Electoral Act of 1998 and other legislation, which would outline the current system of what is arguably a relatively 'pure PR' system.

To quickly recap, the South African National Assembly comprises 400 parliamentarians, 200 of which are elected via national closed party lists[1], with the remaining 200 from provincial closed party lists (per province). Party share is allocated via the Droop quota, which results in a relatively small threshold required for parties to gain a seat, effectively creating a heavily proportional system, arguably one of the most proportional in the world (Konrad Adenauer Foundation 2003, 32). However, constitutionally speaking, there exists no definite or mandated electoral system for the National Assembly, only the stipulation that it should comprise between 350 to 400 members, and that it results in general proportionality. Thus it was

[1] Party-List system allows political parties to determine the appointment of members of a legislature through the drafting of premade lists containing the names of party candidates, with these lists sometimes hidden from the general public, as is the case in South Africa. Unusually these lists are drafted in a sequential manner, numbering candidates and appointing them based on their proportional share (Konrad Adenauer Foundation 2003, 59).

constitutionally possible after the elections of 1999 – and still is – for a new electoral system to be introduced (HSF 2021, 2).

The van Zyl Slabbert Report

To end this uncertainty, the Electoral Task Team (hence ETT) was commissioned by Cabinet in 2002 to evaluate the worth of the electoral system that was used in the 1994 and 1999 elections, and identify any areas for improvement, or whether a new system was warranted (Electoral Task Team 2003, 1). Colloquially known as the van Zyl Slabbert Commission, the endeavour would be chaired by its namesake, Frederik van Zyl Slabbert, who would be accompanied by experts in the field of electoral reform and engage in a process that would consult with various stakeholders of the electoral system. The Commission would conduct roundtable discussions, seminars, and surveys, with the goal of finding and dissecting the strengths and weaknesses of various alternative electoral systems. From the early stages, it was assured that the discussions were to be centred around certain key principles that were, and still are, paramount to South African democracy. These would be the values of *fairness*, *inclusiveness*, *simplicity*, and *accountability*, and the Task Team's attempts would revolve around these principles (HSF 2021, 2).

During its deliberations, the Commission found that although the current Proportional Representative system was deemed to be well aligned with the principles of *fairness*, *inclusiveness*, and *simplicity*, it was not conducive to the fourth principle of *accountability*. It was found that although a purer PR system was more disadvantageous to accountability between the public and the representative, the system was however extremely advantageous to the other three principles (Chiroro 2008, 3). It was further believed by some in the ETT that the PR system used for the two prior elections embodied the electoral values of '*open and fair'* elections: delivering and ensuring human dignity, equality, and freedom whilst empowering voters and minimizing 'wasted votes' (Konrad Adenauer Foundation 2003, 31). Furthermore,

regarding *inclusiveness,* it was found that the pure PR system allowed the voices of minorities to be heard in parliament and helped foster the appointment of women in the Assembly, who traditionally underperform in plurality systems. With the ideal of *simplicity,* the closed list PR system was achievable with a single ballot, with both party lists (national and provincial) being allocated from these votes. Moreover, the system, by avoiding individual candidates, and rather relying on parties (and thus their logos), would prove beneficial to the illiterate segments of the nation (Konrad Adenauer Foundation 2003, 32). It was even noted by Chairman van Zyl Slabbert that the principle of *accountability* was the most contentious in light of it possibly having negating effects on the effectiveness of the other three values (Konrad Adenauer Foundation 2003, 22). It seemed that by improving *accountability,* one could possibly erode the power held by the votes from minorities, as well as place a disadvantage on them and women, in general, to be elected as MPs, and lastly, it could possibly further complicate the ballot system.

Nevertheless, a survey around that time, conducted by the Human Sciences Research Council, found that generally people were content with the PR system, and felt that it had served the nation well (Chiroro 2008, 13). Similar arguments would expand this notion and maintain that the electoral system was instrumental in transitioning South Africa into a fair and democratic society. The question thus posed to the contenders of PR was: why should we fix it, if it is not broken? Yet, those sceptical of the PR system shared widespread sentiments with the public: a survey that elaborated on this and conducted by the ETT found that *71 per cent* of responders showed a desire for more accountability over the members they appointed to parliament (Electoral Task Team 2003, 13).

The Majority and Minority Report

The deliberations from the ETT would culminate in a split in opinion from the experts: a minority would advise maintaining the current system enacted by the Electoral Act of 1998, while a majority would recommend a new system that addressed the perceived deficit in accountability, with the creation of multi-member constituencies (MMC). The majority felt that improving accountability, while at the same time retaining the obvious benefits of a PR system, would require the implementation of multiple and smaller constituencies. In this system, the nine provincial constituencies – which technically already were MMC – would be increased to 69 constituencies, which depending on size would elect between three to nine members to the National Assembly. The logic of such a system, against single-member constituencies that is (which was also considered), was that it would still ensure minority presence in parliament and avoid the issue of 'wasted votes' that usually occur with FPTP arrangements. To still ensure general proportionality, only 300 members would be elected from these MMCs which would be appointed via closed party lists, while the remaining 100 members would be appointed via national closed party lists (Electoral Task Team 2003, 26). The majority of the ETT felt that this system would best realise the principles of *fairness*, *inclusiveness*, *simplicity*, and *accountability*.

The minority report, however, believed that any significant change to the electoral system, was essentially uncalled for as there were (then) no strong public sentiments or protests against the in-use system. More importantly, it was held that because the PR system was crucial in ushering in democratic South Africa, it was best to retain it as it was for the sake of nation-building, reconciliation, and peace and stability (HSF 2021, 3; Electoral Task Team 2003, 66). In terms of the questionable principle of *accountability*, the minority viewed that ultimately it was an election-based issue, with voters upholding the principle by either renewing or revoking support for parties based on their performance (Electoral Task Team 2003, 67).

The After Effects of the ETT

Despite the majority's recommendation for an MMC system, the state would eventually decide to side with the minority opinion in retaining the current system and avoid what was deemed as unnecessary change (HSF 2021, 2). The issue was thought to be settled, and although not entrenched in the Constitution, the PR system would stay and continue to serve the nation for the coming elections. Yet discontent would persist, as the argued shortcomings of the in-place PR arrangement would only continue to fester. Noticeable cases were the 2009 Independent Panel which addressed the lack of contact between MPs and voters (2009, 58), and in 2013, with the failed DA amendment bill which sought to create constituencies (Munusamy 2013) Ultimately, the next two decades would witness little change. One exception was the ad hoc remedy of delegating constituency offices to MPs, in order to provide a better link between the public and its parliamentarians. The stated goal of this is to make parliamentarians available to the public, for them to help resolve problems, and to inform their appointed constituency on the happenings of Parliament (HSF 2021, 2). However various inadequacies have been reported with these offices: firstly, most people do not know of their existence or where to contact them, and secondly (which is related to the first), they seem to be in some cases allocated and run by political parties (Solik 2014, 42; Parliament of South Africa n.d.). Furthermore, in 2017, the Report by the High Level Panel, which was tasked with identifying areas for change in the Republic, revived the Majority view from the ETT in introducing local constituencies into the electoral map, to help rectify the lack of accountability it found between representatives and the electorate. Yet, it should be noted that the Panel did not expand on the debate, rather just highlighting it for future consideration (High Level Panel Report 2017, 525). The issue would not gain the limelight again, until three years later with a Constitutional Court order.

The Constitutional Court and MAC

New Nation vs. the Republic

On the 11th of June, 2020, the Constitutional Court judged that the Electoral Act of 1998 was unconstitutional in that it did not allow independent candidates to compete in elections (New Nation Movement NPC and Others v President of the Republic of South Africa and Others 2020). The case was originally taken to the High Court by like-minded associations that felt dispossessed by the Electoral Act – in it preventing individuals from running for office without being part of a political party. The New Nation movement, along with Ms Chantal Revell, the GRO, and the Indigenous First Nation Advocacy Group, maintained that the Electoral Act infringed upon Sections 18, and 19(3)(b) of the Constitution (1996), which state respectively:

> *18. Everyone has the right to freedom of association*.
>
> And, *19. (3)(b) [every citizen has the right] to stand for public office and, if elected, to hold office.*

During the prior High Court proceedings, attention was placed on Section 19(3)(b), with which the Court concluded that there was no support provided by the Constitution for a right to stand for public office independently. The High Court thus reasoned that the relevant section of the Constitution does not call for an electoral system which includes independents, and so the current PR system that omits independent candidates, is constitutionally sound. (New Nation Movement NPC and Others v President of the Republic of South Africa and Others 2020, 5). However, the case did not end there: an appeal was made to the Constitutional Court, which was granted. The Constitutional Court, under Judge Madlanga, would reject the findings of the High Court and maintain that Section 18 does not only contain a positive element of association but also a negative aspect to it as well. Essentially, it argued that in requiring prospective candidates to join a party if they wished to contest elections, the Act violated their constitutional

rights outlined in Section 18, by forcing an association with those they had no desire to associate with (New Nation Movement NPC and Others v President of the Republic of South Africa and Others 2020, 11). It is from this strain of thought that the judgement was ultimately made which deemed the current Electoral Act unconstitutional, providing Parliament 24 months to rectify the Act and to prevent a potential constitutional crisis.

