

The London School of Economics and Political Science

Miracle or Misery?
Understanding democratic participation in South Africa

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Declaration

I certify that the thesis I have presented for examination for the PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

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A handwritten signature in blue ink, appearing to be 'H.M. K.', with a long horizontal stroke extending to the right.

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Dedication

To Ma.

I'm so sorry it took a month too long.

Abstract

On 27 April 1994 the most hated flag in Africa was lowered, signifying the end of the Apartheid regime. As the world watched the transformation of South Africa taking place – without the bloodshed that the state's direst cynics had predicted – words like 'miracle' and 'inspirational' abounded. Since then, the world has continued to watch South Africa's transition to democracy and even those who were its greatest supporters have begun to ask questions about the quality and quantity of democratic reforms. The increasing centralisation and monopolisation of power by the African National Congress, declining rates of formal participation by citizens and considerable failures in service delivery are major factors contributing to the concerns about the long-term prospects for democracy in South Africa, especially given the record of democratic failure across the rest of the continent. While significant contributions have been made to the study of South African democracy – both theoretical and empirical – there are few, if any, that have sought to combine both these methodologies and hence the scholarship is not, in my view, paying the dividends it should. This research thus explores contemporary politics in South Africa, examining its assets and liabilities in order to provide a clearer picture of the state of democracy in the country. It does so by measuring practices in South Africa in terms of the role accorded to participation in three conceptions of democracy: liberal representative accounts, deliberative accounts and what I term the 'categorical' account. In so doing the research will show that although concerns about democracy in South Africa are justified, if we shift our focus from the instrumental value of participation to its categorical one we may find a way to ensure that the miracle continues.

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Chapter Seven: Conclusion

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Chapter One

Introduction

‘If you want to understand democracy, spend less time in the library with Plato, and more time in the buses with people.’

(Anonymous)

In the sixteen – almost seventeen – years since kilometre-long queues of patient South Africans waited to cast their vote, academic and non-academic contributions analysing democracy in South Africa have been prolific. So why another and why now? After all, 2010 is not a particularly significant year in South Africa – with the exception perhaps of being the host nation of the FIFA World Cup. But this is partly why the timing is right: with no national or provincial elections, no presidential recall (as occurred in 2008), in a sense, not much politics in general, we can concentrate on the bigger picture and take stock of where we are instead of focusing on specific and often momentous events. *Why* I believe another contribution is necessary at all is because although important and valuable contributions have been made, most are offered by political scientists: empirical, often largely descriptive, studies which use general indicators of democracy to assess the extent to which South Africa is democratic. In contrast, political theorists tend to examine democracy as a normative concern and hence the state of democracy in the country is assessed in terms of the author’s personal preference for a particular form of democracy – for example, deliberative democrats such as Edward LiPuma and Thomas Koelble (2009) argue for greater deliberative opportunities based on the supposed ‘culture of democracy’ amongst (black) South Africans but seldom justify these arguments with empirical evidence. Thus although there is an abundance of scholarship on democratic theory on the one hand, and democracy in South Africa on the other, work that combines the two is in short supply. This is not simply a

methodological issue – empirical political theory is a much smaller area of research than either (empirical) political science or (normative) political theory. My concern is that without using the brushes of political and science *and* political theory, the picture being painted of democracy in South Africa is incomplete. Many of the ‘blueprints’ offered for achieving accountable, legitimate and responsive government – broadly accepted as the core values of ‘rule by people’ – whether through more participation or less, seem to ignore the importance of treating the study of democracy in an engaged and concrete way rather than as a strangely scientific matter on the one hand or as an abstract and idealised notion on the other. Empirical positivists are moving from an assumption of democracy as the hegemonic model (liberal, representative and capitalist) while normative idealists construct democracy in relation to key values. Thus, like Rattigan’s actors, the two sit at separate tables: my approach is to bring the two sides together. In so doing, my aim is not only to make a contribution to how we do – and should - understand democracy in South Africa but to how we do – and should – understand democracy itself. This may require a series of compromises: for example, the empiricists will have to be prepared to measure ‘democracy’ according to different, and perhaps less conventional standards, and the theorists will have to think about what is actually doable, and desirable, in the current complex world.

But changing the way we think about democracy itself is not the primary goal of this thesis. I want to suggest that we can – and should – change the way we think about democracy in South Africa. In this sense, I am aware that some may feel that the work is not entirely objective, that I am trying to adapt the theory of democracy to fit the reality of South Africa in order to put a ‘positive spin’ on things. To some extent I suppose this may be true: the idea for this thesis has its origins in the classrooms and libraries of the London School of Economics, where I frequently felt I had to defend democracy in South Africa against

Western and North American criticisms of it. The research for and writing of the thesis took place in South Africa, during a time when one president was recalled, another was put on trial for rape, and the doom-mongers of the pre-1994 days began to rear their heads again. While these were indeed dark days for democracy in South Africa, it seemed to me that the significant pessimism – this time among South Africans themselves – was founded on emotion rather than reality. What was being said and what my experience was seemed vastly at odds. For a brief period in mid-2010, the overwhelmingly positive image of South Africa portrayed during the FIFA World Cup allayed concerns of both locals and foreigners who were reminded of the miracle of the rainbow nation. I hope that the euphoria of that time has not affected the objectivity of the work presented here. But just as Richard Arneson has argued that ‘democracy is not all or nothing’ (Arneson 2009: 108), I argue that South African democracy is not ‘miracle or misery’ – it is a bit of both.

Chapter Two provides an account of democracy in South Africa, its historical context, the character of both formal and institutions and leadership, and informal institutions and the citizenry. It considers the possible explanations for the protracted dominance of the African National Congress (ANC) – the electoral system, the role of race and ethnicity in voter behaviour, the state of opposition parties and the historical and cultural effects of Apartheid and the liberation struggle. While the chapter is of necessity, largely descriptive, it does examine some of the competing claims about the state of democracy in the country. It raises the question of whether part of the reason for what I consider to be overly pessimistic assessments of South African democracy could be due to the tendency of analysts to examine democracy in the country in terms of conceptions of democracy that are traditionally Western and thus may not do justice to the South African experience.

Moving away from South Africa, Chapter Three of the thesis focuses on understandings of democracy itself. Acknowledging the myriad ways in which democracy has been conceived, I argue that on the most fundamental level, democracy is about participation – it is ‘rule by the people’. I consider the conventional arguments about why participation is valuable – it is the optimum system for procuring legitimate, responsive and accountable governments – and about the ways in which participation should occur in order to fulfil these values – liberal representative arguments for less participation, primarily voting, and deliberative arguments for more, specifically deliberation. I then explore the reasons for these arguments – that is, given that both liberal representative democrats and deliberative democrats value participation, why do they disagree on how much participation is valuable? In addition to the common explanations for this disagreement – that one has a more positive view of human nature and citizens’ capabilities than the other – I offer alternative readings for the arguments for both limited and extensive participation focusing specifically on the idea of equal or egalitarian participation. Unlike many analyses of democratic theory, I conclude that liberal representative democracy and deliberative democracy are not opposite sides of the democratic spectrum because irrespective of differences in institutional design, both conceptions aim to achieve egalitarian participation among citizens. Moreover, the value they attach to egalitarian participation is the same: participation is instrumentally valuable as it can bring about stable, effective and legitimate government.

The final part of Chapter Three introduces an alternative conception of participation’s value in which it is suggested that certain kinds of participation can contribute to the creation of moral citizens and thus participation has a value even if its practical benefits (legitimacy, accountability and effectiveness) are limited or lacking. The argument is that participation by the producers of government does not just ‘improve’ the government that is produced, but

‘improves’ the producers of government themselves. The conception of participation as having a categorical value is not positioned as a replacement of the conventional, instrumentalist conceptions but rather as a complement to them. Whereas instrumental accounts focus on the ‘rule’ part of ‘rule by the people’, the categorical account focuses on the ‘people’ part: in so doing, I argue that it can extend our understanding of what democracy is and how and why it should be valued. In other words, I am not discounting or even underplaying the very real value of democracy as the system most capable of producing ‘good government’ but suggesting that democracy also provides the opportunity for facilitating human fulfillment, for citizens to develop as moral agents as well as political ones, and that participation has this value *irrespective* of whether it creates responsive and accountable government.

Chapter Four combines the theoretical material of Chapter Three with the empirical material of Chapter Two in that I examine various aspects of South Africa’s democracy, assessing the strengths and weaknesses of various institutions according to whether they are achieving the outcomes that liberal representative and deliberative accounts of democracy claim (various types of) participation achieves. Liberal representative accounts focus on mechanisms which do or do not allow citizens to ‘control the controllers’ and as such, I explore a number of these mechanisms: elections, judicial independence, restrictions on executive power, the media and the police. I conclude that the results of the audit of democracy in South Africa on liberal representative measures are qualified at best in that there are a number of concerns regarding the extent to which there is real control of the controllers.

In contrast to liberal representative accounts, deliberative accounts focus on the extent to which deliberative processes are available to citizens so that they may have their preferences

refined (and possibly) met. To evaluate the amount and effectiveness of democratic deliberation in South Africa, I focus on local government for it is at this level that most of the opportunities for public participation and deliberation exist and are seen to provide citizens with the means to have their preferences met, or at least considered. The results are again ambiguous – it seems that the rhetoric of the government’s commitment to participation has not led to the empowerment of citizens to take charge of their own development or to ensure responsive government.

In the final part of Chapter Four I turn my attention to an analysis of how South African democracy fares on a categorical account – an account of participation where the value of participation is attached to the extent to which it promotes citizens’ moral development. Evaluating participation in terms of its categorical value is much more difficult than evaluating it on liberal representative and deliberative accounts because examining participation in terms of its non-instrumental benefits requires us to develop an entirely new – and different – set of indicators. I suggest that a starting point in the search for these indicators is the way in which we conceptualise institutions themselves: from constraints to opportunity sets. Because a categorical account of democracy does not focus on the extent to which citizens can fulfil their political duties to the state (producing and controlling the government) but rather on the extent to which citizens can fulfil their moral duties to themselves, I suggest that an account of institutions as opportunities is more appropriate than that of constraints. The analysis concludes with a claim not only that there is some evidence of the recognition of the categorical value of participation by citizens but that we can only explain the levels of participation by invoking such an account. In other words, despite unfulfilled demands, pessimism about their leaders and an increasing sense of their limited ability to influence politics, South Africans seem to regard their participation as valuable in

and of itself and to believe that they have a duty to participate irrespective of the effects of their participation on their government.

Chapter Five entails a return to the focus on democratic theory: in much the same way as I analysed ‘democracy’ in Chapter Three, this chapter analyses ‘democratic citizenship’. The claim that democracy ‘means’ participation by citizens in matters that affect them requires us to examine not only the participatory mechanisms but the participants in these mechanisms themselves. Institutions can do so much: the way these institutions are used does the rest. Examining accounts of citizenship on both a liberal representative conception of democracy and a deliberative one, I argue that a ‘good’ citizen on the former conception is someone who participates in elections, abides by outcomes of elections and respects the rights and freedoms of other citizens; on the latter, the good citizen is someone who has the desire to participate extensively and rationally and is open to the possibility of having her preferences altered by ‘reasoned argument’ in the deliberative process. While the amount of and manner in which citizens participate differ on these accounts, I assert that the motivation does not: citizens participate because there are instrumental benefits in participating. I contrast this with a categorical account of the good citizen in which participation is considered a moral obligation rather than a political (and necessarily instrumental) one. I then attempt to find support for the idea of participation as being a moral obligation in two very different sources: the African philosophy of Ubuntu and ancient Greek philosophy, specifically that of Socrates. In so doing I claim that we have to look beyond the discipline of political science and even of political theory if we want to understand democratic citizenship and the obligation of democratic citizens to participate: any real understanding requires us to consider the contributions to citizenship from the arena of moral philosophy.

The issue of citizenship is much more important on a categorical account of democracy because the focus of participation on a categorical account of democracy is on the participants rather than on the government brought about by the participation. Evaluating democracy in terms of a categorical value of participation requires us to look at what types of participation are conducive to the moral development of citizens. This is critical – claiming that there is a moral obligation to participate is not the same as claiming that the participation itself is moral. In other words, fulfilling one's obligations as a democratic citizen on a categorical account of democracy is not simply a matter of choosing to participate even if the instrumental benefits of participation are unlikely to result: a good citizen on a categorical account has to choose to participate in a moral manner.

Having established various indicators of good citizenship according to liberal representative, deliberative and categorical accounts of democracy in Chapter Five, in Chapter Six I turn to an assessment of how democratic South African citizens are according to these indicators. To do this, I focus on the issue of crime, not only because crime is a national priority among South Africans - in 2008, in a survey across nineteen countries in Africa, South Africans believed crime was the second most important problem on the public agenda, coming out nearly three times the mean across all countries surveyed – but because it is one of the areas where the government is perceived to have had the least success – 69 percent of South Africans believe the government is unable to handle crime. Because the government seems to be failing to deal with the issue of crime, citizens have begun to deal with the problem themselves. The high number and wide variety of responses can be examined in terms of whether they indicate the existence of 'good citizens' according to liberal, deliberative and categorical accounts. In other words, we can assess the participation of citizens in dealing with crime on instrumental grounds by looking at the extent to which their approaches 'work'

and whether they fit into firstly, liberal conceptions of good citizenship where citizens' responses indicate a respect for rights and freedom, and perhaps some version of equality; in terms of deliberative accounts, we can identify whether the responses are reasonable, deliberative and so on. Examining crime on a categorical account is of course somewhat different in that we are not focusing on the extent to which citizens' participation 'gets results' – that is achieves the political ends desired by the participants - but rather the extent to which citizens see participation as a duty (irrespective of the outcomes of that participation) and the extent to which their participation promotes (or looks to be able to promote) their moral development.

Evaluating the 'democraticness' of South African citizens in the context of their responses to crime cannot of course provide us with anything near a conclusive account generally: this is not the intention however. Chapter Six is more of a case study in which a specific issue is examined in terms of three conceptions of democracy and democratic citizenship. In terms of liberal conceptions of citizenship, some citizens' responses indicate a respect for rights and freedom, but others sacrifice equality for the sake of efficiency; in terms of deliberative accounts, many responses are neither reasonable nor deliberative. As mentioned above, examining responses to crime on a categorical account is of course somewhat more complicated since the focus is not on the results of participation but on the manner of it and this is compounded by the problem that in the absence of specifically designed survey data, it is difficult to assess whether citizens do consider participation to be a moral duty or whether they are participating in the hope that its instrumental benefits will result. That said, some of the ways in which citizens do participate do not indicate a moral form of participation – that is, a form of participation that contributes to their moral development – but others do. Like the results of how democratic South Africa is in 2010, the results of how democratic South

African citizens are in 2010 are mixed. But unlike those who regard mixed results as an indication that the miracle is over, I argue that it is a sign that it is not, or at least not yet.

Although the task I set for myself in this thesis is to provide a more balanced understanding of the state of democracy in South Africa in 2010, there is a separate but related conclusion that can be drawn – not about the way we think about democracy in South Africa, but the way we think about democracy itself. I suggest that while a deeper understanding of democracy in South Africa sheds light on the limits of democracy in the country, it also sheds light on the limits of conventional accounts of democracy in general. These accounts - for determining what a democracy is and is not, and what its value is and should be - thus require revision if they are to have meaning in the real world of politics. Like Athenian democracy differs from liberal representative democracy, which in turn differs from deliberative democracy, I suggest that we need to think about the revisions required today. Furthermore, I suggest that these revisions should not be undertaken by either political scientists or by political philosophers: it needs to come from conversations between them. Throughout this thesis, I adopt a ‘pick and choose’ approach in terms of the authors, theories and contexts I discuss. That is, while I bring together a series of influences - Socrates, Aristotle, Kant, Mill – in order to suggest that it is on the basis of these ideas that one could build a more coherent moral account of the moral duty individuals have to participate in politics, I am well aware that in their own context, many of the ideas of these theorists are avowedly anti-democratic. Similarly, while I argue in favour of the notion that context matters and that I argue that we need to mix theory and empirical analysis so as to be able to situate or contextualise supposedly general or universal arguments, I do not subscribe fully to the positions of Raymond Geuss and James Tully who are against ethics-first universalism. Just like democracy itself is about choosing from an array of options which works for the individual,

so have I selected aspects of political science and political philosophy in order to justify my account of democracy. Somewhere between the library and the bus station lies an account of democracy which does justice to both ideal theory and pragmatism. I argue that democratic South Africa provides a good place to start looking for it.

Chapter Two

Democracy in South Africa

We have fought for a democratic constitution since the 1880s. Ours has been a quest for a constitution freely adopted by the people of South Africa, reflecting their wishes and their aspirations. The struggle for democracy has never been a matter pursued by one race, class, religious community or gender among South Africans.

(Nelson Mandela, Inauguration Speech, 10 May 1994)

The Constitution of the Republic of South Africa took effect on 4 February 1997. In contrast to Apartheid South Africa, where parliament was sovereign, the Constitution of the ‘new’ South Africa was to be the ‘supreme law of the Republic’ (Constitution of the Republic of South Africa 1996, Preamble). The democratic dispensation possesses all the institutions and mechanisms which are normally understood to constitute a liberal democratic state under a constitution based on human rights. There is an extensive range of constitutionally guaranteed freedoms, many of which are entrenched by a bill of rights, which also provides for a number of institutions concerned to protect specific kinds of rights - including a Gender Commission, an Independent Electoral Commission, a Human Rights Commission, a Judicial Service Commission, a Public Protector and an Auditor General. Lauded as being one of the most progressive constitutions in the world, the South African constitution incorporates socio-economic rights including health care, food, water and social security. The implementation of these has in several cases¹ been mandated by the Constitutional Court

¹ In 2000, in a ruling that gave content to the right of access to housing, the Constitutional Court ruled in favour of the plaintiff, Mrs Grootboom, saying that she and others living in an informal settlement (near Kraaifontein) had a right to demand that the state act reasonably to provide access to housing to all South Africans by devising and implementing a housing policy that did not neglect the poorest and most vulnerable members of society. <http://www.right-to-education.org/node/660>. [Accessed 5 July 2010] In 2002, after a protracted legal war with the Minister of Health over the provision of anti-retroviral drugs to pregnant women to prevent mother-to-child transmission of HIV, the Treatment Action Campaign (TAC) took the matter to the Constitutional Court. Citing the terms of Section 27 (1) and (2) of the Constitution, the court ruled in the TAC’s favour and the rollout of Nevirapine commenced a few months later.

emphasising just how seriously these rights are taken and the clear separation of power between the judiciary on the one hand, and the executive and legislature on the other. In terms of the system of government, power is spatially concentrated at the national level, although there are some provincial and local powers, supported by both the Constitution and the Electoral Act of 1993. The legislature is, as in most party systems, dominated by the executive (Piper and Matisonn 2009: 147). In terms of elections, the ‘hallmark’ of liberal representative democracy, all four national general elections are regarded as having been broadly free and fair, and on this basis, the government is seen to be legitimate.

Despite this, there are concerns about South Africa’s democracy, related specifically, although not exclusively, to the results of these national elections – not in terms of fraud, but in terms of the substantial majorities secured by the ANC. On Samuel Huntington’s ‘two turnover test’ (1991) election results from ‘democratic’ South Africa preclude us from defining South Africa as democratic. The sizeable majority of the ANC is viewed by many analysts as a dangerous sign for the prospects of democracy given that party competition and the rotation of parties in power are traditionally regarded as a key test of democracy. The low proportion of uncommitted voters and the large relative advantage for the governing party is seen to indicate little prospect for electoral change in the near future.

In exploring the implications of recent political developments for the future of South African democracy, most political scientists have tended to follow the tradition of defining democracy as it is found in the real world: elite and/or party competition through elections, specifically free, fair and regular elections, the outcome of which is abided by all. The core idea is that elections provide both legitimacy and the most important form of elite accountability: the acceptance of the procedures of elections secures the former and the

decision by voters to choose alternative leadership if they do not approve of the incumbents secures the latter. Electoral dominance by one party is argued to contradict the widely lauded concept of multi-party democracy and the emphasis on elections in liberal representative democratic thought. If electoral contestation has no genuine consequences – if outcomes are pre-determined irrespective of performance - there is little incentive for the governing party to be responsive to citizens' needs and interests. Without prospects for alternation in power, one-party dominance bears less resemblance to legitimate democracy, than to thinly veiled autocracy. In a system in which citizen participation is limited to installing a party in government, the formal institution of liberal representative democracy does not mean very much if regardless of performance, the same party is returned to power election after election. If, as Thomas Pempel argues, democracy is predicated on the ability to 'throw the rascals out', how convincing is a democracy which is not characterised by 'periodic examples of rascals actually flying through the doors?' (Pempel 1990: 8). Thus while elections may not be a sufficient indicator of democracy, because they are a necessary – even fundamental – one, an analysis of elections provides a useful starting point for assessing levels of democracy in South Africa.

According to subsection 1(d) in the Founding Provisions of the Constitution, South Africa, as a 'sovereign, democratic state' is founded on the values of universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, all of which are aimed at ensuring accountability, responsiveness and openness. Section 19, the Bill of Rights, states that every citizen is 'free to make political choices' and that this includes the rights 'to form a political party; to participate in the activities of, or recruit members for, a political party; and to campaign for a political party or cause'; furthermore, that '[e]very citizen has the right to free, fair and regular elections for any legislative body

established in terms of the Constitution’ and ‘has the right to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and to stand for public office and, if elected, to hold office’. Focusing on elections and the electoral system specifically, the Interim Constitution of 1993 did not stipulate precisely what form (in terms of an electoral system) national elections were to take other than that the electoral system was to result ‘in general, in proportional representation’ - a stipulation that was confirmed in the Constitution (Act 108 of 1996, Section 46: 1d).

The electoral system used in the 1994 and 1999 elections was a proportional representation closed-list system (list PR) with half the National Assembly (NA) elected from nine provincial lists and the other half from a single national list, ultimately having the effect of one nationwide constituency (with 400 members). Because the list is closed, voters can only cast a ballot for a party not an individual and lists are almost always drawn up by party elites as opposed to party members. Initial proposals regarding the first election put in a five percent threshold but this was dropped when the ANC and National Party (NP) agreed to a concession to the smaller parties (although the five percent threshold stood in relation to the allocation of portfolios in the cabinet of national unity). The Droop Quota was used to allocate seats, and surplus seats were awarded by an adaptation of the Largest Remainder Method. The President was (and still is) elected by the Members of Parliament (MPs) which theoretically means the President could come from a party other than the majority party but in reality, the election of the President is a rubber-stamp in that the ANC has dominated every election. The President appoints the deputy President although in 1994, any party that received more than twenty percent of the vote could elect a deputy President and this resulted in two deputies – Thabo Mbeki from the ANC and (former South African President) Frederick Willem de Klerk from the NP.

The 1999 electoral system was much the same as that used in 1994: the only significant difference was that there was no longer a requirement for a ‘government of national unity’ (GNU). In fact, the GNU had all but collapsed² when, on 9 May 1996, a day after the final Constitution was adopted in the NA, de Klerk announced his party’s withdrawal from the GNU and his resignation from the position of deputy President. The NP transformed itself into the New National party (NNP) in 1997, which was when de Klerk retired from politics. The NNP also ceased to be the official opposition party after 1999, replaced by the Democratic Party (DP) under Tony Leon.

The original Electoral Act (1993) provided for the 1994 and 1999 elections only and although then President Nelson Mandela had said (on 26 March 1999, in the final sitting of Parliament before the 1999 elections) that a re-examination of the electoral system was needed ‘so as to improve the nature of our relationship, as public representatives, with the voters’³ an Electoral Task Team (ETT) was only set up in three years later, in March 2002, to discuss options for the elections in 2004 and beyond. Just three months later however, in response to a proposal by the DP to introduce floor-crossing in the NA⁴ the Constitution of the Republic of South Africa Amendment Act 18 of 2002 was passed. This amendment effectively set aside the anti-defection clause included in the Constitution which prohibited the formation of new parties or party realignments without the MPs concerned losing their seats. Floor-crossing was vehemently opposed by a number of politicians and constitutional experts on the basis that it undermines a system in which parties rather than politicians own parliamentary seats. The way in which floor-crossing was implemented also raised concerns,

² Although the Inkatha Freedom Party (IFP) and the Azanian People’s Organisation (AZAPO) continued to hold seats in the cabinet, as minority partners, by the 2004 election, when IFP leader Mangosuthu Buthelezi refused Mbeki’s invitation to be deputy President, the GNU ended.

³ <http://constitutionallyspeaking.co.za/a-call-for-electoral-reform-politicsweb>. [Accessed 9 December 2010]

⁴ Supposedly on the basis of allowing politicians to change parties on the basis of principle but more likely so it could regain some of the NNP members it had ‘lost’ during the collapse of the NNP-DP coalition in 2001 and so that it could formalise its relationship with the Federal Alliance and hence become the Democratic Alliance.

in particular, that the defection must represent not less than ten percent of the total number of seats held by the party that the defector leaves. This meant that members of smaller parties could easily defect in that a single seat often represented more than ten percent hence most parties only needed two or three members to make defection possible. In contrast, it was virtually impossible for members of the ANC to defect since this could only come about if twenty seven MPs chose to leave. Because of this stipulation, the ANC gained fourteen seats while the Democratic Alliance (DA) lost three between 2002 and 2004. Given the opposition to floor-crossing by so many, one of the tasks of the ETT was to address the issue of 'crosstitution' as it was often termed.

The report released by the ETT in January 2003 made only minor recommendations in terms of alteration to the existing system on the basis that the survey commissioned and carried out for the ETT left delegates

in no doubt that there was a very high level of satisfaction with the current system. For example, 74% of voters were 'satisfied with the way we elect our government', 72% felt that the current system was 'fair to all parties', 81% that it ensured 'we include many voices in Parliament', 78% that it gave voters 'a way to change the party in power' and 68% that it helped voters 'hold the parties accountable for their actions.'⁵

Lack of accountability and availability or responsiveness of individual politicians was regarded as the weak point of a system with which respondents (from both the public opinion survey and from the input of representatives of political parties) were otherwise generally satisfied. The recommendations made by the ETT were almost entirely aimed at increasing accountability (discussed in more detail below) on the basis that a significant majority of those surveyed wanted closer interaction with their politicians: 71 percent said they wanted to

⁵ <http://www.eisa.org.za/events/etteam.htm>. [Accessed 3 July 2010]

vote for a candidate from the area where they lived, 64 percent that MPs should ‘live close to the people they represent’ and 53 percent that party candidates should be chosen by party members rather than party leaders⁶. Political party representatives to the ETT largely confirmed the results of the public opinion survey – both in terms of the positives of the system in place regarding fairness, equality and inclusiveness and the negatives regarding accountability where although most felt that the electoral system helped voters hold political parties to account, many more pointed to the limitations of the system on helping voters to hold individual representatives to account. A significant majority of party representatives was in favour of candidates coming from areas which they represented as a means of improving their individual accountability.

While the ETT argued that electoral systems cannot be expected to ensure accountability or responsiveness, members acknowledged that changing from a single constituency to sixty nine constituencies could aid in this regard. Nevertheless, these recommendations were not accepted by the ruling party and the list PR system for national, provincial and local⁷ government elections remains in place although floor-crossing ceased in January 2009, prior to the fourth national election.

Given the illegitimacy of elections prior to 1994, fundamentally in terms of the lack of representation of the majority of the population, it was very important for the new South Africa’s electoral system to ensure widespread representation. In addition, in 1994, there was a real concern that ‘spoiler parties’ would refuse to participate in the elections (especially those who had only limited support or geographical presence). The list PR system adopted ensured a significant degree of inclusivity in terms of the representation in the National

⁶ <http://www.eisa.org.za/events/etteam.htm>. [Accessed 3 July 2010]

⁷ In the case of local government, there is an exception in that half of the councillors are elected from wards.

Assembly (NA) of parties with a small proportion of the vote. A hypothetical re-run of the 1994 election under different systems shows that under a plurality system and an alternative vote system, only three parties – the ANC, the NP and the IFP - would have been represented in the NA. Under list PR, the Freedom Front (FF), the Pan Africanist Congress (PAC), the DP and the African Christian Democratic Party (ACDP) gained representation with nine, seven, five and two seats respectively (Reynolds 1999). In addition, as discussed above, a decision was taken in 1994 that no threshold (that is, a minimum percentage of the overall vote in order to be awarded a seat) would be imposed, also to ensure maximum representation. Currently, a party needs to obtain 0.2 percent or 35 860 votes in order to be allocated a single seat in the NA. In 2009, twenty six parties contested the elections; thirteen of these were awarded seats, four of them with fewer than 50 000 votes.

Another reason which explains why the single constituency list PR system has been used is that this system is not susceptible to the manipulation of electoral boundaries (or ‘gerrymandering’) that constituency systems are. In the first instance, drawing up electoral boundaries, as well as their subsequent redrawing, would have been an exercise fraught with conflict in South Africa given the distributional consequences involved as a result of the Group Areas Act (1950) and the Bantu Self-Government Act (1959), both of which had dramatic effects on the location of and resources provided for various population groups. Secondly, the electoral engineers wanted to prevent a repeat of the 1948 elections which brought the NP to power (and marked the start of the policies of ‘Grand Apartheid’) despite the party having received 140 000 fewer votes than the opposition United Party (UP), a result blamed solely on the demarcation of electoral district boundaries that favoured the NP.⁸ In

⁸ Most of the seventy seats won by the NP during the 1948 election were in rural areas, while most of the sixty five seats won by the UP were in the urban areas. According to the Constitution that South Africa had at the time, the constituencies in the rural areas were smaller than those in urban areas. This meant that there were more rural constituencies than urban ones. This was to the benefit of the NP, since it tended to do well in rural

list PR, there are few wasted votes; combined with a single constituency system, there are none.

Another factor taken into consideration in 1994 was the need for as uncomplicated a system as possible given levels of illiteracy (in 1995 around 30 percent of the adult population⁹) and the fact that the majority of citizens had never before cast a vote (excluded as they were from South Africa's 'herrenvolk democracy'). Again, list PR appeared to achieve this goal: all it requires of the voter is a relatively simple 'X' vote and the choice is categorical rather than preferential (as it is in the PR systems of Alternative Vote and the Single Transferable Vote). Vote-counting in list PR, particularly where the whole country is used as a single district, is also an uncomplicated exercise in comparison with some others.

Perhaps because of the advantages that list PR has had in South Africa, but perhaps also because it has proved so very beneficial to the ANC, there has been little talk of electoral reform since 2002. While there is little doubt that the ANC would dominate under any system, there is little incentive to alter the current system, especially if the alternative weakens parties' powers over its MPs given the value placed on party discipline by the ANC elite. To be fair, it is not just the ANC that is satisfied with the current system: findings from a 2008 survey do not 'suggest a high level of popular dissatisfaction with the current system, particularly when they are considered in comparison to other countries' (Afrobarometer Briefing Paper No. 76). Hence the fact that the cabinet has not revisited the ETT report (despite a decision being taken that it could do so after the 2004 election if it so wished) is not surprising.

areas in terms of votes. It has been calculated that if rural and urban votes had been of equal value, the UP would have won the election. <http://www.sahistory.org.za/pages/libraryresources/online20books/turningpoints/bk4/chapter3.htm>. [Accessed 5 July 2010]

⁹ http://www.info.gov.za/otherdocs/2007/development_indicators.pdf. [Accessed 5 July 2010]

Having considered the electoral system, let us look at the issues of electoral participation: who can and who does participate. South Africa has one of the most inclusive franchises in the world. Every citizen aged eighteen and above is permitted to vote, and while those serving a sentence of imprisonment were excluded in the 1994 and 1999 national elections, a Constitutional Court ruling in March 2004 against the Electoral Laws Amendment Act of 2003 declared that while, as a matter of principle the South African parliament is entitled to limit the right to vote if there is a demonstrable justification for the limitation, in the case of prisoners there was no such justification. People with physical disabilities or who are illiterate are also provided for at all polling stations and in the case of citizens who have mental disabilities, only those who have been detained under the Mental Health Act (18 of 1973) or those who have been declared to be of 'unsound mind or mentally disordered' are not permitted to vote. In practice, these restrictions are only imposed in the most severe cases.

There is also a Special Vote for citizens who are away from South Africa at the time of the election and are unable to vote at a South African Embassy or Consulate. The Special Vote is cast before their departure (if the absence is due to being in the service of the government or living in the household of such a person; or because the citizen is on vacation, a business trip, attends a tertiary institution or is participating in an international sports event). The Special Vote is also used for patients in hospital, people with physical disabilities which prevent them from making their way to a polling station, and pregnant women (if they so choose).

While the franchise is undeniably extensive, many critics point to the requirement of 'voter registration' as a practical limitation on the franchise. At the time of an election only citizens who have registered to vote and whose names thus appear on the Voters' Roll may cast a

ballot. The Voters' Roll has to be certified before any election. To be entered on the roll one must first apply for registration in person, usually only for the voting district in which one is 'ordinarily resident'. The Voters' Roll for the election closes as soon as the election date declared by the President is published in the Government Gazette. Figures below indicate the effect of registering on turnout.

The Effects of Voter Registration on Turnout

	Eligible Voters (registered to vote)	Votes cast as % of registered voters	Votes cast as % of population (potential) voters
1994	19 726 610	*	85%
1999	18 172 751	89%	64%
2004	20 674 926	76%	55%
2009	23 181 997	77%	58%

* No registration in 1994.

1994 did not require registration: voters had to present formal identity documents and even this requirement was enforced with flexibility in that 2.5 million temporary identity documents were given out and proof of residence was also considered adequate. The election being a founding one notwithstanding, the turnout of 89.9 percent (of 21.7 million eligible voters) is significantly higher than in subsequent elections which required registration. Not only has the Department of Home Affairs (responsible for producing identity documents) been fraught with problems and thus affected the ability of citizens to register but the cost of voting for citizens doubles when registration is required. This cost is not insignificant given the levels of poverty in South Africa: 26 percent of the population was living on less than

\$1.25 a day in 2000, the last year for which the figure is available and in 2010, two-thirds of the income of the poorest twenty percent was derived from social assistance grants¹⁰.

The figures above show the effects of registration on turnout compared with non-registration, but there are additional worrying trends. Population figures show that between 1994 and 2004 the number of people eligible to vote increased by 5 million; yet the number of registered voters only increased by 2.5 million¹¹. The actual number of votes cast in 2004 (15 863 558) compared with 1994 (19 0726 610) decreased by 3.86 million. The ANC's support in 1994 was 64 percent, (of those who voted – eligible population figures are not available because population data in 1994 was limited and that which is available is considered inaccurate); its support in 2004, although increased in terms of votes cast to 70 percent, was actually (in terms of all eligible voters) much lower – 39 percent. In terms of representation, this figure is concerning: a government elected by under 40 percent of the eligible population can hardly be said to be fully representative. In addition, opting out of voting as many citizens did in 2004 may be an indicator of real dissatisfaction – not only with the competing parties but with the system of democracy itself¹².

Part of the reason why all four of South Africa's national elections have been declared free and fair by both local and foreign observers has to do with the secrecy of the ballot and the importance accorded to this aspect of elections. Again, this has its roots in 1994 where political violence and intimidation was seen as a real threat to the election process, particularly in the province of KwaZulu Natal which had been the scene of bloodshed and

¹⁰ <http://www.irinnews.org/Report.aspx?ReportId=88038>. [Accessed 18 November 2010]

¹¹ Although this changed between 2004 and 2009 (where the population of eligible voters increased by 1.9 million while the increase in registration was around 2.5 million), as of May 2010, registration figures have dropped to 22 831 105 (possibly as a result of, among other factors, the collapse of COPE discussed below).

¹² Of course, it can be argued that reduced participation is a sign of satisfaction but as is discussed below, the degree to which this line of argument is convincing in the South African context is minimal.

threats to both IFP and ANC supporters (the former being a stronghold of the traditional Zulu-based party). In 1994, observers from the United Nations, European Union and Organisation of African Unity (as the African Union was then) declared that ‘South Africans’ confidence in the secrecy of the ballot was manifest.’¹³ A survey carried out in 1999 confirmed the perception that the secrecy of the vote was protected: two thirds felt it was either ‘not very possible’ (16 percent) or ‘not possible at all’ (50 percent) for someone to find out how they marked their ballot. Among those who said they would not vote, 46 percent cited the non-secrecy of the ballot as their reason¹⁴. What is worth noting however is that while the 2008 Afrobarometer survey showed that those who felt ‘somewhat free’ (21 percent) and ‘completely free’ (61 percent) to choose who to vote for without feeling pressured, the same survey revealed that 29 percent of South Africans feared becoming a victim of political intimidation or violence during election campaigns ‘a little bit’ and 30 percent feared it ‘somewhat or a lot’. More than a third of those who said they were voting for opposition parties were in the ‘fear’ category as were those who said they would not vote at all. When asked whether they felt that ‘a powerful person could find out’ how they voted, 20 percent responded ‘somewhat’, 13 percent said it was ‘very likely’ while 9 percent were not sure. This means that between 1999 and 2009, confidence in the secrecy of the ballot decreased from 66 percent to 42 percent.

It is important to consider electoral choice, especially given the lack of choice which characterised South African politics prior to 1994. Between 1961 and 1974, Helen Suzman was not only the sole member of the Progressive Party and the sole MP unequivocally opposed to Apartheid; she was the only female in the House of Assembly. One of the most important contributions made by the list PR system has been in terms of levels of

¹³ <http://www.country-data.com/cgi-bin/query/r-12171.html>. [Accessed 28 December 2010]

¹⁴ <http://www.boell.org.za/web/144-346.html>. [Accessed 26 December 2010]

representation achieved by women. As a result of the 2009 elections, 178 of 400 or 44.5 percent of MPs in the NA are women, a much higher figure than in many established democracies that elect candidates in single member districts.¹⁵ In winner-takes-all single member districts, entrenched patriarchal or chauvinistic views of the electorate (or the perception of such views by politicians) lessen the willingness of parties to put up women candidates. By contrast, multi-member constituencies and party lists give a comparative advantage to female candidates as it is in the parties' interest to have a balanced ticket (Bogdanor and Butler 1983: 250). Indeed, although there is no quota for women on party lists (there is not even a requirement for them to be on the list at all), the ANC's 2009 list was split 50/50 and 54 percent of the listed candidates by the Congress of the People (COPE) were women. In addition, five of the nine Premiers (leaders of the provinces) are women.

But while the list PR system significantly increases the representation of women in government, in terms of the choice it provides to voters, it is somewhat less impressive. The presence of women on party lists is entirely at the discretion of the various parties: voters have no say whatsoever in this regard (or in any other relating to the composition of the lists). As indicated above, some parties take seriously the issue of female representation but others do not: despite being a woman, Helen Zille, leader of the DA which is the official opposition elected to have an all male cabinet (a decision for which she was taken to the Equality Court and charged with undermining the Promotion of Equality and Prevention of Unfair Discrimination Act¹⁶). While it may be enough for voters that women are on party lists, because they have no input into where on the lists the women are placed, it is possible that a party which obtains only a few seats will allocate those seats to men (because women are on

¹⁵ South Africa has the third highest number of female MPs after Rwanda and Sweden.

¹⁶ The charges were laid by the Congress of South African Trade Unions but were later dropped – after R50 000 of taxpayers' money was spent in preparation for the trial. Zille remained committed to her all male cabinet. She argued that her choice was not discriminatory and in fact the claim that only women can represent women (or that they represent women better than men do) was what was discriminatory.

the lower part of the list). The converse is also true: for voters who do not favour women representatives, the placement of women high on the list means that they will get into the NA, quite possibly against the desires of the voters.

Another factor to consider as a result of South Africans having to vote for parties rather than for individuals is that voters cannot register their preferences within parties, only across them. This is not a particular problem where parties are monolithic and unified but South African politics is characterised not only by alliances between parties (who contest elections on a single platform) but by significant differences within parties too. In every national election since (and including) 1994, the ANC has been in a 'tripartite alliance' with the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU). Neither the SACP nor COSATU appears on the ballot paper so if one wants to vote for either of them, one has to vote for the ANC. Conversely, a vote for the ANC is also a vote for the other two members of the alliance. In 1994, when the ANC was still (or was still perceived to be) a social democratic party, the differences between the three members were a matter of degree but all were clearly left of centre. In 1999 when Mbeki took over the presidency of the ANC from Mandela, he introduced neo-liberalism into the ANC and indeed, privileged fiscal discipline over the more leftist policies of welfare favoured by COSATU and the SACP. Thus in 1999 and 2004, what it meant to cast a vote for 'the ANC' was unclear in terms of voters' preferences for the direction in which the country should go. By 2008, the issue was further complicated by the factionalism within the ANC itself. At the 52nd ANC national conference held at Polokwane in December 2007 Jacob Zuma and his supporters were elected ahead of Mbeki and his supporters, to the ANC's governing body, the National Executive Committee and Zuma was elected as ANC president ahead of Mbeki. Zuma had been dismissed from his position as deputy president by Mbeki in 2005 (on the basis of charges of

corruption and rape having been laid against Zuma) but as president of the ANC he was able to – and did - recall Mbeki who was forced to tender his resignation as President in 2008. This is because the party, as opposed to the voters, elects the presidential candidate, hence the ANC president had the power to remove the South African president. Because the perception (somewhat justified although never made explicit) was that Zuma was aligned to the left and Mbeki to the right (or at least, the centre), those voters who had chosen the ANC in 2004 out of support for Mbeki and who voted for the ANC in 2009 could be characterised as ‘irrational’ since the direction of the ANC in 2009 was (or was perceived to be) very different from the direction taken in 2004.

While the factionalism within the ANC and among its partners does limit the choice of voters to some extent, the fact that matters came to a head in 2008 actually provided more choice for voters in that it gave rise to a new party, COPE. The birth of the party can be traced back to the recall/resignation of Mbeki from the presidency: two days after Mbeki announced his resignation, Mosiuoa ‘Terror’ Lekota, national ANC chairman and former Defence Minister, served the ANC with ‘divorce papers’ and soon after announced that a national convention would be held to discuss the future of South African politics and the possible formation of a new political movement. The result of Lekota’s statements was the resignation from the ANC of many Mbeki supporters, notably former Western Cape Minister of Safety and Security Leonard Ramatlakane and Mluleki George (Lekota’s former deputy minister and a party pioneer). Former Gauteng premier Mbhazima Shilowa, who resigned from his position soon after Mbeki and the cabinet resigned, announced that he had resigned his membership from the ANC and thrown his support behind Lekota’s convention. Former Eastern Cape premier Nosimo Balindlela announced her resignation from the ANC in order to join the

proposed new party followed soon after by Smuts Ngonyama, the former head of communications for the ANC¹⁷.

The new party was formally launched in December 2008 and Lekota was named president. Political analysts and disillusioned ANC supporters (many of whom had handed in – or burnt – their ANC membership cards), saw COPE as offering something new as an opposition party, precisely because it was born of the ANC and thus enjoyed similar struggle and liberation ‘credentials’ – the lack thereof being a problem with most other opposition parties (discussed below). And indeed, the early days of COPE provided support for the view that there was a real choice in party politics: in municipal by-elections held in early December 2008, COPE won ten of the 27 wards (its candidates ran as independents since the party was not registered); the ANC won only three wards (with a dozen of its candidates disqualified for missing the registration deadline) and the DA won nine¹⁸. And although COPE did not achieve the 20 percent it had aimed for in the national election in 2009, its 7.42 percent share of the vote was the third highest (behind the ANC and DA).

