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## 11 Learning to lose, learning to win

### Government and opposition in South Africa's transition to democracy

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The chapters in this volume clearly demonstrate that “learning to lose”—peacefully accepting the transfer of power and agreeing to participate according to the new democratic rules of the game—is critical to the success of democratic transitions. It is equally critical for consolidating democracy that newly empowered forces “learn to win,” that they do not exclude the losers from the political process, and that they accept the legitimacy of democratic opposition. In our exploration of the South African case, we examine both sides of the coin. We argue that learning to lose and learning to win are complementary and reinforcing phenomena.

Learning to lose for the white minority and learning to win for the majority in South Africa have been two stages in a lengthy process of democratization. The first stage covers the period from the acceptance by the National Party (NP) and the apartheid regime that change was inevitable, to the subsequent lengthy negotiations that led to the “pacted” constitutional settlement of 1993, to the first democratic elections in 1994, and to the passage of the “final” constitution in 1996. These events brought about a fundamental shift in power to the black majority and established South Africa as a constitutional democracy. The second stage—still underway and often unpredictable—involves making the new arrangements work.

In this chapter, we deal more briefly with the first stage of the transition to democracy, concentrating on the second stage. Our central question is: What are the prospects for effective opposition in a racially and economically polarized South Africa, with a party system in which one party, the African National Congress (ANC), is dominant, and likely to remain so for the foreseeable future? Answering this question requires us to define what we mean by the term “effective opposition.” In Westminster systems, the usual expectation is that this role is fulfilled by the minority parties in parliament. The “Official Opposition” is to be an alternative government, a government in waiting. Opposition parties use the parliamentary forum to discredit the government in power, and to mobilize support in order, hopefully, to win the next election. This makes demands on both sides. The government is expected to accept that opposition is legitimate and that members of the opposition are not out to subvert the regime. It must contend with criticism, and accept the possibility of its defeat and replacement. The opposition for its part must accept the legitimacy of the government, understanding that it has

a right to rule and to use its majority to govern by virtue of its democratic election. Learning to accept these relationships is what we mean by learning to win and learning to lose.

Mutual respect and trust are not easy to maintain even in well-established democracies. But in the aftermath of protracted struggle and fundamental regime change, with their legacies of hostility and distrust, these are especially difficult lessons. The opposition will struggle to find a constructively critical role. It is likely to have a deep-seated fear of unfettered majority rule. The government, in turn, is likely to see criticism as an illegitimate threat to the new order. When both government and opposition support is based upon distinct groups, each side is tempted to accuse the other of racially motivated opinions and actions.

In competitive systems the tolerance that government and opposition show for each other is rooted in the fact that the opposition may come to replace the government. In coalition government, tolerance is needed because you can never know with which opposing party you might need to cooperate in the next coalition. But neither incentive exists in the South African case because of the ANC's electoral dominance. It won close to 70 percent of the vote in the most recent national elections and the same percentage of seats in the National Assembly. All nine provincial governments are now also governed by the ANC.<sup>1</sup>

The situation is unlikely to change soon. The ANC has the overwhelming support of black South Africans.<sup>2</sup> Opposition parties—today primarily the Democratic Alliance (DA)—have made only very limited in-roads into the black community. This is not surprising. It reflects the fact that poverty and economic marginalization continue, overwhelmingly, to have a black face, and that the ANC has successfully positioned itself to address those issues (Simkins 2004; Leibbrandt *et al.* 2005). The ANC also benefits enormously from its historic role in the struggle against apartheid.

Under these conditions, the classic role of opposition does not exist in a meaningful way.<sup>3</sup> If winning power is not an immediate possibility, what roles might parliamentary opposition play? Can it hold the government accountable for its actions? Can it provide a check on the possible misuse and abuse of power, a temptation for any government that faces little prospect of defeat? Is it able to foster debate about new ideas and policies? Or are these roles fatally undermined by the absence of any hope of winning an election in the near future?

The weakness of the parliamentary opposition in South Africa requires us also to ask whether there is a broader set of institutions that can act as a source of opposition and provide genuine checks and balances. We consider the role of internal opposition within the ANC; the role of the courts and the agencies established in the constitution to “protect democracy;” the potential of the elected provincial governments in South Africa's quasi-federal system; the media; civil society; and protest at the grassroots level. One-party dominance of the government and legislature is less worrisome if these other sources of opposition are vigorous and effective. A powerful demonstration of internal opposition was provided in December 2007 when elements in the ANC engineered the ousting of party leader

and national president, Thabo Mbeki, and his replacement by arch-rival Jacob Zuma.

### **Learning to lose: the pacted constitutional settlement**

White governments dominated South African politics throughout modern times. In 1948, the system became even more oppressive as the NP extended apartheid into all areas of South African life (Thompson 1995; Ross 1999). In the 1970s and 1980s the struggle for liberation intensified, with increasing violence on all sides. By the late 1980s a combination of events led to cracks in the edifice of apartheid.<sup>4</sup> With the end of the Cold War the South African regime was no longer a bulwark against Communism. International pressure for political reform rapidly increased, as did the economic costs of South Africa's isolation.<sup>5</sup>

The domestic conflict in South Africa increasingly looked like a stalemate. The NP government gradually came to realize that despite its military and police apparatus, it could no longer suppress escalating dissent. The ANC leadership also began to realize that despite its numbers and mass support, it was unlikely to prevail against the NP regime's overwhelming military strength. In this context, and after secret talks with the ANC, President De Klerk announced that a number of political organizations including the ANC would be unbanned, and ANC leader Nelson Mandela and other political prisoners would be released. Tentative talks between the government and the liberation movements began.