The Ministerial Advisory Committee

Parliament was given two years to rectify the issues found with the Electoral Act, a process delegated to the Department of Home Affairs under the direction of Minister Aaron Motsoaledi. Although Motsoaledi perceived the task as more of a technical undertaking – in redressing the definitional issues that prevented independents from contesting – the Minster felt that the development provided an opportunity to readdress the electoral system, and evaluate it from a constitutional perspective that considered the experiences garnered since the birth of democracy. The Minister would create the Ministerial Advisory Committee (hence MAC) to determine which provisions were affected by the Court's Judgement, and what solutions – based upon the South African context – would be best suited. Chaired by former Minister of Constitutional Affairs, Valli Moosa, MAC would be comprised of seven additional members[2] that represented various experts on electoral reform (The Ministerial Advisory Committee 2021, 6).

In a similar vein to the ETT two decades before, MAC would outline guiding principles for their deliberations, that would play a paramount role in selecting options for electoral reform. These principles would include the ETT values of *inclusiveness*, *fairness*, *simplicity*, and *accountability*: but incorporate the added ideals (arguably derivative of the prior four) of

[2] The Committee included Advocate Pansy Tlakulu, Advocate Vincent Maleka, Dr Michael Sutcliffe, Dr Nomsa Masuku, Dr Sithembile Mbete, Mr Norman du Plessis, and Prof Daryl Glaser (The Ministerial Advisory Committee 2021, 6). It should also be noted that Committee member Prof Daryl Glaser acted as Co-Supervisor on this research rapport.

gender equality, *proportionality*, the *effective participation of independents*, *genuine choice*, *effectiveness* (as in efficiency, practicality, or manageability), and *legitimacy* (The Ministerial Advisory Committee 2021, 13). Another element of great concern for MAC was the needed goal of ensuring the longevity of any electoral replacement to be implemented. No matter the exact specifics of the new system, it had to be future-proof, and able to last for decades to come and stand the test of time (Atkins 2022, 8). In consulting with stakeholders and reviewing research on electoral reform, as well as on the specificities of South Africa Constitutional law, the following arguments were found. There seemed to be a desire for the insertion of constituencies into the electoral process that would respect current ward, district, and provincial boundaries; and that a system would be in place that would restore general proportionality, preferably via a second ballot. But there were also concerns that independents would possibly exacerbate patronage politics, as well as the opinion, on whether the electoral system was even at the root of the dissatisfaction felt with democracy (The Ministerial Advisory Committee 2021, 15). Accordingly, the Committee would deliberate on these issues, but ultimately be unable to come to a unanimous stance on how exactly to incorporate independents. In light of this, there would be two options proposed by MAC for Minister Motsoaledi: a majority opinion supported by four of the eight, and a minority opinion supported by three of the eight – one member of the Committee chose not to support an opinion (The Ministerial Advisory Committee 2021, 17).

The Minimalist Option

The minority opinion, often called the Minimalist Option, fittingly to its name, called for retaining the current system with minimal adjustments to allow for the participation of independents. The rationale for its implementation rested on assertions that the Constitutional Court Judgement only called for the inclusion of independents into the electoral system and did not call for a complete overhaul of the electoral system. This stance was further elaborated

by the argument that it cannot be maintained that current disaffection with the government rested solely on the electoral system and that to avoid any constitutional amendments, it would be wise to limit electoral change to the simplest possible parameters (The Ministerial Advisory Committee 2021, 15).

This option would include the amendment of definitions in the current Electoral Act, as to allow independents to be included on ballot lists (The Ministerial Advisory Committee 2021, 18). To facilitate independents, they would be able to run on provincial lists, with the logic being that they would be able to harness the support of the greatest area without needlessly elongating national ballots. The opinion also contested the idea of possible further demarcation via constituencies due to the argument that it would weaken some of the prior mentioned principles owed to the spatial legacies of Apartheid (The Ministerial Advisory Committee 2021, 19). Furthermore, by allowing independents to only contest the 200 provincial-derived seats, the opinion held that the remaining 200 seats appointed from national party lists would ensure proportionality. Regarding the provincial legislatures, the Minimalist Option would allow independents to contest the elections on a single provincial ballot, essentially treating the provinces as single multi-member constituencies (The Ministerial Advisory Committee 2021, 20).

A controversial element of the Minimalist Option, which will be dealt with in more detail later, is the quota system that would discard any votes for an independent candidate once the recipient satisfies the threshold for a single seat; there is also the possible issue of independents winning multiple seats from different provincial allocations if they contest in more than one province, with the system disregarding the votes from the province whose allocated seat is not taken up (The Ministerial Advisory Committee 2021, 20). On vacancies, although the system would be the same as it is currently in regard to parties, any vacancy left by an independent would force a recalculation, which similar to excess votes, would see the removal of the candidate's votes

in order to calculate the new holder of the seat. The Minimalist Option also has no proposed mechanisms for recall or by-elections for the independent, with accountability ultimately being treated as an exclusively election-time event.

With this in mind, comparing the Minimalist Option to MAC's principles, the following arguments are made: its strength lies in its ability to maintain high levels of *inclusiveness, fairness, simplicity,* and *proportionality*, as retaining the pure PR system would deliver these benefits. In addition, it would potentially promote *gender equality* through party lists, and *legitimacy*, via its historic use in nation-building and minority participation. However, it cannot be said that it fosters effective *accountability*, as the decades since the Slabbert Report has not provided any meaningful counter-arguments. The claim that it would cultivate *effective participation of independents,* allow *genuine choice,* and sustain *effectiveness,* is doubtful at best, especially when considering the inherent obstacles of the system, that independents and the votes cast to them have to overcome (The Ministerial Advisory Committee 2021, 21).

In summary, the Minimalist Option is the retainment of the current system, with simple insertions done in order to allow independents to contest in what is essentially a party-based arena.

The Majority Option

While the minority argued to keep the current system with some adjustments, the majority of MAC instead argued for the implementation of a brand-new electoral system for the Republic. The Majority Option, as it was to be termed, called for a mixed-member proportional system, with the reasoning being that it would more effectively deliver on the above-mentioned principles than the minimalist option could, especially concerning the central tenet of accountability.

Similar to the ETT recommendation almost twenty years ago, the Majority Option proposed that the 400 members of the National Assembly would be attained from two separate sources: in this case, 200 from party-based PR lists, and 200 from constituencies. However, unlike the system advanced by the Slabbert Report (which advocated for MMC), the constituencies proposed by the Majority Option would serve as single-member constituencies (SMC) operating under a FPTP arrangement (although an Alternative Vote system was proposed as a possible 'alternative' to a plurality system) (The Ministerial Advisory Committee 2021, 22). These constituencies would be composed of the merging of local wards, a process that would not cut across municipal, district, or provincial boundaries or negate elements of cooperative government. These same constituencies would also serve the separate, yet simultaneous election for members of provincial legislatures, with adjustments for the Northern Cape province, to avoid it from only having a small number of constituencies (The Ministerial Advisory Committee 2021, 24). To ensure overall proportionality, the remaining 200 seats – with the National Assembly thus being placed on a 50:50 ratio – would be sourced from national closed party lists that would be contested by parties. This distribution would be attained via a second ballot, with the voter ultimately having two sets of votes: one for their respective constituency which would include both parties and independents; and another for a party to represent them in the Assembly (essentially a national MMC), a system that has similarities with the one used in local elections. However, it should be briefly noted that in the Majority Option, proportionality would only be gained by calculating it from the second ballot for parties, which is different from the local system, which calculates proportionality from both PR and ward ballots (The Ministerial Advisory Committee 2021, 24) – an arguable source for non-general proportionality. This condition also further empowers the voter, allowing them to split the vote without fear that it would impact the PR results.

Regarding tools of accountability, a strength of this system would lie in the possibility of recall and by-elections for vacant seats in the constituencies, with vacancies from the PR seats being reappointed by the respective parties, as is the case in the current system (The Ministerial Advisory Committee 2021, 26). In the end, the majority of MAC believed that the proposed system would allow for greater power in voting, with the act not only being just able to appoint and possibly remove local representation but in maintaining minorities in parliament via the PR system, as well as being able to split the vote because of the two ballots, in order to further empower individual choice (The Ministerial Advisory Committee 2021, 25).