But after the initial success of COPE, and the hope that it would increase the choice for voters, internal problems, ironically the reason behind the formation of COPE, led to its downfall. The partnership between Shilowa and Lekota that had led to the press nicknaming the new party ‘Shikota’ collapsed: in May 2010, Shilowa supporters served notice of COPE’s vote of no confidence in Lekota (the president of COPE). Shilowa’s supporters, based largely in the Eastern Cape, objected to claims by Lekota and his supporters (largely from Kwa-Zulu Natal) that Shilowa (the deputy president) had mismanaged party funds. This led

¹⁷ <http://allafrica.com/stories/201005280421.html>. [Accessed 3 July 2010]

¹⁸ <http://allafrica.com/stories/201005280421.html>. [Accessed 3 July 2010]

to the statement by Shilowa that he did not recognise Lekota as president. In a High Court battle, Lekota was victorious and having the vote of no confidence effectively overturned, remained president of the party. Shilowa's camp then argued that since they were appealing the judgement, the vote of no confidence stood and hence Lekota was not the president. Ironically, Mvume Dandala, COPE's parliamentary leader (and the man who represented COPE on the 2009 ballot papers) seemed not to be involved in the presidential race, with some reporting that he has resigned, and others dismissing these claims. As of July 2010, the prognosis for COPE is not very good, with many predicting that it will not last long enough to compete in the next national elections. In his 'political obituary' for COPE, newspaper and radio journalist Eusibius Mckaiser writes:

The early days [of the child known as COPE] were that of a happy childhood. But soon the kid fell ill. Problem? He was not allowed to grow into a personality of his own. Far from spontaneously combusting, the vivacious little youngster was secretly dying a slow death due to getting an overdose of this and that medicine, all of which made him sick. One dad wanted nonracialism to the point of scrapping affirmative action. Another wanted to retain the feeding trough for black 'tenderpreneurs'. Some wanted a left-of-centre state that does not tell Nozipho in Diepsloot to pull herself up by her white madam's old bootstraps. Others wanted a smaller state that gives Nozipho the incentives to make her own bootstraps. Simply put, the youngster died because everyone forced themselves on to him. And so things went. In the end, asphyxiation did him in¹⁹.

What Mckaiser is alluding to is that although COPE was comprised of mainly 'rightist' ex-ANC members, the spread of these members in terms of the policies they desired was large and thus could not be ignored (just as they could not be ignored in the ANC before the breakaway). While tensions between Shilowa and Lekota got out of control in mid-2009, they were evident soon after the party was created: Dandala was COPE's representative on

¹⁹ <http://allafrica.com/stories/20100528421.html>. [Accessed 3 July 2010]

the ballot because Shilowa and Lekota both wanted that position and this was the compromise. (It was also part of the reason for COPE's poorer-than-expected electoral performance – many potential COPE supporters either did not know who Dandala was or were turned off by the fact that he is a Reverend). Ultimately, while COPE did increase choices in the 2009 elections, it is unlikely that it will be around in the future. A meeting scheduled to take place in December 2010, to discuss Shilowa's 'recommended expulsion' was first delayed and then cancelled after Lekota and his supporters staged a walkout, leaving Shilowa's supporters to 'elect' him as the new party president although he is not recognised as such by the Lekota faction (*Business Day* 21 December 2010). The continued battle between the two factions continues as they both claim to own the party trade mark and name.

But there is another explanation for why COPE (and other parties) did not really test the ANC's dominance, one related to electoral choice. Party politics in the twenty first century is characterised by 'catch-all' platforms and the clustering of parties round the centre rather than to the left or right. In South Africa, this is exacerbated by the fact that parties typically campaign around the same issues and have virtually identical aims. Consider the 2009 party slogans²⁰:

ANC 'Working together we can do more'

DA 'One Nation One Future'

IFP 'The Tried and Tested Alternative'

UDM 'Now's the time for ALL South Africans'

ID²¹ 'Be a Part of the Solution'

COPE 'An New Agenda for Change and Hope for All'

²⁰ <http://www.boell.org.za/web/144-346.html>. [Accessed 3 July 2010]

²¹ The Independent Democrats, led by Patricia de Lille, former leader of the PAC.

As Cherrel Africa points out, parties promise to address the same major problems – crime, unemployment, poverty, HIV/Aids, housing, education, health care and basic services. What differs are their proposals to deal with these issues which are contained in their manifestos. But the vast majority of voters do not read (and do not have access to) these detailed and extensive strategy and policy positions and the proposals for how they will deal with the problems (as opposed to the problems that they will deal with) do not ‘filter through the rest of the campaign’²². Africa’s explanation for this is that instead of focusing on their proposals, parties devote

much energy to negative campaigning...characterised by widespread verbal assaults in which political parties lambaste each other. As the election date draws closer these attacks become more scathing, the messages more negative and the exchanges more aggressive²³.

Voters’ choices in terms of which party to vote for thus depends, on Africa’s analysis, on which party succeeds in undermining other parties the best.

Another issue relating to electoral choice is a controversial one in that the limitation on choice is said to come from the voters rather than being a result of the electoral or party systems. In a multi-party democracy, citizens dissatisfied with the governing party’s performance are able to signal their dissatisfaction by voting for opposition parties. While merely the threat of being voted out is often sufficient to ensure at least a degree of responsive government, this threat must be credible, and thus requires ‘a strong opposition party that can guard against the erosion of the autonomy of democratic institutions and can replace a governing party that has outstayed its welcome’ (Giliomee and Simkins 1999: 337). It is to prevent this outcome that the importance of multi-party systems is emphasised: a multi-party system in which there is at least one viable opposition party is a democratic

²² <http://www.boell.org.za/web/144-346.html>. [Accessed 3 July 2010]

²³ <http://www.boell.org.za/web/144-346.html>. [Accessed 3 July 2010]

mechanism in that it provides citizens with a means of registering preferences. 'Viable' is the key word here – in South Africa, opposition parties are notoriously feeble.

It is widely accepted that South Africa's opposition parties are weak and have very limited prospects of competing effectively for the support of the overwhelming majority of the electorate - so much so that in late 1998 (then President) Mandela abandoned his normally statesmanlike demeanour and called opposition parties in South Africa 'Mickey Mouse' parties. While there are institutional reasons for South Africa's electoral imbalance (such as those discussed above), these are insufficient to explain the state of opposition. A common diagnosis of the cause of this democratic malady is that it lies with voters themselves, who, due to their supposedly primordial ties to political parties, are not open to persuasion. This popular explanation of voter behaviour in South Africa is based on Donald Horowitz's (1985) 'census' analogy which has had a powerful influence on many analysts and politicians. On this view, voting is 'ascriptive', determined (or at least largely shaped) by birth or descent, rather than by a conscious consideration of party programmes or incumbent performance (Horowitz 1985: 321). Elections are 'ethnic censuses' because voters register identity, not choice: they 'choose, in effect, not to choose but to give their vote predictably on an ethnic basis to an ethnically defined party' (Horowitz 1985: 321). Drawing on this literature, Robert Schrire claims that political competition in South Africa is structured around historical (and therefore, he argues, ethnic or racial) affiliations, with no compelling ideological or policy conflicts setting the government against the opposition parties (Schrire 2001: 135-148). Because of this, he suggests that adversarial opposition may be - and is - perceived as racism and this has a polarising and divisive effect on politics²⁴. While some theorists have interpreted this as a cultural bias against adversarial politics (Schrire 2001), it is perhaps

²⁴ Conversely, co-operative politics (the NP's decision to participate in the 1994-6 GNU or the IFP's alliance with the ANC to contain violence in KwaZulu Natal) is for Schrire regarded as necessary to sustain democracy.

unnecessary to resort to particularised theories of dominant party systems or of post-colonial or ethically divided societies. Indeed, results from *Opinion '99*, a public opinion survey indicate that 'rather than voters hostile to the notion of political pluralism and opposition, what was seen in late 1998 was a significant number of voters (of all races) searching unsuccessfully for an alternative' (Mattes *et al.* 1999: 4).

The findings from *Opinion '99* (and its precursor in 1994) suggest that when South African voters decide which political parties to entrust with their future, they look to real-world events (or at least at those events so perceived) such as the overall direction of the country and the economy, government performance, opposition parties, candidates and key issues. Mattes *et al.* do not dispute the claims that South Africa may indeed face the very real prospect of rigidified party cleavages which will reify the present partisan configuration, and ensure sustained party dominance. But on the basis of their survey results, they conclude that in contrast to the usual interpretations, this prospect is not because the electorate comprises ethnically or racially motivated voters blind to performance of government and political parties, or their own material interests²⁵. Rather, they suggest that in an extremely racially and economically stratified society, 'voters are doing the best they can with what they know (or at least what they think they know) about how political parties and government performance affects their interests' (Mattes *et al.* 1999: 12). They further argue that if partisan cleavages fail to realign over time, it will be the result of party leaders' failures to grapple with this basic fact, and not the result of voters being too stubborn to change themselves.

²⁵ Mattes *et al.* do not dismiss the role of race, class and ethnicity, but argue that these factors, and the interactions among them, shape how voters perceive performance and campaigns, rather than determine how and for whom they vote. They argue that voters of different races appear to attach different emphases and priorities to the same common criteria when situating themselves vis-à-vis the governing party.

Expanding on the issue of ethnicity in voting behaviour, Karen Ferree (2004) points to three ways in which the former is linked to the latter. Firstly, ethnic voting can be interpreted as a ‘primarily expressive act, a means of aligning oneself in a broader movement or party that represents the group with which one identifies’; secondly, as straightforward selection between policy options (where ethnicity works ‘behind the scenes’ to align the policy preferences of group members) and thirdly, ethnicity can be understood to provide ‘a sufficient statistic’ that helps voters make decisions about electoral options under conditions of uncertainty (Ferree 2004: 1). The evidence from South Africa, says Ferree, indicates little support for the first and second hypotheses, but considerable support for the third one – an argument similar to that of Mattes *et al.* Her conclusion is that ‘while having the right set of racial credentials does not guarantee that a party will win a group’s votes, it is a necessary first step for this to occur’ (Ferree 2004: 23). Furthermore, like Mattes *et al.* Ferree suggests

that the ability of current electoral losers to become winners tomorrow depends crucially on their ability to alter their current racial image. The data...provide suggestive evidence that racial images can change. The question for future work is how and under what conditions this is possible (Ferree 2004: 23).

There are a number of tentative conclusions we can draw from Ferree’s argument. If policy preferences are not a significant factor in determining voters’ choices, then Africa’s analysis (above) that parties fail to make clear the differences in their policies and strategies vis-à-vis dealing with the various campaign issues may be true, but is somewhat inconsequential. In other words, since policy preferences do not influence voters (much), the lack of differentiation between parties in this regard does not explain why the ANC continues to dominate (since all the parties seem to be saying the same things)²⁶. Similarly, if Ferree is

²⁶ The issue of voters’ preferences is examined in more detail in the second part of this chapter which deals with deliberation in South African democracy.

correct that voting is not primarily an ‘expressive’ act, then Horowitz’s claims about ascriptive voting and ethnic censuses is also brought into question.

Despite the evidence from Ferree and the fact that opinion survey results tend to reflect more accurately voter attitudes than do generalised theories, not everyone will be convinced by the arguments presented above – it seems that the idea of elections in ‘divided societies’ as racial or ethnic censuses is here to stay. But even if we reject these arguments, there are a number of other reasons which help to explain why the choice provided by opposition parties is not a real choice for many voters.

One argument offered is that opposition parties remain small, simply because they are small. That is, regardless of how positively they might be viewed, they are unable to secure people’s votes simply because it is believed they are too small to launch a serious challenge for political power. This logic seems to lie at the heart of the initial formation of the DA: putting together three small parties (the NNP, the DP and the FA) in the hope that more voters would be attracted to a larger one²⁷. But opposition parties are not rejected simply because they are weak – at least not by the majority of black voters surveyed by Mattes *et al.* (1998). Rather, it was broadly felt that opposition parties had not done a good job as political parties, in that they were untrustworthy, lacking in credibility, and not inclusive. From their surveys, Mattes *et al.* suggest that opposition party policies need to be crafted around the key national problems identified by dissatisfied voters. Opposition politicians need to convey to voters that their party is proposing an alternative policy that is in their interest, rather than simply

²⁷ This alliance no longer exists in that the NNP left the DA to join the ANC, and later ceased to exist at all. It also may explain the ‘Coalition of Hope’ between the DA and IFP touted – but never created – in 2003.

opposing government policy for the sake of opposition²⁸. In the event of voter dissatisfaction with the ruling party, this will enable voters to make a decision as to which opposition party they should support, if any.

Another argument, and one that certainly pertains to South Africa, is that governing parties may, and do, exploit the benefits of incumbency. In essence, because a party in government can use the state's resources to reshape society in its own image, to reward its adherents and to deny such rewards to its opponents, it has the potential to make semi-permanent minorities out of certain portions of its citizenry and to prevent futile and weak opposition from checking majority arbitrariness effectively. In addition, there is the concern that voters may be uncritical or undemanding, especially if the governing party is a 'liberation movement' – as the ANC of course is - which broadly represents a racial majority in a society that has a history of racial conflict and racial oppression, and if it represents the formerly oppressed group most closely. The source of voter loyalty is thus not 'a simple blackness': rather it is a result of the 'liberation identity'. South African academic, businesswoman medical doctor and along with Steve Biko, one of the founders of the Black Consciousness Movement, Mamphela Ramphele has warned that the 'culture of impunity...is a creeping coup d'état often achieved with the approval or unwitting complicity of the people' (*Mail & Guardian*, 12 August 2010). She points out that while liberation movements claim the honour of liberating South Africa, the movements were composed of 'ordinary people, who fought apartheid every day first by surviving, then by resisting and finally by rebelling' and hence it is the 'so-called ordinary citizens of this land who freed it' but that until this is recognised

²⁸ Supporting this claim is the fact that in the 1999 national election, the party which gained the most – the DP was the one which had the clearest and most systematically developed range of programmatic alternatives. In 2003, the DA pitched itself as 'the alternative government'. This strategy seemed to work: the DA gained 12.3 percent of the vote and 50 seats in the NA in the 2004 elections. In absolute terms, the party grew its support from 1 527 337 to 1 931 201 – an increase of over 400 000 votes despite the fact that about 114 000 fewer votes were cast in the election.

more broadly, those same ordinary citizens will ‘continue to thank the ruling party for their freedom’ (*Mail & Guardian* 12 August 2010). Such gratitude is evident in the ‘generosity’ of the ANC’s supporters when it comes to judging the party leadership’s misbehaviour (Lodge 1999: 68). The series of corruption scandals relating to nepotism and suspicious tender awards²⁹ that have characterised South African politics over the last decade highlights Ramphela’s observation, as does the point by Schrire (2001: 25) that citizens may ‘flock to the dominant party to get patronage or because of sheer bandwagoning’ (Schrire 2001: 25). Hence it is not in the interests of the beneficiaries of the ANC to judge the incumbent party too harshly.

If we accept the liberal representative conception of democracy as alternation in government, the existence of credible opposition parties which offer voters legitimate alternatives is a requirement for a country to be termed a democracy. But opposition parties seem unable to fulfil their side of the democratic bargain and thus voters are offered a much diminished choice and indeed, less representation. There is clear evidence that voters are becoming dissatisfied with the government, but instead of being able to vote for a viable opposition party, they choose not to vote at all. But waning political participation marks the gradual erosion of confidence in electoral politics and on the minimalist accounts, electoral politics is an (the) indicator of the existence and health of democracy. For many analysts, this not only casts doubt on the quality of democracy in South Africa; it also signals an erosion of confidence in democracy itself.

²⁹ These include the billion dollar Arms Deal (discussed in Chapter Four) in which senior government officials were charged with having taken bribes in return for awarding contracts, the awarding of multimillion rand tenders to the President of the ANC Youth League, Julius Malema, the imprisonment of Zuma’s financial advisor for corruption, the ‘corrupt relationship’ between the druglord Glenn Agliotti and the former chief of Police (which led to the arrest, trial and guilty verdict of the two), the ‘Tender Park’ scandal where state tenders were abused by those connected to the Limpopo provincial government in order to build mansions with money intended for RDP houses (house for the poor aimed at replacing shacks).

In terms of the extent to which appointment to legislative and executive office is characterised by real choice and broad participation, it would seem that South Africa's scorecard is ambiguous. While even the most ardent critics of South African democracy in general, and the ANC's dominance in particular, cannot deny that the party in power is legitimate, there are nevertheless degrees of legitimacy and as we have seen, the electoral system, inter- and intra-party politics and various factors affecting voter behaviour do seem to weaken this legitimacy in important ways. But contestation and participation is only part of the democratic story: as critical is the extent to which there is popular control over decision-makers or what is encapsulated in the notion of accountability. There are of course a number of ways in which we can measure (or at least define) accountability and all of these are no doubt subject to criticism and contestation. I will consider accountability in the following ways: firstly, by examining the institutional mechanism of the system of government as a means of creating accountability; secondly the extent to which the electoral system allows voters to hold politicians to account and finally how party politics affects government accountability, in particular the effects of the ANC's internal politics. Of necessity, there will be overlaps between these discussions and some of those above.

South Africa is a parliamentary system in that elections determine the make-up of the legislature which in turn elects the president. Usually this system increases accountability between MPs and the president because the latter requires the support of the former to remain in power. In theory at least, MPs can get rid of the president through impeachment, serious violation of the Constitution or a vote of no confidence by at least two thirds of the NA. They can also expose the president's inefficiency or corruption through parliamentary question time (although the effectiveness of this is rather limited as discussed below). In

South Africa however, a number of factors reduce the ability of MPs to fulfil their role of oversight.

Firstly, although any MP can introduce draft legislation by means of a Private Member's bill, in almost every case, draft legislation has been introduced in the NA by Cabinet members, deputy Ministers or a member of a NA committee. It seems that many of the 'regular' MPs – the majority of whom will be opposition party MPs - are unwilling to table new legislation or changes to existing laws. In the majority of cases, bills are drawn up by members of the executive or their departments under the direction of the relevant Minister: indeed, between 1994 and 2004, only one private member's motion was debated in the NA. Bills coming from the executive must be approved by the Cabinet before being submitted to the NA. What this means in practice is that the Cabinet, under the direction of the President, has the power to squash potential legislation. Since Cabinet members are dependent on the President for their positions the chances of them disagreeing with the President is undermined.

As mentioned previously, parliamentary questions can provide a source of oversight. Questions are a way of making issues of the day public. They are also often used for political gain. Opposition parties may ask questions as a way of criticising a minister and the government, while members of the majority party will often ask questions which highlight a minister's achievements. In South Africa, there are three kinds of parliamentary questions:

1. Interpellations or mini-debates
2. Questions for oral reply
3. Questions for written reply

Because all questions (or topics of mini-debates) must be submitted to the Cabinet before they are asked in the NA, and because it is entirely up to the President or Cabinet which, if

any questions will be accepted (in other words, be permitted to be asked), this mechanism of oversight is very limited. Questions are allocated on the basis of seats occupied which means the ANC always has the lion's share and can use question time to highlight its successes. In addition, because the questioner is only permitted one follow-up question, debate is somewhat stifled. In the early days of democracy, when Mandela was president, question time was broadcast on national (free) television and Mandela 'popped up and down like a jack-in-the-box' virtually every Wednesday from 3pm answering one question after another posed to him by mainly Democratic Party MPs³⁰. But when Mbeki took over in 1999, he changed the time of the event and it is no longer televised with regularity. In addition, Mbeki was so often out of the country which meant that he did not answer many of the questions himself (particularly those regarding Aids denialism). Although Zuma seemed more willing to participate in question time, as of November 2010, he had not used this mechanism of accountability to its full potential: he held only six sessions of president's question time in 2009 and five in 2010. He has also not appeared to have encouraged his Ministers to take question time seriously - indeed, by September 2010, according to the DA, out of the 36 times Ministers have failed to appear for question time, explanations have only been given in eleven cases. In response to the DA allegations (although not dealing directly with oral responses to questions), deputy President Kgalema Motlanthe informed the NA that on 3 March 2010 he had written to all Ministers who had unanswered written questions, requesting an explanation for each unanswered question, as well as the steps they would take to ensure they answered all questions as prescribed³¹.

As a consequence of the limited role the NA plays in terms of tabling legislation and use of question time, many have suggested that it is merely a 'rubber stamp' for the executive. But

³⁰ <http://allafrica.com/stories/200110260005.html>. [Accessed 6 July 2010]

³¹ <http://www.news24.com/SouthAfrica/Politics/Ministers-attend-question-time-20100910>. [Accessed 16 November 2010]

there are other reasons which can explain the limited capacity for MPs to control the executive. Because of the list PR system, all seats in the NA are ‘owned’ by the parties. This necessarily has the effect of shifting the loyalty of MPs from the voters to the parties. MPs know that they can be removed from their seats at the discretion of the party and particularly in the case of the ANC, where the president of the party is the president of the country (with the exception of the brief period where Zuma was the head of the ANC and Mbeki and then Motlanthe were the presidents of South Africa), the threat of being removed if MPs are critical of the executive is very real. Indeed, there have been a number of dismissals (or forced resignations by) of ANC MPs over the years: Andrew Feinstein left his seat in 2001 as result of the ANC’s involvement into the investigation of the Arms Deal of 1999 and in 2007 the Deputy Speaker of Parliament (and former deputy health minister) Nozizwe Madlala-Routledge ‘resigned’ a day before she was due to be sworn in again as an MP and less than a week after it was announced that she would be the new ANC caucus chairwoman. Her resignation came after she supposedly went to Vietnam without permission from the President but most analysts believe she was removed due to her criticism of Mbeki over HIV/Aids³².

The controversial floor-crossing legislation examined above is another contributor to party – in particular - ANC dominance (and the associated executive dominance) of Parliament. As mentioned, the ANC was originally opposed to the initiative, describing it as a ‘congealing of a race and class based political opposition³³’. When, however, the NNP leadership announced the desire to switch to an alliance with the ANC, the amendment was passed, with the party justifying the move as ‘political realignment and the break-up of racial power

³² <http://www.tac.org.za/community/node/2144>. [Accessed 6 July 2010] She was widely regarded as one of the most competent MPs, both locally and internationally and for her excellent leadership, the *Mail & Guardian* newspaper gave her the highest score on its annual ministers’ report card of 2006.

³³ <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1397>. [Accessed 6 July 2010]

blocks’³⁴. The gains made by the ANC were linked to the promises of rewards dangled by the party and indeed, a number of the floor-crossers gained salary increases and/or ministerial positions. Other parties had limited potential to offer competing benefits, partly because the Public Funding of Represented Political Parties Act 103 of 1997 stipulates that party funding is allocated according to the principle of proportionality (in other words, the more seats a party has, the more money it receives), although there is a minimum threshold (according to the principle of equity) which any party represented in the NA (or NCOP) must receive³⁵. In 2009 then President Motlanthe abolished the legislation, recognising that floor-crossing in a system where MPs do not own their seats reduces representation and accountability.

It would be unfair to interpret ANC dominance of parliament as being entirely a result of the electoral or party systems. The limited appeal of opposition parties examined above is obviously a contributing factor to ANC dominance but the ANC itself has done much to attract the hearts and minds – and votes – of South Africans. The ANC positions itself as a ‘broad church’ in which everyone is welcome and the Tripartite Alliance certainly lends credibility to this claim as parties to the left of the ANC are included under its umbrella (and members of the SACP and COSATU are permitted to have dual membership). At the same time, the ANC-NNP alliance (and the NNP’s later incorporation into the ANC) signals the inclusion of parties to the right and specifically the party which was the successor of the Apartheid government. This inclusivity is not merely for show: the constitution of the ANC makes provision for members to express their views even if they are not in line with the dominant party position. According to section 5.1:

‘A member of the ANC shall have the right to:

³⁴ <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1397>. [Accessed 6 July 2010]

³⁵ This is however a problem for parties contesting elections for the first time – for example COPE in 2009 and the ID in 2003 – as they have no public funding allocated to them and the degree to which they can get private funding is certainly curtailed given their perceived inability to affect government policies.

- a) Take a full and active part in the discussion, formulation and implementation of the policy of the ANC.
- b) Receive and impart information on all aspects of ANC policy and activities.
- c) Offer constructive criticism of any member, official, policy programme or activity of the ANC within its structures.
- d) Take part in elections and be elected or appointed to any committee, structure, commission or delegation of the ANC.
- e) Submit proposals or statements to the branch, province, region or NEC [National Executive Committee], provided such proposals or statements are submitted through the appropriate structures³⁶.

That said, along with these rights, membership to the ANC involves some concomitant duties. Two of these are especially significant in terms of understanding why there seems to be significant reticence among members to air their views (in addition to the threat of ANC MPs being removed from their seats). One of the most important duties is to ‘defend the aims, policy and programme of the ANC’ which entails that members ‘observe discipline, behave honestly and carry out loyally decisions of the majority and decisions of higher bodies’³⁷. Taking on any organisation or its representatives is no small feat; in the case of the ANC, given the poor level of education and affluence among the majority of ANC supporters the confidence levels needed to do this are low. Some analysts have suggested that the supposed internal democracy of the ANC is undermined by reluctance to allow its members (particularly those in the NA) to develop their full potential in representing the people and securing open, transparent and participatory democracy. Certainly, as explained above, the seriousness with which the ANC deals with members who appear to be critical of it (or who ‘bring the party into disrepute’) lends support to this suggestion. Added to this is the

³⁶ <http://www.anc.org.za/policy/constitution>. [Accessed 4 July 2010]

³⁷ <http://www.anc.org.za/policy/constitution>. [Accessed 4 July 2010]

increasing centralisation of power characterised by ‘deployment’ and ‘redeployment’ of political figures as a means of dishing out rewards and punishments. Although this mechanism does allow the ANC to deal with its members who are performing badly, it also allows the ANC to control its members if they are perceived as being critical of the party. What this means is that the degree to which there is popular control of legislative and executive decisions is diminished and the mechanism of accountability fails to achieve the substantive results that democrats claim arise out of multi-party systems where alternation in government is not merely hypothetical and where MPs are loyal to their voters rather than to their parties.

What is hopefully clear from the analysis above is that the criticisms of South African democracy as being ‘sham’, and/or ‘truncated’, and the predictions that a slide towards one-party ‘democracy’ is inevitable are not without foundation. That said, much of the analysis provides a less than accurate picture of the state of democracy in contemporary South Africa, largely because there has been little recognition that we need to have a clear concept of what we mean by democracy before we can contribute to a discussion of South African democracy. Moreover, we need to recognise that assessing South Africa’s democracy according to different conceptions of democracy will result in different assessments.

It should be noted at this point that I am not suggesting we measure democracy in South Africa in terms of the positive – albeit exceptional - views of one-party dominance and democracy. Some theorists have pointed out that one party dominance can facilitate stability in a democracy by entrenching the legitimacy of democratic institutions, by working to marginalise political extremes, fusing ethnic differences and creating consensus around compromise solutions to national problems (Pempel 1990). In other words, it is suggested

that processes within a party may be more conducive to a democratic compromise than the competitive procedure of inter-party contestation. While this conception does seem to have at least some purchase with members of the ANC and others who are supportive of the current political landscape, I am not convinced by it, nor do I believe it does justice to what is actually taking place in South Africa.

At the same time however, I do think attention needs to be drawn to the tendency of analysts, both within South Africa and beyond, to examine democracy in the country in terms of particular measures, specifically measures used in traditionally Western conceptions of democracy, resulting in very negative assessments of the South African experience. Perhaps this tendency has to do with Huntington's statement that 'the great achievement of the Third Wave has been to ensure the universality of democracy in Western civilisation and to promote its manifestations in other civilisations' (Huntington 1997: 84). But given that many would contest the claim that democracy has a universal manifestation (even in the West), we surely need to consider whether and to what extent conceptions of democracy from the consolidated democracies of the West are or can be useful in analysing new democracies, specifically in the South.

This chapter has provided a description of the current political system in South Africa and examined some of the competing claims about the state of democracy in the country. The explanations for the ANC's protracted dominance offered by both the yaysayers and the naysayers have been considered: whether it is because ethnic and racial identity rather than policy is the determining factor in voters' choices or because such identities shape perceptions and affect voters' expectations in this (weaker) sense, loyalty to the incumbent party is a significant feature of politics. To some extent a consequence of this, but certainly

not completely responsible for it, is the fact that opposition parties have not provided plausible alternatives to the ANC which would also help hold the ruling party to account. The electoral system itself does not seem to provide the incentives necessary to ensure responsive government – while proportional representation has several benefits, it tends to fragment the opposition and does not provide clear alternatives for voters. The ruling party is not therefore constrained or held accountable by even a latent threat of replacement. Within the ANC itself, the internal discipline expected of party members has thus far staved off any real risks to the party's dominance (although COPE had the potential to do so, it failed dismally). In addition, because COSATU and the SACP are convinced that they have more influence as members of the Tripartite Alliance (and for now, they are probably correct), the cracks that have been developing are not enough to cause a split. The chapter concluded with the claim that while all these factors contribute to and are important for understanding democracy in South Africa, we need to situate these factors, and various other ones, in a particular conception of democracy if we are to develop a truer understanding, one that does justice to the complexities of the South African experience. The second part of the following chapter thus interrogates various conceptions of democracy so as to develop a set of 'variables' that can be used to measure the state of democracy in South Africa according to each conception. The first part of the chapter offers a justification for why this thesis proposes participation as a core value of democracy. It suggests that attention has largely been focused on *how* people (should) participate rather than on *that* people (should) participate and that this has serious implications for the way we look at democracy in theory and in practice.

Chapter Three

Understanding Democracy

‘Of course, different people understand different things by democracy.’

(Shapiro 2003: 3)

Introduction

Democracy has won. Whether in the face of external forces or internal pressures, the label ‘democracy’ has become the ultimate legitimiser. A political regime is justified when it is ‘a democracy’; policies, laws and actions are acceptable when they are ‘democratic’. As John Dryzek puts it ‘democracy is today a near-universal validating principle for political systems’ (Dryzek 2005: 218). In practice, however, although professing to conform to the notion of democracy, these regimes, policies, laws and actions often differ substantially from one another. In theory too, interest in democracy is evident from the amount of scholarly attention given to and time spent on it, whether the attention is positive or critical. Less evident are the normative justifications for democracy today given the meritocratic and competitive global society (in other ways) in which we live. Historically, with the exception of a select few, philosophers from the time of Plato have been very negative about ‘democracy’, however conceived. Even those who appear to have supported something resembling what we know as democracy did not do so unequivocally, with some, like Jean Jacques Rousseau, James Madison and Karl Marx, being unwilling to use the term itself. Today, however, despite there being significant disagreement as to what democracy’s value is, there seems to be widespread agreement that it does have a value. The purpose of this chapter is to examine competing claims regarding the value – or values – of democracy and

to develop some mechanism for ‘measuring’ these values. This chapter thus provides the theoretical framework for the following chapter in which the extent to which, if any, South Africa’s democracy achieves or promotes these values is analysed. In order to do this however, we need to settle on some general characteristic common to all conceptions of democracy. In this thesis, participation is considered as that characteristic: in other words, acknowledging Ian Shapiro’s observation above, I will argue that on the most fundamental level, any understanding of democracy should begin with an examination of participation and that this idea, that democracy - on any account - implies participation by citizens in governance in a way that is both different from and more extensive than other systems seems oddly underappreciated in the literature.

Much of the attention is on *how* people (should) participate rather than on *that* people participate. This may of course be linked to the fact that, as Adam Swift puts it ‘everybody loves democracy’ since it ‘really is the motherhood and apple pie of politics’ (Swift 2006: 222). In other words, there seems to be little point in trying to convince people *that* we should participate since this is not in question – after all, the ‘mass conversion of politicians and political thinkers to the cause of democracy has been one of the most dramatic, and significant, events in political history’ (Heywood 2007: 71). Few would contest the claim that participation is clearly one of the bedrock principles of democracy given that it is participation which distinguishes democracy from other systems. As Sidney Verba and Norman Nie argue:

If democracy is interpreted as rule by the people, then the question of who participates in political decisions becomes the nature of democracy in society. Where few take part in decisions, there is little democracy; the more participation there is in decisions, the more democracy there is (Verba and Nie 1972: 1).

Albert Weale suggests that ‘in a democracy important public decisions on questions of law and policy depend, directly or indirectly, upon public opinion formally expressed by citizens of the community, the vast bulk of whom have equal political rights’ (Weale 1999: 14); in a similar vein, the Human Development Report (HDR) defines democracy as ‘a political system that enables people to freely choose an effective, honest, transparent and accountable government’ (HDR 2002: 55). Thus while it is the case that many contemporary definitions may appear somewhat at variance with the spirit of Abraham Lincoln’s oft-cited formulation, democracy is linked in a necessary, although perhaps not sufficient way, to participation. In other words, because democracy allows people to participate, and because participation allows citizens to take ‘part in the process of formulation, passage and implementation of public policies’ (Parry *et al.* 1992: 16), and because this is seen to be the best, fairest, most effective method for distributing power, democracy is ‘good’. A particular system of governance thus results from or as a consequence of democracy; democracy is the optimum means of producing ‘good’ political rule. On this conception, as Weale points out, the crucial normative question is ‘the extent to which there should be an institutional capacity for the public at large to have a [final] say on issues of public policy’ (Weale 1999: 85). And indeed, this is the practical difference between various accounts of democracy: how much say the public should have and what form this say should take.

It is important to consider some of the main arguments as to what the value of participation is that makes it the distinguishing feature of democracy, and indeed of all that is good about democratic systems. Democratic governments, that is, governments elected by ‘the people’, are considered to be legitimate governments. Since a legitimate government is one that is recognised (by others) as having the right to govern, it stands to reason that if the majority of ‘others’, that is, the citizens, has chosen that government, they recognise this right and it is

clearly a normative recognition. John Locke ([1689] 1988) argued that the relationship between the governors and the governed is characterised by a contract in which there is both explicit and tacit consent by both parties: the governors agree to fulfil certain obligations and the governed respect the legitimacy of the governors' authority. Of course, Locke was not a democrat but his emphasis on consent can be understood as a rejection of the legitimacy of force as a means to political authority, an argument expanded upon and improved by Rousseau. Governments that do not rely on or require brute force to remain in power are 'good' governments (or at least better governments than those which do rely on might rather than right). Therefore, at the most basic level, participation is argued to result in good government. How much and what kind of participation may be up for debate but the fundamental point about participation is that only governments based on voluntary acquiescence can be considered a legitimate form of government. Naturally this should not be taken to mean that any government that does not use force to ensure compliance is necessarily legitimate - there are many complex and diverse ways of legitimising political rule: the claim is that a requirement for (democratic) legitimacy is that it is not reliant on force. In this sense, participation conceived as taking part in the political act of choosing is akin to a conception of participation as consent. But consenting to a particular set of leaders or a particular government can be a once-off (at least a once-off every four to five years). As Rousseau so eloquently argued:

The English people believes itself to be free; it is gravely mistaken; it is free only during election of members of parliament; as soon as the members are elected, the people is enslaved; it is nothing. In the brief moment of its freedom, the English people makes such a use of that freedom that it deserves to lose it (Rousseau [1762] 1968: 141).

That it creates legitimacy is obviously a powerful reason for defending participation as political choice (of leaders). An equally powerful line of argument is that participation

produces the most efficient and the most just policies (Verba 2003: 667). One of the clearest articulations of this view is Condorcet's 'Jury Theorem' regarding the relative probability of a given group of individuals arriving at a correct decision. The theorem proves that as the number of voters participating in a decision increases, so too does the probability that the majority decision is correct. Hence Theodore Roosevelt's claim that 'the majority of the plain people will day in and day out make fewer mistakes in governing themselves than any smaller body of men will make in trying to govern them' (Barber 1984: xv). Of course, it has been pointed out that Condorcet's Theorem only holds if we assume (as he did) that each voter is more likely to vote correctly than incorrectly. And this assumption is often used by those with a pessimistic view of human ability to denounce broad-based participation (as many argue the views of Niccolò Machiavelli and Joseph Schumpeter among others are). But even if we accept Condorcet's first assumption, his second assumption, that there is a 'right answer' in matter of policies and politics, remains a problem.

In light of this, that there are seldom 'right' answers in politics, many argue that democracy's value lies in its ability to resolve conflict without violence. Pluralists emphasise that the democratic character of a regime is secured by the existence of groups of various types and sizes so much so that Robert Dahl claims that democracy can be defined as 'minorities government' (Dahl 1956: 133). In the classic pluralist model there is ultimately no powerful decision-making centre because there is a balance of resources obtained through an 'overlapping membership' between factions which means that no single group can achieve a permanent majority so as to marginalise other groups *ad infinitum* (Dahl 1956: 14). This seems somewhat strange however given the corporatised environment of America in which Dahl was writing. Perhaps this is why he concentrated on the level of local government rather than state or federal levels. Nevertheless, Dahl's claim is that rather than resorting to

violence to achieve power, groups wanting to advance their interests have only to wait for the next election to do so. Indeed, the essence of democracy for some is the renunciation of (some forms of) violence (or at least the legitimacy of violence for the state only): it is the nonviolent means by which we can advance our interests and our conceptions of the good. In the twentieth century Mao Tse-Tung believed that war is politics with bloodshed. In the twenty first century, it has become a widely held belief that democracy is, amongst other things, politics without bloodshed.

It is not difficult to find support for this belief: one of the strongest arguments in favour of democracy is that it holds governments to account since in order to stay in office, politicians know they need to look after their citizens' interests. In a functioning democracy, the threat of being voted out is usually sufficient to ensure at least a degree of accountable and responsive government. Democracy makes the ballot far more powerful than the bullet when it comes to constraining and monitoring governments' performance but at the same time, leads to the understanding of participation as being a negative or veto power: we can get rid of Pempel's 'rascals' but it may not be possible to replace them with 'good guys' or more importantly perhaps, define, or at least substantially influence good policy from below.

Clear from the above is that participation is offered as a solution to a principal dilemma in democratic theory: the justification of the sovereign power of the state while at the same time justifying limits on that power. As John Dunn puts it, participation provides the 'sole clearly justifiable basis on which human beings can accept the apparent indignity of being ruled at all' (Dunn 2005: 149). But to claim that it is participation that defines a democratic polity is not the full story: this participation must in some sense be equal because as Charles Beitz argues that 'no theory of democracy that failed to give the egalitarian idea a central place

could possibly yield a faithful representation of the extraordinary grip of democracy on the modern political imagination' (Beitz 1990: xi). In other words, democracy is not simply the extent to which there is institutional capacity for citizens at large to have a say on issues of public policy but the extent to which such participation is equal³⁸. Whether equal participation is understood in terms of it having equal value and content or in the more minimal sense of it being equal opportunities to participate, it is clear that while political equality is not the only indicator of democracy, nor indeed, the only indicator of democratic legitimacy, it is a necessary ingredient of it. Hence Peter Bachrach's claim: 'It is not a distant jump to conceive of democracy as a system which embodies the ideal of equality of political power among all members of the community' (Bachrach 1969: 83). Beitz argues that focusing on political equality – rather than on liberty for example – is justified because political equality 'serves as the chief regulative principle of democratic political competition by defining the fair terms of participation in it' (Beitz 1990: 17). 'Fair terms' is somewhat broad but what Beitz seems to have in mind is the idea that participation rests on both the availability and the capability of citizens to influence decisions. But while equal availability is at least theoretically (or institutionally) possible, how do we deal with the obvious fact that capabilities between citizens are not equal but differ widely (for a variety of factors, not least of which are socio-economic factors)?

It is perhaps as a response to this problem that political equality has come to be understood not as the extent to which citizens have an equal voice in government decisions but rather, the extent to which there is equal consideration by governments of the preferences and interests of all citizens. And since these preferences and interests are expressed and transmitted to

³⁸ The question of what constitutes equality is a complex one: from John Rawls' 'primary goods' to Amartya Sen's 'capabilities' to Ronald Dworkin's rejection of equality of resources in favour of equality of welfare. That said, in this argument the idea of equality is most simply in terms of access to institutions as this incorporates the opportunity and capability approaches.

governments through participation, unequal participation may result in unequal influence which would then diminish the extent to which there is political equality and therefore democracy. It would seem then that political equality, achieved through 'equal' (however conceived) participation, is the normative basis underlying any institutional design claiming to be democratic – both by definition and at least to some extent, in practice. The issue is thus not about participation itself, since there appears to be little dispute about the importance of this for democracy. The dispute about the meaning and grounds of political equality is instead reflected in disagreements about how the institutions of democratic politics should be arranged, that is, in disagreements about how much participation is required, or indeed, desired. The shift from democracy as 'rule by the people' to a focus on the extent to which the people rule has profound implications – as David Held has argued, for example, within the history of democratic theory there is a deeply rooted conflict about whether democracy should mean some kind of popular power – a form of politics in which citizens are actively engaged in self-government and self-regulation – or whether it should be an aid to decision-making – a means of conferring authority on those periodically voted into office (Held 2006: 15). On the former view, democracy is indeed, 'rule by the people' whereas on the latter, it is attenuated to a weaker notion in which popular participation exists in a diluted form, mediated through professionalised political leaders. Because of this absence of widespread citizen participation, 'rule by the people' is measured in terms of the degree of responsiveness of elites to citizens, rather than by the extent to which citizens themselves engage in government. And it is clear that in terms of the conflict to which Held refers, it is the second model which has come to occupy a privileged position in both scholarly analysis and popular thought where the mainstream view is that participation, whether limited or extensive, is a means of allowing the registration of the broad desires of ordinary people,

while leaving actual public policy to the few who are (deemed) sufficiently experienced and qualified to make it.

Once we have committed ourselves to the view that participation – and equal participation at that – is a necessary condition for something to be democratic, we recognise that measuring participation in absolute terms does not get us very far: if there is no participation, there is no democracy and if there is participation, there might be democracy. Hence debates over participation in democratic theory and institutional design tend to focus on the amount and type of participation and it is to these debates we now turn.

One justification for differing levels of participation (on a normative level) is frequently interpreted as being linked to a conception of the capabilities of average citizens. Put simply, there are those who have a higher regard for the capacity of the average citizen to make reasonable and intelligent contributions to politics and those who reject the classical accounts of an informed and active citizenry, replacing it with ‘apolitical clay’ (Dahl 1997: 225). Those who subscribe to the former conception are generally in favour of extended participation, especially in the form of deliberation, whereas those with a less positive view of the capabilities of citizens tend to support liberal representative democracy, specifically the minimalist versions. There are however alternatives to both these interpretations: minimalist accounts may suggest diminished involvement in politics not because the masses are uninformed or incapable, but because reduced participation is equal (or the most equal) participation. Deliberative democrats may not in fact subscribe to an ideal of the citizen as a ‘political animal’ but rather see extended participation as means to enhancing the quality of public decision-making. Before we consider these alternative conceptions, we need to examine the conventional interpretations of both liberal representative democracy and

deliberative democracy. Starting with the former, the focus will be on Schumpeter and Dahl – arguably the most important contributors to this approach to democracy – and to a lesser extent, the work of Larry Diamond, Adam Przeworski and Robert Michels will be considered.