The negotiations between the government and the liberation forces were difficult and complex (Friedman and Atkinson 1994; Sparks 1994; Waldmeir 1997). The NP government knew that it had to learn to lose. In any new order that could make a plausible claim to be a democracy, power would inevitably flow to the black majority—but there was one crucial caveat. Part of what lay behind the willingness of white South Africans, and Afrikaners in particular, to contemplate political reform was that their economic position was secure (Adam *et al.* 1997). They dominated the economy by almost any measure: household income, level of skills and education, home and asset ownership, and labor market position. In the post-Cold War context, with its neo-liberal economic orthodoxy, any attempt by the state to intervene in the economy in a way that damaged white interests would be met with hostility and alarm by both local and international investors (Herbst 1994; Michie and Padayachee 1997; Handley 2005).

For the NP, the representative of the white minority, the primary challenge at the time was to design a constitution that would constrain majority rule as much as possible and provide the strongest possible protections for the soon-to-be minority. A number of alternatives were considered, including protection of group rights and the possibility of an Afrikaner *Volkstaat*.<sup>6</sup> But these ideas quickly faded. The central goal became the establishment of a classic liberal democratic regime, with checks and balances, separation of powers, federalism to disperse power and constrain the centre, protections for minorities through a strongly worded Bill of Rights, and an independent constitutional court.

True to the vision of its 1955 Freedom Charter,<sup>7</sup> the ANC also asserted the importance of protecting rights.<sup>8</sup> The ANC was committed to a unitary state with a strong central government, able to manage the task of economic and social development in post-apartheid South Africa. Reaching compromise was difficult and violence continued in the background. Constitutional talks broke down several times. The white government was loath to lose its control while the liberation movements were impatient to complete the transition.<sup>9</sup> Eventually, compromise was reached: elections were to be held in 1994 and the country would then be governed under an Interim Constitution, which captured the essence of the deal. The bargain that made this agreement possible ensured that the minority would have a substantial voice in negotiating the final constitution.

The status of the Interim Constitution was anomalous, since it had been negotiated by a discredited government and by liberation forces that did not yet have an electoral mandate. Accordingly, it was agreed that immediately after the 1994 elections the newly elected parliament would constitute itself as a Constitutional Assembly and develop a “final” constitution within two years. To protect its interests, the out-going regime secured agreement that this constitution would adhere to a set of 34 Constitutional Principles. They spelled out the basic tenets of liberal democracy while seeking to secure the interests of the outgoing NP government and its electorate. The constitution was to be adopted by a two-thirds majority in parliament and could not come into effect until it had been certified to comply with the Constitutional Principles by the new Constitutional Court. In these ways, the out-going regime, while recognizing the inevitable, sought to minimize its loss by building in as many protections as possible. If it had to learn to lose, the NP wanted to do so on its own terms. To a great extent it succeeded in this.<sup>10</sup>

The bargain was made possible by the ANC’s desire for a peaceful settlement and by the commitment of its leadership to democracy, reconciliation, and an inclusive definition of the nation. Progress towards a democratic constitution was also facilitated by the international spate of constitution-writing that accompanied the third wave of democracy. By now a kind of international constitutional standard was emerging, one which emphasized Bills of Rights, the rule of law, and an independent judiciary, along with free and fair elections.<sup>11</sup> Commonwealth countries and international observers and advisers strongly urged this model. Whatever concerns the ANC might have had about some of the recommendations, it also desired international acceptance of its new dispensation: hence the “pacted” constitution (Murray and Simeon 2005).

The final constitution negotiated in the Constitutional Assembly remained true to the Interim Constitution and to the 34 Principles.<sup>12</sup> Many provisions reflected a shared desire among all parties that in a democratic South Africa, multi-party democracy would be protected and the opposition would continue to have a voice. Strikingly, in the negotiations it was often the ANC that had a deeper and more expansive view of democracy. The NP, as its history had demonstrated so well, was a party of reluctant democrats, who were concerned mainly with protecting their interests by limiting government power.

Six elements of the constitution are particularly worth noting. First, its opening words eschew a sense of majority triumphalism by articulating an inclusive concept of citizenship, in which "South Africa belongs to all who live in it, united in our diversity." Inter alia, the founding provisions proclaim the promotion of human rights, the supremacy of the constitution and the rule of law, and a multi-party system. Elsewhere the Constitution protects independent courts with the power of judicial review, and requires super-majorities for constitutional amendment.

Second, detailed provisions on the national parliament and provincial legislatures protect minority parties, secure financial assistance for them, and establish the position of the Leader of the Opposition. In municipal councils too, parties and interests must be fairly represented. Third, a transitional Government of National Unity (GNU) gave any party with more than 5 percent of the national vote representation in the cabinet. Any party with 20 percent was to be given a post as Deputy President.<sup>13</sup> Although this was to last for only one electoral term, it reassured the minority parties that they would have some voice in the early days of the new democracy. The NP soon withdrew from the GNU, preferring a more Westminster style of opposition. The other major opposition party, the Zulu-based Inkatha Freedom Party (IFP), continued to be represented in the cabinet until 2004.<sup>14</sup>

Fourth is a Bill of Rights, incorporating social and economic rights as well as political and civil rights. Afrikaners, as well as the IFP, sought strong guarantees of the rights of cultural and linguistic minorities. The result is the constitutional recognition of 11 official languages, the protection of "language and culture" and "cultural and religious communities" in the Bill of Rights, and the establishment of a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. Fifth, the Constitution establishes a number of institutions designed to police the quality of democracy, including a Human Rights Commission, Commission for Gender Equality, Electoral Commission, a board to determine municipal boundaries, an ombudsman (called a Public Protector) and an Auditor-General. All are to be independent of the government.