In comparing the Majority Option to MAC's principles, the following arguments are found: its strengths most likely lie in its greater sense of *accountability*, its support of *effective participation of independents*, and in ensuring *genuine choice* with its incorporation of SMC that would allow tighter links between representatives and the electorate, as well as providing a more grounded arena for independents to compete in against parties. In the sense of *inclusiveness*, *fairness*, and *simplicity*, although it would not be as empowering of those principles as a purer PR system would be – if considering it through the lens of membership in the Assembly – it would not be detrimental to those values either. For the principles of *gender equality*, *proportionality*, and *effectiveness*, its nature as a hybrid system would in theory not disrespect these values outright, but caution should be advised for potential breaches that would harm or negate these values. Lastly, in fostering *legitimacy*, it can be held that through local representation and in satisfying constitutional demands, legitimacy would be promoted, but its idea of what entails legitimacy might differ from what is sought after in the Minimalist Option (The Ministerial Advisory Committee 2021, 28).

In concluding this segment, the Majority Option can be summarised as a hybrid system that attempts to merge the greater accountability achieved with SMCs with the greater fairness and

inclusiveness often obtained with PR systems. Essentially, it is a system closely resembling (though not identical to) what is found at the local governmental level.

The Drafting and Passing of the Electoral Amendment Bill

With options provided by the advisory committee and the deadline issued by the Court fast approaching (originally the 10th of June 2022), Minister Motsoaledi in October of 2021 commissioned a team to draft a bill for parliament based on the Minimalist Option (Atkins 2022, 5). Despite the majority opinion from MAC, the Minister opted rather for the minimalist route. The reasoning for this can probably rest on the one hand in the original judgement from the Court not calling for an overhaul of the electoral system, and on the other hand, because there would not be enough time for the required work to implement the constituency system in time for the 2024 elections. One could also argue that there might have been internal party pressures (perhaps even from the tripartite alliance) on the Minister to reject the more popular option, as he did initiate the process that led to the hybrid system being proposed in the first place, an inevitable outcome when one considers preceding endeavours, but this paper will not speculate on such things, at least not yet.

Passing the Bill

At a snail's pace, the draft would eventually be introduced to the National Assembly on the 10th of January 2022. The proposed legislation (hence Bill), as modelled on the Minimalist Option, would primarily be concerned with inserting new definitions and expanding the existing Electoral Act, as to allow independent candidates to contest for the National Assembly as well as in the provincial legislatures (*Electoral Amendment Bill* 2022). However, in light that the Bill would require extensive deliberations and a thorough public participation window, Parliament approached the Constitutional Court for an extension of six months, in order to

finalise the Bill, with the then-new deadline for its enactment being the 10th of December 2022 (Ferreira 2022).

Even snails eventually arrive at their destination, and so, after some deliberations, and a questionably brief public participation window, the Bill would be passed by the National Assembly on the 20th of November 2022 (*Electoral Amendment Bill* 2022), with very little fanfare. The vote in the Assembly was 232 for it (almost exclusively from the ANC and the EFF), and 98 against it (comprising votes from the DA, IFP, FF Plus, ACDP, and COPE), with 3 votes abstaining, hailing from Good and the AIC ("Proceedings of the National Assembly" 2022). The Bill was then sent to the upper house of Parliament, the National Council of Provinces for consideration, and from its time there received additional amendments. One proposed change was to alter the quota of support required by independents to match that of parties, which was set at twenty per cent (this was later reduced to fifteen per cent). But perhaps the most significant change would be the addition of Clause 23, which would create an Electoral Reform Consultation Panel after the Bill was officially passed into law. Its inclusion was most likely the result of public outcry with the reported disappointment with the minimalist approach. In a National Assembly committee discussing the NCOP amendments, Minister Motsoaledi explained that the proposed function of the panel would be:

> to independently investigate, consult on, report on and make non-binding recommendations in respect of potential reforms of the electoral system for the election of the National Assembly and the election of the provincial legislatures. (Portfolio Committee on Home Affairs 2022)

The Bill was adopted by the upper house on the 25th of November and sent back to the National Assembly for consideration on the new amendments, a development which required additional deliberation and public participation, which in turn would place the deadline of the 10th of

December into question. In response to this, Parliament would log two subsequent requests to the Court for extensions, one for the 31st of January 2023 (ENCA 2022), and when it was missed, another for the end of February 2023. This, however, would be the last, as the Bill was passed into law on the 23rd of February 2023 (Dentlinger 2023). What is now certain, is the start of a new cycle of electoral reform debate, which will be properly initiated by the creation of the Reform Consultation Panel post-election 2024.

Judging the Bill

As briefly alluded to, the passing of the bill has been met with little celebration from civic groups as well as the public: for many, the bill represents a missed opportunity to further strengthen and futureproof the democracy of the Republic. Most notable of the criticism lobbied against it is the argument that the bill discriminates against independents instead of empowering them, in effect creating a second-tier MP whose election to office seems to face additional burdens compared to their party-appointed counterpart. For instance, it is maintained that the Bill devalues the votes cast for independents, as when a single independent candidate exceeds the required quota for a seat, any additional votes cast to them, will be disregarded from the PR equations (Fakir 2022; Ferreira 2022). Then there is also the case, that if an independent vacates their seat, that seat will be reappointed after the vacating candidate's votes have been removed from the total equation, also essentially giving the seat to the parties as a whole (Madiba 2022). A valid response to these concerns, which were echoed by Minister Motsoaledi during briefings, is that these votes cannot truly be considered 'wasted' when their discarding implies that the candidate they were cast for won their seat: their objective was achieved, and if more seats are wanted, then the formation of a political party would suffice (Budlender et al. 2021, 8). Although a valid point, it should be considered that one of the principles that played a key role in the Constitutional Court's deliberation that started this whole process in the first place, was the negative notion of association, a principle I believe

that can also be applied to the act of voting: for voting is not just about who ‘to’ vote for, but also who ‘not’ to vote for. A system that leads to votes being essentially discarded, which ultimately benefits other candidates and parties, seems to violate this principle, and even general proportionality as well.

These are concerns that might have been alleviated by a more expansive electoral bill, as was recommended by the majority of MAC, but it seems that there exists some form of resistance towards electoral reform in government. In responding to the passing of the bill, former MP Michael Louis stated the following:

> We know why Parliament has a vested interest in avoiding electoral reform: it threatens the stronghold parties and politicians have over our political discourse and the direction of our nation. It’s like turkeys voting for Christmas. (Louis 2022)

Louis (2022) then continues by asserting that the perceived strategy of government seems to be a ‘Stalingrad’ legal one, which is defined as a long-term plan from a defender to “grind legal proceedings down to a snail’s pace”, using all means available to prevent an unfavourable outcome. Similarly, Vali Moosa, who was the chair of MAC, also outlined his thoughts on the Bill, echoing the sentiments found by the majority of the Committee. First, he notes that the system being enacted is a completely novel one and that it is effectively unsupported by any literature or wider analysis. And second, it seems to violate the democratic value of ‘one person, one vote’ as the calibre of vote cast seems to depend on whether it was cast for an independent – which helps to appoint a single seat – or to a party – where it assists with the appointment of many seats (Moosa 2022).

When the system is considered in its totality, it is not surprising that these problems arise, as Michael Atkins (2022, 8) points out, the issue lies with the blatant attempt of trying to jerry-rig independents onto what is at its core a party list PR system. No matter what concessions are

given to candidates, there will always be an element of 'wasted votes', as elected independents will always as a group obtain more votes than what is proportionally required. For Atkins, this creates a system that generalises distortions of proportionality, which violates the constitutional requirement of having elections result in general, in proportional representation (2022, 10). This of course raises questions on the constitutionality of the Bill, and whether – or perhaps rather when – it will face judgement in court, with such a development potentially delaying the next elections. At the time of writing this paper, some civic groups have already vowed to take the legislation to the Constitutional Court on grounds that the Bill violates constitutional law (Gerber 2023; Louis 2023). Not only is this route of action justified by the claim that the Bill violates general proportionality, but also by what the Helen Suzman Foundation (HSF) asserts, as it making elections "as difficult as possible for independent candidates to compete, by placing profoundly unfair and irrational obstacles in their way" (2022, 4).

It seems scholarly preference is given to the mixed member system that was proposed by the majority of MAC. Yet such a system has not been tested at the national level, at least concerning its mixed relationship with SMC and PR. But it has arguably been tested at the local level. As addressed earlier, at the local level there exists a somewhat similar electoral system to what was proposed for the national level. The paper will now turn its attention to this local sphere of government, analysing its electoral system and the purported strengths and weaknesses of it.

Section Four: The Local Government Perspective

The Electoral State of Local Government

> *In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.* (The Constitution of the Republic of South Africa 1996, sec. 40.(1))

There exists a high degree of similarity between the national and provincial governments in South Africa, with the National Assembly and the provincial legislatures essentially sharing the same method of appointing their members: via closed PR party lists. However, this trend does not extend to the local sphere of government, not completely. Although a form of closed party list proportional representation does exist within the municipalities and metros of South Africa, there is in addition to it, a ward-based system that makes use of plurality-based constituencies. In addressing the literature and analyses regarding the national electoral system, this paper has repeatedly been directed to the idea of introducing a mixed-member system into the National Assembly, a reaction shaped by the great dissatisfaction caused by the purported problems of the current purer PR system.