I. People get the government they deserve

Although Seymour Martin Lipset is credited with coining the term ‘the elitist theory of democracy’³⁹, the reconceptualisation of classical democracy was offered by Schumpeter who argued that the realities of power and inequality meant that democracy had to be radically revised if it was to play a meaningful role in the actual world of politics. On his view of ‘realistic’ democracy, the people are, and can be nothing more, than ‘producers of governments’, a mechanism to ‘select the men who are able to do the deciding’ (Schumpeter 1943: 269). Schumpeter’s claim is not limited to description: his concern with the empirical has specific normative dimensions (in that his theory of democracy is part of a larger project examining the gradual supersession of capitalism by socialism in the West), and he focuses on a highly delimited range of questions, championing a very particular set of tenets about the proper form of popular government (Held 2006: 165).

In opposition to mainstream political theory from classical times, Schumpeter wanted to be free of what he took to be ‘excessive speculation and arbitrary normative preferences’ in thinking about the nature of public life (Held 2006: 164). He aimed to produce a theory that was ‘much truer to life’ than existing models based on the classical meaning of democracy of ‘rule by the people’. As he points out:

³⁹ In his introduction to Robert Michels’ *Political Parties* (1962: 33).

Democracy does not mean and cannot mean that the people actually rule in any obvious sense of the terms 'people' and 'rule'. Democracy means only that the people have the opportunity of accepting or refusing the men who are to rule them...Now one aspect of this may be expressed by saying that democracy is rule of the politician (Schumpeter 1943: 284).

Schumpeter does not see this divergence from classical democracy as a negative thing: on the one hand, he seems not to recognise the classical conception of democracy as being actual rule by the actual people, and on the other, even if this was the case in classical conceptions, modern times call for modern measures – for Schumpeter, one of the central problems with transposing classical conceptions of democracy on to modern societies is the vast differences in the size of the polities – both geographically and in terms of population. Politics today is invariably a fulltime occupation since the nature of modern life makes us 'incompetent' (or less competent) outside our specific area of expertise. Hence,

if we wish to face facts squarely, we must recognise that, in modern democracies...politics will unavoidably be a career. This in turn spells recognition of a distinct professional interest in the individual politician and of a distinct group interest in the political profession as such. It is essential to insert this factor into our theory...Among other things we immediately cease to wonder why it is that politicians so often fail to serve the interest of their class or of the groups with which they are personally connected (Schumpeter 1943: 285).

Schumpeter's theory then, unlike the classical doctrine which attributes a supposedly unrealistic degree of initiative to the electorate (and according to Schumpeter practically amounted to ignoring leadership), allows for the proper recognition of the vital fact of leadership and its special quality of initiative (Schumpeter 1943: 270). This recognition of the role of leadership encourages competition for the people's allegiance among those who would lead. Schumpeter simplifies the kind of competition for leadership by defining

democracy as free competition for a free vote (the only method suitable for large communities to make their decisions known).

For Schumpeter, the clear division of labour between representatives and voters is not only logical but highly desirable. He argues that voters outside of parliament must accept that once they have elected a political representative, political action is that representative's business, not theirs – in some ways a reconceptualisation of Edmund Burke's views on leadership where the business class is to be kept separate from and subordinate to the aristocracy, the nation's 'true' leaders. Not only should electors refrain from trying to instruct their representatives, they should also refrain from attempting to influence their judgement. If they do not like what the representative is doing, then come election time, they can remove that representative from office. Thus the only full participants of Schumpeter's democratic system are the members of political elites in parties and public offices.

Like Schumpeter, Dahl aimed, with his pluralist conception of democracy, to be realistic and objective in the face of all those thinkers who asserted particular ideals without due attention to the circumstances in which they found themselves (Held 2006: 188). Dahl conceptualises democracy in terms of contestation and participation – casting a vote, forming a party, or standing for election. While Dahl expresses sympathy for the 'ideal principle' of political equality, he suggests its replacement with the 'more practical principle of equal opportunity' (Dahl 1964: 9-12)⁴⁰. Thus for Dahl, as with other elitist democrats, participation is required, but in a watered down form. Popular input is 'at once all important yet minimal' (Parry and Moyser 1994: 46): all important in that elections constitute the decisive point in democracy;

⁴⁰ We should note the difference between early Dahl – the neo-positivist empiricist – and the later Dahl – the normative democrat.

minimal in that the ordinary citizen is asked to do little more than turn up at the polling station every few years.

For Dahl, democratic theory is, at the minimum, 'concerned with processes by which ordinary citizens exert a relatively high degree of control over leaders' (Dahl 1956: 3). The essence of the pluralist tradition stems from investigation into the distribution of power in Western democracies with the primary expression of democracy being the prevention of a central concentration of power. By power, pluralists have generally meant a capacity to achieve one's aims in the face of opposition. As Dahl expresses it, 'by power we mean to describe a...realistic relationship, such as A's capacity for acting in such a manner as to control B's responses' (Dahl 1956: 13). Furthermore, A's capacity to act depends on the means at A's disposal and in particular, on the relative balance of resources between A and B. There is ultimately no powerful decision-making centre in the classic pluralist model because this balance of resources is supposedly obtained because there is an 'overlapping membership' between factions which means that no single interest group can achieve a permanent majority and the interests of other groups will not be permanently marginalised. But the fact that people have multiple memberships such that each interest group is likely to remain too weak and internally divided to secure a share of power incommensurable with its size and objectives does not mean that elections and the competitive party system are of trivial significance in determining policy. They remain crucial for ensuring that political representatives will be 'somewhat responsive to the preferences of ordinary citizens' (Dahl 1956: 131). But elections and parties alone do not secure democracy: the existence of active groups of various sizes and types is crucial if the democratic process is to be sustained and if citizens are to advance their interests.

Dahl suggests that empirical analysis shows that control can be sustained if politicians' scope for action is constrained by two fundamental mechanisms: regular elections and political competition among parties, groups and individuals. He emphasises that while elections and political competition do not make for government by majorities in any very significant way, they 'vastly increase the size, number and variety of minorities whose preferences must be taken into account by leaders in making policy choices' (Dahl 1956: 132). Indeed, the democratic character of a regime is so much secured by the existence of multiple groups or multiple minorities that Dahl claims that democracy can be defined as 'minorities government' for the value of the democratic process lies in rule by 'multiple majority oppositions rather than in the establishment of the sovereignty of the majority' (Dahl 1956: 133).

Contrary to Schumpeter's view that democratic politics is steered ultimately by competing elites, Dahl insists that it is anchored to a value consensus that stipulates the parameters of political life (Held 2006: 194). For Dahl, it is true that there have always been politicians or political elites who have had a profound impact on the direction of a nation; their impact however, can only be properly understood in relation to a nation's political culture with which they were 'in tune' (Dahl 1956: 151).

It is important to understand Dahl's conception in relation to political equality because it seems that for him, like Schumpeter, this is not a necessary condition for democracy. Since his position does not require that control over political decisions is equally distributed; nor does it require that all individuals and groups have equal political weight (Dahl 1956: 145), he clearly recognises that organisations and institutions take on a life of their own which may lead them to depart from the wishes and interests of their members. Dahl argues that

theorists of domination give little weight to the importance of organised competition as an instrument by which non-elites may influence the conduct of political elites (Dahl 1989: 275). This statement suggests Dahl's belief that political elites can be made to serve their citizens (or serve them better) by the threat of competition. He argues that

if oppositions are granted the right to form political parties, if the parties are entitled to participate in elections, if the elections are fair and free, and if the highest offices in the government of the state are held by those who win elections, then competition among political elites makes it likely that the policies of the government will respond in time to the preferences of a majority of voters (Dahl 1989: 276).

Dahl's articulation suggests that one set of unresponsive – out of tune - elites can be replaced by a set of responsive ones but this may be an optimistic outlook for can we not make the case that his articulation could (and indeed seems to) simply result in a constant change of political elites who fail to respond to the electorate? Furthermore, how do we amalgamate the vast array of preferences for individuals and policies into one choice? It seems that Dahl is in fact responding to the 'iron law of oligarchy' of political organisations propounded by Robert Michels. His counterclaim is that 'even if we grant that political parties are oligarchical, it does not follow that competing political parties necessarily produce an oligarchical political system' (Dahl 1989: 267) and that electoral failure often sparks the reinvigoration of a party. Yet one may argue that the use of the word 'necessarily' in his claim could be seen as a concession by Dahl to the arguments of Michels.

While Dahl does not accede to Michel's iron law of oligarchy, he does seem to be echoing Michels' view (1962) that in the modern world, we are faced with an irresolvable dilemma: we cannot have large institutions such as nation-states, trade unions, political parties or churches without turning over effective power to the few who are at the summit of these

institutions. But while this leads Michels to conclude, like Max Weber and Schumpeter before him that democracy and large-scale social organisation are incompatible, Dahl points out that the problem with the so-called Machiavellian School (of which Michels, Vilfredo Pareto, Georges Sorel and Gaetano Mosca were a part) is that the impossibility of democracy within a large polity is 'proven' by definition, by seeing that any separation between leaders and led as *ipso facto* a negation of democracy.

For Dahl, while political and organisational elites do in general have long-term tenure in office, and while the structural division between rulers and ruled cannot be terminated, and while these elites have special group interests which may be at variance with those of the people they represent, he does not take this to mean that democracy is impossible. It means rather, that there is a need for a more realistic understanding of the democratic potential in a complex society. In a later work Dahl lays down seven requirements for distinguishing democracies. These include elected officials, free and fair elections, inclusive suffrage, the right to run for office, freedom of expression, access to alternative information and associational autonomy (Dahl 1989: 23). As such, two dimensions – contestation and participation – are critical to Dahl's realistic democracy. He further asserts that even if all these conditions exist, the system with which we are presented is not a democracy, but a polyarchy. For Dahl, no large system in the real world is fully democratised and hence the use of the term polyarchy to describe the (more or less democratic) systems that do exist in societies today. Dahl argues that polyarchy can be understood in several ways: as an historical outcome of efforts to democratise and liberalise political institutions of nation-states, as a distinctive type of political order or regime different from both non-democratic regimes and earlier small-scale democracies, as a system (à la Schumpeter) of political control in which the highest officials in government are induced to modify their conduct so as

to win elections, as a system of political rights or as a set of institutions necessary to the democratic process on a large scale (Dahl 1989: 219). In essence, polyarchies describe the actually existing institutions that are necessary to attain true democracy. Thus Dahl suggests the replacement of the ideal principle of political equality with the more practical principle of equal political opportunity. He goes so far as to suggest that espousing political equality ‘as a major democratic aim is simply to further cynicism towards democracy’ (1964: 14). For Dahl it is obvious that ‘except in exceedingly small groups, specific decisions must be made by a relatively few people acting in the name of the polity’ (Dahl 1964: 12). While Dahl may be accused of underestimating the myriad ways in which people can and do influence decisions, his point is nevertheless important, especially as economies become more interdependent with neo-liberal policies.

Dahl’s contribution to democratic theory is of course ‘thicker’ than that proposed by Schumpeter, and contemporary theorists tend to follow Dahl’s lead rather than Schumpeter’s. Diamond (2001) for example distinguishes between ‘electoral’ democracy and ‘liberal’ democracy and points out that discussions of democracy should be about liberal democracy for this is a much more desirable form of democracy than the rather thin conception. Although less explicit, Huntington too seems to support a two level conception of democracy: he argues that a liberal democracy has elections, but it also has restrictions on the power of the executive, it has independent judiciaries to uphold the rule of law, it protects individuals’ rights and liberties, there is consideration of the rights of minority groups, the party in power is limited in its ability to bias the electoral process, there are effective guarantees against arbitrary arrest and police brutality, censorship does not exist and there is minimal governmental control of the media (Huntington 1997). Thus while Huntington delineates a political system as democratic if the

most powerful collective decision-makers are selected through fair, honest and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote (Huntington 1991:61),

he suggests that it does not take much for a country to hold elections: the real test comes in its ability to put into practice the elements listed above because it is these that are necessary for the existence of a liberal democracy.

Despite being more closely allied with Schumpeter's views (than Dahl's for example), Przeworski does concede that 'more than elections are needed for elections to be held' (Przeworski 1999: 24). Przeworski's develops Schumpeter's theory by claiming that the threat of being replaced is not always sufficient to ensure that representatives are accountable to those who elect them. If this were the case, he argues, governments would do whatever possible to satisfy their citizens. Yet governments do make promises they do not keep; the public is not always perfectly informed; and in heterogeneous societies, governments often favour the interests of a particular group (although not necessarily the one that elected them) or pursue their own interests at the expense of everyone. For Przeworski, electing rulers then is not sufficient to ensure the survival of a system that relies on elections. That said, he does seem to support Condorcet in that he claims that collective decision-making by voting is likely to yield superior decisions than those made by an individual (Przeworski 1999: 27). Why this is the case he does not know for he concedes that since political equality does not lead to economic equality, why do the poor (who tend to be in the majority) not take away from the rich, equipped as they are with the vote to do so?

Dahl may have the answer: although one of his prerequisites of polyarchy is political activity, he suggests that the lower socio-economic groups are the least politically active. This is clearly a good thing for Dahl as these groups are apparently the most likely to produce

‘authoritarian’ personalities. Hence any rise in participation among this group could bring deviations from social norms and consequently threaten the stability of polyarchy. Thus although Dahl may not subscribe to Michels’ observation regarding the ‘incompetence of the masses [who are] incapable of taking part in the decision-making process and require strong leadership’ (Michels 1962: 17), his conception does seem to allude to doubts about the quality of citizens in contemporary mass society.

And it is this on to which opponents of liberal representative democracy tend to latch, interpreting the narrowing of participation as an assumption of the inadequacies of citizens. Theorists such as Bachrach and Jack Walker take conceptions like Schumpeter’s and Dahl’s to mean that people are in a very weak position to make sound judgements about competing ideologies and policies, a position further weakened by their susceptibility and vulnerability to pressures of interest groups which then undercut any independent basis for political thought. For Bachrach,

all elite theories are founded on two basic assumptions: first, that the masses are inherently incompetent, and second, that they are, at best, pliable, inert stuff, or, at worst, aroused, unruly creatures possessing an insatiable proclivity to undermine both culture and liberty (Bachrach 1969: 2).

On Bachrach’s analysis, the relationship between elites and masses is the converse of classical (John Stuart Mill’s version for example) democratic theory because ‘masses, not elites, become the potential threat to the system, and elites, not masses, become its defender’ (Bachrach 1969: 9). This is because if we equalise participation, the quality of participation will decrease since citizens are unequally equipped (either intellectually or materially) for moral reasoning or social science analysis. In other words, ‘it is good for democracy that the educated are more active: they are higher quality citizens’ (Verba 2003: 669).

Walker too attributes a significant amount of distrust of the masses to democratic elitists, arguing that 'at the heart of the elitist theory is a clear presumption of the average citizen's inadequacies' (Walker 1966: 286). He argues that in attempting to make the theory of democracy more realistic, more in line with empirical reality, Schumpeter, Dahl, and their successors have transformed the meaning of democracy from a radical to a conservative political doctrine, 'stripping away its distinctive emphasis on popular political activity so that it no longer serves as a set of ideals to which society ought to be striving' (Walker 1966: 288). Apathy is now not only tolerated, but is instead cultivated, since extensive participation by the uninformed masses could contribute to the break-down of democratic restraint and 'peaceful competition among the elites, the central element in the elitist theory, will become impossible' (Walker 1966: 287). In contrast to classical conceptions, these so-called 'realistic' accounts of democracy, it is claimed, do not simply accord an exceedingly limited role to ordinary citizens; they portray citizens' involvement as an unwanted infringement on the smooth functioning of public decision-making.

Despite the claims made by Bachrach and Walker among others, that liberal representative democrats require fairly limited participation because they have an overly negative view of people's democratic capacity, there is plenty to suggest that concern over citizens' capacity for self-rule is not without foundation: data collected by political sociologists undertaking large-scale empirical investigations into political attitudes and behaviour in most Western countries in the post-World War Two era revealed that the outstanding characteristic of the majority of citizens, particularly those in lower socio-economic groups, 'is a general lack of interest in politics and political activity and further, that widespread non-democratic or authoritarian attitudes exist' (Pateman 1970: 3). More recently, George Marcus and Russell Hanson cite evidence (largely conducted in the United States) which indicates a lack of

tolerance for others, a lean knowledge of politics and a pre-occupation with self-interest (Marcus and Hanson 1993: 2). A decade later, little seems to have changed. Based on their extensive research into American voters, John Hibbings and Elizabeth Theiss Morse conclude that the last thing people want is to be more involved in political decision-making:

They do not want to make political decisions themselves; they do not want to provide much input to those who are assigned to make these decisions; and they would rather not know the details of the decision-making process... (Hibbings and Theiss Morse 2002: 1).

This, they suggest, should not be taken to mean that citizens do not think a mechanism for ensuring accountability is necessary: just that they ‘do not want the mechanism to come into play except in unusual circumstances’ (Hibbings and Theiss Morse 2002: 2).

Because of this ‘preponderance of evidence on the undemocratic inclinations of mass publics’ (Marcus and Hanson 1993: 4) and the apparent lack of available data to suggest otherwise, opponents of democratic minimalism have tended to shift from offence to defence. Instead of showing that claims about the incapacity of citizens are unfounded or overstated, these theorists have tended to accept the unflattering descriptions of the masses offered by those aiming to reduce participation. Instead of arguing that participatory institutions should be extended *because of* the democratic capacity of the public, deliberative democrats specifically have argued that they should be extended so as *to improve* the democratic capacity of the public and indeed, the inadequate rational deliberation by elites who tend to pursue self-interest. They blame the evidence of undemocratic tendencies of citizens on the liberal representative institutions which do not provide citizens with meaningful participatory opportunities. They argue that ‘no useful purpose is served by blaming the victims [ordinary citizens] of insufficiently democratic institutions whose legitimacy is exempted from critical scrutiny’ (Marcus and Hanson 1993: 3). Even Benjamin Barber, the original proponent of ‘strong democracy’, does not argue that the data concerning the ‘limited citizen’ is wrong: he

concedes to (Schumpeterian) views that ‘it is doubtful if the average citizen will ever be as interested in all the decisions made at a national level as he or she would be in those made nearer home’ (Barber 1984: 18). Instead, he claims that the data is irrelevant: it does not show that citizens’ democratic capabilities are limited because it does not measure democratic capabilities at all. As Barber explains, ‘when pollsters inquire after public opinion, what they really tap is the status of private prejudices’ (Barber 1984: 19). In other words, the evidence constituting the original indictment of most citizens’ democratic propensities is not evidence of this at all since the language of democracy is being employed in the absence of democracy. If democracy does not exist in practice, the task of the empiricist then is

to hold up to critical examination, in the light of the actual practices of a regime, the theorist’s democratic interpretation of what citizens are doing, how power is distributed, what constitutes civic judgement and so forth (Marcus and Hanson 1993: 71).

In other words, instead of looking at the facts and data, empirical political scientists need to examine the vocabulary in which the facts and data are expressed: the step from ‘individual voter’ to ‘full democratic citizen’ is a large one; and until and unless that step is taken, all that the data can ‘prove’ is that ‘many regimes so called are not actually or always democratic’ (Marcus and Hanson 1993: 71). Of course it is very hard to prove that citizens have a propensity for democratic politics but there is in fact evidence to suggest that that mass behaviour is generally *in response to* the attitudes, proposals and modes of action of political elites:

The masses do not corrupt themselves; if they are corrupted, they have been corrupted...if a democracy tends toward indecision, decay, and disaster, the responsibility rests here [with elites], not in the mass of people (Key 1961: 558).

II. Do people get the government they deserve?

If the evidence mentioned above is correct, the issue may not be with the masses but with the institutions in which they are expected to participate. This seems to be the argument offered by deliberative democrats: if we want better citizens, we need better institutions. As such, deliberative democrats have tended to focus on ways to increase participation within existing institutional structures rather than on reforming these institutions on a grand, and possibly over-ambitious, scale. John Parkinson argues for example, that it is not ‘that ordinary people cannot deliberate, but that existing liberal democratic structures do not allow them those deliberative capacities, a point that goes back to J.S. Mill’ (Parkinson 2003: 187). Dryzek too suggests that deliberative democracy cannot be incorporated ‘unproblematically’ into existing institutions (Dryzek 2000: 166), but he does argue that this possibility does exist ‘to the extent of a critical orientation to established power structures’ (Dryzek 2000: 162). At issue, as Held argues, is ‘enhancing the nature and form of political participation’ (Held 2006: 232) rather than replacing existing modes completely. There is no doubt that the attention to voting as a mode of participation has meant that other modes have been virtually ignored (Parry *et al.* 1992; Verba and Nie 1972; Verba *et al.* 1978). Political deliberation is not then contrasted with voting but is a prerequisite if aggregation is to be meaningful and legitimate. Deliberative democrats emphasise the need ‘to turn democratic politics from the passive registration of interests’ (Held 2006: 246) by ensuring that the aggregation of preferences becomes the aggregation of refined and reflective preferences. The need for this transformation was recognised almost a century ago, when John Dewey observed that ‘majority rule, by itself, is as foolish as critics charge it with being. But it is never *merely* majority rule [because] the counting of heads compels prior recourse to methods of discussion, consultation and persuasion’ (Dewey 1927: 207, original emphasis). Dewey

seems to argue that dissatisfaction with existing (aggregative) institutions could be reduced if deliberation was incorporated into the democratic system so as to transform the ‘predetermined will of individuals’ (Manin 1987: 351) into the will of the community. In this way, the workings of higher-level representative institutions can be improved. And while, as Parkinson points out,

theorists and practitioners from starkly contrasting traditions have applied the deliberative label to everything from radical democracy in the public sphere, to the determination of public reason by small groups of jurists, even to the internal processes of making others ‘present’ in an individual’s own deliberations (Parkinson 2003: 180),

that deliberation is central to producing these transformative effects seems to be one of the core propositions of deliberative democracy.

Before considering whether people do get the government they deserve on a deliberative account of democracy, we need to examine some of deliberative democracy’s core propositions. Taking up the position of Jon Elster (1997), Parkinson insists that critical to deliberative democracy is

some form of inter-personal reasoning as the guiding political procedure, rather than bargaining between competing interests; the idea that the essential political act – the giving, weighing, acceptance or rejection of reasons – is a public act, as opposed to the purely private act of voting (Parkinson 2003: 180).

For Parkinson, it is crucial that deliberation is democratic; that is, that it embodies the ‘essential democratic principles of responsiveness to public wishes and the political equality of every member of that public’ (Parkinson 2003: 180). Following Jürgen Habermas who argues that genuine deliberation means that ‘no force except that of the better argument is exercised’ (1975: 108), Parkinson sets out a number of requirements – what he terms ‘procedural conditions’ – which ‘minimally include communicative competence, reciprocity, and inclusiveness, and a willingness to be persuaded’ (Parkinson 2003: 181). Democratic

deliberation can produce the transformative effects necessary for improving the way politics functions because it allows us to have our 'pre-formed preferences transformed in the face of a better argument, and thus to set aside strategic concerns and behavior in the pursuit of those preferences' (Dryzek 2000: 2). It is this feature above all others that makes deliberation 'much more than mere talk' (Parkinson 2003: 181).

Jack Knight and James Johnson regard the transformative argument as 'misguided'; they allege that the claim that 'deliberation serves primarily to transform the substances of preferences seems ill-considered' (Knight and Johnson 1994: 282). Leaving aside what they see as a lack of evidence supporting the deliberative argument that achieving consensus at the level of preferences is realistic (through the transformation of preferences), they question whether, at the normative level, consensus is appealing in pluralist societies (Knight and Johnson 1994: 282). If, as John Rawls argues, the pre-formed preferences, goals and interests are essentially the motivation for people to engage in the political sphere (Rawls 1996: 82), how can we expect people to enter the deliberative arena if they are required to abandon, or at least adapt, their preferences once inside? In response to this, Knight and Johnson propose an alternative view of the (possible) effect of deliberation on preferences in which deliberation allows individuals to 'sort out, and hopefully reduce, the dimensions over which they disagree' (Knight and Johnson 1994: 282). Taking up the point made by feminists and critical theorists, that deliberation is susceptible to distortions arising from 'various arbitrary, exogenous social, cultural or economic asymmetries' (1994: 278), Knight and Johnson see the role of deliberation as structuring preference orderings rather than transforming the content of preferences. This more modest goal requires deliberation to establish a common view of the political dimension even though they may differ widely on their judgements' (Knight And Johnson 1994: 282-283).

Raf Geenens points out ‘deliberative democracy is not a unified theory, and can only be compared to a large construction site where many architects are simultaneously at work’ (Geenens 2007: 357). As such, we need to don hardhats if we are to group all conceptions of deliberative democracy together or face the risk of being accused of ignoring the complexity of the concept. That said, although there is a degree of truth in this observation, both the ‘standard’ case for deliberation, or the alternative view as proposed by Knight and Johnson and William Riker among others, have at their core, the idea that ‘outcomes are legitimate to the extent they receive reflective assent through participation in authentic deliberation by all those subject to the decision in question’ (Dryzek 2001: 651). Common also to all deliberative theories is the emphasis on some form of *reasonable* deliberation albeit that what is included in ‘reasonable’ differs - for example, Simon Thompson and Paul Hoggett (2000) argue that it is unreasonable to expect emotions to be left out of deliberation whereas Diana Mutz (2006) focuses on preconditions of equality and reciprocity for reasonable deliberation.

Though by no means exhaustive, this exposition of some of the central claims made by deliberative democrats sheds some light on the relationship between citizens’ capabilities and the governments they produce. While deliberative democrats concede that we are in most cases, a long way away from having the ideal – or even optimum – system of government, their explanation for why this is the case is linked to institutional design rather than the ability of citizens. In other words, it is not the fault of the producers of government but rather the institutions in and through which they are expected to produce governments that is to blame. That said, deliberative democrats have, in the main, not offered much to discredit the low expectation of citizens that they ascribe to the conceptions of democracy offered by liberal representative accounts. Those who have argued for increased participation on the grounds that citizens are interested in and have the capacity for engaging meaningfully in politics are

often charged with having a naïve and idealistic approach – that if such citizens do exist, they are in the minority and indeed, there is an increasing amount of empirical evidence to support these charges. Based on his empirical research into deliberative democracy and ‘human nature’, Janusz Reykowski concludes that the assumption that the ‘ability for meaningful participation in deliberation is a common characteristic of citizens of democratic countries’ is ‘questionable’ (Reykowski 2006: 323). Moreover, even if participants engage in ‘high-quality’ deliberation, there is little evidence to suggest that they are necessarily ‘common good-oriented’ (Bächtiger *et al.* n.d.: 23). In fact, as André Bächtiger *et al.* point out, there are ‘plausible reasons why deliberation, in practice, might do more harm than good’ (Bächtiger *et al.* n.d.: 23). While we can (and many do) read this claim as an (implicit) indictment on the capabilities of citizens, and hence a justification for minimising participation, I suggest that there is another possible reading for limiting participation: one which does not rely on a critical view of citizens capabilities but rather, on a recognition that the socio-economic inequalities that characterise contemporary societies can and do have significant effects on political equality.

III. An alternative reading of limited participation

A reading of Schumpeter in particular and liberal representative democracy in general which takes seriously the fact that political advantage is closely linked to socio-economic advantage, (and conversely, that political marginalisation is closely linked to socio-economic marginalisation) would go as follows: given that most, if not all, contemporary democracies are characterised by significant socio-economic inequality, and given that socio-economic inequality affects the way in which opportunities to participate in political life are used, since resources like education, income and occupation have an effect on political activity and

influence, equality as a political ideal would require (a substantial degree of) equality in social and economic terms. Political equality requires that citizens have equal opportunities to influence political decisions and have equal power over outcomes, and it calls for political preferences expressed by citizens to be given equal weight in the decision-making process. But how do we obtain political equality when certain sections of society are mobilised through their increased ability to convert resources into political influence through their higher socio-economic levels?⁴¹

If we read Schumpeter as an attempt to minimise the effects of socio-economic inequalities, it becomes clear why he limits opportunities for participation to the vote: it is the most egalitarian form of participation since (practically) all citizens, regardless of position in society, can access it. Because ‘voting is the political act least dependent on skills and for which the opportunity to act is most clearly presented to the citizen’ (Verba 2003: 665), for liberal representative democrats at least, it is the clearest expression of political equality. Hence instead of reading Schumpeter’s argument that elections are the democratic institution on which everything else rests as one which is based on reducing participation, I suggest at least a possible reading of it as being an attempt to equalise participation. This is not to say that Schumpeter himself was concerned with equality of this kind but I think we can interpret Schumpeter’s arguments along these lines (irrespective of whether Schumpeter himself would accept such an interpretation). Thus instead of attempting the impossible task of equalising citizens’ capabilities, we focus on equalising the opportunities available to citizens in the form of the vote since more citizens are able to take part in voting than in any other form of activity and voting is equally distributed across the citizens more than is any other

⁴¹ It should be noted that the coincidence between socio-economic status and participation holds in the developed world but not necessarily in the developing world. There is significant evidence that the poor participate disproportionately in terms of what they get out: for example the involvement in ward committees in South African local politics which will be discussed in the coming chapters.

act. Of course citizens may need certain civic skills or competencies so as to vote effectively – such as information about candidates and platforms which will affect preferences – but compared to other forms of participation which require the capacity to speak publicly to communicate preferences, a knowledge of political decision-making structures so as to intervene effectively in the processes and equal access to information, representatives, government agencies, and other organisations, such skills or competencies are fairly minimal. If equal treatment for all is not possible given the different needs of, and preferences among, citizens, what is needed in terms of political equality, is equal consideration of all. The constraints imposed on the design of democratic institutions by this condition – equal consideration – have resulted in voting becoming the central institutional expression of participation. Political equality, or equality of political right, is procedural equality⁴². Of course, Schumpeter is also concerned with party competition: without this, the argument for voting is somewhat redundant. Indeed, this is why there are very few democrats who believe that one party states, even if they claim to be democratic, satisfy the requirements of participation – that is, the requirement of competition.

But is voting an adequate measure of political equality? As discussed above, the primary advantage of voting is that it requires few resources and thus avoids the problem with other forms of participation which are systematically biased in favour of those with greater wealth and education. Moreover, voting gives disadvantaged groups the opportunity to use their numbers as a political resource. But numbers represent an important resource only as long as such groups take advantage of this form of participation to an equal extent as the advantage taken by other groups in other forms of participation. In other words, the advantage of

⁴² Of course, even on liberal terms, there is more to procedural equality than voting: political liberties of speech, rights to engage with elected representatives and to make presentations to parliament are all important. The point is that they are, or seem to be, less important than voting.

numbers may be counterbalanced by the unequal use of participatory opportunities on the part of those who are better off. It is to avoid this very issue that Dahl and Schumpeter argue for the limitation of participation to voting: only voting ensures the equal participation of all. The question however, is whether and to what extent we have sacrificed meaningful participation in our attempts to equalise participation.

Philip Green makes this very point. He argues that the principle behind majority rule – one person one vote – is not really to give everyone equal influence over decision-making. In any jurisdiction larger than a very small town, considerations of time and numbers will ensure that at any given moment all the people cannot govern directly; they can only vote for leaders or for policies, the majority choice to govern. But as Dryzek's conception of discursive democracy (1995) indicates, there is a difference between numbers of people and numbers of views. Nevertheless, Green's point is that any single individual has virtually no impact on a given decision. The true ideal of majority rule, in other words, is 'not that everyone has equal influence, but that no one has any influence' (Green 1985: 171). The moral and symbolic purpose of majority rule is to give all persons the sense that the governing choice has nothing to do with the desires either of themselves or of any other definable individuals: the governing choice governs only because it is the choice of the greatest number among those choosing, whoever they may be. Green argues that any study of participation which focuses on voting is nothing more than 'an exercise in public relations for the pseudo-representative system' (Green 1985: 181). He concedes that elitists like Schumpeter and Walter Lippmann may well be right when they maintain that the only thing 'the people' can really do is choose their leaders but they are 'fatally wrong to consider pulling a lever for a fantasised leader figure as an expression of either choice or participation' (Green 1985: 181). Perhaps Green is overstating things: voting is an expression of choice and participation albeit a limited one.

In a similar vein, some scholars argue that the act of voting in contemporary representative democracies is so remotely connected to actual political decision-making that it is not to be ascribed any political or participatory quality (Parry 1972: 3). For these scholars, in order for something to be an act of political participation, there must be a (more) direct relationship between the act and the outcome, or, as Geraint Parry puts it, a 'reasonable expectation of influencing policy or at the very least making his voice heard in the deliberations leading up to it' (Parry 1972: 3). In contrast, after casting one's vote, the average citizen takes no further part in the decision-making process and the decisions themselves may bear little relation to the wishes of the electorate, either because the legislative issue was not one that featured in electoral campaigns or, more disturbingly, because the decisions taken contradict the electoral promises made. Moreover, a majority preference for one party over another need not imply a majority preference for any one particular policy within the winning party's programme (Parry 1972: 13). As Parry points out, a vote for a socialist party does not necessarily mean that the majority of voters want nationalisation: increased welfare services may have been at the forefront of their minds and their decision (Parry 1972: 14).

A related, but stronger indictment against voting as meaningful participation has its origins with Rousseau who argued that in voting, citizens relinquish their will to their representative. The only time voters are truly free to participate is on election day: in the periods between, they resume the status of slaves to their representative masters. Barber's critique of voting goes even further. He claims that even the supposedly free act of casting a ballot may be of dubious consequence in a system where citizens use the franchise only to select the executive or judicial or legislative elite that in turn exercises every other duty of civic importance. Thus to exercise the franchise is also to renounce self-government. Barber's claim is that the

representative principle steals from individuals the ultimate responsibility for their values, beliefs and actions. Like Rousseau, he argues that meaningful participation is voting in legislative assemblies about actual laws whereas voting in elections is ‘abdication’. Marking a ballot paper a dozen or so times in one’s lifetime for participatory and deliberative democrats is an inadequate sign of political participation. Moreover, as Verba and Nie (1972: 322) argue, voting is ‘somewhat of a blunt instrument’ because it conveys very little information and as discussed above, is not always a clear indication of choice. In addition, voter turnout itself is open to interpretation: does high turnout indicate satisfaction or dissatisfaction? Does low turnout indicate apathy or alienation?

Liberal democrats do recognise the problems with limiting participation to voting. As David Beetham explains it, ‘in isolating participation as an indicator of democracy, no claim is being advanced that it is the indicator’ (Beetham 1994: 45). This reflects Diamond’s conception of democracy in terms of two thresholds discussed above: countries above the first threshold are electoral democracies in the minimal sense that their principal positions of political power are filled through regular, free, fair and competitive elections. Electoral democracy can thus exist in countries with significant violations of human rights, massive corruption, and a weak rule of law. But in order for a country to be a liberal democracy, these defects must be sufficiently contained so that, in elections at least, the will of the voters can be reflected in the outcome, and in particular, unpopular incumbents can be booted from office. Diamond concedes that his emphasis on free, fair, meaningful and competitive elections as the minimal litmus test of democracy is open to significant criticism:

...that this may not amount to much...what is the point of having such ‘electoral’ democracy if the rights of women, minorities, and the poor are extensively violated; if those who are elected take turns plundering the national treasure and abusing power...if elections crown a

temporary presidential monarch who can use and abuse power without constraint for his term of office? (Diamond and Plattner 2001: 11).

Diamond is one of the increasing number of liberal democrats who emphasises an active society in which citizens can participate and express their interests outside of voting in elections but this emphasis is included in what he calls the second threshold or 'normative goal' as opposed to the litmus test (Diamond and Plattner 2001: 12). In other words, extended participation for him is a condition for a liberal democracy but it is not a condition for democracy itself: indeed, the more extensive the participation, the more possible the political inequality. Hence what is required for 'democracy' is limited participation, achieved through voting.

IV. An alternative reading of extensive participation

Deliberative democrats reject the idea that extended participation is an 'added bonus' over and above the essential act of participation in the form of voting. Instead, they argue that aggregation without deliberation cannot be considered to be legitimate political decision-making or self-governance (Rehg and Bohman 1996: 71). To take the public pulse means only to take the measure of aggregated impulse, to elicit 'undeliberated biases unmediated by reason or common deliberation' (Marcus and Hanson 1993: 68). It is for this reason that Held suggests that we should perhaps consider deliberative democracy as 'a change to the way representative democracy is understood and can function' rather than as a 'new innovative model of democracy' (Held 2006: 255). In other words, deliberative democrats may be willing to accept the gains in egalitarianism that voting achieves but only if liberal democrats are prepared to recognise the need to counteract the losses in legitimacy that voting necessitates. As Barber puts it 'democratic legitimacy [cannot derive] from any

simple conception of popular will' (Barber 1984: 370); rather, decisions are legitimate if they survive 'the gauntlet of public deliberation and judgement' (Barber 1984: 370). Aggregation is 'in various ways, inadequate to the task of producing normatively binding political outcomes' because it lacks the 'moral resources required to generate and sustain legitimate collective solutions to politically contentious issues' (Knight and Johnson 1994: 277-278). Supporters of deliberation argue that if, as will always be the case, citizens do not get the outcomes they want, they are nevertheless more likely to accept these outcomes as legitimate if their claims have been fairly considered rather than simply counted (Macedo 1999: 9-10). Thus deliberative democrats argue that legitimacy obtains because it is produced under conditions 'of reasoned argumentation under fair procedures' (Knight and Johnson 1994: 284). The implication is that while voting may be a fair procedure, it does not always occur against a background of reasoned argumentation.

Let us look at the issue of the power of deliberation to transform preferences (discussed above) in the context of extended participation. How convincing is the standard claim (rather than the alternative account advanced by Knight and Johnson and Riker) that deliberation mediates or transforms preferences so that conflict is not simply reduced or accommodated but is somehow eliminated, a claim that seems to be made in the main, without much empirical evidence? As Jason Barabas comments 'unwavering faith in deliberation is puzzling because scholars have not clarified how deliberation works' (2004: 687). Indeed, in their identification of the principal benefits of deliberative democracy, Amy Gutmann and Dennis Thompson can offer only that it should help promote legitimacy; it should help correct mistakes of the past; that its purpose is to promote mutually respectful decision-making and to encourage public-spirited perspectives (Gutmann and Thompson 1996; Macedo 1999). The normative and aspirational content of these benefits has led to the

allegation that those who support deliberation are simply making a series of unrealistic and unsubstantiated claims which have no place in the ‘real’ world of democratic politics. Considering that ‘much of the appeal of deliberative democracy lies in its emancipatory promise to give otherwise disadvantaged groups a voice’ (Knops 2006: 594), it is troubling that the ‘precise mechanisms for delivery of this promise remain obscure’ (Knops 2006: 594).

Proponents of deliberation (and extended participation in general) have not done much to cast off the ‘unrealistic’ and ‘unsubstantiated’ mantle: Jane Mansbridge’s opening gambit in a paper delivered in 1995 was that ‘participation does make better citizens. I believe it, but I can’t prove it. And neither can anyone else’.⁴³ Mansbridge seems however to have been enticed by the instrumentalist metric of citizenship because there is evidence on the benefits of inclusion and participation to the participants albeit related to the republican virtues of recognition, identity, self-worth and agency (as discussed in following chapters). Gutmann and Thompson propose their model as ‘a collection of ideal guidelines, in light of which current practice could be transformed (1996: 26). Knight and Johnson declare that their concern is not with actually existing institutions but with ‘possibilities as to how deliberative arrangements *might* operate’ (1994: 285, original emphasis). Thus while the aim is to elevate other forms of participation to the level of voting, in particular that of deliberative participation, deliberative democrats ‘lack an account of how existing institutions and practices might become more deliberative’ (Fung 2005: 398). Indeed, in the thirty years since the term ‘deliberative democracy’ made its first appearance (in 1980 by Joseph Bessette, in *Deliberative Democracy: The Majority Principle in Republican Government*), there have been far more accounts of how deliberation can be operationalised under ideal conditions rather than in the context of real world politics. This is not to say that there are no

⁴³ Delivered at the Political Economy of the Good Society (PEGS) Conference, 11-12 February 1995. <http://www.bsos.umd.edu/pegs/mansbrid.html>. [Accessed 1 June 2010]

accounts which take forward the operationalisation of deliberation – Parkinson, Dryzek, Elster, Thomas Christiano and Christian List all provide excellent practical applications. But given that deliberation is pitched as an institutional method which results in more informed, more rational and less prejudiced decisions than do other methods (such as simple aggregation), aside from those mentioned above, considerations of what these institutional arrangements would look like in the often very unfavourable conditions that actually exist in contemporary politics are suspiciously absent from much of the literature on deliberative democracy. If deliberative democracy cannot at the very least offer guidance ‘regarding how existing circumstances might be transformed to more closely approximate a deliberative ideal’ (Fung 2005: 400), it is unlikely that it will be taken seriously by anyone other than those who are already convinced by it. The most that can be said about it then is that if we ever get to live in a world in which deliberative democracy would work, a world that is very different from the one in which we actually live, we should give deliberative democracy a go. Until then, we should go about our business as usual, perhaps devoting a bit of time each day to playing ‘the part of wishful-thinking political fools’ (Fung 2005: 399) and waiting for a revolution that we cannot bring about.

What is quite surprising is that many proponents of deliberation (or in Habermas’ case, of communicative rationality) accept the criticism: Habermas himself claims that the ‘deliberative model of democracy appears to exemplify the widening gap between normative and empirical approaches to politics’ (Habermas 2006: 411) and Delli Carpini *et al.* contend that ‘empirical research on deliberative democracy has lagged significantly behind theory’ (Carpini *et al.* 2004: 316). Yet despite the accusation that deliberative democrats have limited evidence (if any) to substantiate their claims (particularly with regard to ‘transformative effects’), there is in fact an ‘impressive body of small-group studies that

construe political communication as a mechanism for the enhancement of co-operative learning and collective problem-solving' (Habermas 2006: 414) such as Michael Neblo's study of 270 subjects from six Midwestern universities (2005) and James Fishkin's study on British Columbians (1995). There is clear evidence that in practice, deliberation does tend to change things – opinions, attitudes, intensity of views and the like (Fishkin and Luskin 1999; Gastil 2000). What is not clear as Neblo points out, is the assumption that 'deliberation changes opinions *via mechanisms specified in the normative theories*' (Neblo 2005: 1, original emphasis). In other words, if changes in attitudes are due to something else, such as social power or group conformity, 'deliberation would magnify social inequality and pervert its own goals' (Neblo 2005:1).

Part of the problem is that central to the success of deliberation is that individuals do not cling to their prior opinions. Citizens open themselves up to the possibility of change while being exposed to information and arguments that may be dramatically different from what they ordinarily encounter. But how likely is it that citizens fulfil (or even desire to fulfil) these conditions? In other words, if the claim that deliberation can transform preferences means that it can achieve convergent, homogeneous preferences, the claim is, as Knight and Johnson argue, 'too strong' (1994: 283). But if the claim is that deliberation results only in preferences that are more 'considered, reflective and self-conscious' (Knight and Johnson 1994: 283), then the claim is largely irrelevant because it will not (necessarily) affect aggregation or affect it positively. Since there is 'no positive linear relationship between participation and reasonableness' (Offe and Preuss 1991: 167), just because deliberation aims for consensus does not mean it will achieve consensus: indeed, Knight and Johnson suggest that there is 'good reason to suspect that [deliberation] might even exacerbate conflict' and that 'faith in the power of deliberation to establish consensus should not blind us to [this]'

(Knight and Johnson 1994: 286). Gerald Gaus argues that appeals to agreement regarding the ‘rules’ of acceptable deliberation are problematic because ‘reasonable disagreement is at the very heart of a healthy democracy’ (Gaus 1997: 237). Similarly, Hibbings and Theiss Morse conclude that

...real-life deliberation can fan emotions unproductively, can exacerbate rather than diminish power differentials among those deliberating, can make people feel frustrated, is ill-suited to many issues, and can lead to worse decisions than would have occurred if no deliberation had taken place (Hibbings and Theiss Morse 2002: 191).