Sixth, the Constitution establishes a system of multi-level (or multi-sphere) government. This was a central goal of both the NP and IFP, intended to limit the power of the central government and disperse political authority. South Africa is thus federal in form, with independently elected national, provincial, and local governments. Each has specified powers and the provinces are represented in the national government through the National Council of Provinces (NCOP). However, the system is only semi-federal, since the most important powers, including control of finances, rest with the central government. The centre also enjoys extensive levers to monitor and control the lower levels of government (Simeon and Murray 2001: 65–92).

All these elements of the pacted constitution point to the legitimacy of opposition in the new South Africa. They provide protections against the unfettered imposition of majority rule and provide the political space for opposition activities (a multi-party system, provincial and local governments as potential sources of countervailing power), as well as freedom of the press, speech and association.

These provisions sweetened the bitter pill of defeat for the NP, and substantially reconciled the losers to their diminished status and power.

This story of political transition in South Africa shows how the outgoing minority government was forced to learn to lose, and how, by participating in the transition, rather than resisting it, the NP was able to secure arrangements that they believed would ensure them an important role in a democratic South Africa. But now in the new dispensation, the NP would be the opposition, rather than the government. Moreover both the GNU and the federalist system offered the opposition parties hope that they could preserve some political space of their own. Indeed, in the first elections, the IFP gained power in KwaZulu-Natal and the NP gained control of the government of the Western Cape. While this was not to last, it was another indication of the success of South Africa's transition as political outsiders moved into government, and vice versa.

### **Opposition in South Africa today**

Eleven years after the adoption of the final Constitution, South Africa has many features of a sustainable democracy.<sup>15</sup> It has held three free and fair national elections. It has had a peaceful transition of power from one President to another. It has a vociferous though small opposition in the National Assembly, a vibrant civil society, and a lively, critical press. The Constitutional Court has established a reputation for independence and its judgments are respected. The white minority does not challenge the fundamental legitimacy of the elected ANC government nor does it threaten to undermine the government.<sup>16</sup> By these measures, the politics of learning to lose in South Africa has been a remarkable success.

Nonetheless, there are some disturbing trends. There has been no turnover of the ruling party in power since 1994. Voter turnout has plummeted (Piombo 2005: 255–7). The ANC has instead further entrenched its majority in the National Assembly. The parliamentary opposition has failed to develop into a lively, multi-racial, liberal opposition with broad national appeal (Southall 2003: 68–74; Southall and Daniel 2005: 34; Calland 2006: 163–85). Instead, opposition has fragmented. The largest opposition party, the DA, has struggled to shake off the image that it is the voice of a discontented and still relatively privileged white minority (Herbst 2005: 93). The former ruling party, the NP, failed in opposition. Having walked out of the GNU, its fortunes plummeted and it dissolved itself into the ANC in 2005. Institutionalized uncertainty about the outcome of electoral competition is absent (Przeworski 1991). Without the prospect of electoral defeat, dominant parties will come to feel that they “own” the political system and will seek to control and limit alternative centres of power. Criticism comes to be seen as irresponsible and divisive. Tendencies toward corruption become more difficult to restrain. The ANC is not immune from such tendencies (Sole 2005; Feinstein 2007).

In what follows, we show that traditional parliamentary opposition is indeed weak and ineffective in South Africa today. Are there then other institutions within the political system which can substitute for this lack? Factional divisions

within the ANC and between it and its alliance partners, pressures arising from a dynamic civil society, grassroots popular politics, and the checks provided by the courts could all go a long way to ensure that ANC hegemony does not go unchallenged.

### ***Parliamentary opposition***

The size and solidity of the ANC's majority is not surprising. Since taking office, the ANC government has overseen an impressive expansion in the provision of basic services, such as housing, basic health care, water and electricity to the poor. There has been a massive expansion in the country's social grant system, providing a small but vital injection of cash into some of the poorest households in the country (Case and Deaton 1996). While unemployment remains high, ANC policy has seen a modest but important recovery in economic growth. Beyond material outputs, the ANC still derives enormous legitimacy from its role in the liberation struggle and its prominence in the transition to democracy.

The job of the opposition has therefore been tricky (Lanegran 2001). In the first democratic elections of 1994, 19 different parties competed of which seven won seats. With 62.6 percent of the vote, the ANC won 252 of the 400 National Assembly seats. The NP was far behind, winning just 20.4 percent of the vote and 82 seats. Third was the IFP, with 10.5 percent of the votes and 43 seats. Under the terms of the Interim Constitution, both of these parties were represented in the GNU, with former President De Klerk as a Deputy President. Smaller numbers of seats were won by the extremist Afrikaner Freedom Front (nine), the largely English-speaking Democratic Party<sup>17</sup> (seven), and the Pan-Africanist Congress of Azania, a radical black party (five), among others.