Yet the system proposed (regarding the MAC recommendation), does in some form exist at the local level (proposals for the National Assembly harbour slight changes to PR allocation), with PR-derived councillors serving next to their ward-based counterpoints, who are elected via a plurality system from separate constituencies (wards). If the national electoral system is to be amended, and if one such proposed revision already exists at the local level, then it is only sensible to analyse its track record since its inception in the year 2000. The paper will now attempt this, but first, it will outline the electoral framework found in the local sphere.

Distinctive

The current arrangement of local government first started to materialise during the transitionary phase set out by the interim Constitution in 1993, with its eventual realisation occurring with the adoption of the final Constitution in 1996 and with the passing of the Municipal Structures Act of 1998, and the Municipal Systems Act of 2000. Under this new arrangement, the goal was to have this reformed local sphere as uniform as possible across the nation, with the fledgling municipalities and metros existing 'wall-to-wall' and operating under very similar structures. In contrast, during the Apartheid era, there was no true universal system for local government in place, instead, its configuration depended upon a multitude of factors, including the province it was within, and whether it was located in the white urban areas, the townships, the farm communities, or in one of the former Bantustans (de Visser 2009, 8). With the end of Apartheid, and with the advent of democracy, the entire nation was segmented into 284 newly demarcated municipalities of three types: metropolitan (officially category A) for the big cities, and, in less heavily populated areas, both a district (officially category C) and local municipalities (officially category B). Their boundaries cutting across the former racially exclusive zones, the rural and urban areas, and were unaffected by provincial governments and former regional authorities (Roefs and Atkinson 2010, 61) – cross-border municipalities would be fully abolished with a constitutional amendment in 2005 (Mkhize and Khanyile 2020).

This new local governmental sphere was divided into two separate systems: a single-tiered metropolitan system for the cities, in respect of their larger and denser population (currently comprising the seven cities of Pretoria, Johannesburg, Bloemfontein, Durban, Gqeberha, East London, and Cape Town, as well as for the East Rand region of Ekurhuleni); and a two-tier system for the rest of the nation (South Africa Yearbook 2021, 154). This two-tier system contained both individual local municipalities (226 at the moment of writing) and 44 larger district councils that comprised multiple neighbouring municipalities (South Africa Yearbook

2021, 153). The establishment of the district level relied on the logic that some services were bluntly beyond the capabilities of some of the local municipalities, but that they could be achieved jointly from a level of government between it and the provinces (Wittenberg 2003, 34). However, there does exist a degree of confusion on exactly what constitutes actions and services that should be delegated to this higher level. In some cases, the district councils do facilitate services that rely upon bulk infrastructure, but in others, they are seen more as a last resort service provider when local municipalities fail to deliver, and so are treated as a type of contingency method. Then there are cases where the districts seem to only act as a hindrance to the more well-functioning municipalities, as was the reported case in Pietermaritzburg during the early 2000s, where its municipality started performing district functions due to inadequacies at the district level (Wittenberg 2003, 35).

The local sphere – municipal and metropolitan – contains a council comprising of elected members, a speaker who is elected via the council and who oversees council meetings, and an indirectly elected mayor who may or may not have executive powers. The executive nature of the mayor depends upon the administrative choices made by the municipality, as they are at liberty to either establish an executive committee for municipal administration or an executive mayorship. Research by Jaap de Visser seems to suggest that the executive mayor is the more popular choice among local governments, with executive authority being delegated to its mayor and their mayoral committees, as opposed to the executive committee, where power is delegated only to a committee to be enforced collectively (2010, 90).

Nevertheless, the more crucial element of local government, at least as it concerns this paper, is the composition of the councillors found within its municipal bodies. In municipalities that contain more than seven councillors, half of the members in the council are to be elected from wards, with their election being attained via a plurality in their respective constituency. To ensure proportionality, the remaining half of the councillors are to be appointed via PR party

lists (*Municipal Structures Act* 1998, sec. 22). Notably, this arrangement allows independents to run for ward councillorships, with the only unique requirement for eligibility being nomination from at least fifty residents of the respective ward (Electoral Commission of South Africa n.d.). Whether they are independent or representing a party, ward councillors have the additional power of establishing a ward committee. These bodies are to act as a supplementary tool for ward councillors, and to help them identify – and hopefully address – community issues and wider public sentiments (Smith and de Visser 2009, 2). The committees usually consist of a specific ward councillor and ten members that represent the given constituency's sector and geographical interests (de Visser 2009, 19). No formal executive power is devolved to these committees, yet they are encouraged to make recommendations to the municipal council on any issue that affects their respective ward, with the ward councillor acting as the medium between both parties. It should also be noted that PR councillors are often assigned to specific ward committees in addition to the ward councillor, to assist the ward councillor in their duties, and to chair meetings in their absence. However, research suggests that their presence in these committees is often an invisible one (Smith and de Visser 2009, 58).

Interdependent and Interrelated

Some of the objectives of local government, as stipulated by the Constitution, are to foster democratic accountability, provide services for communities, maintain a healthy environment, and encourage participation in the local sphere. However, of paramount concern, is the role that local government is to play in development. The Constitution outlines its role as "to promote social and economic development", and to utilise all capacity it might have to realise this objective (*The Constitution of the Republic of South Africa* 1996, sec. 152). It is argued by Annette Christmas and Jaap de Visser (2009, 107) that it is the local sphere (of the three) that arguably has the clearest constitutional mandate regarding development. Possibly, the most direct means of espousing development in the local sphere is via service delivery, with services

under its purview including, but not limited to: water, electricity, city planning, road management, emergency services, and parks and recreation (Koma 2010, 113).

Beyond being the prime provider of basic services, local government also plays a significant role in local developmental projects, aligned with their constitutional mandate of promoting social and economic development. Its definition of being an 'interdependent' and 'interrelated' sphere of government allows it, at least in theory, to coordinate and cooperate with both provincial and national governments in developing basic infrastructure, installing water pipes and services, building housing, and the electrification of areas (Koelble and LiPuma 2010, 566). The logic is quite straightforward, by having national developmental goals interlaced and reinforced at the local level, which is the closest to the people, government should be in a better position to coordinate developmental projects among all three spheres of government and negate any local obstacles. Furthermore, as asserted by Akinboade et al (2013, 4), it is precisely because of this closeness that local service delivery productivity could ideally be maximised, as scarce resources can thus be better utilised when considering local preferences.

As stated, local government harbours the unique privilege of residing closest to the people. And is thus empowered by the Constitution to provide a "democratic and accountable government", via democratic mechanisms to ensure bottom-up accountability (*The Constitution of the Republic of South Africa* 1996, sec. 152). Whether this is truly the case is not clear and will be deliberated on in the next section.

The Track Record for Local Participation and Accountability

Local Government is the closest sphere to the people, and accordingly should be more aligned with the wishes and interests of the locality that it serves. One such benefit stemming from this embrace is that local citizens are often better inclined in understanding the problems that befall

their municipality – more so than an administrator in the national or provincial capital would be. Local denizens are also key when considering the merits of proposed developmental plans, with their feedback being essential in measuring its compatibility with the unique factors influencing a specific local region. It is even asserted by Sikhakane and Reddy that without citizen participation, local government cannot succeed, further arguing that many failed development projects in rural areas are often due to a lack of local involvement (2011, 93). The authors elaborate that citizenry participation is key in that it: incorporates different skills, information, and experiences that are found in the community; provides a clear direction for the community regarding the project and provides clarity between the parties on how best to address issues; shapes better credibility for the local government and promotes more interest in local governmental functions; and it enhances service delivery by making it more focussed upon local desires, anticipations, and needs (Sikhakane and Reddy 2011, 94). To realise this, one can look at the White Paper on Local Government that was published in 1998, which outlined citizenry participation through four levels: via electoral processes such as voting; through stakeholder associations that engage with the government before, during, and after policy enactment; as responsive consumers of services that are of value; and as organised partners in development via the private business sector (Roefs and Atkinson 2010, 59). Perhaps the most powerful tool found in the local sphere for participation, especially regarding the second level above, is the ward committee.

Ward Councillors and Their Committees

As explained earlier, ward committees are run by elected ward councillors to identify and highlight specific needs and issues that are present in the relevant ward area, but they also act as a mechanism to foster community participation via incorporating community actors into the bodies. Indeed, ward committees were envisioned to play a significant role in "bringing about people-centred, participatory and democratic local governance" (Smith and de Visser 2009, 2).

Although lacking any executive powers, ward committees were established by the Municipal Structures Act of 1998 with the aim of enhancing 'participatory democracy in local government' (*Municipal Structures Act* 1998, sec. 72). Despite the lack of any 'real' powers, further acts of parliament (Municipal Systems Act of 2000, and Municipal Finance Management Act of 2003) would reinforce the notion that these committees are a requirement in local government, especially as a means of building capacity within communities to be able to engage with municipal governments and municipal councillors (*Municipal Systems Act* 2000; *Municipal Finance Management Act* 2003; Smith and de Visser 2009, 8).