To be fair, deliberative democrats do recognise that we should sometimes accept decisions taken by majority vote; that some issues are, as Hibbings and Theiss Morse point out, unsuitable for deliberative procedures. But this ‘capitulation’ to aggregation is problematic for deliberative democrats - ‘there is something embarrassing’ says Jeremy Waldron, ‘about voting in a deliberative context’ (Waldron 1999: 212).

Geenens distinguishes three responses to voting by deliberative democrats. The first is that voting signals a breakdown of more ‘democratic’ ways to reach a decision (Geenens 2007: 358). If no consensus can be achieved, we need to resort to voting. But for deliberative democrats, this solution is less than an ideal concession since voting lacks the full democratic legitimacy of decisions reached under conditions of deliberation. Even if Dewey’s point about majority rule never merely being majority rule holds (Dewey 1927: 208), at the end of the day, it is still majority rule and is still open to the charge of being the tyranny of the majority, a charge that is much more damaging when it results from a deliberative process (rather than as a consequence of simple aggregation).

A second response to voting is to locate the legitimacy of voting in a ‘preceding, second order consensus’ (Geenens 2007: 358). Here, voting is circumscribed: it gains legitimacy because deliberation achieves consensus about when to use voting, not about the vote itself. Conditions need to be justified by ‘proper’ deliberation, prior to voting, as to what kinds of decisions are suitable for voting; what method of voting is appropriate; and what substantive (and moral) values constraining the outcome of the vote should be imposed (Geenens 2007: 358). In some sense, this goes back to Rawls’ ‘justice as fairness’ in which outcomes are accepted as legitimate because the procedure by which they have been achieved is agreed to be legitimate or as Fishkin calls it ‘procedural consensus’ (1990: 221).

A third account locates the legitimacy of voting results in the ‘presumption of rationality’ that accompanies voting. This interpretation of voting as ‘epistemic’ or ‘cognitive’ (Geenens 2007: 359; Christiano 1996) is linked to Condorcet’s Jury Theorem discussed above where, as Habermas concludes, the outcome of the vote is (provisionally) ‘our best shot’ at the most rational decision because ‘it records the interim result of a discursive opinion-forming process’ (Habermas 1985: 76). Habermas reiterates this in more recent work, arguing that the vote is legitimate because it is presumed to be rationally acceptable (2006).

But how convincing are these accounts of the legitimacy of voting in a deliberative context? Geenens concludes that all three accounts (which are not mutually exclusive) are ‘profoundly counter-intuitive’ in that they do not ‘grasp the reasons why we spontaneously tend to ascribe a certain democratic legitimacy to the results of a general vote’ (Geenens 2007: 36). Quite simply, these accounts do not fit with how participants in voting understand voting. The ‘winner’ of a vote (whether a person or a policy) is legitimate because a significant number of

people chose that person or policy and not because of the various reasons as to why a significant number of people made that decision.

If the issue of legitimacy is problematic for deliberative democrats, the issue of political equality poses a far more serious challenge. Earlier the point was made that political equality means different things to different people but that the aspects of capability of participants and availability to participate were critical to any conception of egalitarian participation. The argument proposed by minimalist democrats is that voting succeeds on both these counts: the act of casting a vote does not require much from participants (indeed, even illiterate members of the public are able to vote since drawing an 'X' next to a person's image or party logo suffices) and the cost of voting is fairly negligible even considering levels of socio-economic equality. More importantly, voting gives citizens an equal share of influence over the outcome (albeit a very small amount of influence). The very idea of voting is to give people's views an equal weight and in this way, is said to constitute a fair decision procedure⁴⁴. And indeed, there are occasions when a single vote can be decisive – one lone dissenter when a decision is required to be unanimous or when a decision is tied – and thus the argument that voting is not rational (because even the smallest cost outweighs the benefit for the individual voter) is (at least hypothetically) unfounded.

For deliberative democrats however, political equality is a minefield. Geenens argues that aside from the likelihood that 'rational debates tend, *in reality*, to reproduce existing inequalities and to have elitist consequences' (Geenens 2007: 364 original emphasis), the very principle of deliberative democracy excludes many people. Let us consider the

⁴⁴ Of course there may be arguments as to why certain views should receive a greater weighting but unless there is an 'acceptable' reason to support such an unequal distribution of influence, most people regard one person one vote as inherently fair.

empirical problems first. It is patently self-evident that asymmetries in both availability of opportunities and capabilities of citizens exist. In terms of the latter, although it is Amartya Sen who focuses on capabilities, it is William Rehg and James Bohman (1996) and Knight and Johnson (1997) who consider capabilities in terms of political equality or as ‘equality of opportunity of political influence’ (Knight and Johnson 1997: 293). Not only is the cost of deliberation much higher than the cost of voting (in terms of time and resources required to participate) and thus may exclude some (a majority of?) people from the opportunity to participate but it also seems to ignore, or at least underestimate, the differences in people’s ability to participate in this way. It is not for nothing that Aristotle stressed the importance of rhetoric and demagoguery in his description of Athenian democracy: he was well aware (and seemingly in favour) of the inequalities in persuasive power that existed among citizens. Deliberative democracy seems to assume that participants have a specific set of capabilities: the ‘capacity to formulate authentic preferences’; ‘the effective use of cultural resources’; and ‘basic cognitive abilities and skills’ (Knight and Johnson 1997: 298-299) and that participants have equal capabilities in these areas: but feminists for one would argue that gender necessarily contributes to inequalities among participants. But all of these are significantly affected by socio-economic circumstances; the disadvantage minority groups have in voicing their concerns (due, in part to cultural imperialism); and the problem of ‘adaptive preferences’ or the ability to adapt to adverse circumstances (Peter 2007: 382). Thus to ensure that deliberation is not affected by people’s capabilities we need to limit the effects of social and economic inequalities, systemic disadvantages and entrenched minorities. But what this means then is that equality is a precondition of deliberative democracy rather than a characteristic of it. There may be ways of dealing with this – skilled facilitation, foregrounding issues and collective rule-formation – but the extent to which these can overcome the inherent inequalities in the contemporary world is limited.

Let us for the moment put aside the empirical issues connected to the way in which deliberation may exacerbate (or at least not ameliorate) inequalities and look at how even in its theoretical expression, political equality is problematic. Habermas claims that the requirement of unanimous consent is not just linked to legitimacy but to equality since each citizen is equally granted veto powers (Habermas 1985: 110). Formal political equality is obtained because everyone's agreement counts equally. But Habermas seems to ignore the flipside of this claim: if unanimous decisions are required, a single dissenter can prevent the decision from being accepted. In such an instance, this person's position is given a far greater weight and hence, equal political influence flies out the window. As Geenens concludes

such a disproportionate situation obviously contradicts the idea of an *equal* distribution of political decision-making power. Hence an 'equal veto right', taken literally, can hardly be seen as an adequate interpretation of democratic equality (Geenens 2007: 366, original emphasis).

There is another problem with equality of influence linked to deliberative accounts. Because the 'ideal' deliberative situation is one in which the strength of an argument is the only consideration, the number of people who support or reject a certain argument is ignored. This is because there may be no additional arguments to support their view other than the original one offered by the first supporter. In other words, if all the reasons given in favour of position A have been offered, there is no need for other proponents of the position to contribute to the deliberative process (unless their contribution is simply a matter of saying 'I agree' but this show of support is irrelevant to the deliberations). Because, as Geenens points out, this 'rather odd situation is connected to the fact that the deliberative decision-making process is explicitly defined as an *epistemic* one' (Geenens 2007: 365 original emphasis). What this means then is that equal participation for the deliberative democrats can be limited

participation in that we may only need two participants (one in favour of position A and one against it) in order to come to a decision. The fact *that* there are a number of people in favour of position A is not considered to be an argument in favour of that position. Hence instead of every citizen counting equally, we may find ourselves in a situation where the majority of citizens do not count at all. Rule by the ‘people’ is ironically even more limited on (some) deliberative accounts than on liberal accounts of democracy.

V. The value of participation – limited or extensive

Evident from the discussions above is that for both liberal and deliberative democrats, the decisive test of a democracy is participation, and participation that is egalitarian and that divergences between the two camps in terms of what constitutes egalitarian participation is explicable not because, or at least not simply because one is pessimistic about citizens’ capacity while the other is optimistic: for one thing, it has been suggested that it is not necessarily accurate to claim that the basis for limiting participation by liberal democrats is a suspicion of the competence of the masses while at the same time many deliberative democrats accept the unflattering picture of citizens’ capabilities (and/or their democratic tendencies). For another, finding ways to ‘prove’ either generalisation of people’s competence is methodologically difficult and even if we can find a way, the evidence will be subject to fluctuations across space and time. What should therefore be clear from the above is that we are presented with two different ways of interpreting political equality rather than two different conceptions of humanity’s ‘goodness’. Thus the division between liberal and deliberative democrats appears to be about the optimum institutional design to ensure political equality rather than about the quality of citizens themselves (although in certain circumstances they may well be concerned with the latter as well). In other words, despite

their contrasting views about how to achieve political equality, the normative basis of both sets of theorists is the idea of egalitarian participation. On both liberal and deliberative accounts, the objective of democratic participation is to influence decision-making with the aim of securing one's interests. Because inequalities in representation and influence are not random, but systematically biased against less privileged citizens (be it in terms of class, gender, race or education), the concern for all democrats is that some interests are more likely to be protected than others. The liberal attempt to avoid this is to argue that voting is less unequal than other forms of participation, whereas for deliberative democrats, voting that is not preceded by deliberation is flawed. But irrespective of whether the arguments are in favour of limited or extensive citizen participation, the value of participation in conveying the interests of citizens to their representatives is seen as the key to achieving stable and effective government. As such, the justification for which there is institutional capacity for the public at large to participate is an instrumental one – participation is argued to bring about a good political system as it is the most reasonable and most favourable method for distributing power, permitting, as it does, the recognition of people's interests. Thus irrespective of institutional design, the aim is to reduce, if not avoid completely, unequal participation among citizens because citizens who participate less have a reduced capacity to protect their own interests in competition with others and to receive fair treatment from the government.

In contrast to conventional scholarship which positions deliberative accounts of democracy in opposition to liberal accounts, I want to suggest an alternative approach which is to think about the two accounts in terms of their similarities rather than their differences, the fundamental similarity being the instrumental value they place on participation. That is, for both deliberative democrats and liberals, the (primary) value of participation is that it can bring about stable, legitimate and accountable government, government that reflects the

interests of the governed (or at least the majority of them) and it is this feature of democracy that sets it apart from and above other political systems. Participation is thus instrumentally valuable because, as Christiano puts it, ‘democracies just tend to choose the best terms of association for a society’ (Christiano 1996: 16).

I am suggesting that we take seriously the claim that common to both liberal and deliberative accounts of democracy is the view of participation as being instrumentally valuable and that this is justified on the basis that participation by citizens in their own governance improves governance writ large. Of course, what we mean by ‘improves’ is hotly contested – some contend that legitimacy is the primary value of ‘good government’ while others consider accountability and responsiveness to be the indicators of this and many support a combination of all three. And of course, participation can and does have these effects: democracy would not hold its hegemonic position throughout most of the world if democratic regimes were not characterised by legitimacy, accountability and responsiveness. But while we cannot possibly ignore the purchase that this conception of participation as being instrumentally valuable has, we also need to be aware that it may have come at a price: that focusing on the instrumental value of participation has resulted in the neglect of other possible values.

If participation is justified primarily because it facilitates the creation and maintenance of ‘good’ democratic governments, governments that are legitimate, accountable and responsive to the needs and interests of their citizens, what happens if these instrumental benefits do not result from participation? While there is no doubt that participation, especially egalitarian participation, does have the potential to realise these important, even essential, characteristics in governments, there may, in certain circumstances be impediments to this achievement even

when levels of participation are reasonably high. In instances such as these, valuing participation for its capacity to bring about ‘good government’ may run into problems. That is, if our predominant justification for participation is its instrumental value, it leaves open the possibility for non - (or at least diminished) participatory systems to attain legitimacy on the basis that they bring about ‘better’ decisions and governments – there is certainly an argument to be made that an Oracle of Delphi, or a philosopher king would be just as capable (if not more so) as elected leaders and we would be relieved of what are for many of us, the demands of participation. As Lippmann observed:

Although public business is my main interest and I give most of my time to watching it, I cannot find time to do what is expected of me in the theory of democracy; that is, to know what is going on and to have an opinion worth expressing in every question which confronts a self-governing community. And I have not happened to meet anybody, from a President of the United States to a professor of political science, who came anywhere near to embodying the accepted ideal of the sovereign and omnipotent citizen (Marcus and Hanson 1993: 4).

Indeed, if we were selecting a system of government based on efficiency and economic growth, we may be hard-pressed to find a democratic polity that can compete with countries like Singapore and China. And in a world where economics increasingly appears to be the central variable citizens consider when assessing governments’ performance, successes in non-democracies compared with recessions and rises in unemployment in democracies may begin to test citizens’ confidence in the latter. This is particularly relevant in South Africa where democracy is not (fully) consolidated and where there is a history on the continent of democratic collapse. In other words, if participation is valuable because it is the ‘best’ means of attaining good government, what happens if participation fails to bring about good government?

VI. A categorical value of participation

In this section, I will argue that focusing on the instrumental value of participation (even implicitly) comes at a cost – the cost of ignoring, or at least marginalising another very important value of participation: a categorical value. On this account, participation is valued irrespective of (or at least in addition to) the effects it has on government performance. What this means is that while this account emphasises the need for more participation than the liberal conceptions propose, increased participation does not necessarily mean deliberation – while it may include deliberative practices, it is not limited to them. Moreover, the justification for this increased participation differs from those offered by deliberative democrats because the justification is not in terms of how participation affects the quality of governments. Indeed, justifying participation on its categorical value means that even where good government is lacking, non-participation is not a solution. I am not suggesting of course that we can – or should - dismiss the instrumental value of participation but rather, that if the benefits of participation are not obvious in terms of creating and maintaining effective leaders, focusing on the benefit citizens themselves derive from participation may stave off, or even prevent claims of ‘democratic deficits’ by those who privilege efficacy over other values.

The choice of the terms ‘categorical’ and ‘instrumental’ is deliberate in that they provide a clue as to the different values that can be placed on participation. If we consider the basic division in moral philosophy, between deontology and utilitarianism, we can begin to understand the different approaches to participation. Whether it is limited or extended, participation in both minimalist and deliberative accounts of democracy is intended to increase utility in the form of better governments. In contrast, participation on a

deontological account is related to duty, where citizens participate because it is the right thing to do, and not because of the possible benefits that may accrue in doing so. What this suggests then is that we should not only shift our focus from the ‘rule’ part of democracy to the ‘people’ part but that we need more specifically to consider the citizen as a moral entity in addition to being a political one.

Although the use of the term ‘categorical’ in this context is (I think) original (and hence its moral rather than political dimension), the idea of democracy as having ‘intrinsic’ value (Swift 2006) or ‘non-instrumental’ value (Ober 2007) is not. Swift discusses three ‘intrinsic’ values of democracy, all of which are linked to political participation: 1) autonomy where we ‘don’t need to know anything about [democratic procedures] consequences to say that they give citizens the value to rule themselves’; 2) self-realisation where he associates the idea that ‘participation in collective decision-making is an essential part of a fully flourishing human life’; and 3) equality or the idea that irrespective of the outcome of decisions, participation enables all citizens to have an equal say (Swift 2006: 204-209). Interestingly, Swift discusses the ‘intellectual and moral development of citizens’ (2006: 218) under the ‘instrumental’ benefits of democracy (along with ‘good or correct decisions’ and ‘perceived legitimacy’). He is clearly aware that this justification is linked to the intrinsic justification of self-realisation (where self-realisation is constituted through the very act of participation) but argues that it involves ‘less metaphysical baggage than the idea that such participation is, in itself, an essential element of self-realisation for human beings’ (Swift 2006: 219). Swift argues that non-democratic systems are thus ‘infantilising’ because they ‘deprive adults of the chance to develop their intellectual and moral powers’ (Swift 2006: 218). But then he points out that there is somewhat of a paradox in the idea of participating for the sake of personal growth and moral and intellectual development because the outcomes which motivate citizens

to participate are meant to be policy outcomes rather than personal ones. If this was not the case, then which candidate or what party ‘wins’ is in fact of no consequence. As such, Swift concludes, it is ‘hard to see how these in-process benefits could play a major justificatory role’ (Swift 2006: 219).

But Swift has fallen into a trap: although he speaks of ‘personal development’ as being an instrumental benefit, he then explains it in terms of an intrinsic one, albeit using the term ‘outcomes’. The ‘outcome’ of moral and intellectual development is instrumental in terms of its effect on decision-making (and hence on the quality of those selected to rule): the moral development is that through participation (and hearing the views of others) citizens will be less selfish and the intellectual development is that citizens will be ‘better at gathering and assessing information’ (Swift 2006: 218). In other words, participation is still (primarily) linked to its ability to produce better decisions rather than to its effect on citizens’ self-realisation. Thus while Swift acknowledges that participation ‘acts over time to change people for the better’ (Swift 2006: 219) he suggests, somewhat strangely, that someone who took part in politics only for self-development ‘wouldn’t be seriously engaging with the arguments of others, or responsibly exercising her agency as a member of her political community’ (Swift 2006: 219). But surely this is in fact what we mean by participation – or at least, what we ought to mean if we are going to argue that participation has intrinsic value, that is, is a requirement of being fully human? This is not to say that in the great debate between the active and the contemplative life, the active life (necessarily) wins, but the issue is about the direction or point of activity. Valuing participation in terms of its worth to individuals means we need to shift our perspective: instead of seeing politics as inherently and exclusively public, the categorical value of participation implies that we enter politics for

personal as well as political reasons and that the personal reasons are as important a justification for participation as the political ones.

It is necessary to point out however that not all participation can be seen as contributing to self-realisation: participation in vigilante groups, separatist movements and organisations that discriminate on the basis of race, gender, nationality and so on cannot qualify as an essential part of human flourishing. Thus the kind of participation and manner in which the participation occurs entails certain key conditions, such as engagement with those with whom we disagree, substantive debate and/or action on collective political issues under conditions of freedom and equality and participation that conforms to the rule of law. These conditions are required if participation is to be meaningful, that is, if it is to constitute moral self-development.

To clarify this point about participation that constitutes moral development we can look at the issue of crime, and citizens' responses to it. Although this point is examined in detail in Chapter Six, it is worth a mention here. 'Participatory' responses to crime in South Africa (in other words, non-state policing) can be categorised either as 'responsible citizen responses' or 'autonomous citizen responses'. The former is where citizens seek to find solutions to crime and security concerns that are within the ambit of the law; the latter are generally characterised by reactive, *ad hoc* and often violent methods of control (Baker 2002). Regulated citizen responses therefore signal the conditions of meaningful engagement considered here whereas autonomous, unregulated responses do not. This concept will be explored in much more detail in Chapter Six but it is briefly included here so as to illustrate the point made above.

Swift's 'paradox' – that because the motivation for citizens to participate is the effect their participation has on policy outcomes rather than personal ones, justifying participation on the grounds of personal and moral development is problematic – is actually not much of a paradox at all. That is, there is no rule that participation has to be justified in terms of its effect on policy outcomes: the whole point of positing a categorical value of participation is to provide another motivation, one that does not rely on participation's capacity to influence outcomes for the better.

Josiah Ober's account of democracy as a 'non-instrumental good-in-itself' (2007: 59) is much less complicated than Swift's, and as a result, somewhat more convincing. His argument, in essence, is that 'association in decision is necessary (although insufficient) for happiness' (Ober 2007: 59) where happiness is interpreted in the sense of Aristotle's 'eudaimonia'. Ober sees participation as being a good-in-itself that is 'both inherently happiness-producing and necessary to our full happiness' (Ober 2007: 60). This is linked to the Aristotelian premise that we are political animals and thus have a 'natural capacity' for participation (or 'association in decision' as Aristotle calls it). More important for the purposes of my argument is Ober's claim that we have a 'moral responsibility' (Ober 2007: 73) to encourage the expression of this natural capacity (while simultaneously acknowledging possible unintended – and 'bad' – consequences of allowing every natural capacity of every 'being-kind' to be expressed). We therefore do not value democracy as substantive participation because of its 'self-realisation' effects (even though it may have these) but because it is part of our duty as citizens: a commitment to democracy means a commitment to participating in decision-making that affects our collective futures.

Ober's argument has a further contribution to the concern which this thesis seeks to address: that is, the potential for citizens to reject democracy if it fails to bring about legitimate, responsive and accountable governments as it is claimed to be able to do. Ober discusses Isaiah Berlin's (1958) claim that he would be willing to consider living under a benevolent dictator who would preserve the negative liberty of all individuals (in other words, not to interfere with our choices of life-paths and conception of the good). He describes the following hypothetical situation:

I am the citizen of an imperfect but decent democracy. In a nonviolent coup, the democracy is overthrown and I become the subject of an ideal-type benevolent and liberal dictator, who is also an expert in the art of governance. The dictator improves upon the former (democratic) regime...As subjects of the dictator we may say and do pretty much whatever we please. Yet what we say and do has absolutely nothing to do with her decisions in respect to governance, and these decisions are binding upon us. With the exception of being ruled by a dictator, our society is more just, in Rawlsian terms, than it had been...No one in this society suffers humiliation or is deprived of any of the non-political goods of life (Ober 2007: 63).

The point of Ober's thought experiment is that while we can dispense with the claim that (at least in theory) only democracy can secure individual liberty and social justice (in other words, the instrumental value of democracy), we cannot deny the non-instrumental value of democracy:

Association in decision ought to be promoted...because it is a happiness-producing exercise of natural capacities that are necessary for true and complete human happiness and thereby constitutive of the human kind of being (Ober 2007: 67).

For Ober therefore, because the dictator has deprived her citizens of a fundamental aspect of human happiness – that is, association in decision-making as a 'human good-in-itself' (Ober 2006: 68) – she has done wrong to overthrow the democracy albeit that she has provided the citizens with other very considerable benefits.

One final point worth mentioning in Ober's account comes from the work done in genetics (Frank 2005) regarding the environmental effects on the expression of physical and behavioural traits. Ober refers to evidence which suggests that 'political regimes create environments that favor or inhibit the expression of natural human capacities' (Ober 2007: 68). His research indicates that these natural political capacities are retained, despite their being dormant, under conditions which do not allow their expression. This would surely imply that even under the most adverse circumstances, there is always the potential for the promotion of our natural capacities, one of these being happiness through association in decision-making. Somewhat curiously, however, Ober concludes his argument with the claim that we do not have a 'moral responsibility to bring about environmental conditions suited to the expression of every natural capacity' (Ober 2007: 73). This is curious because he seems to place such emphasis on the natural capacity for seeking (and producing) happiness. He does justify his conclusion in that he warns that 'environmental changes that would promote the expression of one being-kind's capacities may inhibit the capacities of other being-kinds' (Ober 2007: 72) and/or that 'association in decision cannot be traded off for other necessary goods' (Ober 2007: 71). These goods are mainly material goods: his, I think undeniable claim, is that 'happiness can only be enjoyed by persons whose material needs are adequately provided for' (Ober 2007: 71). If however these material goods are not adequately provided to citizens, and the likelihood of their being provided in the near future (not for lack of political will but perhaps because of local and global conditions), there does not seem to be any harm in trying to create an environment in which the natural capacity for (non-material) happiness can be expressed. In other words, if the instrumental benefits of participation are limited, and if there is little prospect of this changing, surely there is at least an incentive, if

not a moral duty, to participate on categorical grounds and that we are entitled to justify – and value – participation on this basis?

Conclusion

In general, the attention accorded to the issue of participation has tended to focus on *how* and *how much* people (ought to) participate in order to ensure ‘good government’. For liberal representative democrats, citizens’ participation should be limited to elections. Whether it is because liberal representative democrats perceive citizens to be lacking in the necessary abilities or because they believe it is the only way to guarantee real equality, the emphasis is on less participation rather than more. This conception is the dominant view of participation in the literature and in real world politics and one of its primary benefits is that it is (relatively) easy to put in place. For deliberative democrats, better decisions and more responsive government ensues from more participation rather than less but it is a specific kind of participation – rational and reasonable deliberation. While there are some deliberative democrats who have offered fairly sophisticated and realistic accounts of how deliberative practices should work, in the main, deliberative democrats have been accused of underestimating the high costs of deliberation for citizens, the impracticality of deliberative processes and the reticence of citizens to enter the deliberative forum when they know they may have to have their preferences ‘transformed’. The categorical account of participation discussed in this chapter focuses less on the *how* and the *how much* of participation and more on the *that*; it also shifts the focus from the ‘rule’ part of rule by the people to the ‘people’ part. In others words, attaching a categorical value to participation means we assess participation in terms of its effect on the citizens’ moral development rather than on the (material) gains resulting from the effect of participation on the government. In later chapters

the way in which (the *how*) and the amount that (the *how much*) people (should) participate will be considered. The aim of the discussion presented here has been to argue that if the instrumental benefits that participation is supposed to bring about are being brought about, we may not need an alternative value for participation – the gains that result from participation would be sufficient. But when these are lacking, as they are in South Africa (as a consequence of its particular historical, cultural and socio-economic circumstances), in order to maintain levels of participation, that is, to prevent citizens from choosing not to participate, we have to find another incentive for participation. Without participation, we cannot call South Africa a democracy; without participation the miracle may indeed become the misery.

Chapter Four

How Democratic is Democratic South Africa?

We must deepen the practice of participatory democracy in all spheres of public life. We must strengthen the democratic institutions of state, and continually enhance their capacity to serve the people.

(Jacob Zuma, Inauguration Speech, 9 May 2009)

Introduction

Underpinning this research is the concern that the findings of an audit of democracy in South Africa according to the conventional accounts of democracy will be – and are - necessarily qualified because these conceptions do not take into account the particular context of South Africa. This is not to suggest that there are no problems with South African democracy but I do want to raise the question as to whether evaluations may be unnecessarily bearish. In this chapter I will examine aspects of South Africa's democracy, assessing the strengths and weaknesses of various institutions in terms of whether they are achieving the outcomes that liberal representative and deliberative accounts of democracy claim (various types of) participation achieves. Liberal representative accounts focus on electoral mechanisms which do or do not allow citizens to 'control the controllers'; deliberative accounts focus on the extent to which deliberative processes are available to citizens so that they may have their (refined) preferences met. I will then turn my attention to an analysis of how South African democracy fares on a categorical account – an account of participation where the value of participation is attached to the extent to which it promotes citizens' moral development. The starting point for these investigations is a discussion of the institutions in South Africa which have been designed with these various aims in mind.

Evident from the previous chapter is that the conception of democracy as a means to creating and maintaining a system of government necessarily raises the question of the extent to which there is institutional capacity for citizens to participate on matters of public policy – whether in minimal terms (through voting) or more extensive ways (through deliberation). Perhaps the clearest articulation of the importance of institutions in a democracy is that of Madison in *Federalist Number 51*:

What is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself (Madison 1788).

Madison's conception has had great influence in terms of the conventional approach to institutions, that is, conceiving them as constraints. The focus is on how to design institutions, and citizen participation in these institutions, so as to constrain government behaviour and action and, perhaps more importantly (certainly for Madison and his counterparts given how suspicious they were of the masses) how to design democratic institutions so as to control the participants themselves.

There thus seems to exist a general consensus that, at their core, political institutions are

formal arrangements for aggregating individuals' [preferences] and regulating their behaviour through the use of explicit rules and decision processes enforced by an actor or set of actors formally recognised as possessing such power (Levi 1990: 405).

Somewhat more succinct, Douglass North's conception of institutions as 'humanly devised constraints that structure political and social interaction' (North 1990: 5) is one of the most frequently invoked in the literature. And if we look at the history of democracy, the dominant conceptual paradigm has indeed been to understand institutions in this way, as rules which

constrain actors and groups, both the ruled and the rulers, from behaving outside the established protocols.

The view of institutions as ‘the rules of the game’ is not without its problems however, particularly in terms of the claim advanced in this thesis, that participatory institutions do something other than constrain behaviour. An alternative conception of institutions from that of constraints is to see them as presenting opportunities. The idea here is that opportunities for engaging in political activity are important not (only) because of the government they give rise to, but because they (may) facilitate emancipation for citizens from their history and circumstances. The focus on institutions thus shifts from the type of government they bring about, to the nature of citizenry that develops from these institutions – or as it was put in an earlier chapter, a shift in focus from the rule part of rule by the people, to the people part. On this conception, the central issue is to identify the kinds of participatory institutions which can promote autonomy, rationality, good conduct, and other virtues.

The notion of ‘political opportunity structure’ was developed in the late 1960s and early 1970s by scholars wanting to describe and explain the conditions in which people engage in collective action (Tarrow 1989 and 1995; Kriesi *et al.* 1992). The concept was originally used almost exclusively in the framework of social movement and protest behaviour as Herbert Kitschelt’s definition indicates:

Political opportunity structures are specific configurations of resources, institutional arrangements and historical precedents for social mobilisation, which facilitate the development of protest movements in some instances and constrain them in others (Kitschelt 1986: 58).

More recently however, the concept has been adapted for use in the wider area of participation research although the ways in which it is used suggests a certain dynamism to

the concept. For example, while the notion was originally used in the singular (as in ‘political opportunity structure’) unless it was applied to comparative analyses across states, of late it has been recognised that there may be considerable variation among policy arenas within the same political regime, making it possible therefore to speak about ‘opportunity structures’ which differ in different policy areas. In order to highlight that there may be several possible ‘channels’ of participation, some authors use the term ‘structure of political opportunities’ (Eisinger 1973: 12; Tarrow 1995: 231). In general, the use of the singular ‘structure’ indicates that there is a structure common to all channels, however diverse they may be, and that one has to consider the important links and relationships between the different opportunities. The plural ‘opportunity structures’ (for citizen participation) has been used to stress that the number and range of these structures has increased considerably in modern democracies (Mazey and Richardson 1994: 13). The use of the plural of ‘structures’ means that every opportunity to participate, every channel into the core of the decision-making (and implementation) system is associated with specific (structural) properties which differ from channel to channel. This terminological shift is related to the broadening of the concept in the sense that the main focus on protest movements has been replaced by more general research into all forms of political participation. Sonia Mazey and Jeremy Richardson, for instance, have developed a market analogy for political participation reminiscent of Max Kaase and Alan Marsh’s concept (1979: 137) of a ‘political action repertory’ consisting of both unconventional and conventional political involvement (Mazey and Richardson 1994: 14).

It is not surprising that as the political opportunity structure concept has been popularised, so too has the scholarly attention to the classic division between ‘formal’ and ‘informal’ rules in the study of institutions. Since ‘informal institutions’ simply ‘do not fit’ into a conception of institutions as constraints they had been all but excluded in the dominant liberal (and

proceduralist) conceptions of modern democracy. Some have suggested that the division was potentially unhelpful – so much so that even the arrangement of the sub-disciplines in political science began to be questioned. This has led, in some circles, to the recommendation that organising our thinking in terms of ‘political institutions’ as a sub-discipline, rather than institutions of a particular geographical area, is a more logical way theoretically of partitioning the discipline. This in turn gave rise to questions as to whether the term ‘political institutions’ should be expanded to include any kind of repetitive behaviour that influences political processes or outcomes (‘informal’ rules) or reserved for formal rules that have been decided upon in a political process. Including those things such as ‘habits’, ‘culture’ and the like which seem to affect ‘openness to participation’ has the advantage of incorporating most of the things that guide individual behaviour but the drawback is that ‘institution’, as a concept, then risks becoming too diluted. If so, it faces the same fate as that of other popular concepts in the social sciences: if it means everything, it explains nothing.

This debate was to some degree resolved with the publication of James March and Johan Olsen’s seminal article ‘The new institutionalism: organizational factors in political life’ in 1984. They stressed not only the organisational factors in political life but also the importance of norms and values in defining how those organisations would and should function. There has been significant research into how, and the extent to which, those intermediary social and cultural norms of behaviour interact with formal institutions. And the evidence seems conclusive: formal structures affect and are affected by (inherited) informal structures. The beliefs and attitudes of people influence the emergence of formal institutions and the characteristics of these institutions in turn shape the mode of people’s participation.

In some instances, these informal institutions may be democracy-deepening, democracy-neutral, democracy-erosive, or in some cases, a combination thereof.

What is particularly interesting is that institutional analysis has been ‘rediscovered’ not only in political science, but in many disciplines closely related – economic history (North 1990), economics, the sociology of organisations, social anthropology, and industrial relations. Many of them point to the fact that in order to understand variation in development between social systems, it is not social or economic structural variables, but political institutions that are the most important explanatory factors. We could say therefore that politics, understood as institutional engineering, has regained much of the centrality that it had lost up to now. But we are a way away from telling either the most interesting, or the most accurate story as to the role political institutions really play, how differences in institutional structures can be explained, and what causes changes in political institutions.

The reason for this, or at least a reason, is that little, if any, attention has been directed at the way we view formal institutions, particularly those associated with democracy. New institutionalism has led to significant research into the areas of ‘political culture’, ‘social capital’ and other forms of behaviours, attitudes and beliefs encompassed in the term ‘informal’ institutions and this has in large part, been a result of the reconceptualisation of these institutions as constraints to one of opportunities or ‘incentives’. But one possible avenue of inquiry seems to have been neglected. While it may appear fairly unproblematic to conceive formal political institutions - legal frameworks, constitutions, electoral rules, party systems and so on – as constraints, surely we should at least consider the possibility that there is much to gain from reconceptualising even formal institutions as opportunities given how much has been gained from reconceptualising informal institutions in this way? In other words, since the conception of formal institutions as ‘constraints’ has led to liberal accounts

of democracy⁴⁵, what kind of democracy could we achieve if we conceive of formal institutions as providing opportunities?

The importance of this alternative conception has somewhat surprisingly been overlooked: Martin Raiser for example argues that

at a practical level, whether informal institutions are considered to be constraints or parts of a society's opportunity set is probably less important than the recognition that informal institutions fundamentally influence human behaviour while not being directly amenable to policy (Raiser 1997: 3).

And when the distinction has been made, the primary conception of institutions in the literature is as structural constraints (that allow or prohibit anti-democratic behaviour among elites): the idea of institutions as incentive structures (that promote or discourage democratic behaviour among individuals) is generally only a secondary consideration.

But there is considerable purchase to be gained if we conceive institutions as opportunity sets rather than as constraints because the former view accords institutions a far greater significance. On the constraints view, the primary participants in the governance of a country are the elites: on minimalist accounts, citizen participation is confined to controlling the elites thereby encouraging accountable and responsive behaviour; on deliberative accounts, citizen participation, although more extensive, is still aimed at limiting the threat of unreasonable behaviour so as to reduce or eliminate the threat to the democratic system in place. If institutions or political structures are regarded as opportunity sets, the role of citizens is more active as they become actual participants rather than simply controllers. The significance of this alternative conception of institutions becomes clear when we consider the value of

⁴⁵ Even deliberative accounts allude to the structures of participation as constraints with their requirements of reasonableness and a willingness to shift positions in the face of rational arguments.

participation on categorical grounds: not only does the conception of institutions as political opportunity structures affect the way in which the political system functions (or does not function); just as important are the implications of this for citizens' moral functioning – interaction between citizens can either contribute to or detract from their moral development. On this understanding of participation, the goal is to design institutions and create opportunities that can first ensure that citizens do participate and second ensure that the participation promotes citizens' moral development.

I. Liberal democracy in South Africa

As Parry and George Moyser (1994: 46) point out, that one theory or model of democracy should pay special attention to a single mode of participation – voting – and virtually none to others is a reminder of the multidimensionality of 'participation' and that this model (or at least versions of it) has come to occupy a privileged position in scholarly analysis and popular thought. It seems that democracy as the 'rule by the people' has been attenuated to some rather weaker term which captures the elements associated with modernity – institutionalised popular influence, procedures of accountability (Parry and Moyser 1994). 'Rule by the people' has thus taken on a procedural form in which elections are the principal mechanism for determining and transferring government power. Because of this absence of widespread citizen participation, the degree of responsiveness of elites to citizen participation, expressed via the ballot, has become an important indicator of democracy. Given that it is their only means of communicating their will (of participating), the ability of citizens to change and control their governments is taken to be a central democratic index. It is however disingenuous to claim that liberal democrats exclude all forms of participation – other than elections – from their conceptions, with the exception of Schumpeter perhaps. It is

not that popular participation is totally neglected in liberal conceptions of democracy – it is that it exists in a diluted form, mediated through professionalised political leaders. For example, while they both refer to electoral democracy, Diamond and Huntington nevertheless emphasise that democracy requires more than elections: it requires free and fair elections and for this, elections have to take place against a background of the rule of law, freedom from intimidation and so on. Indeed, for liberals, ‘the definition of democracy in terms of a procedural minimum (competitive elections, universal franchise, the absence of massive fraud and the effective exercise of civil liberties) is generally accepted’ (Giliomee and Simkins 1999: xvii). The result of this is that citizen participation has ceased to be the paramount indicator of democracy. It has been joined by several others – the competitiveness of elites, the representativeness of representation, the control of bureaucracy, the independence of the judiciary, and freedoms of various kinds (Parry and Moyser 1994: 45).

It would therefore be inadequate to audit democracy in South Africa – on liberal conceptions of democracy – simply in terms of elections for this cannot provide a satisfactory, or indeed uncontested, picture. This is because those who evaluate South African democracy purely on electoral grounds either come out in support of the country on the basis that all four national elections have been declared free and fair whereas others are highly critical because of the massive electoral majorities garnered by the ANC. Consequently, I will use a number of criteria, based on a combination of the accounts of liberal democracy examined in the previous chapter, to measure whether, and to what extent, we can characterise South African democracy as ‘democratic’.

a. Elections

I will use the term ‘elections’ in a broad sense, that is, the discussion will include the electoral system, voting behaviour, elections themselves and party politics (both within the ruling Tripartite Alliance and in terms of opposition parties) as measures of the ‘democraticness’ of South Africa.

As discussed in the first chapter, South Africa uses a list PR system for national (and provincial) elections. While this has had considerable benefits for the composition of parliament, especially in terms of the number of women MPs, and for voters themselves, in terms of the simplicity of the ballot, list PR has significantly affected both the accountability of MPs to their constituents since they owe their seats to the party rather than to the electorate, and the choice of voters in that they can only register preferences across parties not within them. Given the number of alliances in South African politics and the ‘broad church’ nature of the ANC (and the DA to a lesser extent), the inability to indicate preferences within parties is very problematic. Nevertheless, to the extent that the electoral system is very representative, votes are not wasted and it is not susceptible to gerrymandering, despite the criticisms mentioned above and in Chapter Two, in terms of its electoral system, South Africa is democratic on a liberal conception.

Regarding elections themselves, the criticism of them on the grounds of the ANC’s dominance is in my view, unwarranted. There is no evidence that suggests that any of the elections have been even partially unfree or unfair. Indeed, South Africa can be credited with going above and beyond what is considered necessary to ensure free and fair elections: in all of the four elections, many voting stations were still operating long after their scheduled

closing times in order to accommodate the thousands of people who turned up to vote. For example, in the 2009 elections, 40 percent of the voting stations in Gauteng stayed open after midnight⁴⁶. Again, although none of the elections have been without issues - such as a shortage of ballot papers, pens and other essential items and occasional scuffles outside one or two of the voting stations - given that there are nearly 20 000 voting stations, these should not be seen as having undermined the freeness and fairness of the processes.

On the indicator of party politics, while the dominance of the ANC and the lack of any real possibility (in the immediate future) for alternation in government does weaken the extent to which there is genuine competition between parties, given the number of parties in parliament and the diverse array of interests they represent, it is fair to say that South Africa is a multi-party democracy. Key to this statement is the fact that in 2009, the ANC lost its two thirds majority in the national elections and hence has no power to change the Constitution without the support of opposition parties. This suggests that while multi-party politics is very weak, it is moving in the right direction. But even if formal multi-party politics is deficient on liberal accounts of democracy, there are some who claim that the Tripartite Alliance and indeed, the internal politics of the various ANC 'factions'⁴⁷, is, at least partially, doing the job of multi-party politics (Piper and Matisonn 2009).

The fact of voter behaviour is possibly the most damaging to South Africa's image as a democracy. Whether we take the strong line that elections are nothing but ethnic censuses (Horowitz 1985, Schrire 2001) or the weaker one that the electorate is not simply racially or

⁴⁶ http://www.mediaclubsouthafrica.com/index.php?option=com_content&view=article&id=1087:2009-general-election-23-4-9&catid=44:developmentnews&Itemid=111#ixzz16HbZqgWo [Accessed 25 November 2010]

⁴⁷ That there are factions is not something members of the ANC will admit to but the recall of Mbeki and the rise to power of Zuma is clear evidence that there are different 'camps' in the party and that their differences are significant. The breakaway of senior members of the ANC to form COPE is another indication that there are not just cracks in the ANC-SACP-COSATU alliance but within the ANC itself.

ethnically motivated, blind to all other factors, but that race and ethnicity affect how voters perceive performance, electoral campaigning and so on (Mattes *et al.* 1999), there is no doubt that election results tend to match fairly closely the racial and ethnic make-up of society. On liberal accounts, the so-called ‘ascriptive’ voting behaviour raises doubts about the extent to which there is accountability and responsiveness in the country (in that if voting is based on these essentialist features, government performance is irrelevant to voters’ decisions) and this is I think a justified concern. Nevertheless, on the minimalist conception of democracy, or the ‘thin’ liberal conception, South Africa does not fare too poorly on the broad issue of elections.

b. Judicial independence

Integral to the liberal conception of democracy is the recognition that the popular state must be subject to review. Liberals recognise that constitutionalism, as the presence of constraints, provides a more effective guarantee of ‘good’ government than do elections alone. Of course, because modern constitutional democratic regimes developed historically in close relation to the liberal conceptions of the individual and of freedom, detractors of the principle tend to equate it with extreme libertarianism, and an ideological semi-sanctification of a free-market economy (Eisenstadt 1999: 7). The (over-)emphasis on rights perceived by these critics is said to be emasculating democracy in that it can result in privileging lawyers and the courts over legislators in decisions regarding social policy. That is, elected representatives of the people become less significant agents of policy-making than unelected members of the legal fraternity. This in turn raises questions about equality in that not all citizens are empowered to access the courts - or at least, are not all equally empowered. On this account, a constitutional democracy is potentially very elitist: if not an oligarchy, then at the

minimum, democracy for the few. While these criticisms have their merits, because we are assessing judicial independence according to liberal accounts, we need not deal with these criticisms here.

On the whole, South African courts have not been afraid to rule against the state. Indeed, in the last few years, the government has lost some high profile cases. These include:

- October 2000: The Grootboom case in which the Constitutional Court ruled against the government on the grounds of its failure to act reasonably to provide access to housing to all South Africans.
- June 2002: The Minister of Health lost a bid to appeal against a Pretoria High Court ruling that the provision of Nevirapine at only a few selected sites was unlawful.
- July 2002: The state unsuccessfully tried to prevent the court from confirming a High Court order invalidating provisions of the Judges' Remuneration and Conditions of Employment Act on the grounds that it discriminated against same-sex partners.
- October 2003: The Constitutional Court dismissed an appeal by the state and the parastatal Alexcor Limited against a Supreme Court of Appeal ruling to return mineral rights belonging to Alexcor to a community which was forcibly removed from its land.
- October 2003: The Constitutional Court threw out an appeal bid by the Limpopo Education Department after they waited too long to lodge it. The state wanted to appeal a Pretoria High Court decision giving school governing bodies the right to appoint educators.