By the third elections of 2004, the ANC had consolidated its position even further, winning 69.7 percent of the vote and 279 seats, enabling it to amend the Constitution by itself (Southall and Daniel 2005). The minority parties also underwent considerable change. The former dominant party, the NP, now re-named the New National Party (NNP), saw its support shrink to less than 2 percent of the vote. Opposition support was concentrated in the DA, but it won only 12.4 percent of the vote and 50 seats. The IFP was reduced to 28 seats and remains a regional party. The United Democratic Movement, an attempt to build a cross-racial party, won only nine seats.<sup>18</sup>

Most significantly, the NP has collapsed; in a certain sense it had failed to learn to lose (Maloka 2001). Deprived of its *raison d'être*, apartheid, it was unable to construct a coherent alternative to the ANC. Its electoral base in the white community dwindled and it failed to attract black voters. The cross-over of most of its remaining politicians to the ANC in 2005 may have been a last-ditch effort to hold on to some fragments of power but nonetheless provides an extraordinary example of the oppressor joining the revolution. The IFP's fortunes have been better, but it too has lost voter support. Only the DA has grown, but within a diminishing space for opposition, and, as we have seen, it has failed to broaden its support beyond the white community.<sup>19</sup>



Opposition parties have nonetheless been active (and vocal) in Parliament. They are assertive at question time and have proposed some private members' bills. When they are able to coordinate their National Assembly activities, they compensate for their small numbers by dividing responsibility for committee work. Initially, parliamentary committees provided some space for relatively non-partisan engagement by MPs, giving the opposition parties opportunities to make real contributions to legislation. However, this has not been sustained.<sup>20</sup> As Nijzink and Piombo (2005: 70) comment, a "clear trend in the past ten years of parliamentary politics is that parties and partisan considerations increasingly dominate National Assembly parliamentary proceedings, even in areas where one would expect individual MPs to be able to deal with certain aspects of their work in an atmosphere of relaxed party discipline."

Time allocated to speakers in parliamentary question time is based on party strength, thus favoring the ruling party (Nijzink and Piombo 2005: 70) and committees may not issue separate minority reports in which opposition parties can express their views. In 2005, in a move that particularly irked the DA, the position of chair of the public accounts committee, which had traditionally been occupied by the opposition in the National Assembly, was allocated to a member of the miniscule Pan Africanist Congress party.<sup>21</sup> These factors are reinforced by the fragmentation of the small opposition parties that often speak only for special interests, and by the fact that the current President, Thabo Mbeki, has been able to subdue the IFP and AZAPO (Azanian People's Organisation) by including them in his cabinet, and to reward the erstwhile leader of the NNP in the same manner. Parliamentary opposition is thus weak, fragmented, and vulnerable, unable to mount a serious challenge to the ANC, or to contemplate any alteration in power. Despite its efforts, it has been unable to make meaningful contributions to policy development, or to exercise effective oversight and scrutiny.

Nijzink and Piombo (2005: 70) conclude that "the ANC has become more reluctant to engage in open and robust deliberations."<sup>22</sup> It does not respond kindly to criticism from the official opposition party.<sup>23</sup> Overall, its extreme defensiveness and introduction of parliamentary procedures to shield it from criticism are not attributes of a winner in a fully democratic system. Most of the opposition, on the other hand, seems to adopt a rhetorical and confrontational style rather than to engage in constructive criticism. This, Nijzink and Piombo suggest, may be a sign of the normalization of politics. It may also be a sign that "[p]arliament is losing its central role and is not the main forum to debate issues of public concern" (2005: 71). It is certainly not the primary site of opposition today.

### ***Extra-parliamentary opposition***

The country's electoral dynamics mean that the most significant opposition in South Africa comes from outside parliament. We begin with divisions within the governing party itself. The ANC frequently claims that vigorous debate within the party is more than adequate compensation for the weakness of institutionalized opposition from outside. But, perhaps as a legacy of its history as an underground

movement, the ANC emphasizes the importance of party discipline and solidarity (Lodge 2006).<sup>24</sup> This hostility to intra-party dissent undermines the claim that internal democracy is a sufficient substitute for inter-party competition. Of course, the party, like South African society as a whole, is no monolith.<sup>25</sup> There are many internal divisions: between those whose struggle heritage is focused on Robben Island, those who were in exile abroad, and those who fought in the streets of Soweto; between those who support the centrist policies of the government and those seeking more radical solutions; and between diverse regional and personal factions, and so on.

Tensions within the ANC erupted publicly in 2005 over corruption allegations against then Deputy President, Jacob Zuma, and criticism of Mbeki's detached leadership style and market-orientated economic policy. Zuma's down-to-earth manner, his political credentials (which include 10 years as a political prisoner on Robben Island), and the perception that he remains in touch with the concerns of ordinary South Africans *has* made him enormously popular within the ranks of the ANC (and the youth wing in particular), and with the ANC's political partners (especially with COSATU, the trade union movement). Open rebellion within the party culminated in the succession battle which challenged the powerful norm, namely that the ANC should deal with internal disputes privately and thus always present a unified public face.<sup>26</sup> Most surprising was that the challenger, Zuma, won a decisive victory at the ANC party conference in 2007.<sup>27</sup>

It might be argued that, given the dominance of the ANC, such a shift in party leadership was equivalent to a change in government in a more competitive party system. But this analogy must not be taken too far. First, it is by no means clear that change in party leadership will automatically lead to a change in the national presidency in advance of scheduled national elections. Secondly, the electorate within the party is much smaller than the national electorate, or even the electoral base of the ANC.<sup>28</sup>

The limitations of internal debate as a substitute for opposition are starkly portrayed by the mystery, attempts at secrecy, and confusion that surrounded the 2007 leadership battle in the ANC. On occasion the party leadership encouraged open debate, and at other times it chastised groupings within the ANC which *seek* to air the issues in public. The failure to develop consistent, open procedures for a transfer of power has contributed to the very division that the party leadership tried to avoid. Nevertheless, the overall outcome was to give the public access to crucial debates from which they might otherwise be barred (Lodge 2006). In this context, the party conference may be seen as a victory for democracy in South Africa as it may have shifted the culture of the ANC from its traditional struggle-oriented internal discipline and secrecy to a more participatory, open forum for political debate.