The 2005 '*Guidelines for the Establishment and Operation of Municipal Ward Committees'* outlined ward committees as the following: independent bodies, that operate under a representative structure, that are independent in form and must operate according to their functions without fear or prejudice, and create formal and unbiased channels of communication between the community and its municipal council (2005, 8). Ideally, the committees are meant to meet at least quarterly, with sub-committees meeting more regularly, so that constant and orderly feedback can be channelled back to the municipal council. However, the track record of such happenings since their inception in 2000, has not been so procedural.

Conducting a case study on six ward committees in three different municipalities (one being a metro), Terrence Smith and Jaap de Visser analysed the relative performance of these bodies and how effective they were in their respective wards (Smith and de Visser 2009, 2). The findings were not uniform and emphasised differential outcomes depending on local factors. For example, one ward, identified by the authors as Ward F, demonstrated effective functioning with optimal representation, regular meetings, and diligent engagement from both the ward committee members and its ward councillor. Most notable of this specific case, was the commitment and dutiful nature of the specific ward councillor, exemplified by his amiable and constructive relationship with the other members of the committee (Smith and de Visser 2009,

50). In contrast, when the relationship between the ward councillor and ward committee members was less cordial – or even absent, as was the case in some of the wards in the study – the effectiveness of the committee seems to degrade. By far the most interesting finding of the case study is the significant role that ward councillors have in the performance of the committee, with its success or failure, or rather usefulness, being dependent upon the ward councillor's commitment to the committee (Smith and de Visser 2009, 57). This argument is collaborated by another study that was conducted by Laurence Piper and Roger Deacon, who identified three claims when analysing the party-competitive Msunduzi municipality (Pietermaritzburg) in KwaZulu-Natal. First was that ward effectiveness was dependent upon the councillors, second was that ward committees required efficient municipal support in order to perform well, and third was that ward committees were too politicised, which hindered their ability to ensure effective accountability from parties (Piper and Deacon 2008, 42).

The first element of note is that there seems to be little incentive for municipalities to unilaterally strengthen ward committees. Due to the obscurity of their responsibilities, with no formal powers established in law, the local government sphere seems to be disinterested in fully incorporating ward committees into the channels of local governance, with even the well-functioning committees, run by dutiful councillors, still often failing to achieve real influence over their municipal councils. As a side note, another issue found in the case studies, related to this sense of obscurity, was the general lack of sufficient training available to ward committee members, an absence that most likely fuelled general confusion and incompetence in these bodies, limiting effectiveness (Smith and de Visser 2009, 57; Piper and Deacon 2008, 42). Nevertheless, most alarmingly was the degree of politicisation found within ward committees, with the case study in Msunduzi demonstrating party dominance over local wards, with relevant ward committees often seen as party branches and not as an independent body holding parties to account (Piper and Deacon 2008, 45). Even the makeup of these bodies, which ought

to represent the geographic and sector interests of the ward, are often handpicked to ensure the composition of party loyalists, and regularly made inaccessible to party outsiders (Atkinson 2007, 64; Smith and de Visser 2009, 49; Piper and Deacon 2008, 44).

The Politicisation of Local Government

The prior politicisation argument is key, with a central tenet being that party centralisation is possibly high-jacking the mechanisms of the state, found in the sphere closest to the people. It is argued that councillors, both ward and PR, are not as concerned with local issues as much as they should be and that instead, it is regional and national party politics that determine the local agenda (Alexander 2010, 37). One purported reason for this lies in the possibility that local government officials are more likely to be subjected to the horizontal accountability structures of the party than the vertical accountability that they might have to a constituency. Indeed, the local sphere has been exposed to its fair share of scandals regarding political patronage and cadre deployment, usually with detrimental effects on service delivery (Reddy 2016, 5; Koelble and LiPuma 2010, 584). A dilemma that could be explained, as Pierre de Vos puts it, as quoted in Pieterse (2020, 133), by the "somewhat overbearing role" that parties, in general, have over governance in South Africa, where party loyalty is a far more useful tenet, for the career-minded lower party member – who often starts in municipal government. For instance, there is currently no method for an electorate to recall a councillor from the local sphere of government, but there are means of revoking councillor status if a member loses their party membership – this is the case for a ward councillor if they were elected while being a member of a party (*Municipal Structures Act* 1998, sec. 27).

Naturally, party control is of high importance concerning accountability, acting as an additional means of keeping politicians in line. This is especially true in South Africa, where the party is intrinsic to the political landscape, being a strong centre for mobilisation (de Visser 2010, 95; Piper and Deacon 2008, 45). Parties often act as a method of sorting individuals into clear and

identifiable camps, as a tool for easily deciphering who holds similar, and dissimilar, views. And by electing a party, and not an individual (with the party thus having the ability to expel disloyal members), the voter is assured that their vote will remain aligned with their interests even if a party member disassociates with the party stance. But this over-reliance on parties can result in its share of detrimental impacts. Parties, just like individuals, can over time disassociate from the voter, an issue that might be remedied by changes in voting. However voting in South Africa often contains a symbolic element (Mtimkulu 2009, 40), thus actual voting might not reflect this possible mismatch of interests (this will be expanded upon later in the section). Furthermore, parties are often defined as 'large camps' in South Africa, with *87 per cent* of South Africans in 2019 voting for either the ANC, the DA, or the EFF (Electoral Commission of South Africa n.d.), parties that arguably cannot be claimed to be geographically situated. The parties voted for by most, are national parties with national interests, and so, understandably might not be the best spokesperson for regional and sectoral interests.

It can also be maintained that in a PR-based system, party discipline tools are much more powerful, and often utilised as a weapon at the behest of party leaders to restore party cohesion. An example of this can be demonstrated by the occurrences in Nelson Mandela Bay, when Mayor Athol Trollip was ousted from his office due to coalition council members abstaining from a vote of no confidence, with the said councillors subsequently losing their council positions because of this break in party loyalty (Capa 2018) – and have recently been arrested due to claims of taking bribes to allow Trollip's ousting (Dayimani 2022). Another case occurred in the same year, when Cape Town Mayor Patricia de Lille was ousted from her position as head of local government, due to her DA membership being terminated, only to be temporarily reinstated (Hyman and Phakathi 2018). Lastly, the more recent case occurred in 2022 when both the Speaker for Johannesburg's Metro, Vasco da Gama, and the Mayor of Johannesburg, Mpho Phalatse, lost their positions in the council. It is reported that da Gama

lost his seat due to breaks within the coalition, leading to swift disciplinary action by party leaders upon the rogue councillors who broke the party line (Tandwa 2022; Mahlati 2022). Although Phalatse would later regain her seat, ultimately she would lose the Mayorship due to party fractures in her coalition in January 2023 (Ramushwana 2023). The point being made is not on the petty politics that often consumes local government – on who should, and who should not be mayor – but rather to direct attention to the power wielded by political parties to expel council members, and even the mayor, due to misalignment on party grounds (although some of the expulsions were concerned with alleged criminality). Even the office of the mayor in local government, with its indirect election, demonstrates the importance placed upon party structures and their sway over the selection of the head of local government (Hartmann 2008, 240), being extremely important in that most municipalities are administrated via an executive mayorship.

Even though the local government framework is supposed to merge the twin virtues of 'accountability to the public' via wards, and the 'fairness and inclusiveness' from PR arrangements, there is naturally doubt on whether this supposed division of council members at all conciliates these different democratic pillars. Moreover, the election procedure that appoints these ward councillors is usually dominated by party-chosen candidates (whose position depends on party membership), which suggests a not-too-dissimilar presence of party loyalty with ward and PR councillors alike (Pieterse 2020, 140). Out of the 4 381 ward councillors elected in the 2021 Municipal Elections, only 51 were independents (just over one per cent of the total) with the largest share coming from the Eastern Cape (15 elected), KwaZulu-Natal (11), and Limpopo (10). Interestingly, seven out of the nine provinces elected independents to ward councillorships, however, none were elected in either Gauteng or the Western Cape (Electoral Commission of South Africa n.d.). The same is the case for the metros, where there was not a single independent candidate elected to any ward in any of the eight

metropolitan councils. This result can perhaps be due to these areas – both the metros and the two provinces – being heavily urbanised and densely populated, where the charismatic advantages of independents are negated, and the organisational advantages of parties are accentuated. But what this can tell us, is that even though it is possible for ward councillors to not be party aligned, the vast majority of them in South African local government end up being, and are thus susceptible to party discipline. The counterpoint will maintain that having these posts aligned and influenced (rather heavily) by the parties ensures overall accountability to party standards and principles. The issue, however, is that this just places an indirect method of accountability upon the posts that according to the Constitution serve the electorate and not the parties. The local government system is supposed to merge vertical accountability (via wards) and horizontal accountability (via parties through PR seats), but having both susceptible to party structures, while limiting electorate mechanisms of accountability (voter recall, et cetera), seems to make voter control nothing more than a façade.