- March 2004: The Minister of Social Development unsuccessfully attempted to prevent social welfare grants being extended to all permanent residents.
- November 2004: The Minister of Home Affairs was refused a request to appeal against a Supreme Court of Appeal ruling that gay marriages be legalised⁴⁸.

Since 2005 however, the ANC government has displayed open hostility to the courts, launching attacks in the media that could well be interpreted as attempts to promote a bench that is more sympathetic to the government's ideology and policy programme of 'transformation', and to exert implicit pressure on judges to make rulings that accord with the government's policy agenda. In January 2005 for example, at the ANC's 93rd anniversary celebrations in Umtata in the Eastern Cape, the party released a statement asserting that the judiciary should be brought into 'consonance with the vision and aspirations of the millions who engaged in the struggle to liberate our country from white minority domination', and that judges should undergo a shift in their 'collective mindset' so as to be 'accountable' to the electoral 'masses'⁴⁹. A few days later then ANC spokesman Smuts Ngonyama told the media that Justice Minister Brigitte Mabandla and the Judicial Service Commission were continuing to explore ways of changing the 'mind-set' of judges' (*Financial Mail* 14 January 2005).

Indeed, there is a view among certain legal scholars and members of the legal profession that there is a disproportionately high number of politicians on the Judicial Services Commission (JSC) which, in terms of provision 178 in chapter 8 of the Constitution of South Africa, is responsible for advising the national government on any matter relating to the judiciary or the administration of justice). Marius Olivier and John Baloro claim that this could 'not only jeopardise the independence of the commission, but also the perception of independence. The

⁴⁸ http://www.da.org.za/docs/621/judicial%20review_document.pdf. [Accessed 25 November 2010]

⁴⁹ http://www.scielo.org.za/scielo.php?pid=S1727-37812010000200001&script=sci_arttext&tlng=en. [Accessed 25 November 2010]

impression could be created that the views of the majority party in Parliament will be sustained' (Oliver and Baloro 2001: 31-50). Part of the reason for this criticism is that the Constitution stipulates that when the JSC considers any matter except the appointment of a judge, it must sit without the members designated in terms of subsection (1) (h) and (i). The members to which this refers are

six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly and four permanent delegates to the National Council of Provinces designated together by the Council with a supporting vote of at least six provinces (Constitution of the Republic of South Africa 1997, Chapter 8, Section 178).

In other words, the appointment of judges is clearly political; moreover, given that only three of the ten members of the national and provincial parliaments have to be opposition members, the process is skewed in favour of the ruling party. Moreover, the President has the power to appoint nine other members of the JSC (the Cabinet Member responsible for the administration of justice; two practicing advocates nominated from within the advocates' profession but appointed by the President; two practicing attorneys nominated from within the attorneys' profession, appointed by the President; one teacher of law designated by teachers of law at South African universities; and four persons designated by the President as head of the national executive, after consulting all leaders of parties in the National Assembly). Given the wide and deep support base of the ANC, it is at least constitutionally possible for the President to pack the bench with pro-government members.

Between 2005 and 2010, a number of draft bills relating to various judicial matters have come before parliament such as the Superior Courts Bill and the 14th Amendment to the Constitution Bill, the Judicial Services Commission Act Amendment Bill, the Judicial Conduct Tribunals Bill and the South African National Justice College Draft Bill. The first

two bills, originally gazetted in December 2005, were withdrawn from parliament by then President Mbeki in 2006, but only after the 52nd ANC National Conference in December 2007, where a resolution was passed to ‘transform the judiciary’ and Mbeki was called on to pass the bills and implement their provisions before the end of his government’s current term. This did not happen and as of November 2010, the proposed legislation has not been passed.

It would be unreasonable to claim, as the DA has on several occasions, that the judiciary is ‘under threat’ but there is evidence that if the ANC had its way, judicial independence would be curbed. Special Advisor on Transformation to Justice Minister Mabandla told the media in 2005 that ‘judges and the legal profession currently regulate themselves and these structures should be reviewed’ (*Mail & Guardian* 18 February 2005). That the Chief Justice at the time responded to the statement by asserting that the review mechanism ‘is inconsistent with the principle of separation of powers and the independence of the judiciary’ (*Mail & Guardian* 18 February 2005) indicates that in some circles at least, the liberal emphasis on judicial independence is respected. Nevertheless, South Africa’s scorecard on this measure of liberal democracy is ambiguous.

c. Restrictions on executive power

Much of the literature on democracy assumes that procedural mechanisms aimed at controlling the controllers will have substantive outcomes, in particular, the recognition by those in government of the need to be accountable to those who put them there. Hence Melvin Dubnick and Jonathan Justice argue that while accountability is an indicator of answerability, responsiveness and so on, ‘it is also indicative of the conditions it promises to create’ (Dubnick and Justice 2004: 5). The inference is that if the ‘correct’ procedural

mechanisms are in place, governments will perform ‘better’. But just because the institutions exist should not be taken to mean that they are working. The engagement of citizens with many of these institutions coupled with a commitment by the government to preserving their integrity and functioning is essential if formal mechanisms of accountability are to prevent ‘a drift towards a general level of institutional “immunity” in the political sphere’ (Sole 2005: 86). What this suggests then is that we need to examine how extensive the institutions which control the controllers are on paper and more importantly, whether and to what extent these are ‘rendered weak by a lack of enforcement, or (...) bypassed by strong informal codes of secrecy and solidarity, and a certain social approval or cachet being attached to “beating the system”’ (Sole 2005: 87).

Before we can undertake this examination however, we need to clarify what we mean when we talk about accountability because the term covers ‘a huge range of phenomena’ (Sole 2005: 87). Joy Moncrieffe argues that conventional definitions of accountability tend to ‘restrict the accountable parties to governments and public officials’ (Moncrieffe 1998: 392) and as a result, ignore the very real possibility that even with responsible leaders and public officials, a political system can be corrupt. She argues that interpretations of the concept of accountability must focus ‘not merely on the responsibilities to the governed of those who are elected to govern but also on the relation among groups or factions and their responsibilities to elected officials’ (Moncrieffe 1998: 392). Interestingly, while the Open Society Monitoring Index (OSMI) supports an understanding of the concept in which a government is accountable to citizens and civil society, the horizontal accountability it envisages is not between citizens but between government institutions. ‘Vertical accountability’ unsurprisingly is likely to occur when governments are ‘popularly elected through free, fair and competitive elections and where elected legislators are accessible to ordinary citizens and

legislatures facilitate public participation in law-making processes’ (OSMI 2010: 4). Horizontal accountability however can only be achieved if legislatures and other state institutions have ‘the constitutional powers, resources and political incentives to monitor and review executive branch policy and conduct on a regular basis’ (OSMI 2010: 4). Given that Idasa’s Democratic Index (DI) also focuses on relations between government institutions in analysing accountability – only three of the eight indicators of accountability refer to citizens’ ability to monitor their elected representatives – it would appear that in South Africa, there is much more to accountability than public participation in elections.

South Africa is a parliamentary system in that elections determine the make-up of the legislature which in turn elects the president. Usually this system increases accountability between MPs and the president because the latter requires the support of the former to remain in power in contrast to presidential systems where the president is directly elected and hence owes her appointment to the citizens rather than to the legislators. In theory at least, MPs can get rid of the president through impeachment, serious violation of the Constitution or a vote of no confidence by at least two thirds of the NA. They can also expose the president’s inefficiency or corruption through parliamentary question time.

One of the reasons, if not the primary reason for choosing a parliamentary system (over presidentialism) is because parliamentary systems tend to curb presidential power. This was clearly a consideration for those involved in the institutional engineering of the new South Africa as Section 92 of the Constitution stipulates:

Members of the cabinet are accountable collectively and individually to parliament for the exercise of their powers and the performance of their functions. Members of the cabinet must act in accordance with the constitution and provide parliament with full and regular reports

concerning matters under their control (Section 92, Constitution of the Republic of South Africa, 1996).

Indeed, the whole of Chapter Nine, 'Institutions Supporting Constitutional Democracy', emphasises the separation of powers as fundamental to the development of an accountable, transparent and democratic state. But while it has become something of the norm in most party systems for the legislature to be dominated by the executive and hence for the line between them to be blurred there are a number of examples which point to the disempowerment of the legislature and the judiciary, as discussed above, largely, although not exclusively, in the form of co-optation by the executive.

The mechanism of parliamentary questions is intended to provide a source of oversight at the horizontal level. Questions are a way of making issues of the day public. But in practice, questions are often used for political gain. Opposition parties may ask questions as a way of criticising a minister and the government, while members of the majority party will often ask questions which highlight a minister's achievements. Brendan Boyle argues that while MPs sometimes 'question aggressively...they take no notes, make no follow up questions and clearly lack any significant intellectual grasp of the issues they pretend to interrogate' (*Sunday Times* 1 May 2010).

It is of course not surprising that MPs from the ANC do not use question time to criticise the government – there are few parliaments in the world where MPs openly criticise their leadership. But in South Africa's case, the fact that MPs do not own their seats and hence rely on party leaders for their positions in parliament means that this mechanism is rather ineffective. It is disappointing however that opposition MPs are not using question time to hold members of the executive to account but rather for mudslinging.

Another indication that horizontal accountability in practice is far from what it appears to be on paper has to do with the introduction of bills in parliament. As discussed in Chapter Two, although draft legislation may be introduced in the NA by any MP in the form of a ‘private member’s bill’, in the majority of cases, bills are drawn up by members of the executive or their departments under the direction of the relevant Minister: between 1994 and 2003, the ‘number of bills that began as private members’ initiatives is almost non-existent...and the majority of private members’ bills were not officially introduced to parliament, nor passed as acts’ (Habib and Schultz-Herzenberg 2005: 170). Part of the problem is that private members’ bill proposals are required to be examined by a committee which decides whether the proposal meets ‘certain criteria’ – if not, it will not be put on the Parliamentary Order Paper. But even if all the private members’ bills that made it to the Parliamentary Order Paper were passed (which was not the case), this would still only amount to 5.5 percent of all legislation passed and promulgated. It is therefore not surprising that the OSMI’s overall mean score for ‘executive accountability to parliament’ was 4.3 (OSMI 2010: 6). Looking at the individual components of ‘executive accountability to parliament’, however, suggests that the greatest impediment to this is perceived to be political will which scored 3.6 (OSMI 2010: 7). Again, one of the primary explanations for the seeming acceptance of legislators that laws are initiated and drafted by the executive is the dependence of cabinet members on the President for their positions and the dependence of MPs on party leaders for their seats.

The drafting of legislation and use of parliamentary questions are general indicators that MPs are not fulfilling their responsibilities with regards to oversight. There are and have been a number of specific cases where the executive has displayed an almost complete disregard of the constitutional requirement for it to be held accountable to and by MPs. In May 2010, the Minister of Defence Lindiwe Sisulu clearly violated this constitutional requirement (and

parliamentary rules) by refusing to appear before the Standing Committee on Public Accounts (SCOPA) or to supply two interim reports from the Interim National Defence Force Service Commission. These reports have been requested by SCOPA and other MPs who insist that they cannot properly process the Defence Amendment Bill (which provides for a permanent service commission to deal with military conditions of service) if they do not have the report – reports which were initiated after the South African National Defence Force went on strike in early 2010 in protest of poor service conditions and morale and which apparently describe military service conditions as ‘a ticking time-bomb’ and a ‘potential risk to national security’ (*Business Day* 12 August 2010). Sisulu argued that the reports are ‘works in progress’ and could not be provided to the committee until the commission tasked with writing the reports had completed its work. At issue is the notion of ‘executive privilege’ - whether the constitution or other legislation provides for or exempts anyone on the basis of their being a member of the executive. If SCOPA were to use its (section 56) constitutional right to subpoena Sisulu to appear before it and make available the reports, it would be unprecedented in the history of the new South Africa. But this seems unlikely to happen given the ministry’s legal opinion which states that although section 56 of the Constitution may require a person to comply with a summons,

this does not mean that ministers may be forced to produce documents willy-nilly. Any portfolio committee foolish enough to issue a summons to a minister on a matter pending before Cabinet or the executive will be met with an iron-clad claim of executive privilege (*Business Day* 12 August 2010).

But members of SCOPA will have to think very carefully as to what their response to the implicit threat in this statement will be: the last time SCOPA took a member of the executive to task in such a public way was in 2001 when it investigated allegations of corruption in the ‘Arms Deal’.

In December 1999, the executive announced that, as part of the modernisation of its defence equipment, the South African Department of Defence had committed to the Strategic Defence Acquisition (the Arms Deal) which would see the purchase of corvettes, submarines, light utility helicopters, lead-in fighter trainers and advanced light fighter aircraft. At the time, the capital expenditure on procuring these machines was said to be R29.9 billion, excluding finance charges, adverse foreign exchange movements and escalation clauses (Idasa 2001 :8). Within in two years of this claim, the total cost of the transactions had risen to R50 billion. To put this figure into perspective, in 2001 the annual health and welfare budget of the Eastern Cape Province (the poorest of the nine provinces in South Africa) was R8.5 billion. When criticism was directed at the executive for entering into the Arms Deal on the basis that the money would be better spent on reducing poverty, providing housing and improving health services, the executive justified its decision in terms of the benefits of ‘off-sets’ the Arms Deal would have. These off-sets (National Industrial Participation and Defence Industrial Participation) were initially announced to amount to R110 billion but this figure was quickly reduced to R104 billion. The media briefing held at the time stated specifically that ‘over the medium term benefits...fully off-set economic and fiscal costs of the procurement’ (Idasa 2001: 21). At the time it was pointed out that ‘off-sets are an internationally discredited manner of promoting arms transactions’ (Idasa 2001: 23) and that ‘if it is possible, by spending R29.992 billion, to achieve economic benefits of R104 billion, why does every developing country in the entire world not spend its entire budget on arms?’ (Idasa 2001: 23).

Had the majority of the legislators supported the Arms Deal, it would likely not have become the issue it has: indeed, more than a decade after the Arms Deal was struck, it continues to be a major topic of concern both domestically and internationally, ‘a festering sore on our body

politic' (Zille 2010), signaling a 'profound crisis in executive-legislative relations' (Mattes 2002: 26). This is because the Arms Deal not only failed dismally to bring about the supposed benefits but because of the corruption scandals related to it and more importantly, the manner in which the executive responded to these scandals. Since the point of this section is to illustrate the inability of parliament to curb executive power, I will not examine the Arms Deal in detail, but rather discuss the relevant aspects of it for parliamentary oversight.

Within a year of the announcement of the Arms Deal, in October 2000, SCOPA published a report on the Arms Deal. Its preliminary findings were mainly negative – it had received allegations of nepotism, cronyism and conflicts of interest in the awarding of the tenders - and the report recommended a quadruple-body investigation: the Auditor-General, the Ombudsman, the National Director of Public Prosecutions and the Special Investigating Unit (SIU). After the Auditor-General's report questioned the government's decision to select one of the more expensive sets of available options and highlighted deviations from accepted procurement practices, the NA passed a unanimous resolution adopting the SCOPA report and its recommendations. But in January 2001, then President Mbeki refused to grant the SIU a proclamation to start investigating the matter and at the same time, the leader of the ANC delegation on SCOPA, Andrew Feinstein was removed from his position by the ANC chief whip, Tony Yengeni and replaced by the deputy chief whip. This came just a month after the Secretary-General of the ANC reminded ANC members that 'the principles of democratic centralism still guided party structures' (Mattes 2002: 26). In February 2001, although SCOPA traditionally operates on non-partisan lines and is headed by an opposition party MP, the ANC used its majority on SCOPA to pass a resolution that SIU participation in

the investigation ‘was not intended’⁵⁰ and rejected Feinstein’s earlier insistence that Judge Willem Heath, then head of the anti-corruption SIU be included in the joint investigation of the Arms Deal. After being instructed by the ANC leadership not to speak without permission, Feinstein, a long-term stalwart of the party resigned his seat in the NA in August 2001.

Aside from the massive corruption, its complete unaffordability (in 2010, it is estimated to exceed R120 billion), the Arms Deal presents a clear failure on the part of MPs to hold the executive to account. The ANC’s emphasis on party discipline, coupled with its significant numerical advantage in parliament means that individual MPs, like whistleblowers, face a conflict between their duties to the electorate and those to their party. The ANC’s strategy of ‘cadre deployment’, which the party openly admits to, is to deploy its ‘cadres’ into ‘strategic positions’ in all institutions of state.⁵¹ Despite the constitutional protections accorded to key oversight bodies such as SCOPA, the National Director of Public Prosecutions and the Directorate of Priority Crime Investigation – known as the Hawks – these institutions have been shown to be toothless in the face of party political pressures. In October 2010 the head of the Hawks, Lieutenant General Anwar Dramat announced the decision to close the investigation into the Arms Deal on the basis that it ‘wasn’t really getting anywhere.’⁵² In response, opposition MPs expressed their extreme disappointment and fear that the shutting down of the investigation ‘will do even more damage to our country’s constitutional democracy than the corruption itself.’⁵³ In 2011, the investigation was re-opened.

⁵⁰ http://iacconference.org/documents/10th_iacc_workshop_Parliamentary_Accountability_in_the_New_South_Africa.pdf. [Accessed 27 November 2010]

⁵¹ http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=10206:zille-laments-arms-deal-scandal-fatigue&catid=54:Governance&Itemid=118. [Accessed 27 November 2010]

⁵² <http://www.africanpilot.co.za/african-pilot-newsletter-no-43-2010-437.aspx>. [Accessed 27 November 2010]

⁵³ http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=10206:zille-laments-arms-deal-scandal-fatigue&catid=54:Governance&Itemid=118. [Accessed 27 November 2010]

A very real problem that the Arms Deal exposed in terms of legislative oversight is related to the inability of the NA to amend spending bills. Despite the Constitution's call for the executive to pass legislation to grant the legislature more power than it currently has (at present, MPs can only reject or accept a spending bill), the ANC has refused to do this. But many have suggested that even if MPs were granted more power to exercise their constitutional mandate of oversight, the electoral system would still have a major effect on the ability of MPs to hold members of the executive to account. Because MPs know that they can be removed from their seats at the discretion of the party and particularly in the case of the ANC, where the president of the party is the president of the country (with the exception of the brief period where Zuma was the head of the ANC and Mbeki and then Kgalema Motlanthe were the presidents of South Africa), the threat of being removed if MPs are critical of the executive is very real. Indeed, there have been a number of dismissals of (or forced resignations by) ANC MPs over the years: as mentioned in Chapter Two, Andrew Feinstein left his seat in 2001 and the Deputy Speaker of Parliament (and former deputy health minister) Nozizwe Madlala-Routledge 'resigned' in 2007.

In terms of the ability of the legislature to control the executive then, South Africa's record is not particularly impressive. But this is not the only institutional device in place: one of the primary functions of the media in a liberal democracy is to act as a watchdog, especially in terms of the actions of the executive power. In the next section, this mechanism of oversight will be examined according to the liberal requirement of limited government control of the media and the absence of censorship.

d. A free and independent media

In 2010, the Protection of Information Bill was re-introduced to parliament, having been shelved in 2008 after vigorous criticism from civil society and the media and some legislators themselves. The 2010 version, regarded by many as ‘more severe and more insidious’ (Ramphela 2010) than its predecessor, is supposedly motivated by an attempt to create a suitable mechanism for managing sensitive information but ‘creeping provisions’ in the Bill signal a very real danger that the media will be prevented from disseminating information and whistle-blowers will be unable to make public cases of corruption and inefficiency by government officials. Just days after hearings were staged before an *ad hoc* parliamentary committee tasked with addressing these concerns, a journalist was arrested on charges of fraud and attempting to defeat the ends of justice, despite the police not having an arrest warrant. Perhaps it was simply coincidence that Mzilikazi wa Afrika had just published a story exposing Police Commissioner Bheki Cele’s alleged signing of a ten-year lease on a building belonging to a politically connected individual, a lease which would cost the taxpayers over R500 million and despite the South African Police Services’ Head Office having a ten-year lease on its existing building. But given a statement by a senior police official that the police were ‘feeling the heat from the ANC’⁵⁴ such a coincidence seems unlikely. And considering the exposé surfaced at the same time that the former Police Commissioner Jackie Selebi was found guilty of having ‘a generally corrupt relationship with drug kingpin Glenn Agliotti’, it was not surprising that the ANC was indeed ‘feeling the heat’. As of November 2010, the Protection of Information Bill has not been passed, but it remains on the government’s agenda for 2011. Whether the judiciary can again stand up to attempts by the executive to diminish its independence, only time will tell. One can only

⁵⁴ <http://www.news24.com/SouthAfrica/News/Wa-Afrikas-arrest-Premier-laid-charges-20100807>. [Accessed 9 December 2010]

hope that Mamphela Ramphele's analysis of political leaders' persistent hesitancy to demonstrate their political will to foster accountability and transparency is incorrect: she suggests that it may be because 'to be answerable to and open with the people is to come too close to the ideal that the people shall govern' (Ramphele 2010).

e. Police brutality and arbitrary arrest

One of the key indicators of the existence of a 'true' liberal democracy is the behaviour of the police: since the state is considered to have the sole legitimate authority in terms of the use of force, how the police behave is critical. Despite the continued claims that the post-Apartheid police force would not mirror the brutal and unlawful practices of its Apartheid counterpart, there were those who wanted very strong police force. In 1999, Minister for Safety and Security Steve Tshwete adopted a policy of 'no mercy' which was widely criticised in the media on the grounds that some of his methods verged on the unconstitutional (Shaw 2002: 86). His stance may account for some of the abuses of power that occurred in the early days of the South African Police Service (SAPS); others may have been related to the 'old order' style of policing. In the period 1 April 1997 to 30 April 1998, 232 people died in police custody. While 29 died of natural causes and 72 apparently committed suicide, the rest died as a result of injuries sustained while in custody or prior to custody, or from unknown causes where police negligence cannot be ruled out (*Hansard* 18 August 1998). Between April and September 1997, there were 55 complaints of police torture (*Business Day* 31 October 1997). An Amnesty International report indicated that abuse was still prevalent five years on:

Consistent accounts from survivors of torture by members of the Brixton Serious and Violent Crimes Investigation Unit indicate that interrogators have used a toilet at the unit's headquarters

where victims have been tied up, naked and hooded, and subjected to electric shock torture (*Mail & Guardian* 12 July 2002)⁵⁵.

In 1996 alone, 15 325 members of the police were charged with crimes ranging from murder and armed robbery to reckless driving (*Hansard* 17 June 1997). In 1997 there were 17 526 complaints against the police and 9 035 criminal charges (*Cape Argus* 1 April 1998). Members of the police were twice as likely to be charged with murder (122 for every 100 000 police officers) than members of the public (61 per 100 000) and the number of police officers convicted of committing crimes ranged from 1 686 in 1994, to 1 839 in 1996 with 1997 seeing some 38 police officers convicted for murder, 41 for attempted murder, and 16 for armed robbery (Schönteich 1999: 41).

The above data seems to imply that existing procedures appear to be quite efficient at holding the police to account – at least in terms of gross corruption, if not in terms of general competence. Indeed, the Ministry for Safety and Security has frequently been sued by individuals claiming to have been wrongfully arrested, assaulted or abused by the police and in 1996 alone there were 6 437 civil claims against the Ministry with a total value of R409 million (Schönteich 1999: 41). When members of the police are found to have violated citizens' rights, the state pays the court-ordered damages. While these compensation payments put pressure on the already over-stretched budget, it seems they are not significant enough to warrant more effort on the part of the state to reduce the violations.

⁵⁵ The report cites the case of Thabani Ndlodlo, wrongfully detained for a staggering 446 days and unlawfully assaulted by police, who shot him in the legs after attempting to extract a bribe from him and refers to Zakhele Mabhida who was fatally shot by Durban police in April 2001, after he had handed himself over, unarmed, to the police several hours earlier in connection with a murder investigation (*Mail & Guardian* 12 July 2002).

Despite the above, there are clear indicators that South Africa's record in terms of police brutality and arbitrary arrest has improved in the last decade and is very good by any standard. Nevertheless, there are concerns about the direction South Africa is taking when it comes to state policing, specifically related to the proposed 'shoot-to-kill' policy.

In 1994, when the Criminal Procedures Act was undergoing revision so as to distance the post-Apartheid police force from the military style of its predecessor, the issue of 'shoot-to-kill' was discussed. Proposals generally favoured the curbing of the power of the police to discharge their weapons but was met by opposition, from the Department of Safety and Security mainly, on the grounds that policemen and women are 'dealing with criminals who are motivated by the understanding that human rights are tilted in their favour' and hence that police are killed by criminals before they are able to complete the warning procedures' (Sekhonyane and Louw 2002: 2). The Act was eventually passed in 2003 after a ruling by the Constitutional Court in 2002 that an Act that gave the police permission to use deadly force in fulfilling their public duties where it may not be necessary or reasonably proportionate, was both socially undesirable and constitutionally impermissible:

The rights to life, human dignity and bodily integrity are essential to the value system prescribed by the Constitution. Any significant limitation of these rights would for its justification demand a very compelling countervailing public interest (Sekhonyane and Louw 2002: 2).

In late 2009 however, a seemingly resolved debate was reopened by the newly instated National Chief of Police and has been supported by Deputy Police Minister Fikile Mbalula, Police Minister Nathi Mthethwa and most importantly, President Zuma. In response to high levels of crime in the country, and pressure to reduce crime before the 2010 FIFA World Cup, Cele questioned current legislation which requires an arresting officer to justify the use

of deadly force by ‘proving’ that it was the only way to ensure the capture of a suspect. The officer has to be sure that the force is immediately necessary for the purpose of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm (Criminal Procedures Amendment Act 65 of 2009). In addition, the arresting officer must be able to prove that there was a substantial risk that the suspect would cause imminent or future death or grievous bodily harm if the arrest was delayed (Criminal Procedures Amendment Act 65 of 2009). Cele’s proposed adjustments to the Criminal Procedures Act would allow police to ‘open fire on suspects without having to worry about what happens after that.’⁵⁶

The statements by those in support of the policy have raised concerns over the commitment the Constitutional Court’s ruling in 2002, particularly with regard to human rights. Cele contended that it is ‘a warning [that] anyone who attempts to challenge the police will lose’⁵⁷ and Mbalula was fervent in his support, calling on police to ‘shoot the bastards’ as they were ‘incorrigible criminals’ who needed to be stopped.⁵⁸ Mthethwa supported this claim with his own, that ‘we are going to meet these thugs head on, and if it means we kill when we shoot, then so be it.’⁵⁹ Christine Hobden (2010: 98) points out that although significantly lower than before the Apartheid law was amended in 2003, the incidences of police who have shot suspected criminals have escalated since the talk of ‘shoot-to-kill’ has resurfaced. Thus although more than 100 policemen died on duty in 2008, reports indicate that police shot about 600 suspects and innocent bystanders in that same year.⁶⁰ Lesirela Letsebe, a Human

⁵⁶ <http://www.guardian.co.uk/world/2009/sep/16/south-africa-police-world-cup> [Accessed 2 August 2010]

⁵⁷ <http://www.news24.com/SouthAfrica/News/Here-we-shoot-to-kill-20091109>. [Accessed 13 February 2010]

⁵⁸ <http://en.afrik.com/article 16464.html>. [Accessed 24 January 2010]

⁵⁹ <http://www.guardian.co.uk/world/2009/sep/16/south-africa-police-world-cup>. [Accessed 2 August 2010]

⁶⁰ <http://en.afrik.com/article 16464.html>. [Accessed 24 January 2010]

Rights attorney has questioned whether the shoot-to-kill policy is a ‘Camouflaged Revival of the Death Penalty and Reversal of the Bill of Rights’, arguing that

one cannot help but wonder whether current attempts on amending the Act are not directed towards indirectly reviving the death penalty through blooding the hands of the police and not those of the would be hang man. President Jacob Zuma stated prior to his election that a referendum into the death penalty would not be a problem if South Africans wanted it.⁶¹

If Letsebe is correct, this indicates a significant threat to the Constitution and the protection of human rights enshrined in it. In 1995, in the first case ever heard in the Constitutional Court, the judges unanimously declared the death penalty unconstitutional on the grounds that

the very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process. Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is a willingness to protect the worst and the weakest amongst us, that all of us can be secure that our own rights will be protected⁶².

The role of the police and the criminal justice system in general in upholding the values of the Constitution cannot be underestimated – particularly on accounts of liberal democracy where the respect (by government and other institutions) for human and constitutional rights is a critical indicator of a country’s ‘democratic health’.

To sum up: in terms of the requirements necessary for liberals to award the tag ‘democracy’, South Africa’s scorecard is mediocre at best. While I challenge the labelling of South African democracy as ‘sham’, ‘truncated’ and so on, there are certainly reasons to be concerned – not so much in terms of what the state of affairs is at present, but in terms of the

⁶¹ <http://www.ngopulse.org/article/shoot-kill-camouflaged-revival-death-penalty-and-reversal-bill-rights>. [Accessed 6 July 2010]

⁶² <http://www.globalpost.com/webblog/south-africa/public-opinion-and-the-constitutional-court>. [Accessed 29 November 2010]

direction in which ‘liberal democratic’ South Africa is heading. In a liberal democracy, where citizen participation is confined to electing and controlling the elites, mechanisms of oversight and accountability are critical. If we view these institutions as constraints, as liberals do, then the ambiguous success of the judiciary, parliament and the media in constraining executive behaviour in South Africa suggests that liberals’ criticisms of the democraticness of South Africa’s democracy are not without merit. In the next part of this chapter, we will examine the extent to which, if any, democracy in South Africa fulfils the requirements demanded by deliberative democrats.

II. Deliberative democracy in South Africa

According to the claims made at the start of this chapter, that both liberals and deliberative accounts of democracy view institutions as constraints rather than as opportunities, we need to consider whether, and how, citizen engagement in and with deliberative and participatory institutions is able to limit threats to the democratic system in place.

Participation and deliberation is considered by the South African government to be a fundamental part of democracy. The former Speaker of the House Frene Ginwala, in her foreword to *A People’s Government: The People’s Voice* (2001) wrote that

Democracy requires that citizens should be continuously engaged in governance and [should] interact with those who make decisions. Marking a ballot box once every few years is an important element in democracy; but it is only one step in the process of building a society that genuinely serves the interests of all its people. Those who are elected to make policy and laws on behalf of the people are required to fulfil their mandate in consultation and dialogue with the citizens on whose behalf they act⁶³.

⁶³<http://www.chapter2.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1554>. [Accessed 2 December 2010]

Since 1994 the government has put in place policy and legislative frameworks that seek to promote participatory governance at national, provincial and local levels although the latter is where most of the legislation has been directed. The notion of public participation in all spheres of government is embedded in the South African Constitution in several sections but Section 195 is particularly clear:

In terms of the basic values and principles governing public administration – people’s needs must be responded to, and the public must be encouraged to participate in policy-making (Constitution of the Republic of South Africa 1996 Section 195).

According to the White Paper on Local Government (1998) active participation by citizens is necessary on four levels: as voters to ensure maximum democratic accountability of the elected political leadership for the policies they are empowered to promote; as citizens who express, via different stakeholder associations, their views before, during and after the policy development process in order to ensure that policies reflect community preferences as far as possible; as consumers and end-users who expect value-for-money, affordable services and courteous and responsive service and as organised partners involved in the mobilisation of resources for development via for profit businesses, non-governmental organisations and community-based institutions. The White Paper also suggests that ‘municipalities should develop mechanisms to ensure citizen participation in policy initiation and formulation, and the monitoring and evaluation of decision-making and implementation’. Approaches which can assist in achieving this include fora to allow organised formations to initiate, influence and monitor policies; structured stakeholder involvement in certain committees, in particular if these are issue-oriented committees with a limited lifespan rather than permanent structures; participatory budgeting initiatives aimed at linking community priorities to capital investment programmes; and focus group participatory action research conducted in partnership with non-governmental organisations (NGOs) and community-based

organisations (CBOs) in order to generate detailed information about a wide range of specific needs and values.

Two key pieces of legislation have been passed in accordance with these mandates: the Municipal Structures Act 117 of 1998 (amended in 2000 and 2003) and the Municipal Systems Act of 2000. The former sets out roles for Executive Committees and Mayors and sub-councils or ward committees, a combination of which is required for different categories of municipality. The latter Act directs attention to the need to encourage the involvement of communities in the affairs of the municipality. The fact that public participation was high on the agenda of the government is evident from the fact that the whole of Chapter Four of the Municipal Systems Act is devoted to public participation. The Act in many instances is fairly prescriptive on what is required to be done by municipalities in respect of a number of its functions in so far as public participation is concerned, but it is in many instances silent on how it must be done, leaving this to the discretion of municipalities. This has posed many challenges for municipalities and despite the lapse of time since the promulgation of the Municipal Systems Act, it is evident that the community consultation and involvement process is still in its infancy and municipalities are often not fulfilling their legislative obligations. As is discussed below, the converse, however, is also true in that the communities themselves have not involved themselves sufficiently in the affairs of the municipality, choosing to become involved only when things have gone severely wrong.

Underpinning the policies of public participation is *Batho Pele*, a Sotho translation for 'People First', an initiative to get public servants to be service orientated, to strive for excellence in service delivery and to commit to continuous service delivery improvement. It is a simple and transparent mechanism, which allows citizens to hold public servants

accountable for the level of services they deliver.⁶⁴ *Batho Pele* indicates an attitude to service delivery which places citizens at the centre of public service planning and operations and as such is a major departure from a dispensation which excluded the majority of South Africans from government machinery to one that seeks to include all citizens for the achievement of a better life for all through services, products and programmes of a democratic dispensation. It is through *Batho Pele* that the key values in public participation - information, consultation and involvement, can be realised.

A related policy initiative is that of community-based planning, the purpose of which is to ensure the active involvement of the community, especially poor people so as to improve the quality of plans and services, extend community control over development and empower communities so that they take action and become less dependent. Communities are to implement their action plans through local structures such as working groups or subcommittees and civil society. These are then supported by community development workers (CDWs), who have a critical role to play during the planning, as well as during implementation. The government allocates monetary resources in order to leverage voluntary action by communities. In practice many of the services needed by the community are those they provide for each other. These include traditional healers, grocery clubs, stokvels, burial societies, crèches, home-based-care, traditional birth attendants, farmers advising other farmers and so on. In order to maximise the extent and coverage of services, the government recognises that it must encourage and support the community-based services, which sustain most communities, often through volunteers, rather than replacing them with centralised, professional, and often expensive and inaccessible services. This is particularly important for services that are not complex, which are needed frequently (daily or weekly), and which

⁶⁴ *Batho Pele* Handbook: <http://www.fedusa.org.za/Documents/public%20service.doc>. [Accessed 2 December 2010]

involve context-specific services, in that they need to be adapted to specific people. These services are most suitable for provision in a community-based mechanism. This is typical of personal care services, or agricultural extension. The support of such services provides an opportunity to widen access to services without increasing the overall funding envelope.

The role of the government is seen as being one which strengthens rather than replaces community activity. In 2003 the CDW initiative was introduced, the primary aim of which is maintaining direct contact with the people where they live. Since the initiative's inception, CDWs have been appointed in different parts of the country. The CDWs can play a supportive role to the ward committees by ensuring that citizens are informed on government support and services; encouraging citizens and ward committees to engage with opportunities, especially those which involve identifying the needs of communities and those which support the implementation of community activities and projects by community structures and lastly, to provide technical support (compiling reports and documents for example) to ward committees to monitor community projects and to account to communities and municipalities. Encapsulating the government's attitude to public participation, in 2002, the then Minister of Provincial and Local Government, Sydney Mufamadi explained:

Government does not only view community participation as an end in itself. Rather the purpose of participation is the very essence of a people-centred approach to development. In this context communities should not be viewed as passive participants but as active agents of change and development. Participation processes should develop people to become more resourceful themselves in as much as it should be aimed at ensuring that service and infrastructure delivery is enhanced through community participation.⁶⁵

⁶⁵<http://www.watersupport.co.za/misc/MunicipalInformation/eWISAWaterworks/misc/MunicipalDocuments/FSDisMotheo/LMMangaung/file.pdf>. [Accessed 2 December 2010]

In the *Public Participation Framework Manual* (PPFP) developed by the Department of Co-Operative Governance and Traditional Affairs (DCGTA) in 2006 public participation is defined as an open, accountable process through which individuals and groups within selected communities can exchange views and influence decision-making. It is further defined as a democratic process of engaging people, who are to decide, plan, and play an active part in the development and operation of services that affect their lives. But while this is only one of the many definitions of public participation, the justifications for promoting it are largely uncontested: basic assumptions underlying public participation include the acknowledgment of the rights of all people to participate in matters affecting their lives; the need to narrow the social distance between the electorate and elected officials and to promote values of accountable and responsive governments.

What is evident from the above discussion of the policies and legislation relating to public participation and the statement by Mufamadi is that the South African government views political participation as a means – perhaps (potentially at least) one of the most effective means – of improving the lives of citizens (and indeed non-citizens residing in South Africa since they are explicitly included in discussions about public participation). In other words, public participation is conceived in instrumental terms first: the possible categorical value of public participation is neglected or at least wholly implicit. The research undertaken specifically for the development of the PPFP showed that over and above the legal and constitutional requirement to consult with citizens, public participation is promoted because it is considered as having a role to play in being able to develop plans and provide services which are more relevant to local needs and conditions and because it empowers local communities to have control over their own lives and livelihoods – something significantly absent during the days of Apartheid.

The PPFP recognises that for public participation to work – that is, for it to achieve the instrumental benefits it has the potential to achieve – there are ‘five kinds of measures’ required:

1. **Citizens can participate:** This refers to the argument that citizens need the appropriate skills and resources to participate effectively. These skills range from the ability and confidence to speak in public, to the capacity to organise events and recruit others to participate in them. It also includes having resources to access such activities whether transport to get to a meeting, money to hire a venue or access to the internet. Notably it also includes access to organisations which are usually the key social actors outside of government. Typically, poor and marginalised groups have lower access to such skills and resources and thus participate less, and less effectively than better off sections of the population. Hence there is a need to pay special attention to techniques that can include the poor and marginalised in community-based planning and community participation practices more broadly.

2. **Citizens like to participate:** This refers to citizens’ feeling of belonging to the community as the basis for engagement. Simply put, citizens are more likely to participate in local governance if they feel both that they belong to the local community and that the local government belongs to them, that it is *their* government. Social networks within a community and between the community and those in government are important for building this sense of identification and basic trust. Notably, while a sense of community can improve participation, a belief in exclusion undermines it. Hence it is essential that local government is as inclusive as possible.

3. **Citizens are enabled to participate:** This insight emerges from the fact that most citizens participate through groups such as CBOs or organisations such as ward committees. Political participation in isolation is both rare and difficult to achieve. The inclusion of a range and variety of stakeholder groups in participation processes is essential to improve both the quantity and quality of community participation in governance since no single organisation or structure can represent every segment of civil society on its own. There is an important role for local government in ensuring that local role-players are involved in decision-making as well as service delivery.

4. **Citizens are asked to participate:** The mobilisation of citizens can come from a range of sources but the most powerful is when it comes from those responsible for decisions. Hence, in short, citizens become more engaged more often when they are asked to engage. A variety of ways that people can engage is important as different people will respond to different methods. Furthermore, the more regular and long-standing processes are the more people are likely to learn about these processes, and how to use them.

5. **Citizens are responded to:** This is the insight that most people participate to make a positive difference to their own lives. In other words, if they feel that participation is improving service delivery or local development or municipal policy then they are likely to continue to participate. On the other hand, perhaps the biggest deterrent to participation is the perception or experience that participation makes no difference. For people to participate they have to believe that they will be listened to, and that their views will be taken into account. Making community participation 'responsive' is about ensuring feedback, even if that feedback is sometimes negative. In participation terms, bad feedback is better than no feedback at all.

Given the commitment to public participation by the government of South Africa, and the recognition of the benefits it can have, it is somewhat surprising that most analysts and citizens themselves are less than enthusiastic about the state of public participation in the country. The general consensus is that the rhetoric of participation has not led to the actual empowerment of citizens to take charge of their own development, albeit in partnership with the government.

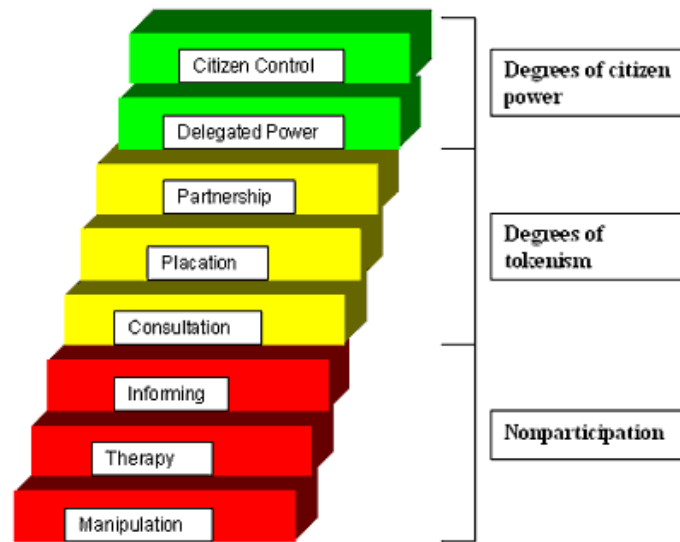
There are a number of explanations for this and the blame cannot be laid solely at the door of the South African government. In terms of the first measure considered above – whether citizens can participate – the legacy of Apartheid, where the majority of citizens received sub-standard education (‘Bantu’ education), is such that many South Africans do not have (or do not perceive themselves to have) the skills and resources necessary to participate effectively. The psychological effects of Apartheid on the ‘worth’ of the majority of citizens did not disappear on 27 April 1994, particularly the effects on the poor and marginalised citizens and this too contributes to their capacity for participation. Regarding the second measure, that citizens like to participate, again we need to look at the consequences of Apartheid and the two seemingly opposite effects on the majority of citizens: on the one hand, there was a strong tradition of community management, community-based organising and mobilising against the state but on the other, because of the Apartheid state’s overwhelming power, citizens tend to have a passive ‘recipient’ mind-set (since before 1994, the majority of citizens were not able to make demands on the government particularly in terms of service delivery). For both the activists and the general (passive) population, Apartheid seemed to signal the end of a need to fight or even participate: because the liberation movement had achieved its promise of equality, there was widespread faith that the promise of ‘a better life for all’ by the ANC government was on its way. The expectation

was that the government would deliver development rather than supporting people in achieving their own development. This was not helped by the fact that many of the activists who had led the civil society movements were now in government. Funding also dried up as most of the international donors directed resources to the new government rather than to the anti-Apartheid movements.

It was not long however before citizens' patience began to be tested and in recent years, there has been an increase in levels of participation in civil society and indeed, an increase in the calls for the government to take seriously the need for citizens to participate on a number of levels (the third and fourth measures above). This has resulted in a move to a community development approach, supported by the government. But the government has often acted more as gate-keeper and controller than as a facilitative body which allows communities to control resources and resource allocation. Hence the fifth, and possibly most important measure of effective participation, that of citizens being responded to, is somewhat limited in the South African context.

In this regard, Sherry Arnstein's 'ladder of participation' in which types of participation are categorised according to interactions between citizens and their governments, is very useful.