There are also deepening tensions between the ANC and its alliance partners.<sup>29</sup> The tripartite alliance that makes up the ANC alliance was formalized during the early 1990s to contest South Africa's first democratic elections, consolidating a long-standing set of more informal alliances. COSATU, formed in 1985, united unions which aligned themselves with the ANC. For its part, the SACP (South

African Communist Party) had, since at least the 1940s and 1950s, been closely associated with the ANC.

The current disagreement between the SACP, COSATU and the ANC centers on the economic policies adopted by the ANC since the late 1990s. Both allies have been sharply critical of the government's conservative macroeconomic policy, the Growth, Employment and Redistribution strategy, dubbed GEAR. The number of new black millionaires in South Africa has risen sharply. Their swift accession to wealth has been facilitated by the model of Black Economic Empowerment adopted by the government.<sup>30</sup> However, these policies have not produced dramatic improvements in the livelihoods of the majority of black South Africans and levels of inequality in South Africa continue to be among the highest in the world.<sup>31</sup>

Dissent within the ANC and between it and its alliance partners is real and growing, ensuring that competing policies are sharply debated within the ruling party (Mde and Brown 2006). Like factionalism within the ANC, however, until recently intra-alliance conflict has not been an effective substitute for true inter-party competition. This is because much of the debate has taken place behind closed doors, and because much of it has involved personal rivalries and competition for spoils that have little direct connection to the concerns of citizens.<sup>32</sup>

More recently, however, disagreement has taken on a more public face. Competing policy choices and alternatives have, for the first time, triggered vigorous public debate and the SACP and COSATU may be learning the lesson that the NP learned earlier—that a subordinate position in the governing alliance is no substitute for a truly independent status. Both the SACP and COSATU have threatened to leave the alliance (IDASA 2005; SACP 2005). Many believe that the potential break up of the alliance is the most likely way that South Africa will move from one-party dominance to a multi-party system. The outlines of such a party realignment can be imagined: a centrist ANC competing with a more socialist opposition. However, that would require the SACP and COSATU to break their links to the ANC and to compete for votes on their own. Thus, while the possibility of a movement to a multi-party system through the break up of the dominant alliance is no longer completely unthinkable, it remains unlikely. For the time being, the success of the SACP and COSATU campaign to oust Mbeki as leader of the ANC will deter them from striking out on their own.

### ***Federalism and regionalism***

In federal systems, sub-national governments often provide alternative bases of power and authority, limiting central power and the authority of the party that controls it. South Africa has adopted a quasi-federal regime, with three constitutional spheres of government. However, for a number of reasons, provincial and local level governments have not emerged as effective challengers of the national government (Murray and Simeon 2001). First, jurisdiction and fiscal powers are heavily concentrated in the central government. The center also has wide powers to monitor and regulate provincial and local governments. Second, with few exceptions, provincial and local governments and their leaders

have little independent standing from which to mount a challenge to the ANC dominated centre. Third and most important, all provincial governments are in ANC hands. While local and regional branches of the ANC have considerable influence on such matters as preparing party electoral lists, the ANC itself remains highly centralized (Lodge 1999; Gumede 2005). Provincial Premiers are formally selected by their legislatures, but, in fact, they (and other local politicians) are “deployed” by the national executive leadership of the party. They are thus at least as responsible to the center as they are to their own electorates. Provinces in South Africa have undertaken few independent legislative initiatives, and they seldom challenge the government in the NCOP, which was designed originally to ensure a provincial voice in national policy and administration.

There is some potential for regional bases of opposition. As we have noted, the IFP formed the government of KwaZulu-Natal after the 1994 elections, as did the NP in the Western Cape. It is possible that alternative parties might win an election in at least one or two provinces in the future.<sup>33</sup> Moreover, there are strong regional differences that the central ANC government must balance, between, for example, the wealthier industrialized Western Cape and the much poorer, more rural regions, such as the Eastern Cape or Limpopo. Provincial (and metropolitan) governments in the stronger provinces have developed some political autonomy, while the weaker ones have become increasingly dependent on the centre. In provinces such as Gauteng and KwaZulu-Natal there are several examples of determined opposition from local leadership to central dictates (Tabane and Gcukumana 2006).

Some provinces have used their limited jurisdiction to pursue independent policies, for instance, in the critical area of treatment for AIDS (Steytler 2003).<sup>34</sup> Regional government and party leaders in some cases have increasingly chafed at central domination. The central leadership of the ANC has paid attention to these recent developments. Dissatisfied with poor provincial performance, perhaps worried about potential provincial assertiveness, and, some say, determined to retain control of all provinces, prominent voices in the ANC have recently advocated abolishing provinces or radically redrawing the provincial map (Pressly 2007; ANC 2007: 6–10; Department of Provincial and Local Government 2007).