It has already been noted above how ward committees are dependent upon the commitment of their respective ward councillors, and how their lack of powers often results in neglect from the local council. The perception is that individual councillors, whether independent or party affiliated, have little influence over council deliberations, especially when they are not of the dominant and ruling party. This is further exacerbated in the municipal governments functioning under an executive mayor, with their mayoral committees often consisting only of close allies that are from the same party (Pieterse 2020, 141), and reportedly operate in some cases via secret meetings, unbeknownst to unaligned councillors and the wider public (Atkinson 2007, 65). As long as parties maintain their majority, whether slim or significant, many councillors can be, and are, excluded from the impactful decisions made in a municipality, acting effectively as glorified ‘rubberstamps’ (Atkinson 2007, 65).

The presence of wards and ward councillors in local government seems to not have had the desired effect of improving accountability wholesale, instead being heavily impacted by the calibre of ward councillors elected, and then only if the said councillor is of the ruling party or coalition in local government. What data has shown is that improvement in responsiveness and service delivery is rather dependent upon the party competitiveness of the specific wards and the effectiveness of neighbouring wards that contain a councillor from a competing party (Farole 2021, 526; Zimbalist 2022, 254). Similarly, it is maintained that politicisation is much more likely to occur in party-dominated councils, indicating the strong role that party leaders can have over municipalities that are not competitive (Zimbalist 2022, 268). What the research suggests, is that when party leadership places pressure on performance (due to the possibility of electoral defeat) then only then, do our elected officials dare to listen to their constituencies.

Local Government and Protest

South Africa is no stranger to protests, from the yesteryear struggle movements opposing Apartheid policies to the more recent service delivery demonstrations that seem to have sprouted in the 2000s. These more recent happenings are partly due to persistent state failures regarding service delivery, including issues related to water services, housing, electricity, et cetera. However, in conjunction with non-service delivery, contributing factors playing into protest occurrence also lie in a general sense of unresponsiveness from leaders to the public, as well as the high levels of corruption and nepotism found within the governmental spheres (Atkinson 2007, 58; Alexander 2010, 31; Nleya 2011, 3). Another related cause, perhaps reinforced by the offence felt from the two latter suggestions, is the severeness of poverty within the nation, with protests stemming from the relative deprivation affecting so many people. This can easily play an amplifying role in the perceptions of political unresponsiveness

and the visible corruption among leaders, as the poor simply have resorted to other avenues to remedy the ails that affect them (Alexander 2010, 32).

Most protests occur in the urban areas of the nation, but their crosshairs – as well as for those found in the more rural localities – are predominately dead-set upon local municipalities. Why this is the case, according to Purshottama Reddy (2016, 4), is because of the following reasons: firstly it is due to the greater visibility of maladministration at the local level, in both its bureaucracy being more exposed, and in its cases of corruption being more notable to the public; secondly, it is argued that some protests occur due to a trickle-down effect regarding national and provincial policy failures; thirdly, is that local government often falls prey to the shenanigans and attempts of politicisation, orchestrated by both national and provincial party leadership; and fourthly, due to the relative 'closeness' of local government to the people, protests are often seen by the public as a more reliable means of ensuring accountability from politicians.

The Closeness of Local Government

The question then becomes: why resort to protest and mass demonstrations (sometimes violent), and not utilise formal mechanisms in place that are supposed to facilitate government/public participation? As alluded to, an explanation for the wider rise of protest action throughout the nation can be contributed to the general sense of alienation felt by the public towards their official representatives, and more importantly, to the formal participatory mechanisms that are in place (Smith and de Visser 2009, 22). It has already been noted how ward committees can be disempowered due to a lack of interest existing from their respected councillors, and how ward councillors can, in turn, be disempowered by the municipal council if they do not have a place within the ruling hierarchy. It is argued that many protests that outwardly seem to just concern service delivery failures are actually organised to combat the alleged misallocation of these services to party 'comrades' who squander them, because of

either a lack of qualification or due to blatant neglect (Akinboade, Mokwena, and Kinfack 2013, 10). In light of this assertion, some protests are purely seen as a means for the public to hold local government accountable, and to prevent the mismanagement of government resources and the rewarding of tenders to bad candidates (Akinboade, Mokwena, and Kinfack 2013, 10; Bond and Mottiar 2013, 290).

To demonstrate this sense of estrangement found between the people and their local governments, the paper will resort again to analysing the most recent Afrobarometer survey data on South African perceptions of democracy and politics (Round 8). The survey found, regarding the relationship between the public and its local government councillors, that *66 per cent* of respondees have '*never'* in the past year (mid-2020 to mid-2021) contacted a local government councillor regarding an issue that they have (2021, 43), and *61 per cent* of those asked '*disapproved'* (*30 per cent* '*strongly'*, and *31 per cent* just '*disapproved'*), of the performance of their elected local councillor (2021, 57). The data seems to support the notion that a significant absence exists in the relationship between the people and their local representatives, with the former set of data revealing a lack of willingness being present in people to contact councillors, with the latter set of data probably indicating one reason for this being the perceived dissatisfaction with councillors. Although, it should be noted that the data paints a worse picture for both Parliamentarians (*94 per cent*) and party representatives (*82 per cent*), with higher percentages of people '*never'* contacting either group (2021, 43), but given the relatively purer PR system existing at the national level, the results are hardly surprising for MPs, but quite notable for party officials.

Continuing, *48 per cent* of the surveyed felt that local government '*never'* attempted to listen to the community (2021, 58), and only *6 per cent* felt that '*none'* of their local government councillors engaged in corruption, with *36 per cent* feeling that '*some of them*' had, *24 per cent* believed that '*most of them*' did, and *25 per cent* maintained that 'a*ll of them*' have engaged in

some form of corruption (2021, 63). This set of data implies a strong belief existing in the public that local government officials are not as concerned about the issues and problems facing the community as they should be, and instead, a significant *85 per cent* felt that corruption existed to some degree within their local councils, indicating a belief that most councillors might be more concerned with self-enrichment and nepotism, than in serving the communities that they are constitutionally obliged to.

Obviously, these survey responses do not infer that those who are dissatisfied and frustrated with their local governments are then forced to engage in protests – when asked exactly this question, only *10 per cent* stated that they have '*participated in a demonstration or protest march*' (Afrobarometer 2021, 43). But it does suggest that something at the local level is not working and that there exists within this sphere untapped and wasted potential. It is even argued by some researchers, that the practice of protest itself demonstrates the potential energy found at the local level that could be harnessed for problem-solving and other constructive endeavours (Reddy 2016, 3; de Visser 2009, 19), but instead, the community are left unsatisfied with their elected officials, and possibly even with democracy itself, resorting to more drastic means of ensuring accountability (Wasserman, Chuma, and Bosch 2018, 4; Akinboade, Mokwena, and Kinfack 2013, 18).

Protests and Ensuring Accountability

The arguments rest on the assertion that within these communities that are disaffected with their local government (and perhaps even with the provincial and national too), a paradigm is being developed: because the local government does not want to listen, action should thus be taken to make them listen. A notion supported by the arguments made by Peter Alexander (2010, 37): that many, especially the disadvantaged and poor, feel disaffected with democracy and its many institutions, and thus resort to protests in what Alexander refers to as the 'Rebellion of the Poor'.

One similar argument raised by Susan Booysen is that formal processes such as voting go hand-in-hand with informal actions such as protesting (2011, 129). Because voting is either symbolic or impractical due to socio-political factors, community grievances are only communicated through what Adam Harris and Erin Hern call '*Valence Protests*'. These are categorised as mass demonstrations that are not entirely initiated by either ideological or revolutionary aspirations to change the ruling regime, but due to material wants and needs, and communicating that to those in power (Harris and Hern 2019, 3). Thus, these protests are of political significance in their use as non-electoral tools for ensuring accountability to the government.

For a large part of the electorate in South Africa, voting may be a completely symbolic and psychological action, and more so, seen as an impractical method of communicating to the government due to the unlikelihood of regime change (Harris and Hern 2019, 33). But protesting, however, remains an effective alternative for achieving some level of accountability upon those in charge. A sentiment encapsulated by the words of Booysen, who maintains, that for many in the electorate "voting helps and protest works" (2007, 31). But if protests are thus seen as partly the outcome of an ineffective and unapproachable government, then we are confronted by two interrelated questions: how widespread are they, and to what extent do they occur?