Arnstein's 'Ladder of Participation'



Arnstein argues the highest degree of citizen power is when people participate by taking initiatives independently of external institutions for resources and technical advice they need and retain control over how the resources are used. The next best thing (in terms of maximum participation) is where governments ultimately fund and run the decision-making process but delegate some powers to communities followed closely by partnerships in which communities have considerable influence on the decision-making process but the government still takes responsibility for the decisions. Citizen power decreases in cases of placation (where the community is asked for advice and token changes are made), consultation (when communities are given information about a project or issue and are asked to comment but the consultative process does not concede any share in decision-making to communities), and informing (where the community is told about a project but members may not be asked for their opinions and if they are, these are unlikely to be taken into account). At this point participation begins to look more like tokenism than like a mechanism for citizen empowerment. The final two rungs on the ladder include therapy, where participation takes

the form of citizens being told what has been decided and manipulation, where participation is simply a pretence: either the community is selectively told about a project or decision according to an existing agenda. The communities' input is solely to further the existing agenda (Arnstein 1969).

Applying Arnstein's framework to the PPFP in South Africa allows us to draw some interesting conclusions. Examining various issues in respect of which municipalities are obliged to engage with communities and specifies the types of participation required, of the 80 sections of public participation legislation, the municipalities are required to 'consult' the public in 30 matters, to 'inform' the public in 45 matters and to 'involve'⁶⁶ the public in a mere ten matters. In other words, only 12.5 percent of the participatory mechanisms entail any sort of deliberation between citizens themselves and between citizens and government representatives. Thus while the South African government claims to be 'moving to a new phase of partnership and negotiated development, and a people's contract where communities recognise their rights but also their responsibilities, and where the state has duties to respond and facilitate' (PPFP 2007: 21), evidence in practice suggests these claims are largely hollow.

The 2002 DI, developed by Robert Mattes and Richard Calland for Idasa in order to provide a mechanism for evaluating the state of democracy in South Africa, by South Africans, surveyed a number of topics: consensus on and participation in popular self-government; popular selection of decision-makers; popular control over decision-makers; the protection of citizens' equality and ability to control decision-makers and economic and social inequality. A five point scale was used in the survey where 1 indicated 'lacking', and 5

⁶⁶ Involve is the term used in the PPFP document but on Arnstein's terms, it is a combination of placation and partnership: for example, 'build capacity'; 'community to participate in drafting'; in 'developing', in 'monitoring'; and 'setting targets'.

‘high/excellent/as close to the democratic ideal as one can imagine’⁶⁷ (DI 2002: 17). The data on whether citizens ‘enjoy the avenues for participation and involvement that democracy ought to extend to them’ (DI 2002: 21) suggests that while citizens tend to think that the impact of participation is relatively equal between all citizens (a rating of 4), in terms of the extent to which ‘citizens participate in political life’, ‘feel prepared and competent to take part in political life’ and believe participation in political life ‘can give them some ability to influence collective decisions’ (DI 2002: 21) the ratings are pretty poor (2). Interestingly, the data also shows that access to enough information to express a general opinion on political issues was adequate (indicated by the reasonably low number of ‘don’t know’ responses). What this means is that in contrast to the views expressed by South African ‘elites’ (and indeed, by those who support minimalist conceptions of democracy on the basis that the masses are incapable), is that citizens at the grassroots are adequately educated to participate. That said, in terms of access to information in order to make informed decisions, despite the data revealing that the majority of South Africans have a ‘sophisticated understanding of their interests’, 61 percent said they did not have enough information and 76 percent felt politics is too complicated to enable them to understand events (DI 2002: 22). Part of the problem is that despite there being eleven official languages in South Africa, most information from the government is provided in English (and government business is conducted in English) and thus assumes that most citizens are literate English speakers which is clearly not the case. It is far more important (in terms of building citizens’ capacity to participate) for governments to inform citizens of their actions in a manner that enables them to understand politics than to engage in public participation exercises which in some cases are required by law but which largely turn out to be unsuccessful attempts to simulate democratic representation.

⁶⁷The DI defined democracy as a ‘principle of popular self-government rather than simply a specific set of procedures’ (2002: 4).

Another disconcerting – although unsurprising – finding from the survey is related to citizens' views regarding their ability to influence elected representatives. Questions covered how extensive and systematic citizens' opportunities are to influence legislation and executive policy between elections; the accessibility (and equality of access) of mechanisms and processes of influence to citizens and the effectiveness of citizens' abilities to influence legislation and executive policy and to influence it equally (DI 2002: 38)⁶⁸. With the exception of the final question, the extent to which citizens who 'blow the whistle on corrupt or unlawful practice in the public sector are protected from subsequent victimisation or other damage' which scored a rating of 3 (adequate/sufficient), all the questions scored 2 – inadequate/insufficient. Regarding accountability, measured in terms of the ability of citizens to monitor elected representatives, again eighteen of the nineteen indicators scored a 2; only the issue of 'outside interests of executive branch officials [being] open to public scrutiny' scored a 3⁶⁹.

What the above tells us is that citizens are either not aware of opportunities for meaningful participation or do not have (or feel that they have) the skills and resources required to take up these opportunities. This indicates that in South Africa, extensive participation is not producing the outcomes proponents of deliberative and participatory accounts of democracy claim it can produce. Of course this does not mean that the conceptualisation of democracy in this way is at fault but it does mean that using this conception to assess the strength or weakness of South African democracy will inevitably paint a murky picture. Applying conceptions of participation which focus solely on whether or not certain political ends are achieved do not (and perhaps cannot) take into account the particular context of South Africa

⁶⁸ I have condensed the survey questions – legislation was separated from executive policy and the questions measuring equality were separated from the questions about influence and accessibility.

⁶⁹ This is somewhat ironic since the current president is being investigated for failing to declare his assets and interests by the date required by the parliamentary committee overseeing these things.

where the gap between those with the resources to influence government – through deliberation especially - and those whose influence, for historical reasons, is limited, is deep and wide. Coupled with the government's somewhat lax attitude towards encouraging participation, deliberative practices cannot provide the majority of citizens with 'real' opportunities to participate, and thus they remain imprisoned in the silence to which their history and circumstances have condemned them. On deliberative accounts of democracy in which deliberative practices are supposed to result in responsive, accountable and legitimate government, South Africa's democracy again performs sub-optimally. Democracy – the egalitarian participation of citizens in the governance of their country - thus has to mean something else and have a value that is separate from its instrumental one. The final section of this chapter examines how South African democracy fares on an alternative account of democracy, where participation has a categorical value and where we view institutions as opportunities rather than as constraints.

III. Democracy in South Africa on a categorical account

How do we evaluate the health of South Africa's democracy on a categorical account of democracy? Unlike liberal and deliberative accounts, where indicators have been suggested and used for decades, measuring participation in terms of its non-instrumental benefits requires us to develop an entirely new – and different – set of indicators. As suggested above, a starting point for this is to understand participatory institutions as opportunities rather than as constraints. This is because on a categorical account of democracy, the focus is not on the extent to which citizens and various state institutions constrain the power of the government but rather on the extent to which citizens are encouraged – and able – to fulfil their duties to themselves and to others, specifically their moral duties.

Because the categorical approach to valuing participation is non-conventional, finding evidence of institutions which support it is very difficult since it is unlikely to be institutionalised in any explicit way. That is, given that participation (whether liberal representative or deliberative) is considered instrumentally valuable, participatory institutions are designed to achieve particular outcomes – accountability, legitimacy, responsive government and so on. This means that we start with a set of tangible outputs (those that make a government ‘good’) and then design institutions that produce, or are at least believed to produce these outputs. The extent to which the outputs are achieved thus indicates the extent to which we are justified in valuing participation on its instrumental benefits.

When it comes to ‘measuring’ a categorical account of participation, we cannot rely on outputs in terms of ‘good government’. Attaching a categorical value to participation of necessity means that the extent to which participation brings about good government is unsuitable as a justification: that there is a categorical value to participation can only be explained if participation occurs despite these outputs *not* being achieved and in cases where it is clear that they will not be achieved even if participation continues. In other words, a categorical approach to participation may explain why people participate – and continue to participate – even when their participation is not bringing about the outputs mentioned above.

What this means is that we have to examine participation in South Africa in terms of whether firstly, there are opportunities for people to participate on matters that are not, or are only partially tied, to any instrumental outcomes (in terms of government responsiveness for example) and more importantly whether and how people are making use of these opportunities. In other words, where there are opportunities for citizens to participate in public affairs (public because we are focusing on democracy as a political system), the way in

which citizens respond to these opportunities can give us an idea of whether participation is valued for reasons other than, or in addition to, its instrumental benefits. This means that we have to examine instances where citizens not only choose – or choose to continue – to participate in order to achieve certain ends but more specifically, where this decision is made in spite of these ends not being achieved. It is important to note at this stage that we are not considering whether the form of participation is itself ‘moral’ – this will be examined in Chapter Six. In other words, we first have to establish whether citizens’ behaviour indicates that their participation has a categorical value – that is, whether they seem to consider participation as a duty irrespective of the outcomes of that participation. If we can establish this, we can examine whether having a (moral) duty to participation necessarily results in participation that is ‘moral’. While the two are linked, confirming the former does not automatically confirm the latter but denying the latter does not automatically deny the former. Put differently, a categorical account of participation has two parts: the first relates to a moral duty to participate; the second to a moral duty to participate morally. The first part is examined below; the second in following chapters.

If participation is valued because of the outcomes it achieves, we should find that participation decreases as the benefits accrued by it decrease (or at least, do not increase). On this account, while non-participation may signal satisfaction, it is more likely that it signals dissatisfaction with participation: a feeling that it has failed to deliver on its promises. One of the clearest explanations of the relationship between participation and (dis)satisfaction is that developed by Albert Hirschman in *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations, and States* (1970). According to this schema, there are two responses to declines in goods or services: ‘exit’ which refers to the cessation of consumption, and ‘voice’ which is any attempt at all to change, rather than escape from, an objectionable state of affairs

(Hirschman 1970: 30). These attempts take the form of complaint, protestation or the mobilisation of public opinion and/or organising internal opposition (Barry 1974: 107). For Hirschman, there are numerous advantages to voice over exit, with the primary one being that voice provides the potential for firms to stave off bankruptcy by responding to customer discontent. As Keith Dowding *et al.* (2000: 471) explain, while exit is a ‘fairly crude, binary response [v]oice responses can be more subtle’, and can indicate dissatisfaction with greater clarity and ease than can exit. An additional advantage to voice over exit is the fact that, in operational terms, voice is a continuous variable while exit is a dichotomous one: that is, exit can only signal disapproval, whereas voice may be used to articulate a more complex preference structure (Dowding *et al.* 2000: 471). Although the relationship between voice and response posited by Hirschman is fairly straightforward (generally, the louder the voice the more likely a firm will respond), the subtlety of voice makes it subject to manipulation which may lead to less assured results.

Hirschman’s analysis is based on the market where consumers, dissatisfied with a product or service, can opt to switch from the producer or service provider to an alternative producer or service provider. That is, the option to switch brands provides consumers with an exit. If there is only one supplier or producer – if the market is a monopoly – consumers may either exit the market entirely by ending consumption or they may not exit at all (and may or may not use voice to signal their dissatisfaction). Anti-monopoly claims are based on the argument that both of these options are unfavourable: consumers should not be forced to ‘do without’ and nor should they be forced to consume substandard or dissatisfying products or services. What is important is that while switching to another brand is a form of exit, it is also a form of voice: exit to another brand signals dissatisfaction to the former brand but the fact that the consumer has not exited the market entirely provides the former brand with the

opportunity to ‘win back’ the consumer by improving the product or service provided. In this way, both the consumer and the brand (or producer/supplier) benefits: the former because they can hold the producer/supplier to account and the latter because they can respond to consumers’ demands and so stave off bankruptcy.

Hirschman also posits a third reaction ‘loyalty’ which affects both exit and voice and despite this being the most widely contested element of Hirschman’s schema – Brian Barry has deemed it an ‘*ad hoc* equation filler’ (Barry 1974: 95)⁷⁰ – it is this reaction that can explain a significant amount in South African politics, specifically in terms of the reasonably high levels of participation in the face of extremely low levels of delivery. Given the limits to exit and voice in South Africa – the dominance of and discipline within the ANC, the weakness of opposition parties, the electoral system and so on – it may be loyalty that is behind the relatively high engagement of citizens with participatory institutions – whether liberal representative ones such as voting – or deliberative ones – such as in the various mechanisms at the local level.

Hirschman’s claim that ‘loyalty holds exit at bay and activates voice’ (Hirschman 1970: 78) has been subject to much debate – not only in terms of his supposed lack of clarity in defining loyalty (in his 1986 work, he links loyalty to trust) but in terms of the relationship between loyalty and voice. It can be argued that although loyalty staves off exit – which limits the potential of firms to go bankrupt – it actually deactivates voice. This means that consumers continue to consume the good with which they are dissatisfied. In politics, and in South African politics specifically, the role of loyalty is significant: because most consumers base

⁷⁰ Barry’s criticism is that because Hirschman provides no independent criteria by which to measure loyalty, ‘the equation can always be made to fit the facts *ex post*, by imputing loyalty in sufficient quantity to a person who, on the basis of the first term (the cost-benefit calculation), should have switched but in fact has not done so’ (Barry 1974: 96).

their loyalty on personal preferences for example – they prefer the taste of Coke to Pepsi – if the taste changes, they will voice their dissatisfaction and if this does not have any effect, their personal preference will trump their loyalty since the loyalty is ultimately (although not exclusively) based on the consumer's taste preferences. In politics, loyalty is a much more complicated matter: we cannot in most cases attribute loyalty to a specific preference because loyalty is based on so many factors such as ideology, history, class, religion, race, ethnicity and often something quite intangible – the magic of Madiba or the charm of John F. Kennedy.

Katrina Burgess alludes to the complex nature of loyalty when she defines loyalty 'as historically constructed expectations regarding the good intentions of another actor' (Burgess 1999: 6). When that 'actor' is the ANC, with its undisputed position as the liberator of South Africans from the evils of Apartheid, loyalty is unquestionably a powerful thing. Hence it is common for analyses of politics in South Africa to link the dominance of the ANC to the loyalty of its supporters. Of course, the weakness of alternatives, the supposed character of voting in divided societies, the internal discipline required by the ANC of its members and alliance with the SACP and COSATU and even the electoral system are also considered but in the face of obvious government failure and continued support for it, detractors are quick to criticise the 'uncritical' loyalty of South African voters.

So can loyalty to the ANC do the explanatory work for why South Africans continue to participate in the face of poor returns on this participation? Or is there another explanatory variable that conventional accounts overlook – that South Africans participate because they value participating for reasons other than the instrumental benefits of participating and that these reasons are *not* related to loyalty?

In her introduction to a special issue of *Transformation* on South African local government, Claire Bénit-Gbaffou writes:

Most papers converge in the conclusion that institutional participatory mechanisms...currently in place in South African cities do not work properly in practice...these dysfunctional participatory institutions lead residents to adopt other modes of expression in their attempts to be heard (Bénit-Gbaffou 2008: ii).

She does however, following Richard Ballard, another contributor to the volume, warn against over-romanticising these alternative mechanisms because ‘their variety and resourcefulness do not mean that they are always efficient’ (Bénit-Gbaffou 2008: iii). She refers to the argument of John Harriss (2007) that participation (in social movements that do not rely on political parties or trade unions) is not a ‘panacea to empower the poor’ because it ‘might be relatively inefficient in terms of outcomes for pro-poor urban policies’ (Bénit-Gbaffou 2008: iv). It is clear from these comments that Bénit-Gbaffou and the (majority of the) other contributors to the issue measure the success of participatory institutions (whether formalised or not) on instrumental grounds – efficiency, responsiveness and so on. There is little consideration that such participation may have a value aside from its instrumental one and that this is the very reason why it should be valued rather than criticised.

I say ‘little’ consideration rather than ‘none’ because in his article on ‘South Africans’ participation on local government’ (in the volume referred to above), Mattes concludes that

the poor are *more* likely to participate (rather than less), and that neither dissatisfaction nor satisfaction with local government performance provides an adequate account of this participation (Mattes 2008: 116, original emphasis).

On the basis of public opinion data collected over a decade (from 1995 to 2006), Mattes reveals that

not only do performance evaluations make an extremely small contribution to the explanation of participation ($R^2 = 0.008$), no specific evaluation of local government delivery,

performance, corruption or representation has any statistically significant impact (Mattes 2008: 133).

Another somewhat counter-intuitive finding - if people participate because participation has instrumental benefits – is that ‘respondents who encounter difficulties obtaining services from various government agencies are more likely to participate, not less’ (Mattes 2008: 133). This suggests that people are not dissuaded from participating by the lack of results of their participation. Of course, it can be argued that continued participation may be linked to the belief (justified or not) that eventually, the results *will* be achieved but if the difficulties experienced are many and serious, the cost of participation increases while the benefit remains constant.

Can this continued participation be explained in terms of loyalty? In other words, do South Africans participate despite their dissatisfaction because of their relationship to their leaders? In his analysis of the 2003, 2004 and 2005 *South African Social Attitudes Surveys* (SASAS), Yul Derek Davids observes that while South Africans’ satisfaction ‘with the way democracy is working’ increased from 45 percent in 2003 to 62 percent in 2004, it declined to 53 percent in 2005 (Davids 2010: 70) and more than a quarter of the respondents were either dissatisfied or very dissatisfied. This is not surprising given that in 2004, only a small minority of respondents believed it was ‘easy or very easy’ to influence decisions of the country, the province and the municipality – 15 percent, 15 percent and 29 percent respectively. What is surprising – if participation is supposedly linked to its instrumental benefits – is that while 59 percent of respondents disagreed with the statement that ‘whether I vote or not makes no difference’, 84 percent of those same respondents felt it ‘was the duty of all citizens to vote’ (Davids 2010: 82). Rural informal dwellers were the least convinced of their ability to influence decisions yet the most committed to voting (87 percent). And in terms of local government – the level of government least highly regarded among all South African – while

41 percent of those surveyed said they had ‘some or no influence’ over local government decisions in their area, 83 percent said they would vote in the next local government elections (Davids 2010: 82). In terms of the question posed above – whether continued participation can be explained in terms of loyalty’s ability to activate voice - it would seem not to be the case: whether it is the nature of the majority of voters to be ‘uncritical’ of the ANC – now the government but very recently, a liberation movement - or the strict discipline expected of ANC members, loyalty to the ANC seems not to have activated voice in any substantial way.

The importance of citizens’ belief in their ability to influence decisions that affect them is critical if we are to consider whether participation is valued on categorical grounds. Hence if it were simply a case that Davids’ conclusion, that ‘respondents with a low LSM [living standards measure] were more upbeat [than those with a high LSM] about satisfaction with the way democracy is working’ (Davids 2010: 84), we could perhaps still use an instrumental justification of participation to explain why the poor continue to participate – they may have lower expectations, less exposure to the corruption and mismanagement and so on – and hence still link participation to its ability to improve their lives materially. But this would not explain why those who consider themselves to have the least influence over decisions that affect their lives continue to participate and participate more than those who think they do have some influence. We could however explain this according to a categorical account of participation: that South Africans value participation for reasons other than its instrumental benefits.

In an attempt ‘to probe citizens’ understanding of democratic citizenship’, Mattes questioned respondents on who they thought was responsible for holding elected officials to account (Mattes 2008: 129). In terms of holding MPs to account, only 11 percent stated that it was the

job of the voter: 44 percent of respondents believed that it was the President's 'duty' to do so (Mattes 2008: 129). Mattes concludes that 'South Africans are some of the least likely citizens...to see a role for themselves in holding councillors [and MPs] accountable' (Mattes 2008: 129). Considering this, the question of why they continue to participate is all the more perplexing – at least if we attach an instrumental value to participation. Participation is supposed to have material benefits: as Ballard puts it, in the 'South African parlance this means *delivery*, or the physical installation of infrastructure and delivery of services' (Ballard 2008: 172, original emphasis). Yet it is these tangible benefits that are not only lacking, but declining: between the end of Apartheid and 2007, South Africa's Gini coefficient rose and the income of the poorest 20 percent of the population declined from 2.7 percent to 2.3 percent of the total income. Total employment dropped by 475 000 in the first six months of 2009, and by a further 484 000 – or 3.6 percent of the workforce - in the three months that followed. Between the last quarter of 2009 and the third quarter of 2010, approximately 300 000 jobs were lost.⁷¹ Again, if participation rests on its perceived or real ability to result in (tangible) improvements to the lives of the participants, on the grounds of unemployment alone, we should expect to find much lower levels of participation than we currently do. If however participation is perceived to be valuable not because – or not only because – of its instrumental value, the levels of participation may be less difficult to explain.

Conclusion

It seems that an instrumental account of participation cannot fully explain why levels of participation in South Africa are what they are: on both liberal representative and deliberative explanations of democracy, participation is simply not coming up with the goods for the

⁷¹ <http://www.statssa.gov.za/publications/P0211/P02113rdQuarter2010.pdf>. [Accessed 1 December 2010]

majority of South Africans. On Hirschman's account, the benefits to the participants are lower than the cost of participating which should lead to exit; that is, decreasing participation. It is possible of course that loyalty is responsible for the continued participation of citizens but this would mean that loyalty acts as an activator of voice – if not, loyalty would also reduce levels of participation. Given the declining levels of partisan identification amongst all South Africans, (Bratton 2006; Schulz-Herzenberg 2007 and 2009), however, loyalty does not seem to provide an adequate explanation for why citizens continue to participate. The suggestion made here is that continued participation by South Africans can be explained in terms of the categorical value they place on participating. In other words, despite unfulfilled demands, pessimism about their leaders, and an increasing sense of their limited ability to influence politics, South Africans seem to regard their participation as valuable in and of itself and to believe that they have a duty to participate irrespective of the outcomes of their participation

But does a (moral) duty to participate necessarily mean that participation is moral? In other words, while we may have explained why South Africans continue to participate, we have not addressed the issue of how they participate. An uncritical assessment of all forms of participation as being valuable is hugely dangerous: on such an assessment, any and all participation – from voting to vigilantism – would be both acceptable and a confirmation that democracy in South Africa (on a categorical account) is alive and well. But there is a vast difference between the claim that we have a moral duty to participate and the claim that we have a moral duty to participate morally. This chapter has provided some arguments as to why I think we can claim the first – that South Africans consider themselves to have a moral duty to participate – but it has not considered the second claim. This will be done in Chapter Six, where I undertake an analysis of the variety of ways in which citizens have responded to one of the key problems in South Africa – crime – assessing these responses according to

liberal representative, deliberative and categorical accounts of participation. In order to do this, we need to develop a framework for assessing whether participation is moral or not and this is the subject of the following chapter.

Chapter Five

Understanding Democratic Citizenship

We said, and we were much derided for saying so, that only citizenship makes the moral man; that only citizenship gives that self-respect which is the basis of respect for others, and without which there is no lasting social order or real morality.

(Philip Green 1883: 72)

Introduction

Claiming that democracy ‘means’ participation by citizens in matters that affect them, requires us to analyse not only the participatory mechanisms but the participants in these mechanisms themselves. Institutions can do so much – the way in which these institutions are used does the rest. Many of the criticisms levelled at the way democracy is working in South Africa are linked to particular conceptions of South African citizens and hence what we mean by ‘good democratic citizens’ needs to be examined. On liberal representative accounts, the ‘good’ citizen is someone who participates in elections, abides by outcomes of elections and respects the rights and freedoms of other citizens. On deliberative accounts, the good citizen has the desire to participate extensively and rationally and is open to the possibility of having her preferences altered by ‘reasoned argument’ in the deliberative process. The amount of and manner in which citizens participate may differ on these accounts but the motivation does not: citizens participate because there are instrumental benefits to participating. On the categorical account however, there is a much stronger requirement – the good citizen must see participation as a moral obligation rather than simply a political (and necessarily instrumental) one.

Arguably, citizenship itself is a contested concept, taking on different meanings in different historical and geographical contexts and in different political conceptions. But we need to start somewhere. The term ‘citizenship’ is mentioned eight times in *A New Handbook of Political Science* (Goodin and Klingemann 1996); civic virtue and civic duty a mere three times each and civic culture five times. Four of these appearances are in the context of voting, two in terms of rational choice theory and the sole reference in terms of the ‘intrinsic value of citizens’ is in fact not entirely a case of intrinsic value since the claim is that ‘people perform citizenship duties because they like to, or because they feel guilty if they don’t or because it is embarrassing to look stupid during lunchtime conversation’ (Goodin and Klingemann 1996: 27). What is perhaps most interesting is that between pages 53 and 223, neither ‘citizenship’, ‘citizens’ nor ‘civic duty’ are mentioned – in other words, between discussions of Plato and Aristotle in 400 and 300 BC and those of Paul Lazarsfeld and other Columbia sociologists in 1944, in *Political Science* at least, the study of citizenship simply ceased to take place. This is of course hyperbolic, or at least a particular idiosyncrasy of the book in question, because as discussed in the opening chapter, classical political science was dominated by normatively charged concepts – justice, nation, rights, patriotism, society, virtue, tyranny – all of which at least implicitly link to the issue of citizenship. But it may confirm David Ricci’s conclusion that the ‘tragedy of political science today’ is that there has been a shift in interest from critical, normatively charged questions about the foundations of politics and democracy to the ‘empirically manageable and politically useful’ (Ricci 1984: 297; Held 2006: 272).

What this suggests is that if we are to develop an understanding of citizenship, we need to look beyond the discipline of political science. But even political philosophy, or political

theory, does not offer us much more in terms of its contribution to conceptions of citizenship – the combined number of times the term ‘citizens’⁷² is mentioned in Robert Goodin and Philip Pettit’s *Contemporary Political Philosophy* (1993) and *A Companion to Contemporary Political Philosophy* (2006) is seven. Of course, this may again be a peculiar quirk of the books in question, but given that the former is described as a ‘monumental volume [which] provides the most comprehensive and authoritative collection of the essential primary readings in post-war political philosophy’⁷³ and the latter as doing contemporary political philosophy ‘proud [since] its contributions...could hardly be bettered’⁷⁴, the lack of attention to citizenship (whether implicit or explicit) is surely noteworthy.

It is in fact in the arena of moral philosophy that we find the most significant – both quantitative and qualitative – contributions to the study of citizenship. This may be because, as Charles Taylor, in his exploration of the sources of modern selfhood argues, it is only by understanding how our ‘pictures of the good have evolved’ that we can understand the ‘modern identity’ (Taylor 1989: 3). His claim is that ‘selfhood and the good, or in another way selfhood and morality, turn out to be inextricably intertwined themes’ (Taylor 1989: 3). It seems then the starting point for our inquiry into ‘the good citizen’ is in moral philosophy, which focuses on what it is good to be or the nature of the good life⁷⁵.

I. Citizens on a Liberal Account of Democracy

Although the term ‘liberalism’ only emerged in the early nineteenth century (to describe a particular Spanish party), it is possible to trace elements of its core ideas to the seventeenth

⁷² Extending the search to include ‘citizenship’ which appears a combined 33 times, and ‘citizens and democracy’ and ‘civic or republican virtue’ each of which appear twice, we still only have 44 mentions in 1 397 pages of political philosophy.

⁷³ Anonymous reviewer, back blurb.

⁷⁴ Anonymous reviewer, back blurb.

⁷⁵ Of course this itself brings problems but I defend my choice on the basis that we have to start somewhere.

century, particularly the English Civil War (1688), where the citizen began to be recognised as a legal entity with rights and obligations. It is important to note however that the legal contract between a people and its government meant that obedience from the former is contingent on the latter's recognition of (and respect for) certain basic rights.

The right to own and control property, as argued by Locke is a central feature of the liberal conception of citizenship; the protection of citizens' rights to private property was for Locke, a key requirement for consenting to be ruled. If citizenship is conceived of in largely instrumentalist terms, as the liberal account of citizenship tends to do, as long as the rights and liberties of citizens are reasonably protected, there is little, if any incentive for citizens to participate in matters of politics. Participation for liberals is 'functional' – it serves the purpose of limiting abuses of power and protecting citizens' rights. On a liberal account, if citizens do participate, it not out of a sense of duty, but rather out of self-interest: in contrast to JFK's plea in his Inaugural speech in 1961, liberal citizens do indeed ask what their countries can do for them. 'Satisfied' liberal citizens have very little reason to participate; but very dissatisfied ones should be prevented from too much participation given the 'success with which unscrupulous demagogues have been able to manipulate a credulous citizenry' (Oliver and Heater 1994: 18). Or as Michael Saward explains it:

The main reason for...downgrading the role of ordinary people in democratic politics is straightforward enough: it is because most people are ignorant about issues, irrational in their opinions and preferences, and easily swayed by manipulative appeals from unscrupulous politicians (Saward 2003: 41).

As Gerry Stoker points out, the 'implication of this view is that the people should vote, choose their government and then get out of the way' (2006: 152). Hence for liberals, particularly those who subscribe to a Schumpeterian version of liberal democracy, 'the best citizen is the passive and apathetic one' (Oliver and Heater 1994: 19). Legitimacy, some

degree of accountability and responsiveness can, on liberal accounts, all be achieved through voting: other than this, the only requirement of liberal citizens is acquiescence (Hardin 2009: 242).

The apparent preference of liberals for a passive citizenry is not however necessarily linked to the ignorance or irrationality of citizens – as discussed in Chapter Three, there is a much less negative reason for limited participation: we simply are not political animals. Morris Fiorina thus argues that it is

time to abandon the notion of political participation as part of human nature. It is not, it is an unnatural act...Contrary to the suggestions of pundits and philosophers, there is nothing wrong with those who do not want to participate; rather there is something unusual about those that do (Fiorina 2006: 152).

For liberals, politics is inherently pragmatic: it a means to getting things done. If political activity can bring about ‘better’ results for individuals, they will participate. If not, they will not. April Carter points out that ‘liberalism cannot object to people pursuing purely private interests when they vote or otherwise engage in politics, or oppose tendencies to apathy and abstention from political activity’ (Carter 1998: 70). She draws on Barber’s contention that the values of liberal democracy mean that ‘no firm theory of citizenship, participation, public goods, or civic virtue can be expected to arise’ (Barber 1984: 4).

But Carter - and Barber - have fallen into a trap: they dismiss accounts of liberal citizenship because these do not conform to their own, republican-inspired perspectives. Carter takes up the ‘republican critique of liberalism’s tendency to focus on individual interests in the private sphere and its *failure to recognize the significance of the political realm*’ (Carter 1998: 70, my emphasis). Hence although Carter claims that her aim is not ‘simply to endorse a republican ideal of citizenship against liberal views’ (Carter 1998: 72), she does seem to want to do just

this: she concludes her article with the claim that ‘the failure of liberalism to articulate its own ideal of the good citizen leaves a void to be filled’ and her suggestion is that a liberal concept of citizenship should incorporate ‘awareness of individual responsibility and the importance of political activity but qualifies duty and loyalty to the state by due respect for rights and loyalty to universal principles’ (Carter 1998: 81).

Nicholas Buttle too argues for a conception of liberal citizenship which is complemented by republican ideas (Buttle 1997: 150). He takes the work of Rawls to be a key influence on the liberal conception of citizenship and claims, on this interpretation, that

citizenship is primarily a matter of status: the citizen, in contrast to the subject, is a person who possesses a status as a valued member of a political community...and two moral powers: the power to formulate a plan of life, or conception of the good for themselves, and the power to cooperate together with others on fair terms (Buttle 1997: 147, see also Rawls 1993: 19).

Buttle criticises this conception because it does not ‘place any value of citizenship as an activity’ (Buttle 1997: 148). For him, democratic politics requires citizenship to be an activity, rather than a status, whereby ‘individuals are committed to participate in the defence of their state and in the pursuit of its well-being’ (Buttle 1997: 148). He argues that liberal conceptions of citizenship do not ‘given any weight to such participation’ and that without a commitment to be politically active, the ‘very point of being a citizen, rather than a private individual or member of a group, may be eroded’ (Buttle 1997: 148). At the same time however, he defends a broadly liberal view of citizenship in which participation is not considered to have any moral value in itself ‘such that citizens possess a moral responsibility to be politically active’ (Buttle 1997: 148). He stresses that the rights of citizens cannot be lost simply because an individual chooses not to participate in public activity:

If, for instance, individuals choose not to take up the opportunity to be politically active and place a value, rather, on private life, then they cannot be condemned for living a life that is less good than that of the activist, or a life that is inconsistent with the status of a citizen (Buttle 1997: 148).

It can however be argued that there is at least an implicit moral value attached to a Rawlsian conception of citizenship in its requirement that participants be ‘reasonable’ – where reasonable people ‘desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept’ (Rawls 1993: 49). Thus while there may not be a moral responsibility to be politically active, once an individual decides to participate in public affairs, she must do so in a morally acceptable way – for Rawls this means a reasonable way.

In his article *Multicultural Citizenship: The Limitations of Liberal Democracy* (2000) Duncan Kelly claims that the ‘liberal state is – in a bravado return to its Hobbesian basis – neither arbiter nor moral guardian, existing merely to uphold the rule of law and guarantee the conditions of safe existence for the people over who it rules’ (Kelly 2000: 32). Although he recognises that such a state has never existed outside the realm of normative political theory, he does suggest that this conception explains why liberal accounts focus on the instrumental benefits of citizenship to individuals. Kelly does point out that a critical aspect of the truly Hobbesian state that citizens have unconditional obligations to the sovereign thus liberals’ neglect of citizens’ obligations to the state (and to each other perhaps) is indeed problematic; as is the liberal emphasis on rights given their almost complete absence from Hobbes’ conception. Kelly suggests that it is the instrumental nature of the Hobbesian contract and the neutrality (in the sense of not being a moral guardian) of the sovereign that underpin liberal accounts of citizenship. Nevertheless, he argues that ‘transforming citizenship is but one part

of rethinking the moral goals that underpin a political community' and that such a transformation must go 'beyond the horizons of liberalism' (Kelly 2000: 40).

This seems to be a view shared by at least some contemporary liberals. For example, Dawn Oliver and Derek Heater bemoan the minimal influence of citizens on government decisions, and look for ways to 'empower' the 'practically impotent' citizens through alternative means of participation (Oliver and Heater 1994: 19). While Buttle defends a broadly liberal account, he too argues for a thicker conception of citizenship on the basis that the 'privatisation' of citizenship may result in the degeneration of society into 'a series of atomised, isolated individuals who stare at each other with suspicion and hostility, with no sense of common ties or identity' (Buttle 1997: 149). Nevertheless, whether they support a more or less active citizen, liberal accounts of citizenship focus (almost) exclusively on 'qualities necessary for the maintenance of the good polity, efficient political processes and desirable forms of political organisation' (McKinnon and Hampsher-Monk 2000: 144). Catriona McKinnon contrasts this with accounts of the qualities which are associated with a good person, arguing that 'even the most far-reaching accounts of good citizenship will not demand that good citizens be perfectly virtuous people' and further, that 'it can be seen as a desideratum of an account of good citizenship that it does not make this demand' (McKinnon and Hampsher-Monk 2000: 144). For liberals especially, the fact of reasonable pluralism means we cannot – and should not – expect people to engage in political activity because such engagement may not be considered valuable from the moral, philosophical, religious or other position of that person. Any attempt to require good citizenship to hinge on such active participation is illiberal in that it infringes on the rights of individuals to pursue their own conception of the good – rights guaranteed by the liberal state.

Ultimately, expectations of contemporary liberals in terms of what is required from citizens are not quite as minimal as a Schumpeterian conception in which all that is needed from citizens is that they vote and pay taxes. Whether it is a concern for the ills in society or an obligation to defend their states (although not necessary in terms of military service), most liberal accounts of citizenship do acknowledge that citizens have some responsibility not to be 'passive and apathetic'. But this responsibility is justified on instrumental grounds – it is only through the exercise of these responsibilities that the liberal state can be secured. The influence on liberal conceptions of citizenship of Gabriel Almond and Verba's *The Civic Culture* (1963) cannot be understated: their assertion that democracy has a greater chance of success under a civic culture which is the combination of parochial (where citizens are not exposed to or are only superficially interested in politics), subject (where citizens are excluded from political decision-making processes) and participant (where citizens feel they can contribute to and are affected by politics) cultures. They maintain that although citizens need to be included in the political process to express their preferences to government and to hold governments to account, there are some issues they should trust elites to make decisions on their behalf. Citizens do and should deliberately choose not to influence their governments on some issues so as to give their governments a certain level of autonomy thereby assuring the stability and efficiency of democratic politics. A good liberal citizen is thus one who, through manifesting a civic culture, protects and promotes the values of liberal representative democracy.

II. Citizens on a Deliberative Account of Democracy

One of the primary concerns about liberal democracy articulated by some deliberative (and participatory democrats in general) is the (Rawls-inspired) self-interested justification for

citizen participation. Drawing on Barber's critique of liberal citizenship where 'democratic values are prudential...a means to exclusively individualistic and private ends' (Barber 1984: 4), Carter argues that 'liberalism's failure' is that it has not developed 'a satisfactory concept of citizenship' (Carter 1998: 68). Because it does not entail a 'belief in the dignity of politics and increased political participation, willingness to subordinate private interests to the public good, and a restoration of civic virtue' (Carter 1998: 70), Carter argues that the liberal account of participation is inadequate.

But this conception of citizens being willing not only to have their views criticised, but if necessary to abandon these views for the sake of the group does seem unrealistic. In his criticism of deliberative democrats' accounts of citizens, Stoker declares that

the argument about the nobility of politics and the sacredness of the citizen [is] a bit hard to swallow. Politics has much more prosaic and pragmatic ends than heroic deeds at its heart. I also find it difficult to trust anyone who says they are behaving altruistically or in an other-regarding manner. I can accept mixed motivations, but I don't like the idea of those who engage in politics being able to claim that they are working for higher, benign purposes alone (Stoker 2006: 155).

While the idea of citizens engaging in politics for altruistic reasons does seem a bit far-fetched, Stoker's claim is somewhat disingenuous: not all, or indeed not even the majority, of deliberative conceptions are based on the idea of moral and other-regarding citizens engaging in politics out of some commitment to the intrinsic value of political activity. Many deliberative democrats in fact share Mill's view that 'a person must have a very unusual taste for intellectual exercise [required for meaningful engagement in politics] in and of itself, who will put himself to the trouble of thought when it is to have no outward effect' (Mill [1859] 1991: 400). Participation in general but deliberative participation specifically is supported on instrumental grounds: since democratic-decision making 'requires knowledge of the interests of the people...more participation may lead to more effective learning [of citizens'

preferences] and *better decisions*' (Stoker 2006: 153, my emphasis). This instrumental justification for deliberation is reaffirmed by Russell Hardin who suggests that 'deliberation can lead us to a better grasp of better means to achieve a goal' (Hardin 2009: 236). Deliberative citizens are argued to have – or at least develop – the capacity to affect politics at higher levels, and hence improve their own lives through securing decisions that represent their interests.

And there is empirical evidence to support the argument that deliberation has instrumental benefits:

Many studies of deliberation experiments show that political efficacy measurably grows among the participants in the deliberative process...makes people feel better about their political effectiveness, more knowledgeable about their local community and clearer about how local officialdom could, or should, respond to them (Stoker 2006: 159).

That said, having a clearer account of how officials should respond to them does not necessarily mean that deliberation 'improves' citizens in an objective way: deliberation can not only lead to bad decisions just as easily as it can lead to good, but citizens themselves can be harmed by the deliberative process: they can be 'humiliated and brow-beaten'; they can be required to 'open up' in ways with which they are not comfortable and they may also 'retreat into silence' (Stoker 2006: 159). More concerning perhaps, especially for deliberative democrats who justify citizen participation on the grounds that it results in better decisions, more accountability and increased legitimacy, is that citizens can become dominated by a particular individual or group which results in citizens' abandoning 'their ordinary standards of judgement and go along with a line of argument or a conclusion that may be ill-judged' (Stoker 2006: 160).

To avoid these potentially damaging features in the deliberative process, deliberative democrats offer an account of the good citizen which emphasises 'reason, reflection, open and challenging debate and careful weighing of the evidence' (Stoker 2006: 155). Participants must 'follow the procedures and norms of deliberation; people are supposed to choose between options not on the basis of self-interest but rather on the basis of a judgment about which of the options are most reasonably going to advance the group's agenda' (Stoker 2006: 157). But if this is what constitutes a good citizen, then deliberative democrats are back to a conception of citizenship as inherently other-regarding. Of course, a citizen's self-interest might not conflict with the group's interests but the implication is that if they do, citizens must abandon their egoistic desires for the sake of others.

It is interesting then that although deliberative democrats adopt a Rawlsian conception of a good citizen as one who is reasonable, they do not require reasonable to mean neutral. At most, reasonable for deliberative democrats involves a commitment to considering one's views in light of arguments against them and if these are compelling, citizens should not merely consider these views but modify them or change them completely. This solves to some degree the concern with liberal conceptions of citizenship which, as Stephen Mulhall points out, fail to 'avoid begging the political question against those who do not share liberal values' (Mulhall 1997: 170). In other words, deliberative accounts of citizenship do not (on the face of it) require participants to be committed to liberalism's values (other than the value of reasonableness). Neither the state nor citizens themselves are required to be 'neutral' on a deliberative account: the fact of pluralism means that this is not possible and hence the deliberative solution to pluralism is debate and discussion over competing values so as to achieve consensus about, or at a minimum, consent to, decisions made in the deliberative process.

In terms of this, Ellen Freeberg argues that

deliberative democrats distance themselves from the view of authority as ever capable of 'neutrality' and the liberal view of authority as having to steer clear of all 'private' matters where private encompasses everything in civil society that has little relation to the goal of providing physical protection (Freeberg 2002: 69.)

According to Freeberg, deliberative democrats never expect that those 'in authority should or can pull back from acting as the focal point for synthesizing disparate opinions into a coherent moral compromise and from being the guardians of higher moral truths or the bearers of our best judgment' (Freeberg 2002: 69). Holding a state to account requires officials to make public their reasons for or against a particular decision or action, and the legitimacy of a decision or action (and the consent of citizens to abide by it) requires public scrutiny of these decisions through a deliberative process which entails the weighing up of competing values and interests.

Thus while Barber and Carter may have a strong view of the obligations of citizens in a deliberative democracy, there are many other proponents of deliberative democracy who do not. Habermas himself, in his revised account of citizenship (2006) does not require citizens to ignore their own values in the deliberative process, no matter how much they may conflict with the views of others and/or be considered unreasonable or irrational. Drawing on Habermas in her examination of the difficulties arising for both religious and secular citizens in a deliberative process Cristina Lafont explains:

In the public sphere ordinary citizens are *allowed* to make use of any reasons they sincerely believe in, even if those reasons are exclusively religious. In that sense, they are not obliged to come up with secular reasons that do not correspond to their sincere beliefs (Lafont 2009: 135).