### ***Courts and agencies***

The courts and other institutions designed to safeguard democracy may place limits on the unfettered majoritarianism of one-party rule. Their obligation, after all, is to the Constitution rather than to any party. The courts have played an important role in providing a balance to the government. They have challenged its performance in a number of important areas, including housing, health care, freedom of speech and access to information.<sup>35</sup> They are widely regarded as independent. Recently the Constitutional Court has also underlined the importance of public participation in decision-making in Parliament and the provincial legislatures by declaring a number of laws and a constitutional amendment invalid because of the failure to

comply with the constitutional provisions requiring public involvement in law making.<sup>36</sup>

The independence of the judiciary may be under some threat, however. In 2005, Cabinet approved a constitutional amendment that, among other things, would increase the power of the Ministry of Justice vis-à-vis the judiciary and would allow the President to appoint regional judge presidents (Moya 2006). The proposed constitutional amendments provoked unprecedented judicial resistance, prompting the President to intervene. Judges and the legal establishment in South Africa have insisted that the proposals would destroy judicial independence. Moreover, more recently, political interference in the prosecuting authority has threatened the justice system yet further. While the outcome of these actions remains unclear, the judicial record so far provides a noteworthy example of creative support for open democratic processes and extra-parliamentary opposition in a context in which formal opposition is ineffective.

The record of the independent agencies established by the Constitution is considerably weaker. Although the Public Protector deals with increasing numbers of complaints relatively effectively, the office has frequently been accused of being partisan in more high-profile matters.<sup>37</sup> The Human Rights Commission has built a reputation for useful work, but the Commissioners were unable to agree to investigate the AIDS pandemic and related health care concerns. Its work is seldom visible to the public. The Auditor-General lost some credibility in an investigation relating to an arms deal in which he was accused of changing a report after it was reviewed by the executive (Feinstein 2007: 213). The ability of these agencies to check government power is thus in some question.

### ***Civil society and media***

One of the remarkable aspects of the anti-apartheid struggle in South Africa was the way it drew on and in turn engendered the growth of a diverse and vocal civil society. This was facilitated, in part, by support, including funding, from international sources sympathetic to that struggle. Many hoped that civil society would continue to provide an important source of opposition to the dominant party after 1994. Two factors limited this potential. First, most civil society organizations were sympathetic to the ANC-led anti-apartheid struggle, and thus are not inclined to criticize the party. Secondly, when the ANC government took the reins of power in 1994, it often looked to civil society leaders to fill senior governmental positions; this weakened the groups themselves. Still, certain sectors of civil society continue to provide a source of opposition in contemporary South Africa (Friedman 2005: 10–14).

The private press, overwhelmingly liberal in orientation and for the most part still white-owned, is widely regarded as independent and prepared to debate the issues of the day. The same is not necessarily true, however, of the state-owned media, which tends to hew more closely to the ANC's version of events. Independent think-tanks and NGOs continue to flourish. For their part, churches

have shifted from “a position of alignment and co-optation towards a more independent and critical voice” (Bompani 2006: 1138).

One of the most striking characteristics of the transition period has been the patience of South Africans, as they wait for the increased employment, better schools, clinics, housing and other services. Progress has indeed been made, but the gaps remain daunting. A striking development in the last two years, however, is the increasing number of local protests against delivery failures and other aspects of ANC rule. Local protests have occurred in many parts of the country. In the recent local elections, citizens in one community successfully boycotted the vote in protest against their assignment from one province to another. Such dissent remains relatively localized and un-organized. No parties have yet emerged to focus and mobilize it (Desai 2006).

The Treatment Action Campaign (TAC) is an exception. One of the most active NGOs in South Africa, and led by a former anti-apartheid activist, the TAC employs high-profile tactics, including marches and rallies, laying of charges of murder against the Minister of Health, and challenges in the Constitutional Court for breach of the right of access to health care. The TAC has been enormously successful in winning international support and media attention for its struggle to compel the government to tackle more systematically the HIV/AIDS epidemic. It has won several crucial legal battles. The example of the TAC raises questions about appropriate opposition tactics in a society in which one party enjoys hegemonic status. The TAC has adopted a very different tack to the head-on opposition strategy of the DA, and to great effect. Taking at face value the ANC's claim to support vigorous debate on all issues of public importance, the TAC has asserted its support for the party while at the same time challenging government policy both through public protests and in the courts.

## **Conclusion**

South Africa's political transition has been a major success. In the critical earlier period, the old regime did, in the end, give up power, peacefully, and agree to participate in the new system. The new regime took power and negotiated a new constitution. Each could have acted differently with disastrous consequences. That this was avoided was the result of a combination of factors: the favorable economic climate, the military stalemate, the strategic calculations of the contending forces, and the role of particular leaders who established the minimum level of trust necessary for a successful resolution. The ANC embraced political victory without exacting retribution and imposing repression. The white minority learned to lose, accepting that political (if not economic) power could not remain in their hands.

The second stage of South Africa's transition presents a mixed and perhaps somewhat less optimistic picture. This is the period of consolidation and the fundamental fact that underpins it is the unassailable dominance of a single party, the ANC, and the virtual impossibility of any alternation in power into the foreseeable future. Such a political dynamic fosters worrying behaviors on

both sides. The ANC maintains the idea that the government is “ours,” and that opposition is illegitimate, especially if it comes from minority white groups. On the side of the opposition, the realization of permanent minority status provides few incentives to reach out for a broader electoral support base or to form political coalitions. To put it bluntly, it is by no means clear that the current ruling party, the ANC, has learned to be a gracious and generous winner, able to contemplate even the smallest losses. There is also little to show that the parliamentary opposition has any capacity to grow beyond a small, embattled opposition, destined always to lose in any larger battle for voter confidence.