Concerning occurrences, data from the Institute of Security Studies (ISS), between the period of December 2021 to November 2022, identified *959* individual protests that took place within the country. Of that total, those targeting corruption, crime, and socio-political issues accounted for *221* of the incidents. Those initiated due to dissatisfaction with education, electricity provision, housing/land, labour (including those directed to private enterprises), and transport accounted for *443* of the total protests. Lastly, the number of protests aimed at basic municipal services, and notably for grievances felt against ward councillors, stood at *105* during the same

period. The remaining *190* protests, according to the ISS, were orchestrated due to a range of issues that included: business practices, demarcation issues, general disruptions, political or electoral causes, international causes, general unemployment, vigilantism, and xenophobia (Lancaster 2018, 41; ISS Protest and Public Violence Monitoring Project n.d.). In collating these reports, the ISS primarily relied upon local newspapers, party and university notices, and reports made by trade unions (Lancaster 2018, 30). It should be noted that a heavy reliance on newspapers does make the data vulnerable to certain limitations, such as newsworthiness, protest reach, and the mislabelling of events, just to name a few (Lancaster 2018, 31; Salehyan et al. 2012, 505). According to Wasserman et al (2018, 11), there is also the additional phenomenon of protest complacency taking place within nations that have historically experienced protests to a large degree – which South Africa arguably has. The assertion is that many protests are simply not novel enough to make the front page anymore in national newspapers, and if they do, those of a violent nature or more related to metropolitan interests, are reported upon. This suggests a possible underrepresentation of the smaller and more nuanced demonstrations that are simply not important enough to the public that these newspapers cater to.

Concerning their severity, tactics employed by protestors vary, including, but not limited to: mass meetings, drafting of petitions, stay-aways, construction of barricades, looting, chasing of unpopular individuals out of townships, and the forced resignation of elected officials (Alexander 2010, 26; Akinboade, Mokwena, and Kinfack 2013, 10). Most of all, there seems to be a preference for action depending on what type of protest is ongoing, with those targeting service delivery and the lack of political accountability, favouring road closures and tyre burning. Whereas worker strikes more often use strikes, marches, and picketing, student protests rely on boycotting, as well as marches and picketing. It is asserted by Patrick Bond and Shauna Mottiar, that student protests are more likely than others to engage in violent

demonstrations and vandalism (2013, 290). Beyond those concerning students, there is a worrying track record of protests, and other mass mobilisations, overall turning more violent recently, not only in the incidents themselves, but also in the responses fielded by the state (Wasserman, Chuma, and Bosch 2018, 2). Although caused by different factors, Marikana in 2012 and the July Riots in 2021 are indicators of how destructive these events can become from both state and non-state actors.

The Death of Voting

In considering the above assertion: in the lack of trust in local officials, and the resorting to non-electoral means of ensuring accountability, why does it seem that voting patterns do not correlate with public dissatisfaction? The first point is that voting choices during elections are not as impacted by local service delivery as they would seem to be. The ANC for one wields a significant (although perhaps diminishing) hold over large portions of the electorate, where voting for the ex-struggle movement is more due to symbolic reasoning than to performance. Furthermore, there might also be concerns about national politics that override local preference, with many voters believing it beneficial to have the same party in power nationally as well as at the local level, limiting any inter-party conflict that could stall local services (Atkinson 2007, 74). There is also the proposed issue of party alternatives, with some voters remaining unconvinced in casting their vote for other parties, feeling them to be just as ineffective, or perhaps not having their interests at heart (Alexander 2010, 33). Then there is also the previously noted argument that voting is not considered an adequate method for showing public dissatisfaction, relying instead on protests to keep the government accountable.

This argument contains some support when considering research from Carin Runciman, Martin Bekker, and Terri Maggott, who analysed the voting patterns of individuals (specifically active protesters) in locations that have been more prone to experience protests (Runciman, Bekker, and Maggott 2019, 10). It was found that there was no significant change in voting behaviour

between protestors and non-protestors, with both groups still predominantly voting for the ANC – although, unsurprisingly, more non-protesters proportionally voted for the governing party than protestors did (Runciman, Bekker, and Maggott 2019, 17). The data suggest that although dissatisfied with the government, South Africans generally seem to rather resort to protesting, and even not voting at all, than to changing voting behaviour.

A development of ever-increasing significance in South Africa, as voter turnout has been in flux in this country, especially concerning the local government elections. In the six local elections since the advent of democracy, only the elections in 2011 and 2016 had a voter turnout above 50 per cent (both slightly above *57 per cent*). The election in 1995 had a turnout of *49 per cent*, the one in 2000 had *48 per cent*, and in 2006 the turnout was also *48 per cent* (Electoral Commission of South Africa n.d.; Roefs and Atkinson 2010, 62). Even though there was a notable nine-point increase in turnout from the-around 48 per cent turnout of the 2000s to 57 per cent in the 2010s, the recent local election results in 2021 saw the turnout again falling under the 50 percentile mark, with its lowest ever-reported score of *45 per cent* (Electoral Commission of South Africa n.d.). In many mature democracies voter apathy is seen as a natural process of political normalisation, but it might also indicate dissatisfaction with the political choices present, especially at the local level. This rise in abstaining from voting can be due to increasing levels of political disengagement being found within the public, as both voting and protesting as a means of political change, are evermore criticised (Roberts et al. 2019, 13). The reason for not voting has been made clear (symbolic voting, no party alternatives, party dominant system, et cetera), but protesting is not as enticing to all members of a polity, as besides its often unofficial stance and the relative danger that it sometimes involves, the act itself is a more demanding method for political participation, which can be off-putting to parts of the wider voter base.

For comparison, the voter turnout for the national elections shows a similar trend to the local results: 2004 with 76 per cent, 2009 at 77 per cent, 2014 at 73 per cent, and the recent 2019 election with the lowest score of 66 per cent (Electoral Commission of South Africa n.d.). The results might also support the notion that national politics are more important for citizens than the local counterpart, perhaps due to a belief that real change comes from the top, or because party loyalties are more utilised when it is the National Assembly that is up for grabs.

On a final note, the turnout data reveals an interesting track record for Gauteng. In local elections, it has one of, if not the lowest turnout rates in the nation, with its 2021 score being 43 per cent to the national 45 per cent. However, in national elections, the opposite is true with Gauteng having one of the highest turnout rates. In the recent 2019 elections, the turnout rate in Gauteng was the overall highest at 71 per cent, above the national average of 66 per cent (Electoral Commission of South Africa n.d.; n.d.). Considering that Gauteng is a metropolitan heartland, and thus a major epicentre of local protests, does this perhaps correlate with the arguments that local dissatisfaction does lead to non-voting behaviour at the local level in favour of other actions? And that national elections are more immune to local issues than the local level?

The Foreseen and Unforeseen Limits of Municipal Government

In concluding Section Four, the following can be surmised. Local government was envisioned and implemented to make use of the greater sense of responsiveness between it and the public. To achieve this, it implemented ward councillors and ward committees to facilitate public dialogue and create a level of intimacy between council members and general public issues. However, ward committees have not been the saving grace that it was envisioned as, they have especially been negated by the performance of their relevant ward councillors, a lack of commitment from their municipal council, the political parties influencing them, and from a general lack of training for these bodies. Due to this assertion and supported by general negative

attitudes held toward these institutions, it can be stated that many protests occur because, or at least have been exacerbated by, the non-existent responsiveness of local government and its councillors. Protests are thus seen as an alternative (perhaps sometimes as a supplement) to voting and other mechanisms of participation, with some perhaps perceiving it as a viable tool for the local community to help realise the democratic ideal of realising its participation, and fostering a sense of accountability upon its representatives, where it challenges a sense of arbitrariness that it perceives to exist at the local level of government.

Wards, Councillors, and Parties

The following section will attempt to provide suggestions on how to resolve problems found with the mixed-member system of local government. The first issue regards the nature of ward and PR councillors. As remarked, the implementation of two different sets of councillors is based on the attempt to limit the negative effects often felt by purer electoral systems, in this case, those of proportional representation and plurality-based SMCs. As the arguments in the early section on the electoral debate suggest (Section Three), there is a certain appeal in merging the two systems to reattain their benefits while limiting their negatives. However, perhaps due to poor implementation, or because of party dominance in South Africa, there seems to be very little to distinguish between the two.

As noted, party membership is paramount in keeping a council position in local government, and party-affiliated ward councillors are just as susceptible to party discipline as PR councillors are. Naturally, it is only the independent ward councillor who seems to be beyond the party's reach, which is understandable. However, the issue with this is that the reason for ward councillors, even if they are party affiliated, is to have a segment of councillors directly elected from the electorate, to represent regional interests and not the already represented party interests which is achieved via PR councillors. The suggestion is not to have ward councillors completely disconnected from the political party, which seems unadvisable, perhaps even

unattainable in contemporary South Africa. Instead, the suggestion is to remove Section 27 (f) from the Municipal Structures Act, which allows party leadership to dictate a ward councillorship's vacancy. Additionally, further consideration should be made on further amending the Act, to allow an electorate to recall a ward councillor who has failed to represent the interests of the ward they represent[3]. Such amendments would allow, I believe, for a clearer differentiation of the two types of councillors and allow them to better represent the interests that they are constitutionally obliged to.