But this may be a more paltry concession to value pluralism than it appears at first glance: Lafont, again drawing on Habermas, explains that citizens are only obliged to come up with

secular reasons ‘if they want their reasons to count in the deliberative process’ (Lafont 2009: 135). This seems peculiar – while citizens are entitled to ‘take their own cognitive stance in public deliberation’ (Lafont 2009: 141), if a citizen wants her cognitive stance to be taken seriously, to ‘count’ in the process of arriving at a final decision, one which she is obligated to abide by, she has to offer reasons that are acceptable to those who do not share her cognitive stance. Or as Lafont puts it, while citizens have the right to take their own stance, ‘this right by no means includes an additional right to the protection of the integrity’ of their stance (Lafont 2009: 141). In fact, if objections to the cognitive stance of a particular citizen are cast in terms of reasons generally acceptable to democratic citizens – for Lafont, ‘reasons based on basic democratic principles of freedom and equality’ (Lafont 2009: 142) – the citizen has an obligation to address and defeat the objections using such reasons. But in saying this, Lafont seems to be conceding to a liberal view of democracy and democratic citizenship in which particular values – freedom and equality – take primacy over others. So although she claims that her proposal is that to participate in the deliberative process, ‘no one has the obligation to engage in a way of thinking entirely foreign to their own cognitive stance’ (Lafont 2009: 143), she does seem to support the Habermasian position that if one wants one’s stance to matter, one may well have to do just this. To be a ‘good’ citizen on this account of deliberative democracy is demanding indeed.

McKinnon’s account of a good citizen, or in her terms, ‘civil citizens’ (2000: 150) is similarly demanding. She explains that there are four requirements for citizens to engage ‘civilly’ in public reason:

1. The good citizen is aware that the views of others differ from her own, and that this is the inevitable result of the free exercise of reason and the burdens of judgement;
2. The good citizen is willing and able to engage in public reason by offering reasons in political discourse which also count as reasons for reasonable others;

3. The good citizen is willing and able to empathise and identify with views unlike her own in order to assess whether the reasons she proposes to invoke in political debate are reasons acceptable to others, given their different conceptions of justice;
4. The good citizen is willing and able to listen to the views of others expressed in good faith, and to accept the possibility that her own view might be mistaken in some aspects (McKinnon and Hampsher-Monk 2000: 150).

McKinnon can be accused however of making the same mistake as some of her deliberative colleagues since one can argue that these are the results of participation in public deliberation rather than the conditions for it; that reasonableness and rationality are not a starting point for deliberation but an outcome of it. Surely a primary reason for engaging in political activity is *because* one holds such strong views and because one wants to persuade others of the correctness of these views, not have these views ‘transformed’? If citizens must be willing and able to accept objections to, and possibly even give up on, their strongly held views, what possible incentive could there be for citizens to take the time and put in the effort required to participate? While some citizens may have the confidence in themselves to believe they can defeat the positions of others, it is surely irrational for citizens who are more insecure, or who recognise that their own positions may not be shared by others, to enter the deliberative forum. Given that engagement in the public sphere is regarded by deliberative democrats as *the* legitimating force for justifying ‘coercive policies with which all citizens must comply’ (Lafont 2009: 127), how can there be an obligation to comply for citizens who take the *rational* decision not to engage?

Ultimately, while it may on the surface appear to offer institutional opportunities for citizens to participate in the decision-making process, deliberative citizenship, like liberal citizenship, actually constrains citizens by requiring them to accept certain values even if they are in conflict with their own. This would not pose as great a problem if the justification for

engaging in politics were not instrumental – in other words, if the incentive for citizens to engage was not based on the expectation that engagement would benefit them and promote their personal interests. Unless we subscribe to a justification for participation on altruistic and other-regarding grounds, which is unlikely to convince the majority of people to participate, we need self-interest to provide the motivation to participate. While we can claim, as Rawls does, that self-interest can and will benefit society at large, it is not the benefit to society that prompts us to participate: it is the self-interest. Conversely, if it is not in our self-interest to participate the cost of this non-participation to society at large is unlikely to change our decision not to participate. It is because of the reality of self-interest as the primary motivation for participating, that a categorical account of ‘the good citizen’ does not rely on anything other than self-interest to provide this motivation. It is categorical in that a good citizen has a duty to participate but this duty is to herself rather than to others.

III. Citizens on a Categorical Account of Democracy

Before I can examine the argument that citizens (may) have a moral duty to participate, I need to clarify just what this argument entails because there are a number of aspects to it. The first is that a moral duty to participate does not necessarily mean that the way in which citizens participate is itself ‘moral’ because in order to define an action or set of actions as ‘moral’ we need to define what we mean by moral – morality differs according to the moral theory we adopt. Hence what is ‘moral’ for ethical egoists for example is that which is right for the individual in question – the effect an action has on others is ultimately irrelevant – whereas a moral act for utilitarians requires us to act for the sake of increasing the total utility of all affected even if the action has undesirable effects for the individual herself. As such, we need to distinguish between a moral duty to participate and a moral duty to participate morally; that

is, we need to distinguish between the claim *that* we participate and the claim about *the manner in which* we participate.

A second consideration is that the claim that there may be a moral duty for citizens to participate – that participation is valuable irrespective of the way in which it affects the legitimacy, accountability and responsiveness of governments – is not a claim about the amount of participation that is the most desirable. In other words, while liberal accounts of citizenship emphasise the instrumental benefits of less participation and deliberative accounts emphasise the instrumental benefits of more participation, a categorical account does not. Again, a categorical account considers the idea *that* we participate; this is different from the claim about *how much* we participate.

Obviously we cannot ignore either the amount or the kind of participation; this would be to tell only part of the story. But at the same time, we cannot consider these questions unless we have a story to tell about whether or not participation *per se* can be justified on the basis that it has a value to the participants aside from the instrumental value conventionally attached to participation. Hence a claim that participation has categorical value is a claim about the way in which we understand participation rather than a claim about the participation itself.

The idea that citizens may have a moral duty to themselves to participate can in my view be traced back to two philosophical traditions which at first glance, could not be more different: the traditional African philosophy of Ubuntu and ancient Greek philosophy, specifically that of Socrates.

Ubuntu offers us an understanding of ourselves in relation to the world. It is a claim that through interaction with others, we discover our own human qualities. ‘Ubuntu Ngumuntu Ngabantu’ – a person is a person through other people – asserts that we affirm our humanity when we acknowledge the humanity of others.

Ubuntu is the essence of being human. It speaks of the fact that my humanity is inextricably bound up in yours. I am human because I belong...You can’t exist as a human being in isolation. It [Ubuntu] speaks about our connectedness. You can’t be human all by yourself (Tutu cited in Battle 1997: 13).

Ubuntu thus provides a basis for morality where morality is linked to the potential of being human. Michael Battle explains this as the idea that ‘we don’t come fully formed into the world...we need other human beings in order to be human’ (Battle 1997: 15).

Nhlanhla Mkhize explains the psychological understanding that Ubuntu implies in his translation of the Sotho version of Ubuntu: ‘Motho ke motho ka batho babang’ – ‘it is through others that one attains selfhood’ (Mkhize 1998: 1). He thus points to the importance of community in self-definition; personhood ‘cannot be described solely in terms of the physical and psychological properties’ (Mkhize 1998: 1). In order to understand who we are as individuals, we need to understand the community in which we as individuals exist.

Some interpret Ubuntu as a stronger claim: that it is not just that we need a community in order to be an individual but that Ubuntu suggests that the community has priority over the individual. Hence communalism is ‘ethically superior’ to individualism which in Ubuntu, is frequently ‘equated with egoism and selfishness’ (Enslin and Horsthemke 2004: 546). A liberal account of democracy is not therefore a suitable democratic model since African culture and identity are ‘ill-served’ by this model (Enslin and Horsthemke 2004: 546) because

in the context of (South) Africa, only this African principle of human interdependence can provide an appropriate basis for democracy (Enslin and Horsthemke 2004: 547).

While Ubuntu theorists do not as far as I know make a claim about participation in a community having a ‘categorical value’ to the individual, the idea that we can only become an individual through relationships with other individuals I think implies this. If we consider it important to the individual to attain selfhood, perhaps even the duty of an individual to do so, and if we can only attain selfhood through others, then a duty to oneself requires engagement with others. Of course, while engagement with others is a necessary condition for becoming human, it is not a sufficient condition: theories of Ubuntu go further by specifying the kind of engagement that is required. Those who make the strong claim that Ubuntu gives priority to the community rather than to the individual may argue for a kind of engagement where an individual is willing – indeed required – to ‘sacrifice’ one’s own interests for the sake of the collective interest whereas the weaker claim does not seem to entail this: the claim is rather that it is in our interests to engage with the community and consider its collective interests.

Because of the problems associated with the idea that we may have to subordinate our interests for the sake of the community’s interests – or as Stoker puts it, the idea that citizenship is based on altruism – I want to focus on the weaker version of Ubuntu as a source of a categorical justification of participation. In other words, I think that while Ubuntu is incompatible with selfishness, it is not incompatible with self-interest. Because we can only become ‘fully human’ through participation, and because it is in our interests to become fully human, it is in our interests to participate with others. Of course, one could argue that it may not be in our interests to participate with others – if the cost of participation outweighs the benefits for example – but surely the benefit of ‘becoming fully human’ trumps any cost?

The above account of Ubuntu may not pass muster with those unconvinced by the African philosophy nor with those who subscribe to the stronger version of it. Those in the former category may dismiss Ubuntu as idealistic while those in the latter may object to my interpretation of Ubuntu as being too liberal, too self-interested. Although I acknowledge these potential criticisms, I maintain that my reading is not irreconcilable with and does not do an injustice to the fundamental principles of Ubuntu. In fact, I think that my conception moves Ubuntu from the realms of idealism to the reality of the contemporary world and provides the basis from a justification of participation on categorical grounds.

Moving now to a second potential source for the justification of participation on categorical grounds, let us consider the philosophy of Socrates. The Socratic method of dialogue seems to be based on the idea that if one wants to achieve self-knowledge, one needs an ‘other’. To enable his companions and students to reach self-knowledge, Socrates took on this role. The Socratic method has been considered in the context of a number of disciplines: in teaching medical ethics (Birnbache 1999); in psychotherapy, theory, research, practice and training (Overholser 1994); and in law (Childress 1982). Its relevance to political philosophy has not however been given the attention I think it deserves. Of course, given that Socrates was a critic of democracy, the application of his philosophy to citizen participation in politics may be considered inappropriate, but it seems to me that his method and his (political) beliefs are not necessarily inextricably bound up with each other. Socrates himself seems beset by contradictions: questioning the Sophists’ doctrine that ‘virtue’ can be taught, yet devoting much of his time to teaching, or at least facilitating, the development of morality in his students and companions: indeed, it was his ‘corruption of the minds of the youth’ for which he was sentenced to death. In his trial, he criticises the jurors for their lack of concern about ‘the welfare of their souls’ and their preoccupation with their families, political

responsibilities and careers. In terms of democracy, while Socrates does seem to object to such an imperfect form of government – that is, government by imperfect people, he accepts the will of the people when he accepts his death sentence: he refuses to go against the decision of his community because he has agreed to live under the laws of the community. What is perhaps most interesting about Socrates' apparent objection to democracy is that against the norms of Athenian society, he seems to have believed in equality: his conversations were with young and old, slave and free, rich and poor and perhaps most controversially, he not only tends to talk of 'men and women', but claims (in Plato's *Menexenus* and *Symposium*) that his teachers were women – Aspasia of Miletus and Diotima of Mantinea.

So where does this leave us in terms of finding a justification of participation on categorical grounds in Socrates? Firstly, like the philosophy of Ubuntu, the philosophy of Socrates necessitates an 'other' for it is only through interaction with others that we can achieve self-knowledge, that we can become fully human. Secondly, the individual must, for Socrates, be willing to have her beliefs and opinions questioned, scrutinised, and criticised by others – in a sense, the claim made by deliberative democrats (although the basis for their claim is that subjecting one's beliefs to public scrutiny is the benefit it has to decision-making rather than to one's own development). For Socrates, who seems to have had no interest in being involved in public affairs, reaching our potential as human beings possessing self-knowledge is what we owe to ourselves rather than what we owe to the community. It is ultimately our own self-interest that motivates us to engage with others; it is our duty to ourselves that requires us to interact with others. Of course, while the development of knowledge and wisdom of members of a community may improve the community (and if it is a democracy, the decisions made by the community), it is improvement of the individual upon which Socrates focuses.

While different in so many obvious ways, the philosophies of Ubuntu and Socrates both posit a relationship between participation with others and self-realisation, the latter in terms of realising our humanness rather than having our material interests met although these are not of course mutually exclusive. Consequently, I suggest that we can read both philosophies as sources for a categorical justification of participation in which the citizen participates with other citizens not because of the instrumental benefits to the community that such participation may achieve, but because of the contribution such participation makes to the individual citizen herself. Of course, a citizen who has achieved personhood (in terms of Ubuntu) or self-knowledge (in terms of Socrates) may be conceived of very differently on both philosophies; the actions of a ‘self-realised’ individual may be vastly dissimilar from one account to the other because although both philosophies emphasise the importance of becoming moral – what moral meant in the context of Socrates is not (necessarily) the same as what moral means in the context of Ubuntu and neither conception of morality may be relevant in the contemporary world. Hence in order to establish that we may have a duty to ourselves to become moral; a duty that can only be fulfilled by participating with others, we need to establish what ‘becoming moral’ actually constitutes.

Having examined the philosophy of Socrates, one may argue that it is somewhat repetitive to take Plato as our starting point for such a discussion – or at least predictable given, as Peter Berkowitz suggests, the ‘virtue, or the promotion of human excellence’ in ancient (Greek) philosophy, ‘was generally held to be the ultimate aim of politics’ (Berkowitz 2000: 4)⁷⁶. It is however, less predictable perhaps to do so by examining *The Laws* and *The Apology* rather than *The Republic*. One possible reason for the neglect of the former (certainly in relation to

⁷⁶ Berkowitz seems to be alluding to the idea that in recent times, the loss of a particular (albeit contested) vision of the good given by reason, science, nature or God by which to measure politics normatively has led in some ways, to the ‘death of citizenship talk’.

The Republic) may be linked to the question of its authenticity: even Ast, the great Platonist, argued that ‘one who knows the true Plato need only to read a single page of *The Laws* in order to convince himself that it is a fraudulent Plato that he has before him’ (Guthrie 1987: 322). It is however, now widely accepted that *The Laws* is indeed authentic: Aristotle himself refers to it as one of Plato’s dialogues. And it is in fact in *The Laws* that we find the clearest articulation of what is considered to be the proper ‘telos’ of constitutions: in all his legislation, the lawgiver’s singular aim is virtue, in essence, the fostering of courage, justice, moderation and wisdom in the citizens. Most of the dialogue (Books 4-12) explains the political and social institutions which should produce genuinely virtuous citizens. What is particularly interesting is that a common view of *The Laws* is that it represents Plato’s view of a city that would be best, given less optimistic assumptions about what human nature is capable of (unlike *The Republic* which presents a city which would not be realisable by humans as they actually are). In other words, the goal of creating virtuous citizens is not, for Plato, an ideal but something actually achievable.

The notion of the virtuous citizen is equally important in *The Apology*, where, as mentioned above, Socrates tells us that while a vital duty of citizens is to improve the state through self-knowledge, as critical is that citizens ought to ‘philosophise’ in pursuit of truth and perfecting their souls. He explains that precisely because wisdom and truth are so closely connected, his efforts to obtain wisdom through finding the ‘truth’ should be seen as a service to society (for which he suggests at his trial, he should be rewarded – with free meals in the Prytaneum, an honour reserved for athletes and other prominent citizens): if we are all wise, none of us will ever do wrong thus the health and prosperity of the state would be assured. Conversely, no set of laws can ensure such health and prosperity if citizens are lacking in virtue. Thus rigorous philosophical and intellectual exercise – that which enables us to obtain self-

knowledge – is not a crime, but an activity of the highest moral value. Taking *The Apology* and *The Laws* together, we can conclude, at least tentatively⁷⁷, that virtue can be acquired and that it is the highest goal which citizens can achieve. The political role for citizens depends on the kind of ethical character and wisdom they can acquire: in the city of Magnesia, not only are citizens largely free from detailed regulation and supervision by others; an important part of their own good is to be formed by deliberating and acting upon their grasp of ethical principles (Bobonich 2002: 418-73). This is the heart of the critique of the modern world which is all process, all systems, all institutions and no distinct vision of the good life to guide human behaviour (for example the liberal view of the state as neutral).

While the possibility of ‘acquiring’ virtue may be ambiguous in Plato, in Aristotle it is not: on his view, man is born neither good nor bad but without any character at all (without any moral virtues) and with a capacity, as yet unrealised, to think in different ways (undeveloped intellectual virtues). The acquisition of moral virtues is from our families and our cultures and they thus proceed from habitual practices while intellectual virtues are acquired through rational instruction (so although we are born with the relevant capacities to learn, we are taught to exercise the way we think by instruction and experience) so that we learn to think and act the way all humans do. To behave well requires that one has already become habituated to choosing to be good, by desiring the right end which is the end of doing well. Only then does one use one’s intellectual virtues to deliberate or calculate about the various means that are in one’s power to achieve this desired end, or ‘Highest Good’. Thus because the acquisition of moral virtues through habituation is more important than and prior to the development of the intellectual virtues in leading a successful human life, Aristotle is

⁷⁷ Tentatively because in *The Republic* and in *Meno*, Plato seems to suggest that virtue is neither taught nor acquired and yet in the dialogue of Protagoras, he again allows Socrates to conclude that virtue can be taught and that it is the philosopher’s job to teach it.

especially concerned with the training of the moral virtues, training which occurs through interaction and engagement with others, that is, through politics. Aristotle's 'political animal' is in fact our 'good citizen': the person who recognises that personal happiness is achieved by being virtuous where virtue is a 'willingness to work for the public good, and not just on their own narrow interests' behalf" (Hadenius 2001: 18).

Ethics for Aristotle is a practical discipline rather than a theoretical one, and thus in order to become 'good' we should not simply study what virtue is but rather actually engage in virtuous activity. Because of the particular historical circumstances attached to Aristotle's use of the term 'citizen', it is important to look at what he says about the good man, in addition to the good citizen. For Aristotle, what separates man from the genus 'animal', of which he is a part, what makes man's 'ergon' or function unique to his species is that he engages in moral and rational activity. Only humans do this and thus only humans exhibit both moral virtues (or character virtues) and intellectual virtues (virtues of the mind). In other words, only humans can become 'good', and only through the development of our virtues can we achieve the ultimate human goal, or what he called the 'Highest Good'.

Despite being linked to the intellectual tradition of Aristotle, in that he too argued that politics and morality should not be separated, Rousseau begins his argument from quite a different position from Aristotle. Whereas Aristotle believed that we are born 'neutral', that is, without any moral or character virtues, Rousseau contends that man was 'good' by nature (in the sense that his self-preservation instinct was tempered by compassion, unlike the Hobbesian vision) but is corrupted by society. Society's negative influence on otherwise virtuous men stems from its alteration of 'amour de soi', a positive self-love, to 'amour-propre', or pride. The former represents the instinctive (or natural) human desire for self-preservation in

combination with the human power of rationality. The latter is artificial and forces man to compare himself with other men which in turn fosters jealousy, fear, vanity, and suspicion. While natural or primitive man possesses a basic drive to care for himself and leads a semi-isolated existence, he is characterised by a disposition to compassion or pity on the one hand, and values the good opinion of others as an essential component of his own well-being on the other. The 'progression' to modern society leads to the degeneration of man in the form of increased interdependence and inequality. Because the resulting state is one of conflict, Rousseau argues that it was invented as a kind of social contract privileging the rich and powerful and entrenching inequality as a fundamental feature of human society. Rousseau then presents us with a 'second' contract, the adoption of which will enable individuals to preserve themselves and remain free. This is achieved through the 'general will' which both guarantees individuals against being subordinated to the wills of others and ensures that they obey themselves. To act under the general will consists for each citizen in thinking about what is in the common interest, for this is to give up 'amour-propre' and focus on the commonality of man that is 'amour de soi'. In other words, even if the common interest conflicts with one's own private interest, good citizens will, through the use of reason, be motivated to choose the common good (Boucher and Kelly 2003: 242). Rousseau's system aims to produce responsible individuals who take into account interests wider than their own, and in so doing, learn to be public citizens as well as private ones.

Differing from Aristotle in that he believed that ethics is not the doctrine of how to make ourselves happy but rather, of how to become worthy of happiness, and differing from Rousseau in that he opposed (direct) democracy since it establishes an executive power contrary to the general will, Immanuel Kant can nevertheless be seen to offer a convincing synthesis of the ideas of the two men. For Kant, there is something 'moral', or worthy of

admiration about a person who does her duty for no other reason than that it is her duty. The difference between the moral and immoral person is not that one is good and the other bad, it is that one does what is right whether it will bring her happiness or not, while the other is concerned only with her welfare.

In order to be good, or moral, one must possess a good will. But a good will does not, according to Kant, derive its goodness from being directed to the achievement of intelligence, courage or wealth, for these things are good only when directed by a will that is already good. The goodness of the will is derived rather from the use of faculties and talents such as intelligence, courage and wealth in the service of duty. This means then that a will to act from duty follows the dictates not of desire or inclination, but of pure reason. It is the will of someone who does the right thing not because that is what she wants to do or because of the consequences that follow it, but because it is what pure reason demands of her. And only the actions deriving from such a motive are deserving of moral praise and respect.

Despite not being a democrat, Kant is very much a believer in equality in that he argues that every human being capable of rational thought is capable of developing a good will. The ideal state to which he aspires – the ‘Kingdom of Ends’ – is one in which free, rational agents achieve autonomy, or self-rule, simultaneously living the life of ruler and subject⁷⁸. This view of the equality of individuals is emphasised by Kant in both formulations of his Categorical Imperative:

The Formula of Universal Law: ‘act only according to the maxim whereby you can at the same time will that it should become a universal law’ (Kant [1785] 1948: 52);

⁷⁸ What is critical to understand is that in the Kingdom of Ends, one is subject only to laws and rules which one has derived through pure reason. As for Rousseau, being a subject is not a limit to or constraint on one’s freedom or autonomy, but an expression of it because a participant in the Kingdom of Ends is someone who ‘legislates in it universal laws while also being themselves subject to such laws’ (Kant [1785] 1948: 92).

The Formula of Humanity: 'act in such a way that you treat humanity, whether your own person or in the person of another, always at the same time as an end, and never as a means' (Kant [1785] 1948: 56).

For Kant, the source of value is 'humanity', or free, rational, agency. He argues that we should recognise that others also possess humanity, and as such we ought to respect it in everyone equally. And if we do so, we will realise that autonomy is not simply a case of 'achieving one's own selfish ends' but rather, a state in which it is agreed that all ends are equally valid and as such, one ought not be swayed by the special circumstances of particular cases, (especially one's own). Fulfilling the criterion of universality and the recognition of humanity in ourselves and in others is the only way of achieving a 'good will', the possession of which is the true test of morality.

With the exception of some egoistic theories, morality only really makes sense when applied to a social context. Kant would argue that Robinson Crusoe has duties to Friday whether Friday is around or not and in fact, in the case of the latter, because Crusoe will not have an opportunity to perform any of his duties, he will lack the opportunity to develop himself morally and will end up morally stunted. Not only do both formulations of the Categorical Imperative refer to an 'other' (although it is somewhat more implicit in the Formula of Universal Law than in the Formula of Humanity), but in suggesting that humans should act 'as if one were through his maxims always a law-making member in the Universal Kingdom of Ends' ([1785] 1948: 82), Kant seems to allude to a hypothetical community. Thus while morality and the good will are accessed through pure reason, and as such are the property of individuals, Kant seems to imply that we need to consider individuals other than ourselves in deciding what right conduct is. Because morality involves duties to others, it is only fully

expressible in society so we can better advance towards having a good will in society than we can alone. Society and morality (practical reason) are thus conditional upon one another. It is not that morality gets its value from being applied in society, but rather that society is a necessary condition for practical reason (and thus morality). On that interpretation, the development of a 'moral citizenry' depends not only on the individuals comprising that citizenry, but more importantly, on the relationships between these individuals, and their engagement with one another.

While those who have a commitment to democracy are unlikely to be committed to a Kantian position in moral philosophy, attaching a value to democracy is surely linked to Kant's supreme principle of morality, the autonomy of the will. What Kant's conception of morality contributes to the idea of democracy as an end in itself is that we build into democracy, that is, 'rule by the people', the idea of (certain kinds of) citizen interaction having intrinsic worth. If we acknowledge that autonomy, rationality and indeed morality are accessible (only, or at least largely) through interaction between citizens, we find value in such interaction irrespective of whether it brings about 'good government'. Autonomy is not a consequence of democracy; it does not arise after or because of democracy. In it, as in no other system of government, this principle is clearly and fully embodied because participation, the direction and control of agents from within, is moral autonomy. And while it may not be sufficient, it is necessary for the most praiseworthy conduct. If the rules governing individuals do not arise from our own participation, but are imposed from without or by some despotic element within, the moral character of the individual suffers, even if the decisions imposed are good ones. If however we see democracy as being synonymous with autonomy, that is, the expression of self-government as a moral ideal, we may begin to understand that the value of

participation is categorical, it is a duty, worthy of being prized for its own sake, and not because of the government or system it gives rise to.

The idea that participation, both in public organs of decision-making and in civic organisations, could not only foster the civic virtue underlying democracy, has also played a central role in the writings of Mill who emphasises the educative role of political participation. Through taking part in elections, debates, and meetings, and especially through performing their public duties, serving as office-holders, jurymen and so on, citizens become habituated in word, thought and action, to working for the common good. They are taught to look beyond their narrow self-interest and to regard their own actions as part of a larger effort to promote the public good. Mill, unlike his father and Jeremy Bentham before him, regarded the business aspect of government (a set of organised arrangements for administering public matters) as being much less important than ‘how far it promotes the good management of the affairs of society by means of the existing faculties, moral, intellectual, and active, of its various members’ ([1859] 1991: 195). In other words, the fundamental role of government is its influence on the human mind and the degree to which it promotes ‘the general mental advancement of the community, including under that phrase advancement in intellect, in virtue, and in practical activity and efficiency’ (Mill [1859] 1991: 195). For Mill, participation promotes the development of citizens (individuals with the right, ‘public-spirited’, character), and it is this, rather than because it is a form of government in the universal interest, that Mill denotes popular democratic government as being the ‘ideally best polity’ ([1859] 1991: 203). For Mill, the goodness of government can be ascertained, as he sees it, by ‘the degree in which it tends to increase the sum of the qualities in the governed, collectively and individually’ (Mill [1859] 1991: 40). The primary strength of a popular state lies in the fact that, more than any other type of state, it is capable of fostering the intelligence

and virtue of its citizens. Thus he rejects other forms of government (such as a benevolent despot), which may achieve success in the business side of government, because human beings living under such a regime cannot develop their

thinking or their active faculties...and their moral capacities are equally stunted. Wherever the sphere of action of human beings is artificially circumscribed, their sentiments are narrowed and dwarfed... (Mill [1859] 1991: 203-4).

Like Rousseau, Mill asserts that there is a relationship between the qualities and psychological characteristics of individuals and certain institutions: if institutions are set up so that individuals do not participate in public affairs, then individuals are concerned only with their private affairs and the capacities for responsible action remain undeveloped and the 'self-regarding' virtues suffer too:

The man never thinks of any collective interest, of any object to be pursued jointly with others, but only in competition with them, and in some measure at their expense...the private money-getting operation fastens his attention and interest exclusively upon himself...making him indifferent to the public...and in his inordinate regard for his personal comforts, selfish and cowardly (Mill [1859] 1991: 230).

While participation can turn this state of affairs around, it is significant that for Mill, universal suffrage and participation in national government is only meaningful if citizens are prepared for this through active, extended participation, participation at a local level, because 'a political act, to be done only once in a few years, and for which nothing in the daily habits of the citizen has prepared him, leaves his intellect and his moral dispositions very much as it found them' (Mill [1859] 1991: 229).

Mill's contribution to democracy is significant: participation is not for him simply required to produce 'good' policies but is responsible for the development and fostering of 'good' citizens. That said, Carole Pateman points out that in his practical proposals, Mill 'does not

take his arguments about participation seriously enough’ and thus his view of representative government seems ‘incompatible with the fundamental role he assigns to the educative function of participation’ (Pateman 1970: 31). The fact that he does not offer us a synthesis of his views means that there is significant ambiguity between his practical proposals for representative government and the participatory foundations of his theory. Nevertheless, Mill’s contribution in terms of the categorical value of participation should not be discounted.

As the above analysis has shown, *that* we have a duty to ourselves to participate has a bearing on *how* we participate. This because of the intellectual tradition which has its roots in Plato and Aristotle and is continued by Rousseau, Kant, and Mill: that while it is the quality of people as citizens which ultimately determines the quality of public and political life, it is at least partly through public and political life that people can become good citizens. The value of participation has come to be recognised as bringing about competent and broad-minded citizens, who actively ‘stake out their positions on an autonomous basis; [and are not] found in relationships of dependence and submission’ (Hadenius 2001: 18). In other words, participation is prized not because it brings about ‘good government’, but because it is through participation and interaction that human beings exercise and develop their capacity to become ‘good’. In cases where ‘instrumentally good’ government is lacking, the significance of valuing participation in this way cannot be underestimated. But even in the presence of good government, there is still an argument to be made that participation should be valued categorically so that human beings should be allowed to exercise their capacity to become moral beings and to exercise this capacity equally. But to claim that we should participate equally is still not a claim about the *amount* and *manner in which* we should participate and it is to this we must now turn our attention. To do this we need to look at another account of

democracy which has been mentioned in previous discussions but requires further examination: that is, a participatory account of democracy.

Although it only emerged significantly in the 1960s and 1970s, participatory democracy has its roots in Rousseau: as Pateman explains, for Rousseau, participation is ‘very much more than a protective adjunct to a set of institutional arrangements; it also has a psychological effect on the participants’ (Pateman 1970: 22). Proponents of participatory democracy, while agreeing with the claims of mainstream democratic theorists (that participation is the optimum means of protecting private interests and ensuring responsive government), highlight the educative effects of participation, the effects it has on participants’ characters and personal development: ‘the human results that accrue through the participatory process provide an important justification for a participatory system’ (Pateman 1970: 25).

For a number of reasons real interest in participatory democracy was relatively short-lived. Because participatory theorists in the main were offering critiques of actually existing democracy, their accounts were not always backed up with empirical evidence. Even today, those in favour of participatory democracy have a hard time ‘proving’ their claims as Mansbridge’s opening statement in her PEGS paper (mentioned in Chapter Three) illustrates. Mark Warren argues that

although the transformative ideals of radical democracy are attractive for many reasons, they too are beset by a fuzzy utopianism that fails to confront limitations of complexity, size and scale of advanced industrial societies (Warren 1996: 242).

In addition, because participatory democracy was associated with the New Left in the West, once the Cold War ended and liberal representative democracy ‘had won’, anything ‘tainted’ with socialism and radicalism was sidelined. The minimal state of the Ronald Reagan and

Margaret Thatcher eras contributed to emphases on individualism at the cost of the community, thus hammering another nail in the coffin of participatory democracy. Oscar Wilde's quip that socialism required 'too many evenings' was, at least implicitly, just as appropriate to the notions of extended participation espoused by participatory democrats. By 1982, even one of its greatest defenders admitted that 'for many people in the 1980s, "participation" and "participatory democracy" are merely echoes of a time past' (Pateman 1982: xiii). Referring to Green's *Retrieving Democracy* (1985) and Mendel-Reyes's *Reclaiming Democracy* (1995) among others, Emily Hauptmann points out that even the titles of books written about participatory democracy in the 1980s and 1990s 'announced its waning' (Hauptmann 2001: 397). As she observes 'political theorists now often speak of participatory theories of democracy in the past tense, as ideas that grew out of the political and intellectual ferment of the 1960s and then subsided with it' (Hauptmann 2001: 398).

Hauptmann suggests that the place participatory theorists once held 'as the envisioners of a more inclusive, vibrant democracy' (Hauptmann 2001: 398) has been taken up by deliberative democrats (of the left) although she concedes that the vision of this new cohort of democratic theorists stops 'well short of the sweeping changes participatory theorists believed must be part of the process of democratisation' (Hauptmann 2001: 398)⁷⁹. This is in large part because unlike participatory democrats who stressed the need for a complete change in the institutions of 'democratic' societies (so as to harness democracy's 'transformative effects') and hence focused on revolution, deliberative democrats have turned their attention to reform. Today, these revolutionaries have all but disappeared: even if often driven from the left, the efforts of neo-participatory democrats tend to be reformist, justified by the demands of practicality and pragmatism.

⁷⁹ Hauptmann's claim is not accurate however, or at least, should be limited to the North and West: in developing countries, there is a lot of this talk, especially in Latin America, and Brazil in particular.

Whether they see themselves as continuing the ‘theoretical project participatory theorists began’ or claim ‘no strong intellectual connection to participatory theory’ (Hauptmann 2001: 399), deliberative democrats have tried to ‘pare down’ participatory ideals so as to avoid the risk of making the same mistakes as participatory democrats whose ‘scepticism toward all existing forms of democracy has led to impractical attempts to apply demanding forms of participation in every area of social life and has lent a utopian cast to their positive democratic ideals’ (Bohman 2000: 9). Deliberative democrats all seem to share the conviction that ‘participatory theorists fail to place the complexity of the contemporary world at the centre of their theories of democracy’ (Hauptmann 2001: 400). In so doing, they conclude, the participatory ideal of ‘more democracy’ (across all major social institutions) is not only unrealistic, but dangerous (Hauptmann 2001: 400). Unrealistic because it assumes that people want to participate in politics (and indeed, in all other arenas); dangerous because the ‘specialised discourses’ (required in the complex world of modern politics) are ‘inhospitable to broad participation’ making participatory democracy ‘likely to be unstable’ (Warren 1996: 242).⁸⁰ Deliberative democracy in contrast, has lower – more realistic – expectations of individuals and takes seriously the intricacies of contemporary societies: individuals may indeed be drawn to democratic participation, not necessarily because it is attractive, but because it is the least unattractive way of organising power in the face of contest (Warren 1996: 243).

Wanting to separate himself (and other deliberative theorists) from the ‘idealism’ of participatory democrats, Bohman emphasises the need for normative claims to be possible at least or ‘as Kant puts it, “ought implies can”’ (Bohman 2000: 21). He is clearly taking

⁸⁰ Warren seems oblivious to the fact that a recurring pattern across many parts of the world is that popular mobilisations that change policy are alliances of community-based organisations and professionalised NGOs.

seriously the mandate of critical theory to 'be practical' and as such, claims that deliberative democracy offers a more modest solution (than does participatory democracy) in which political participation is not associated with sweeping institutional transformation; nor does it, more pertinently, promise to deliver sweeping personal transformation (Bohman 2000, Hauptmann 2001).

Denise Vitale is among those who see the deliberative project as the legitimate heir to participatory democracy because they both see the 'instrumental' value of participation. She argues that participation is one way to achieve a *de facto*, rather than a simply formal, democracy. Far from being an end in itself, politics, and political participation in general, is a necessary activity if goals are to be met and concrete problems solved (Vitale 2006: 750). She suggests that 'political deliberation entails a strong ideal of participation that has not, however, been properly clarified' (Vitale 2006: 739). Vitale explains that participatory democracy justified its 'counter-proposal to [the] restricted notion of citizenship and democracy [offered by elitist and neo-liberal conceptions] on three grounds' (Vitale 2006: 750). The first, says Vitale, is the 'normative argument that democracy will improve as citizenship is reconstructed and political practice enlarged beyond the representative system'; the second is that 'increased participation is directly related to the reduction of social and economic inequalities' with the third justification being the 'educative function [which] develops the social and political capacities of each individual' (Vitale 2006: 750). Because she is far more sympathetic to the participatory democrats' project than many other supporters of extended participation, Vitale argues that it is 'necessary to retrieve the debate on participation in order to ascertain the real potential of deliberative politics' (Vitale 2006: 756) especially since deliberation lacks any recognition of politics as action (beyond deliberating)

– there is little if any consideration by deliberative democrats of participation in a march, a bomb, an advice office and its effects on democracy.

But is deliberative democracy the natural successor of participatory democracy? Deliberative democracy certainly seems to focus on producing ‘better’ decisions in that it is mainly concerned with ‘better’ representation: usually in the form of bringing the poor and the marginalised back into decision-making structures. In the process, deliberative democrats claim to be giving proper recognition to equality and freedom, believing somewhat naively perhaps, that the ‘truth’ is (always) on the side of the poor and marginalised and that this will help to overcome the systematic distortions of current systems.⁸¹ Deliberative democrats have taken up (and altered) the participatory democrats’ idea that increased participation produces better decisions but they have ignored the other aspect of participatory democracy relating to the benefits accrued to the participants aside from improved governance. Participatory democracy was and is about bringing back republican notions of community, recognition and empowerment that are largely lost in both minimalist accounts of democracy (because of the limits imposed on participation) and deliberative accounts (given the lack of real opportunities to participate in face-to-face collective processes). It is this emphasis on the ‘categorical’ value of participation that (some) participatory democrats place at the centre of their theories which makes their contribution to democratic theory so distinctive. By contrast, it is their neglect of this value (among other things) that makes deliberative conceptions somewhat unsatisfactory – at least on the account of democracy I am presenting here.⁸²

⁸¹ I am very grateful to Laurence Piper for drawing my attention to this point in our many discussions on the subject.

⁸² Of course, we cannot exclude the issue of rights – the idea that it is our duty to participate necessarily incorporates that we are entitled to participate.

Let us examine the evidence to support the interpretation that participation has categorical value in accounts of participatory democracy:

In a strong democratic community...the individual members are transformed, through their participation in common seeing and common work, into citizens...that community cannot remain an association of strangers because its activities transform men and their interests (Barber 1984: 232)

Barber's conception of 'strong democracy' involves a form of government in which 'all of the people govern themselves in at least some public matters at least some of the time' (Barber 1984: xiv). His justification is that to legislate and implement laws at least some of the time is to keep alive the meaning and function of citizenship in all of us all of the time, whereas to delegate the governing power, even if only to representatives who remain bound (at least supposedly) to us by the vote, is to give away 'not power but civic activity, not accountability but civic responsibility, not our secondary rights against government but our primary right to govern' (Barber 1984: xv). Although he is well aware of the need for efficient government, Barber argues that at least as important are the effects of participation on members of the political community:

In participatory democratic institutions citizens develop and exercise capacities of reasoning, discussion and socialising that otherwise lie dormant, and they move out of their private existence to address others and face them with respect and concern for justice (Barber 1984: 252).

One deliberative democrat who does seem to take the link between participation and self-realisation seriously is Habermas – in fact it is central to his theory of communicative action (1985; 1987; 2006). Although he emphasises the role of consensus achieved as a result of perfectly rational dialogue under ideal conditions (perfectly transparent communication unlimited by space and time), and hence the instrumental benefits to the state and the

legitimacy of its decisions that results from deliberation, he does argue that communication promotes moral self-development. That said, for Habermas it is not just participation, but the agreement that results from deliberation that provides the opportunity for self-realisation and moral development.

But if we take seriously the participatory democrats' arguments, that citizen participation produces 'empowerment' for the citizens themselves in addition to producing 'better decisions', we cannot limit the justification of participation to its instrumental value. The operative hypothesis for participatory democrats is that citizen participation produces 'empowerment', defined by Evelina Dagnino as 'the construction of active social subjects, defining for themselves what they consider to be their rights and fighting for recognition of those rights' (Dagnino *et al.* 2008: 7). More specifically, empowerment refers to the

transformation of an individual's prior mentality of fatalism and dependency on 'higher ups' and/or an active disgust regarding all things political, to a new sense of personal responsibility to struggle against systemic exclusion and domination, and a belief in one's efficacy to be successful in doing so (Dagnino *et al.* 2008: 8).

Empowerment means moving from 'parochial' and 'subject' mentalities towards a 'participant' mentality to use Almond and Verba's terms (1963). Thus participatory theorists focus not only, and not even mainly, on the impact participation has on political decisions, but rather, on the impact it has on citizens themselves. Although participation can generate 'greater feelings of political efficacy and ultimately benefit the larger society by anchoring it in a citizenry clearer about its interests and responsive to the claims of justice and the public weal' (Mansbridge 1997: 424), it is the claim that less participant citizens have a reduced capacity to develop their faculties through joining with others that provides support for the claim that participation has a categorical value in addition to its instrumental one.

What should be clear from the above account is that the claim that participation has – or can have – a categorical value is more than just a single claim. The most basic meaning is that if participation has a categorical value there is a (moral) motivation for citizens to participate as opposed to a motivation based on the instrumental value of participation. But there is a difference between have being motivated to participate for moral reasons and being motivated to participate morally. Thus far, while I have considered various accounts of what ‘a moral action’ means, I have focused my argument on the claim that we have a moral duty to participate. In the following chapter the focus shifts to the second interpretation of participation being categorically valuable in that I analyse the manner in which citizens participate in South Africa on moral grounds. Before doing that however, I want to consider the idea of participation as an obligation in more detail.

IV. The Obligation to Participate

The above discussion has gone some way to explain why a shift from understanding participation as having instrumental value to understanding it as having the additional categorical value means that we have to reconsider our conception of institutions – from their being constraints on the power of the decision-makers, a mechanism for ensuring responsiveness, accountability and legitimacy, to their providing opportunities for people to ‘develop themselves’; for the attainment of ‘self-realisation’. On liberal accounts of citizenship, behaviour is constrained by the threat of citizens ‘throwing the rascals out’ and on deliberative accounts, decisions are constrained by the requirement that they are reasonable.

But aside from the way we view institutions, the shift in the way we understand the value of participation has another consequence: we have to find a normative justification for participation in something other than, or at least additional to, political obligations. If politics is pragmatic as it seems to be, a mechanism for having one's interests met (or at least heard), if this is no longer the justification for our obligation to participate, we need to find another source of our obligation to participate or risk having no obligation to participate at all. The following discussion will suggest that we can ground participation in a moral obligation: that is, participation is required in terms of the moral duty we owe to ourselves.

It is all very well to have well-designed institutions – those that provide opportunities for citizens to develop their moral functioning – but it is another matter entirely to ensure that citizens take up these opportunities. As deliberative democrats have discovered (although are hesitant to admit this), just because you build it, does not mean they will come⁸³. While a tiny minority of us may be convinced of our Kantian duties, or even our Aristotelian telos, it seems that a sense of political obligation is not shared by the general public. This is hardly surprising – it is improbable that we could fulfil our political obligations in practice given the observation by George Klosko that ‘at the present time, it is widely believed that there is no satisfactory theory of political obligation’ (Klosko 2004: 801). Even more strongly, John Simmons concludes that no theory *will* work, having shown why political obligation based on principles of consent, fairness, a natural duty of justice or gratitude is problematic (Simmons 1999). Klosko further points out that even softer versions of obligation – *prima facie* political obligations – have been criticised in recent years (Klosko 1990: 1235). In his attempt to account for a theory of political obligation (rooted in the principle of fairness), Klosko argues that the ‘current demand for a theory of political obligation would be satisfied

⁸³ From the film *Field of Dreams* (1989).

if one could bring forth good reasons for complying with the injunctions of one's government, whether or not these reasons stem from specific voluntary actions' (Klosko 1990: 1235). Obviously, and Klosko mentions this explicitly, obedience to these laws is contingent on whether or not they have been passed by a legitimate authority. This is a critical point because on Klosko's account, he distinguishes between political obligations and other moral requirements to obey the law on the basis that our obligation to obey the law is 'because it has been passed by the proper authorities rather than for other reasons' (Klosko 1990: 1236). Such a theory of political obligation is based on legal positivism, more specifically, something like HLA Hart's conventionality thesis, that is, that laws are conventions promulgated by the relevant and legitimate authorities, and this is where their validity derives from, not from some higher moral law. The problem this poses for democracy however is that participation is what is meant to grant governments their legitimacy and this in turn is what is supposed to ground political obligation. But if one of our political obligations is to participate, we are then faced with the unenviable problem of requiring participation in order to justify requiring participation. Hence grounding political obligation, in terms of a duty to participate, cannot rest (at least not solely) on the legitimacy of the obligators. In addition, if Klosko is correct, that on an intuitive level at least, 'the strength of political obligations should depend largely on the consequences of obeying or disobeying different laws' (Klosko 1990: 1237), what if we know we 'can get away with' not fulfilling our obligation (or if the benefit of not fulfilling it is greater than the cost of not)?