The specific South African context—a new democracy with an overwhelmingly dominant majority party—imposes exceptional demands on democratic consolidation. The responsibility for establishing a political culture of tolerance of opposition that is essential to constitutionalism and democracy rests almost entirely with the ANC government. But this places a huge burden on the new party: the ANC must at one and the same time transform itself from a liberation movement into a political party that defends its platform and challenges its competitors, and build a nation with a culture of open democratic competition. And this must be done in the most demanding of social and economic circumstances. Thus, the low marks that the ANC earns on our score card for tolerating the parliamentary opposition and other institutions that could build a culture of accountability are no surprise.

What then can we conclude about the state of opposition in South Africa? Parliamentary opposition in the classic model is very weak. There are disturbing signs that the behavior of the ANC has begun to reflect the lack of accountability that comes with its electoral dominance. Equally disturbing is the tone adopted by some ANC leaders, implying that the current opposition is illegitimate and racist and an increasing insistence on a kind of national unity that forecloses public dissent. The opposition parties similarly display some of the pathologies of voice without the prospect of responsibility for actually governing.

We think that democracy is best protected when there is a competitive party system, when the incumbent party is constrained by its need to maintain electoral support and when opposition parties are motivated by their need to win that support. This is not the case in South Africa today, with worrying implications for the quality of its democracy. Nonetheless, even a quick scan of South African politics reveals a range of sources of opposition: some within the ANC itself, and within its broader coalition; more in civil society, the press, and in messages from local communities protesting the lack of service delivery and yet another in the restraining force of the judiciary. In addition, both the level and scope of opposition to the ANC government seem to be increasing. The government, to be sure, seeks more control over important political institutions and to suppress the emergence of opposition or alternative sources of authority. But this is increasingly contested. In this respect, South African democracy displays considerable vitality.

It is early days for South Africa’s democracy. An optimist might argue that so long as opposition takes root in civil society, political learning can and will occur. As suggested by events in India after that country’s independence, it may be that

as South Africa moves further from the transition moment, a healthier and more robust system of parliamentary opposition will develop (Reddy 2005). Whether the emergent opposition forces can constrain the ANC government and whether or not they lead to new political formations remains to be seen, however. Opposition in the classic parliamentary sense is weak. Yet, alternative arenas of opposition are alive and well, meaning that the ANC may yet have to learn to be the kind of tolerant winner that South African democracy deserves.

## Notes

- 1 It is important to underline that this dominance is not the result of coercion, manipulation, or abuse, but rather of the operation of democratic electoral politics. The purely proportional electoral system, indeed, is designed to ensure representation of even small minorities in Parliament.
- 2 Some have argued that elections in South Africa continue to have many of the characteristics of an "ethnic census." Steven Friedman (2004: 3) convincingly refutes this argument: "To say that South Africans vote their identities is not to say that elections are ethnic censuses...It is to insist that preferences are shaped by voters' assessment of which party can best provide a vehicle for who they are...Many black voters will support the ANC even if they lack a job because they believe it expresses their demand for dignity and freedom...many white voters will support the DA even though they know it will not be able to influence government decisions because they believe it says what they feel." See also Friedman (2006: 5 and 1999).
- 3 The ANC has been characterized as a "dominant party" and, for many observers, this does not bode well for South African democracy. See Giliomee *et al.* (2001), Giliomee and Simkins (1999), Lanegran (2001). Others disagree: cf. Reddy (2005), Suttner (2004).
- 4 For instance, in 1986 a number of laws central to apartheid were repealed or amended. See, for example, the Black Communities Development Amendment Act No 74 of 1986; the Identification Act No 72 of 1986; the Abolition of Influx Control Act No 68 of 1986; and the Restoration of South African Citizenship Act No 73 of 1986.
- 5 In particular, the decision by US-based Citibank not to roll over South Africa's loans, a move replicated by a number of other international banks, critically reduced the regime's access to credit on international markets, a clear sign that global capital markets were no longer prepared to bet on the viability of the status quo.
- 6 For the larger debate on managing conflict in divided societies like South Africa, see Horowitz (1991), Lijphart (1985).
- 7 For a copy see: <http://www.anc.org.za/ancdocs/history/charter.html> (accessed March 2006).
- 8 Constitutional Guidelines 1988.
- 9 Excellent accounts of this period are found in Friedman (1993), Friedman and Atkinson (1994), Sparks (1994).
- 10 At least, in the short term. For a discussion of the ANC's success in outmaneuvering the NP after the 1994 elections, see Giliomee *et al.* (2001).
- 11 The ANC contributed to the internationalization of this standard through its promotion of the Harare Declaration of 1989 which set out the principles on which a future South African constitution should be based and which were adopted by the UN General Assembly (<http://www.anc.org.za/ancdocs/history/oau/harare.html>) as the *Declaration on Apartheid and its Destructive Consequences in Southern Africa, A/RES/S-16/1*.
- 12 For accounts of this process, see Andrews and Ellmann (2001).
- 13 See Constitution of South Africa Schedule 6 item 2.