Regarding the Ward Committee, its failures, as noted, seem to be due to its lack of specific powers and duties, resulting in its usefulness being heavily dependent upon arbitrary action from the councillor and the municipality. If we consider the discussion on accountability in the first section of this paper, we will remember the significance of representation and freedom being dependent upon the non-arbitrariness of those who govern. To be free, and to truly represent (for Pettit and Pitkin) is to have formalised structures that outline and define reciprocal powers. Thus, if the framework of these committees is more institutionalised, rather than just recommendations, it could allow for more ease in the establishment and operation of these bodies, as well as outlining member responsibilities. As noted by Roefs and Atkinson (2010, 67), if run well, ward committees can be beneficial to local government by encouraging public participation, resolving community issues, advising the municipal council on local needs, assisting with government development programs, and perhaps most importantly, in providing regular feedback to communities on local government activities.

[3] A possible system could envision the usage of a petition apparatus for recall during the midpoint of tenure (two and half years) which if significant (possibly twenty per cent of the electorate) could force a recall vote for the entire constituency. This could result in either two sets of votes (first a referendum to recall the official by the whole electorate, and if successful a by-election) or a direct by-election if the petition succeeds.

Legacies, Incapacity, and Administrative Divides

In concluding this section, it should be noted that the local government sphere was not created from a clean slate, and neither was it unaffected by the wider societal and historical legacies of the nation. Beyond the local electoral system: its councillors, the ward committees, and the parties that compete within them, other factors have additionally impacted the effectiveness of local government. Regarding administration, it should be noted that there exists very little division between the executive and legislative elements of local government in South Africa. There is no executive branch that is elected or that operates separately from the legislature, that is the council. As stated, local government can either have an executive mayorship, which is elected by the council, or an executive committee, made up of council members. Issues arise from this arrangement because it can cause complications with the position of speaker of the council, who has no executive functions but does run the council and its members. As well as creating questions regarding who truly is in charge of municipal administration, which sometimes leads to municipalities adopting problematic committee systems (de Visser 2010, 91).

Another important, but sometimes forgotten vulnerability in local government is the capacity limitations it often faces. It has been reported that municipalities in the country often face financial limitations that prevent them from engaging effectively with their mandates. For one, an analysis in 2010 asserted that half of the municipalities in the country did not have the resources to pursue their initiatives of providing free basic services, with many of the remaining who did have sufficient funds, admitting they did not have a financial plan to realise these projects (Roefs and Atkinson 2010, 75). What should be considered, is that many municipalities operate in areas with high unemployment and poverty, a condition that does not exempt the public from services that the municipality simply cannot provide. In the context of participation endeavours and their cited failures, it should be considered that public

participation requires highly skilled public servants who can facilitate such an outreach. But due to capacity issues, these agents and skills are often absent from regions where they would be most beneficial, a possible part of the explanation for why ward committees are deemed invisible to the majority of South Africans (Atkinson 2007, 29).

Additional issues facing the local government are outlined as the following: unfunded mandates with a mismatch between what is expected from the municipality and what is given to achieve it, demarcation issues on some municipalities lacking an economic base or having too large of a hinterland for efficiency, legal compliance being considered more important than service delivery, and lastly, in that desirable political leadership does not always equate to sound fiscal activity (Reddy 2016, 4). It is held that the ‘one size fits all’ approach of uniform South African municipalities, with all of its legacies of socio-economic inequalities, financial unviability, and spatial history, is currently, simply unrealistic (Koma 2010, 118).

Section Five: Conclusion

Fairness, Inclusiveness, Simplicity, and Accountability

Over twenty years ago, the van Zyl Slabbert Report outlined four principles that were key for any electoral system to be implemented in South Africa. As referred to in Section Three, these were the principles of *fairness, inclusiveness, simplicity,* and *accountability.* The research of this paper has been primarily concerned with the last of these values, that of *accountability.* Why this is, stems from a perception that accountability in the legislative bodies of South Africa has been heavily limited, and in some cases negated. A sentiment that seems to be held by large swaths of individuals, civic groups, and scholars. Whether it is the majority of the ETT, the advocates of the Majority Option of MAC, or some of the other scholars and groups that were vocal between the present and 1994, what seems evident is that the accountability shortcomings of the PR system need to be addressed.

The question of whether the PR system has hindered or assisted South African democracy can be answered as follows. The PR system from its inception in 1994, has had many benefits: it has allowed for free and fair elections to take place in a troubled and scarred nation; it has unified the nation by empowering small and minority parties to compete in elections; it has also allowed the votes of all South Africans to be heard, allowing them to sway the legislature no matter how insular their interests might be; and just as importantly, it has created a simple and straightforward system of voting, greatly encouraging voter participation. Overall, the PR system has arguably allowed for effective nation-building, an outcome that many doubted during the turbulent years of the 1990s, a statement perhaps most clearly reflected by our relatively uneventful elections. Although the principles of *fairness*, *inclusiveness*, and *simplicity* have arguably been upheld by the PR system, *accountability* has not. Moreso, it has been the sense of 'accountability to the electorate' that has been hindered by the PR system the most, and as the paper has argued, it has been supplanted by the more multifaceted

'accountability to the party' instead. The first section of the paper outlined why accountability is of consequence. It is of concern because, without an accountable and responsive government, the electorate is arguably disempowered, unfree, and subjected to arbitrary interference (as Pettit holds) and removed from their position of sovereignty. Accountability is also important because it, along with responsiveness to an electorate, are essential elements for a person to be an ideal representative (per Pitkin). This is a representative that can independently deliberate for those they represent, but who will ultimately be made malleable by formal processes to the interest of the people. This is not to say that the other principles are less important or of secondary status to democracy, but that the current PR system arguably falters in promoting accountability, more so than the others. It is for this reason, that almost all proposals for a new system, call for some form of a mixed-member system, so as to uphold all four of the principles.

Final Remarks and Recommendations

The amendment process detailed at the end of Section Three is ultimately insignificant to the claims of this paper. As noted by the supporters of the Bill, the Constitutional Court judgement only called for the inclusion of independents, and not for creating greater mechanisms of accountability between the legislature and the public. Although valid concerns were raised on the weaknesses of allowing independents to compete in what is at its core, a party-based system, much of the dislike of the Amendment Bill ultimately stems from some recognition of the limited responsiveness that will still exist between Parliament and the voters. In light of this, and considering the various proposals from the ETT, ISI, MAC and other scholarly groups, the paper considered the status of the mixed member system found at the local governmental level. As noted in Section Four, much of the hopes and designs for a potential new electoral system for the National Assembly already existed to some extent in the local sphere. The paper however found little realisation of the founding ideals at the local level, the mechanisms that

were supposed to strengthen constituency participation were lacking in powers, which only diminished their significance, relying on more arbitrary arrangements. Perhaps more disappointingly, it was attested that the ward representatives deviated little from PR representatives, failing to be a true counterbalance to PR representatives and their party influences. As noted in the concluding remarks of Section Four, if real differentiation is to be made between constituency representatives and PR representatives, then stronger institutions of accountability need to be enacted for each, depending on their arguable source of authority – the voters of a constituency for the former, and the party for the latter.

Furthermore, ward representatives should be more intertwined with their local constituencies. Seeing that parties dominate ward elections and that localities still vote predominately for parties, election time procedures will not suffice to improve the intimacy between a representative and the represented. By formalising ward committees, standardising their member appointments, empowering them with some responsibility (especially regarding development initiatives), and making their feedback process to the council mandatory could perhaps be a first step. What this entails for an alternative national mixed-member system, is that consideration should be given to what is desired by the public, rather than giving semantic concessions. If constituency-based MPs are introduced, to serve next to PR-derived ones, more mechanisms of accountability should exist as well, such as the ability to recall MPs, and arguably, to have party membership not impact legislative member vacancy. Party affiliation is a natural part of an election, membership allows easy identification for a voter in choosing candidates that share similar interests and concerns. However, just as a constituency's MP's election is dependent upon constituent votes, so should its continued membership be based on constituency dictates. Party membership may be revoked, but it should not revoke an already elected member's office (this should not be the case for a PR-based MP), such revocation should only occur when the constituency demands a recall.

However, this paper did not elaborate on what exactly these responses should be, they are recommendations based on empirical analysis. The paper was also limited in its study on other aspects that negatively impact the local government, specifically socio-economic and historic legacies stemming from Apartheid. The local governments of South Africa are still impacted by the spatial legacies of Apartheid and colonialism, with deeper analysis of these dynamics, especially concerning the role of traditional leaders and former Bantustan administration, being a key area of interest for understanding the intricacies of local government and the factors that it faces. The paper also did not conduct any form of fieldwork in any of the municipalities or metropolitan areas, instead relying on research by other scholars, which in some cases were dated. Any further research into ward councillors and their ward committees could benefit from a more recent study utilising fieldwork.

The debate on electoral systems, and more specifically on their relations to accountability, is not set and done. The coming year will only continue to see these topics being brought up and discussed. And most likely will be amplified after the elections in 2024, when the creation of a new electoral panel will again, like its predecessors, consider the merits of proportional representation and whether it benefits or hinders our democracy.

- *25 378 words*

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