- 14 The last leader of the NNP, Marthinus von Schalkwyk, remains in the cabinet at the time of writing, but as a member of the ANC.
- 15 The usual term is “consolidated democracy.” As it is commonly used in political science, this implies both a judgment about the broad and deep quality of democracy, and some measure of confidence that that democracy will endure. In terms of this relatively demanding definition, there are grounds for questioning whether South Africa is a fully consolidated democracy. We would be happier to describe South Africa as a “durable democracy,” a definition which implies two qualifications: First, we mean by this a limited definition of democracy as a political system in which key leaders are chosen through competitive elections with universal suffrage; and second, we are making a judgment which is not so much about the quality of the democracy as about its durability over time. In terms of this more limited definition, South Africa unquestionably is a democracy, has been one for the last twelve years, and is likely to continue to be one for the foreseeable future. Many thanks to Nancy Bermeo for this helpful distinction. See also Diamond and Morlino (2005), O’Donnell *et al.* (2004).
- 16 Note that the white community has lost little of its economic power.
- 17 This would become the DA.
- 18 Voter participation in South Africa remains high by international standards. Of the registered electorate, 89.3 percent voted in the national and provincial elections in 1999 and 76.7 percent in 2000. The turnout of registered voters for local government elections on 1 March 2006 was around 48 percent.
- 19 The DA is, of course, an experienced loser with roots in the famous Progressive Federal Party for which Helen Suzman was the lone parliamentarian for many apartheid years.
- 20 Nor, of course, does it often occur in other Westminster parliamentary systems, which are characterized by strict party discipline and executive dominance.
- 21 About two-thirds of the parliaments in the Commonwealth follow the practice of giving the chair of the public accounts committee to a member of the opposition. The ANC has never embraced this tradition fully. The first post-1994 public accounts committee was chaired by a member of the IFP, which was then represented in cabinet.
- 22 Feinstein’s (2007) description of the way in which the ANC blocked a parliamentary enquiry into a 1999 arms deal is a devastating example. A more recent example concerns the suspension of National Director of Public Prosecutions, Vusi Pikoli. The DA demanded that Parliament reconvene urgently to discuss the suspension but this request was refused (SAPA 2007).
- 23 For example, in 2006 the Minister of Education, Naledi Pandor, characterized the opposition as “whiners” and “whingers,” “reborn purists” who had caused “much of the awful legacy we deal with today” and who “had had the power to effect change at many points in their privileged lives” but “when push came to shove, ...did not fight for freedom” (Department of Education 2006). See also a letter by ANC Caucus spokesperson to *The Star* expressing high indignation that the DA thought it could chair the Public Accounts Committee: “The DA is not the only opposition—in fact there are better and more credible opposition parties... This campaign [by DA for PAC chair] has nothing to do with good public representation but everything to do with advancement of party interest. Again, this is in the DNA of such parties” (Lekgoro 2005).
- 24 Cf. also Lodge (2002: chapter 8).
- 25 See generally Friedman (1999: 97).
- 26 For an authoritative account of policymaking within the ANC, see Lodge (1999).
- 27 Jacob Zuma was elected to the presidency of the ANC with 2,329 votes to Thabo Mbeki’s 1,505 votes. Zuma’s victory was consolidated by the fact that his slate won all other top leadership positions in the party, ousting some of Mbeki’s most senior Cabinet ministers.

- 28 About 4,000 delegates had voting rights at the ANC party conference (IDASA 2007). An ANC audit of its membership concluded that on 30 June 2007 it had 621,237 members (IDASA 2007). There are 21,054,957 registered voters in the country (Independent Electoral Commission 2006).
- 29 For a discussion of this issue, see McKinley (2001).
- 30 Broad Based Black Economic Empowerment Act no. 53 of 2003 <http://www.dti.gov.za/bee/BEEAct-2003-2004.pdf> (accessed March 2006). See also Iheduru (2002).
- 31 Cf. the Gini index of inequality, published by the UN as part of its Human Development Report: <http://hdr.undp.org/en/reports/global/hdr2003/> [accessed March 2006].
- 32 Proposals to amend South Africa's labor legislation have put a sharp focus on these issues. The Minister of Labour has reassured the electorate that "the labor laws will not be changed," in the same breath saying that the Cabinet is working on "reform" of the law. The changes are rightly viewed by COSATU as a response to the concern of business and the ministry of finance that the current labor regime is too protective and inhibits the development of small business and international investment. But the current labor regime was a hard-won victory for COSATU just a few years ago.
- 33 The DA re-captured control of Cape Town in the 2006 local elections, but without a clear majority, and complex negotiations among the parties ensued.
- 34 See also responses to provincial boundary changes brought about in 2006.
- 35 For example, *Government of the RSA v Grootboom* 2000 (11) BCLR 1169 (CC) (on access to housing), *Minister of Health v Treatment Action Campaign* (1) 2002 (10) BCLR 1033 (CC) (on treatment for HIV/Aids); *Midi Television (Pty) Ltd t/a E-TV v Director of Public Prosecutions (Western Cape)* 2007 (5) SA 540 (SCA); [2007] 3 All SA 318 (on free speech and the media); *Van Huyssteen v Minister of Environmental Affairs and Tourism* 1996 (1) SA 283 (C) (on access to information).
- 36 *Doctors for Life International v Speaker of the National Assembly and others* 2006 (12) BCLR (CC) and *Matatiele Municipality and Others v President of the RSA and Others* 2007 (1) BCLR 47 (CC).
- 37 The 1999 arms deal is one such example; a diamond tiara acquired by the Minister of Energy Affairs—now Deputy President—another.

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