In contrast, and as Klosko himself seems to prefer, we can ground political obligation by appealing to the 'wide range of benefits that the legal system confers' (Klosko 1990: 1236). But while this does seem to be a fruitful avenue in terms of developing a general theory of political obligation, when we consider the specific obligation of participation that democracy

requires, if participation does not confer these benefits, does the obligation fall away? And if so, we are back to the problem identified throughout this thesis: that instrumentalist justifications of participation rely on the promised ends (legitimacy, accountability, service delivery and so on) being achieved and this poses a problem in instances where the ends are not necessarily being achieved (despite the existence of participation).

While Klosko and Simmons may be overstating the extent to which we cannot provide a satisfactory theory of political obligation, there are (potential) problems with grounding political obligation in either the political legitimacy of the obligators or the political benefits accrued to those who are obliged to participate. We thus have to look elsewhere to find a normative justification for the obligation to participate, one that is not instrumental. In other words, how do we get citizens 'to come' if the costs of participating outweigh the (political) benefits that participation brings about?

The suggestion in this thesis is that there is an alternative understanding of participation – an understanding based on the value to the participants in terms of their moral duty to themselves - rather than on instrumental grounds – the value of participation to the political system. What this means in terms of obligation then is that the justification for our obligation to participate is a moral obligation rather than (or in addition to) a political one. In what follows, I will argue for a theory of moral obligation which provides a justification for participation, indeed a requirement to participate, which does not rely on the benefits to the rule part of democracy but to the people part. Again, it should be reiterated that there are multiple aspects to a categorical account of participation: that we participate is separate from how and how much we participate. At this point, I am not analysing our obligation to participate in terms of the kinds and amount of participation that can contribute to the moral

development of citizens – this I will do in the following chapter when I analyse how South Africans participate and how much they participate in regard to the issue of crime. In other words, I am for the moment assuming that any participation is what we desire: my aim is to find a way to get people to participate in general or, put differently, a motivation for participation that is not linked to the traditional outcome associated with participation, such as accountability, legitimacy and improved service delivery.

It may seem somewhat strange to take a debate in criminal law as a starting point for this discussion but given the persistent controversy in criminal law involving the relevance of a defendant's motive, I think it is useful to do so. Whitley Kaufman defends what he calls the 'orthodox rule' in which motive is regarded as irrelevant for criminal liability, although it may be relevant for 'judging a person's moral culpability' (Kaufman 2003: 317). The orthodox rule differentiates between 'intention' and motive':

Intention covers the contemplated act, what the agent wills to do. I see a person in distress, decide to rescue her, and do it. The action was an act of rescue. I intended to rescue the person, I committed to doing it, and did it...By contrast, a motive is a *further* goal that one wishes to accomplish with the intended act. I rescue the person in danger, I intended to do it, so mine was an act of rescue. But suppose I did it because I wanted to appear as a hero in the local newspaper. I had an ulterior motive (Tesón 2005: 5).

In a more parsimonious articulation, GEM Anscombe suggests that 'a man's intention is what he aims at or chooses; his motive is what determines the aim or choice' (Anscombe 1976: 18). In terms of participation, what we want is for people to have the intention to participate: we want them to choose to participate. Why they participate is then the motive: in terms of the criminal who steals, his motive may be self-interest (he wants to get rich) or it may be because he wants to feed his starving child and has no legal means of doing this. The

orthodox view would (supposedly) not consider the motive because the act (intention) is the deciding factor in determining guilt or innocence. Critics of the orthodox doctrine argue that not only is the doctrine false – in that judges do consider motives – but that it is morally inexcusable to ignore motives because they do count; as Terry Nardin contends, we have ‘moral duties to act from the proper motives’ (Nardin 2006: 10). And of course, this seems intuitively desirable: we tend to feel that saving a person from drowning because it is the ‘right thing to do’ is somehow more admirable, more moral even, than if we do it in order to appear heroic.

The argument for this intrinsic value of motives has been linked to a Kantian position (Kaufman 2003) where people are supposed to do the right things for the right reasons or where having good motives does not exonerate a person from acting immorally: ‘A lie is a lie, and it is in itself intrinsically base whether it be told with good or bad intent’ (Kant 1963 in Kaufman 2003: 330). It is important to note that Kant’s use of ‘intent’ is actually what criminal law means by motive and hence why proponents of the orthodox view justify it on Kantian grounds. Obviously it is preferable for our actions (intentions) to be guided by ‘good’ motives but for Kant, as for the orthodox criminal law advocates, this is neither a necessary nor a sufficient condition for judging an action in terms of its moral value. Applying this to participation, the argument would be that *why* people participate (their motive) is much less important than *that* they participate (their intention). But, and this is where the problem arises, if the motivation for participation is instrumental – that participation improves the quality of the government – if the quality does not improve, the motivation may disappear altogether and take with it the intention, in this case, the act of participation. On Fernando Tesón’s example, if my intention to save a drowning person is

motivated by a desire to be seen as a hero, if I am not seen as a hero (and do not appear in the local newspaper), I may not save the next person in distress.

The problem of motives in terms of political participation then is not about whether the motives for participating are ‘good’ or ‘bad’ but rather, whether they exist or not: if we have no motivation to participate it stands to reason that we may not choose to participate at all. More relevant to the argument I am proposing here is that if our motive for participating is based on the political outcomes of participation, if these outcomes are not achieved, we will need to find an alternative or at least additional motive for participating if we want to ensure that participation continues. This is what I have been describing as the categorical value of participation: where we are motivated to participate because of the moral value of participating itself rather than the political value of participation’s outcomes.

The emphasis on the categorical value of participation as being an additional motive rather than an alternative one is important. In a functioning democracy, the instrumental value of participation is sufficient to ensure that we participate: assuming that we all want ‘a good government’ and assuming that we believe that democracy is the optimum way to achieve good government, we will participate because democracy means participation. But in a malfunctioning, or even semi-functioning democracy, participation does not ensure ‘good government’, or at least a government that is not good in all respects. In the case of South Africa, participation is very low at the level of local government, the level of government which is perceived to be the least accountable, most inefficient and worst at service delivery of all three levels. This suggests that the motivation for participation is indeed instrumental: as the benefits of participation decrease, so does the motivation to participate. It is thus critical that we find another motivation, at least until more of the benefits are evident. In

other words, the justification for participation on categorical grounds is not being argued to be 'better' than the justification on instrumental grounds. I am suggesting rather, that it may fulfil the role of justifying participation, of providing the grounds for an obligation to participate, until such time as the instrumental justification is motivation enough.

Justifying participation in terms of its categorical value means we can ground the obligation to participate in morality rather than in politics. This move goes a long way in solving the problem mentioned above – that of developing a satisfactory theory of political obligation – because not only can we develop a satisfactory theory of moral obligation, but because others have already done so. Part of the problem with political obligation is due to its origins in social contract theories which all, to a lesser or greater extent, seem to assert that people are morally free from all but autonomously chosen bonds but at the same time, that states may coerce their citizens in some cases and that this coercion is permissible on the grounds that contracting to the state gives it our consent to do so. But although the consent model of political obligation was very popular historically, today it is significantly tarnished. As Christopher Wellman explains, not only do

citizens almost never consent to their governments [but] any act even resembling that which implies consent (like voting) is a moral nullity because it is performed under coercion (the voter in a political election will be – and has been – subject to the state's laws no matter how, or even whether, she votes (Wellman 1996: 220).

While Wellman may be taking the definition of consent to the extreme (in that many consent theorists argue that consent simply entails that we do not not consent, for example by engaging in acts of civil disobedience or trying to secede), even if there was consent, this consent could only give rise to fairly limited (and impotent) political obligations because whether explicit or hypothetical, these obligations are 'chosen' - they are a moral requirement because of some voluntary performance (like a promise).

Earlier I referred to a theory of moral obligation but in fact, the term I should be using is moral duty because I want to distinguish between an obligation which arises out of a voluntary performance and a duty which falls on us non-voluntarily by virtue of a non-voluntary role or status – on my argument, the role or status of a person. I argue that having a moral duty to participate rests - or can rest - on our non-voluntary status as people whereas our political obligation to participate is voluntary, and most often contingent on the benefits of participating.

Although I believe that this moral duty can be defended along Kantian lines, I want to examine Samuel von Pufendorf's discussion of duty in *On the Duty of Man and Citizen According to Natural Law* (1682) which influenced Kant because Pufendorf is a central figure in theories of obligation. Although Pufendorf classified numerous duties into the three categories of duties (those we owe to God, those we owe to ourselves and those we owe to others, it is the duties of the soul (that we owe to ourselves) and the absolute duty to avoid wronging others (that we have to other people) on which I am focusing. In terms of developing our skills and talents, the contribution of participation is I think, uncontroversial: theorists of participatory democracy have long argued for the educative effects of participation and their arguments are being confirmed by much of the current empirical research on participation, especially the research coming out of Brazil, India and parts of Eastern Europe. In terms of the duty not to wrong others, again I think that participation has a significant contribution to make. Having a duty not to wrong others implies that we necessarily interact with others. Given that the duty to avoid doing wrong to others is an absolute duty rather than a conditional one (the latter being a duty which for Pufendorf results from an actual contract between people and hence in some sense can be avoided if we do not

enter into contracts), we can conclude that we do in fact have a moral duty to participate in society on Pufendorf's account, not because of the benefits participation gives (or may give) to the kind of rule under which we live but because participation is necessary for us to become the kinds of people we ought to be. Put differently, while we *may* have a political obligation to participate on instrumental grounds, I am suggesting that we *do* have a moral duty to participate on categorical ones.

Conclusion

Once we have established that citizens have a moral duty to themselves to participate so as to achieve their humanness (Ubuntu); self-knowledge (Socrates); telos (Aristotle), we need to examine the kinds and amounts of participation that are most likely to realise this. Although the former has been alluded to above – we need to participate equally for example - in the next chapter we will look at specific ways in which and the amount that South Africans participate so as to judge which, if any, forms of participation have moral value. That is, in examining responses to the issue of crime in terms of the manner in which South African citizens participate, I will analyse which if any forms of participation contribute to citizens' moral development. While citizens in South Africa *are* participating, we need to examine whether this participation is due to the instrumental benefits of participation or because South Africans see participation as a duty. Moreover, in terms of the latter, I will explore the extent to which, if at all, participation is moral.

Chapter Six

How Democratic are South African Citizens?

The way a society deals with crime and punishes its social deviants reveals much about that society.

(David Gatland 1990)

Introduction

As has been mentioned, a categorical account of participation is one which emphasises the ‘people’ aspect of rule by the people since it focuses on the moral obligations of citizens. While liberal and deliberative accounts of democracy entail accounts of good citizenship, because they are both focused on the instrumental benefits participation has in creating and maintaining ‘good government’, the emphasis is on the ‘rule’ part – the quality of decision-making. At most, the interest in citizens is the extent to which they participate so as to ensure a government’s legitimacy, accountability and responsiveness. A categorical account of democracy however necessarily entails an examination of how citizens behave – or do not behave – in matters that affect their lives and how they behave towards one another in addition to how they behave towards government institutions. In other words, where there are opportunities for citizens to participate in public affairs (public because we are focusing on democracy as a political system), the way in which citizens respond to these opportunities can give us an idea of whether participation is valued for reasons other than, or in addition to, its instrumental benefits. This means that we have to examine instances where citizens not only choose – or choose to continue – to participate in order to achieve certain ends but more specifically, where this decision is made in spite of these ends not being achieved. Moreover,

the manner in which citizens participate in these matters indicates the extent to which we can term the participation morally – or categorically – valuable.

In order to assess the ‘democraticness’ of citizens in South Africa, I have chosen to focus on the issue of crime. Firstly, crime is a national priority among South Africans: according to Afrobarometer surveys carried out in 1994, 1999, 2003, 2006 and 2008, with the exception of the euphoric days of the start of democracy, where only 6 percent considered crime a problem, the issue of crime has dominated the responses of South Africans in terms of their view on the most significant problems the country faces. Although concern for crime peaked in 1999, at 65 percent, in 2003 it was still the second most important issue with 35 percent of South Africans citing it as a major problem. In 2006 the issue of crime had dropped to fifth place on the list of priorities at 23 percent but in 2008, in a survey across nineteen countries in Africa, South Africans believed crime was the second most important problem on the public agenda, coming out nearly three times the mean across all countries surveyed. In addition, between 2004 and 2006, the perception of the government’s success in reducing crime as very or fairly bad increased from 58 percent to 64 percent and in 2008, at 69 percent, South Africans’ perception of the government’s inability to handle crime was the highest in Africa – the mean being 45 percent. Linked to this was the perception that it was either very unlikely or unlikely that ‘ordinary citizens’ would be caught if they committed a crime – at 44 percent, South Africa was well above the African mean (24 percent) in 2008. Lastly, between 2006 and 2008, the perceived corruption in the police services grew from 34 percent of people believing most of the police were corrupt to 45 percent. Only 6 percent of people in 2006 believed there was no police corruption; 40 percent believed there was ‘some’.

A second – and perhaps the most relevant – reason for focusing on crime is because it is one of the few issues where citizens are able to ‘do something’ themselves unlike for example unemployment which in South Africa, is structural or poverty, which is tied to unemployment. As (the perception of) crime has increased – so too has ‘non-state policing’ which, as will be discussed below, incorporates a large variety of responses to crime by citizens and hence this can give us some insight into how democratic responses to crime are which in turn helps us assess the ‘democraticness’ of South African citizens. And because the responses are so varied, we can look at them in terms whether they indicate the existence of ‘good citizens’ according to liberal, deliberative and categorical accounts. In other words, we can assess the participation of citizens on instrumental grounds by looking at the extent to which their approaches ‘work’; moreover, we can gauge how well or poorly these responses fit in with conceptions of good citizenship. For example, in terms of liberal conceptions of citizenship, we can examine whether citizens’ responses indicate a respect for rights and freedom, and some version of equality; in terms of deliberative accounts, we can identify whether responses are reasonable, deliberative and so on. Examining crime on a categorical account is of course somewhat different in that we are not focusing on the extent to which citizens’ participation ‘gets results’ – that is achieves the political ends desired by the participants but rather whether citizens firstly are participating and secondly, whether their participation promotes (or looks to be able to promote) their moral development. Before assessing South Africans’ participation on the various accounts, the context in which this participation does or does not occur will be examined.

a. Crime in South Africa

In the last decade of the twentieth century, spending on the South African criminal justice system as a proportion of the national budget more than doubled from less than 5 percent to almost 10 percent (Schönteich 1999: 3). Over the same period the number of reported crimes increased by between 50 and 100 percent (Schönteich 1999: 3). Between 1994 and 2004, the budget for the criminal justice system increased by 165 percent: from R14.4 billion to R38.2 billion. The growth rate of the criminal justice budget between 1995/96 and 2004/05 exceeded the growth rate of the national budget (Albeker 2005: 9). By 2008, state expenditure on protection services (justice, correctional services and the police) had increased by 293.5 percent (although expenditure on the police actually fell by 5.6 percent). Despite this, the number of serious crimes committed only decreased by 18.5 percent over the fourteen year period. Despite ‘vociferous public concern about crime, expenditure on criminal justice has never grown dramatically faster than expenditure on the rest of government’s mandate and function’ (Albeker 2005: 9).

Against this background, it is not surprising that South Africa’s transition seems to have been accompanied by declining perceptions of safety. If South Africans feel unsafe it is because they are unsafe. That is, public perception of crime is not dramatically over-inflated in terms of actual criminal activity. The *Victims of Crime Survey* commissioned by the Ministry of Safety and Security and carried out in 1997 revealed that in that year, 21 percent of all households had experienced one (household) crime and 15 percent of individuals had experienced one (individual) crime.⁸⁴ In terms of actual numbers, this translates to approximately 3.8 million South Africans. By the time the second *National Victims Survey*

⁸⁴ Household crimes are crimes committed against a household and individual crimes are those committed against an individual. The survey used the international United Nation Interregional Crime and Justice Research definitions.

was carried out, the number of people feeling very unsafe at night had more than doubled from 25 percent in 1997 to 58 percent in 2003.⁸⁵ While the government has begun to take notice of the extent of the problem (the increase in spending, the commissioning of surveys), in light of the significant numbers of South Africans who are affected by crime, it is not surprising that only 23 percent of citizens believed, in 2002, that it was making any inroads in crime reduction⁸⁶. Yet figures released by the South African Police Service (SAPS) in 2010 indicate that crime is decreasing, albeit at a very marginal rate. The number of violent crimes in particular has declined – murder, attempted murder and all sexual crimes have been reduced from 115 979 in 2003/04 to 102 576 in 2009/10⁸⁷.

There are a number of reasons for the increase in crime. One of the largely accepted explanations is that crime tends to increase during periods of political transition (Louw and Shaw 1997; Schönteich 2000). The essence of the arguments relating increases in crime to political transitions is that as change and democratisation processes proceed, society and its instruments of social control (both formal and informal) are reshaped (Louw and Shaw 1997: 1). During these periods of instability, routine policing activities are diverted towards controlling violence, with the result that opportunities for crime open up. The social bonds holding society together are loosened, making crime more likely – in South Africa, the collapse of Apartheid meant the collapse of a single, consolidated enemy or target. Mark Shaw argues that with this weakening of state repression, focus was diverted to intra-community conflict and this is a convincing explanation, at least in the cases of parts of Gauteng and KwaZulu Natal where state-sponsored violence was tearing communities apart.

⁸⁵ <http://www.iss.co.za/pubs/Monographs/No101/ExecSum.pdf>. [Accessed 29 November 2010]

⁸⁶ http://www.idasa.org/za/z_print.php?art_id=982. [Accessed 29 November 2010]

⁸⁷ <http://www.saps.gov.za/statistics/reports/crimestats/2010/totals.pdf>. [Accessed 29 November 2010]

In addition, political violence during the transition weakened social control, in turn producing marginalised groups reliant on the conflict for a livelihood.

In addition to its transition, South Africa's particular history is often given as a reason for the high crime. 'Culture of violence' theories suggest that the effects of Apartheid coupled with years of political violence have produced a destructive culture which manifests itself in what the *Nedcor Project on Crime, Violence and Investment* (1996) terms 'murderous intolerance'. The responsibility for this 'culture of violence' has been laid at the door of both the Apartheid state and the liberation movements, the former for obvious reasons, the latter for urging a people's war which bred a culture of violent lawlessness and a distrust of authority (Louw and Shaw 1997). Exacerbating the effects of this 'culture of violence' is the fact that South Africa is a heavily armed society. According to the police's Central Firearms Registry, more than three million South Africans are in the legal possession of some 4.2 million firearms – of which just over half are handguns. Moreover, it is estimated that a similar number of illegal firearms are circulating throughout South Africa⁸⁸. While this 'gun culture' may be in part a response to high levels of crime, there is little doubt that the long history of armed conflict means that many South Africans are familiar with firearms and are willing to use them. In the 'amnesty windows' of 2005 and 2010, 94 631 and 109 582 guns respectively were handed over to the police.⁸⁹

Given its long history of abuse and corruption, the police force, as a state institution, has never been held in high esteem by South Africans. This was one of the primary reasons why the transformation of the police force was placed so high up on the transition agenda. But

⁸⁸ The porous borders between South Africa and Mozambique allow arms smugglers to bring large quantities of firearms into the country. Because of an oversupply of these weapons and the impoverished state of Mozambique, these guns sell cheaply – R50 for an AK47 – making them easily accessible (Schönteich 2000).

⁸⁹ <http://www.southafrica.info/services/gun-130410.htm>. [Accessed 29 November 2010]

instead of an improvement in the public's perception of the South African Police Services (SAPS), there has been an increasing loss of faith in the police since 1994. To a large extent, the poor public perception of the police is justified – it mirrors the SAPS's poor performance. But with the highest global rates for police members being killed in action⁹⁰, and the disproportionately low pay, dissatisfaction among SAPS members has further eroded the low levels of service and even lower levels of morale. Between August 1996 and August 1997, there were 21 strikes by employees of the Department of Correctional Services, one lasting just under a month, another lasting over two weeks. This is despite the fact that the South African Police Service Act (1995) specifically states that 'no member shall strike, induce any other member to strike or conspire with another person to strike.'⁹¹ This was reiterated by the courts in August 2010 when it blocked the SAPS's planned strike in terms of section 65(1)(d) of the Labour Act (1998, amended 2000 and 2002) which prohibits striking by any organisation providing 'essential services' to the community (*Mail & Guardian* 26 August 2010).

Lack of personnel on the ground and insufficient resources significantly contribute to the real and perceived failure of the SAPS to do its job: during the late 1990s, the SAPS lost 20 000 members but by March 2006, the numbers were back to their 1995 levels. Despite an estimated increase in the number of SAPS personnel from 155 532 in 2006 to over 180 000 in 2010, as of October 2010, the SAPS has 151 164 members – a *decrease* of over 4 000⁹². Given that only about two-thirds of the SAPS are non-commissioned officers (once they receive the rank of captain they are essentially promoted out of field duty), the number of

⁹⁰ 200 police officers are killed per year (*Mail & Guardian* 12 July 2002).

⁹¹ <http://www.info.gov.za/view/DownloadFileAction?id=70987>. [Accessed 30 November 2010]

⁹² <http://www.gunfree.org.za/Portals/gunfree.org.za/docs/SAPS%20Annual%20Report%20hearings%2018Oct2010.pdf>. [Accessed 30 November 2010]

policemen and women doing 'visible' policing is extremely low⁹³. Because of the use of police officers in administrative functions (in 1997, 25 percent of police officers were deployed in an administrative capacity), the visible presence of police is stretched so thinly that it fails to act as a significant deterrent. As such, the role of the police shifts from preventing crime, to reacting to crimes after they have occurred and been reported.

The number of police on the ground is even lower however because of absenteeism. In 1996 alone, some 1.3 million days were lost due to absenteeism (in addition to vacation and special leave taken in that year) with some areas of the Cape Peninsula having an absentee rate of 77 percent (*Hansard* 19 August 1997; 18 September 1997). A high level of absenteeism not only results in diminished levels of service: it is an indicator of the high degree of unhappiness among SAPS members⁹⁴. When we consider that in 1998, approximately 0.35 murder cases per police officer were reported in the Western Cape and almost eight assault charges per officer in the Northern Cape, it is not surprising that the police are absent from work (Schontëich 2000: 5).

Another significant reason why transitions and high crime tend to go hand in hand is that transitions almost always require a restructuring of the criminal justice system and laws. This is particularly relevant in South Africa given that the transformation of the police services was one of the top priorities in the new dispensation. As a result, many criminal justice functions have been operationally weakened. On the one hand, experienced personnel trained in the policing methods of the old authoritarian order are unsure how to function effectively in a new legal framework based on the rule of law and a constitutionally entrenched bill of rights; on the other, there are a number of new and inexperienced recruits. For example, in

⁹³<http://www.gunfree.org.za/Portals/gunfree.org.za/docs/SAPS%20Annual%20Report%20hearings%2018Oct2010.pdf>. [Accessed 30 November 2010]

⁹⁴ More recent figures are unavailable.

2000, a quarter of all police officers were ‘functionally’ illiterate and more than 10 000 did not have a driver’s licence (Schontëich 2000: 1). This means that 9.4 percent of officers could not patrol a street in a vehicle or drive to the scene of a crime – indeed, to their police station - without breaking the law themselves. This is however a significant improvement on the 1998 figures: then more than 45 000 SAPS members did not have a driver’s licence. When it comes to detectives, it was reported in October 2010 that nearly 5 000 detectives – 14 percent of the 33 651 detective personnel – lack the requisite fourteen weeks of training for the job (*Sapa* 12 October 2010). The lack of adequate training has however been recognised and on 29 November 2010, it was announced that police officers would now have two years of training rather than one. And perhaps in response to comments by both the Police Commissioner Cele – that officers must have their ‘stomachs in and chests out’ – and the Deputy Police Minister Mbalula – that overweight cops must ‘shape up or ship out’ – the training will also include a diet plan (*Witness* 14 September 2010).

The imbalance between the increasing demand for an effective criminal justice system and the state’s (diminishing) ability to provide the necessary resources is one of the most serious problems in contemporary South Africa. In a United Nations survey of public satisfaction with the police across a range of developing countries, South Africa featured last in Africa, with only 27 percent of respondents believing that the police were doing a good job (Shaw 2002: 89). The negative perception of the police by citizens is not new: figures showed a sharp increase between 1994 and 1997 in the number of South Africans who believed the government had little or no control over the crime: from 44 to 63 percent (Louw and Shaw 1997). The survey reveals that 30 percent of respondents thought that giving information to the police would make no difference to their ability to catch criminals, while 57 percent said they would feel unsafe giving evidence to the police (Louw and Shaw 1997). Some 28

percent of those surveyed felt that most or almost all police officers are corrupt or in collusion with criminals (Louw and Shaw 1997). A survey conducted by the Institute for Security Studies in 1998 shows only 34 percent of respondents 'trust the police always or most times', while only 43 percent believed that 'the police are interested in what happens to you' (Schönteich 1999: 15). More recently, in a study of the SAPS in the North West Province carried out in 2004, 47 percent of community members who had had contact with the police showed little confidence in the police and 44 percent felt dissatisfied with the service they received from the police (Pienaar *et al.* 2005: 211). 39 percent of those who had had contact with a police officer in 2003/4 believed the officer showed 'low to very low competence'; 43 percent indicated 'low to very low' levels of trust in the police; and only 38 percent felt that their neighbourhoods were 'fairly safe' (Pienaar *et al.* 2005: 220). While the experience of citizens in the North West Province is not necessarily an indication of the experiences of the South African population at large, research published in 2008 indicates that safety is a concern for all South Africans: a 2005/6 survey showed a significant increase in the percentage of people who are 'substantially more fearful of walking alone in their residential areas during the day and after dark' – from 44 percent in 1998 to 71 percent in 2006 (Roberts 2008: 3).

The increasing number of convictions of SAPS members also contributes to the public's poor perception of them: between 1994 and 1997 an average of 13 954 complaints or charges per annum were laid against SAPS members and 2000/01 figures show that over 14 600 cases against SAPS members were investigated (Masuku 2002: 1). Given that conviction rates hovered around 1 200 policemen and women per annum between 1995 and 1999, it would seem that the 'monster' of police criminality and corruption is not being dealt with particularly efficiently (Masuku 2002: 4). Most concerning perhaps is that although there are

currently 151 164 SAPS employees, 207 000 fire arms have been issued.⁹⁵ This is not altogether surprising – 3 856 police guns were ‘lost’ in 2006/07 which was a 68 percent increase from the number of weapons lost in 2005/06. Even taking into account that 3 226 firearms were ‘lost’ in 2009/10 (with 233 recovered), it is still not clear why there are (in theory) nearly 53 000 more guns than there are police members⁹⁶. Shadow police minister Dianne Kohler-Barnard says the figure suggests that wittingly or unwittingly, the South African police could be a major supplier of weapons to the country’s criminal underworld. Explaining that it was impossible to say how many of the guns declared lost had instead been sold by corrupt officers, Kohler-Barnard said

I can’t discount that. I don’t know whether they are selling them or leaving them on the counter at Wimpys when they go to have a hamburger. Investigations into lost firearms were sometimes launched but nothing ever comes of them, nothing ever happens and no one is punished.⁹⁷

Although a civilian who loses a gun is often declared unfit to have a firearm, it was only on 7 December 2010 that the decision was taken that SAPS members who lose their service weapons will be dismissed.

It is not just with the police that South Africans are dissatisfied – the conviction rate of criminals is also a major concern. Obviously this is related to the police because the size of its workload affects its members’ ability to move from arrest to trial. In 2002, about 100 000 operational police faced approximately 2.5 million crimes⁹⁸. That translates to 25 crimes per member for the year or one every two weeks. Clearly, not every uniformed member is

⁹⁵ <http://www.gunfree.org.za/Portals/gunfree.org.za/docs/SAPS%20Annual%20Report%20hearings%2018Oct2010.pdf>. [Accessed 30 November 2010]

⁹⁶ <http://www.gunfree.org.za/Portals/gunfree.org.za/docs/SAPS%20Annual%20Report%20hearings%2018Oct2010.pdf>. [Accessed 30 November 2010]

⁹⁷ <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/southafrica/7085320/South-Africa-police-lose-3000-guns-a-year.html>. [Accessed 9 December 2010]

⁹⁸ A moratorium of crime statistics was put in place in 2001/02 and since then it is not as easy to access crime statistics.

dealing directly with crime, and looking at the ratio of detectives to crime (115 per year, or one every other workday) may suggest a more realistic workload. According to police data for 2000, South African detectives referred about a quarter of the cases that they handled to court or about 28 cases apiece for the year. This equates to around one case every nine working days and roughly correlates to Schönteich's figure that 23 percent of offenders are caught by the police (Schönteich 1999: 16). The government has acknowledged that this is a low level of productivity, but more problematic is that only 5 to 8 percent of crimes committed result in conviction (Schönteich 1999: 16). Hence while 25 percent of cases may make it to court, the quality of the investigation (coupled with the quality of the legal representation) is insufficient to secure conviction.

It is beyond the parameters of this thesis to provide detailed, systematic and scientific reasons for and explanations of the issue of crime in South Africa. The discussion above is simply meant to provide context for the responses to crime by citizens because these responses can indicate the extent to which, if any, participation by citizens can be seen as having value other than, or in addition to, its instrumental benefits. Crime is a useful case study *because* of the (perceived) failure of the SAPS to deal effectively with it – hence if citizens get involved in crime-fighting initiatives it is clearly because they see their participation as (potentially) having instrumental gains. The question is whether and how citizens participate even if these gains are not being achieved.

It is not only in South Africa that there is evidence that the traditional approach to fighting crime, where the criminal justice system is a state monopoly, is obsolete. Many developed (and developing) countries are characterised by active forms of non-state participation in crime-fighting and the criminal justice system - both commercial or private sector enterprises

and non-profit (often community-based) ventures. But both private sector and non-profit security initiatives in South Africa are far more advanced than in many developed and developing countries. These initiatives imply a new division of labour between the state and civil society – a shift from the formal institutions of public decision-making and accountability to the more informal structures of individual and community participation. In essence, security and policing are increasingly being located in the institutions of civil society, on both a commercial and non-profit basis.

b. Citizen Responses to Crime

Les Johnson (cited in Baker 2002) provides a useful tool for understanding the non-public or private response to policing using the categories ‘responsible citizen responses’, ‘autonomous citizen responses’ and the ‘registered private security industry’. While the latter is self-explanatory, we need to clarify the meaning of the first two terms. Broadly speaking, ‘responsible citizen responses’ encompass acts that are approved by the state police and may even be taken in conjunction and collaboration with them (but are ‘private’ in the sense that they are individual-or-community-driven non-profit initiatives). ‘Autonomous citizen responses’ refer to actions that occur not only independently of the state police but often without their co-operation or approval. For the purposes of this section, the distinction between ‘responsible citizen responses’ and the ‘registered private security industry’ will be collapsed and the two will be examined together since most ‘responsible citizen responses’ in South Africa involve the use of the registered private security industry.

i. Responsible Citizen Responses

The private security industry is big business in South Africa so it is not surprising that there are more personnel in this industry than in the SAPS: according to 2009 figures, the private security industry employs roughly double the number than does the SAPS⁹⁹. Anthony Minnaar reports that:

In 1990 the private security industry was valued at R1.2 billion and by 1997 this figure was put at R6-billion...but by 1999, inclusive of vehicle security and tracking and in-house security (large mining houses, banks, insurance companies etc.) the value of the private security industry was estimated to be R9 billion. In January 2004 this value was estimated to be more than R14 billion with estimates as high as R18-20 billion also being mentioned (Minnaar 2007:19).

The growth in the industry is no doubt linked to its successes in reducing crime. For example, in 1996 and 1997, Cape Town's business community, Metrorail, and the city council funded a 'rent-a-cop' scheme in which 140 police reservists were employed to patrol parts of the city. The scheme was credited with reducing crime in the city centre by 40 percent over the 1996 Christmas period and by 30 percent on commuter trains (*Cape Times* 25 July 1997). In September 1997, residents of Cape Town's Observatory formed a non-profit company 'Obswatch' to control the operation and funding of a security control room for the suburb. The funding was derived from almost 1 000 residences and businesses paying R50 and R100 a month respectively. At its inception, the company employed seventeen guards and at any one time four guards – who are in radio contact with the control room – patrol the area on bicycles. The guards are police reservists who carry handcuffs and concealed firearms. While the guards do not have full powers of arrest, they can make

⁹⁹ <http://www.psira.co.za/pdfs/PSIRAAAnnualReport2009-2010.pdf>. [Accessed 30 November 2010]

citizens' arrests. Compared to February 1997, crime figures had dropped by 60 percent by February 1998. Housebreaking had decreased by 88 percent, robbery by 67 percent, theft by 57 percent and burglaries from businesses by 58 percent. By comparison, crime in neighbouring Mowbray rose by 20 percent over the same period (Schönteich 1999: 29). It is difficult to know whether this increase is a result of general increases in crime or because localised policing 'displaces' criminal activity to less well organised or affluent neighbouring areas. Nevertheless, it is successes like this that have grown the private security industry exponentially.

'Responsible citizen responses' are diverse. In some cases, non-state policing relies on the services of police reservists. In the majority of cases, individuals, communities and corporations engage the services of the registered private sector security industry to satisfy their security needs. While increasing numbers of people are turning to private sector initiatives for their security requirements, this option is only open to those who can afford it. As a result, less affluent citizens often set up community-run, non-profit ventures (such as neighbourhood watch groups) and may even work with the police in an attempt to reduce crime. These have had differing levels of success: the 'poster child' for this type of response to crime is the BKM Watch (Bergvliet, Meadowridge and Kreupelbosch neighbourhood watch) in the Western Cape which was launched in January 2007 and which has in some of its areas, reduced crime by more than 50 percent¹⁰⁰. So successful has BKM Watch been that it produced a DVD to help any group of people to set up their own effective neighbourhood watch in 2008.

¹⁰⁰ http://www.mosselbay.co.za/successful-neighbourhood-watch-offers-help_article_op_view_id_3864. [Accessed 30 November 2010]

Another successful community initiative is the Mountain View neighbourhood watch. Mountain View is a section of Mabopane, a suburb lying to the north-west of Pretoria. In 2003, concerned by the increasing crime – from house burglaries to the theft of children’s pocket money as they walked to school - Mpho Adams, a resident of the area, felt that the trouble lay with the fact that

people were not talking to each other about the problem. They would come and go without even greeting each other. I did not grow up like this. When neighbours do not talk to each other, the community is weakened. Criminals can see that we do not communicate. Then they continue to hit us hard (Adams cited in Mgudlwa and Ström 2010: 15)

After much informal talk among neighbours, and then a public meeting, the Mountain View neighbourhood watch was formed with Adams as the chairperson of a six member executive committee. According to Adams, ‘residents of Mountain View had a strong feeling that it belonged to them. Everyone felt welcome to participate. People from different backgrounds and political parties got involved’ (Adams cited in Mgudlwa and Ström 2010: 16).

Households in Mountain View paid a small amount to become members, as did local businesses and this gave the neighbourhood watch some financial resources to get going. The executive committee was given the mandate to inform local authorities – the police and local councillor - about their day-to-day experiences of crime. They pointed out that there were no streetlights in Mountain View and that there were too many ‘bushy areas’ where criminals could hide. A lack of storm water drains meant that roads in the area were very bad, which made it difficult for emergency vehicles to reach Mountain View. Identifying the main streets in the area that needed to be improved, the executive members met with a local member of the mayoral committee and asked him to include these improvements in the next municipal budget. Adams explains:

At first, the local councillor did not take the committee seriously. He made many excuses when first invited to a meeting. Then [we] sent a second letter, copying it this time to the mayor and the speaker in the local council. This time the councillor agreed to come to the meeting. The community was encouraged by this and people began to believe that the committee was achieving something (Adams cited in Mgudlwa and Ström 2010: 17).

The Mountain View neighbourhood watch is truly a neighbourhood watch in that it relies entirely on members of the community. Having identified the most troubled area in Mountain View, they organised boot patrols where men in the community patrolled in the early morning and early evening, when people were most vulnerable to crime. They were especially active at the end of the month and at weekends. People in Mountain View felt strongly that the youth should be involved in the neighbourhood watch as a way to ‘keep them away from crime and to show that they could be part of the solution’ (Adams cited in Mgudlwa and Ström 2010: 19). As a result of the neighbourhood watch, crime decreased in Mountain View especially in the worst trouble spots and over time, the community saw many other improvements – from streetlights to improved roads and so on. The neighbourhood watch organisation has also extended to address other community issues: ‘when there is a death in a family, every household contributes a set amount. We also work together to comfort and assist the family members’ (Adams cited in Mgudlwa and Ström 2010: 22). Another sign of the value the community places on their neighbourhood watch organisation is that when the CPF was established in 2008, ‘people did not want to abandon the neighbourhood watch. They welcomed the CPF, but they understood that Mountain View neighbourhood watch could still play a unique role as the community’s own organisation’ (Adams cited in Mgudlwa and Ström 2010: 24).

A more extreme form of 'responsible citizen response', but one that is fast becoming a defining characteristic of urban landscapes, is the 'gated community'. The gated community is not unique to South Africa. But unlike its global counterparts which have developed in response to citizens wanting to secure a variety of civic services, the gated community in South Africa has arisen as a means of providing security in the face of dysfunctional public police and compounded by urban fiscal stringency. With the support of at least two thirds of the affected individuals, residents apply to the municipality to 'purchase' sections of the roads leading into their suburbs. Access control points (usually consisting of a guard house with booms controlling vehicle and pedestrian access into and out of the suburb) are erected across the purchased section of the road. The area is surrounded by a perimeter fence or wall and any non-resident has to register at the access point and is checked on exiting the area. Glenhazel, Bakersfield, Gallo Manor and Fourway Gardens were among the first suburbs in the greater Johannesburg area to establish gated communities. But more and more are appearing. Between December 1999 and February 2000, Johannesburg processed 35 applications for what amounted to 360 road closures. In the same period, Germiston received 23 applications, Bethlehem ten applications, Krugersdorp four and Potchefstroom three (Shaw 2002: 95). The positive effect such road closures have had on crime locally has led to the expansion of the 'gated community' phenomenon to relatively small towns and cities: despite having populations of less than 100 000, Port Shepstone and Stellenbosch have had ten and two applications respectively (Shaw 2002: 95). In 2003 a national survey on gated communities (both enclosed neighbourhoods and security estates) was carried out. The survey indicated the highest numbers of enclosed neighbourhoods in Gauteng, with two municipalities having from seven to nine neighbourhood closures, two having from sixteen to

25, one from 25 to a 100 and one with more than 100.¹⁰¹ It was however estimated that there were at least 188 illegal road closures in the City of Johannesburg.¹⁰²

Some municipalities crack down on illegal gating. In January 2009, residents of Umhlatuzana, an area just outside Durban, erected booms in their suburb in response to the high number of hijackings and robberies in the area. These booms were installed at the entrance of two roads and the community put security at each entrance. The boom gates and security guard huts were sponsored by the residents themselves. Guards armed with batons, tear gas and whistles started to patrol the streets day and night. The boom gates are generally open – closed only if there is an emergency or a need to stop someone leaving the area. Residents all have discs on their cars and anyone without a disc who wishes to drive through has their registration number taken down together with details about their car. People on foot are escorted to the place they are visiting, especially during the evening. Satchee Govender, chairperson of the Umhlatuzana Civic Association anti-crime forum justified the action taken by the community: ‘We have a constitutional right to be protected by the state and the protection that has been given is inadequate. Residents, in my view, are well within their rights to start doing something to protect themselves’ (Govender cited in Mgudlwa and Ström 2010: 35). Not everyone agreed: the city manager, Mike Sutcliffe, insisted the gates be taken down and the head of the Human Rights Commission argued that gated communities were problematic:

Public places have to remain public. We understand the issues around crime and the desire for communities to take measures that improve safety in their neighbourhoods. However, in an open society, it is important that we don’t have a situation where we begin to close off neighbourhoods and communities that should be accessible (Kollapen cited in Mgudlwa and Ström 2010: 37).

¹⁰¹http://www.csir.co.za/Built_environment/Planning_support_systems/gatedcomsa/docs/Nat_survey_gated_com_SA.pdf. [Accessed 30 November 2010.]

¹⁰²http://www.csir.co.za/Built_environment/Planning_support_systems/gatedcomsa/docs/Nat_survey_gated_com_SA.pdf. [Accessed 30 November 2010.]

Responsible citizen responses are as varied as they are widespread. Whether to a lesser or greater extent, these responses all involve interactions with the SAPS on some level. Faced with the government's apparent failure to combat crime, South Africans are making alternative arrangements for their security and in the context of their inadequate resources to deal with the problem themselves, the police are supporting these initiatives. This is not the case for autonomous citizen responses to which we now turn.

ii. Autonomous Citizen Responses

Another form of non-state policing indicates a different kind of civil society response altogether. Whereas 'responsible citizen responses' seek to find solutions to crime and security concerns that are within the ambit of the law (and are approved by the SAPS), 'autonomous citizen responses' are characterised by reactive, *ad hoc* and often violent methods of control (Baker 2002). Unlike the (more or less) regulated 'responsible citizen responses', 'autonomous citizen responses' – or vigilantism¹⁰³ in common parlance – can be seen as the appropriation of 'state functions in a way that creates a parallel sovereign power that is unregulated' (Schärf and Nina 2002: 34).

Predominantly a feature in townships in the early nineties – wracked by violence, these had become no-go areas for state police – when the new dispensation did not provide the panacea for the crime problem, the mindset of popular justice spilled over into the cities and extended across the country, giving rise to kangaroo courts and anti-crime groups (Shaw 1995, Baker 2002). Certainly there is a relationship between vigilantism and the real and perceived failure

¹⁰³ While there is a difference – over and above the obvious discursive one – between political vigilantism and criminal vigilantism, this study is confined to the latter.

of the criminal justice system. Coupled with the high expectations that the state would at last be in a position to protect all its citizens equally and deliver essential services, the disappointment with slow delivery, rising crime levels and growing perceptions that the criminal justice system is ineffective and slow, has led to various forms of popular justice taking place. Bronwyn Harris (2001) reports the case of a young man, accused of raping an eight-year-old girl, who was arrested but released because of insufficient evidence. This apparently angered the community and a group of women 'caught him, beat him up, tore down his pants and then castrated him with a broken bottle' (Harris 2001: 5). Where citizens feel that the police are incompetent or reluctant to address crime, vigilantism is presented as a necessary and inevitable reaction to police lethargy. This argument takes the line that police inaction creates vigilantism: there is a perception in society that criminals are being allowed to go free, a perception that is often supported by the lived experiences of those affected by crime.

To some extent, the dissatisfaction and distrust of the police which was a characteristic of Apartheid South Africa has carried over into the new dispensation:

What [causes] community mob attacks is truly a factor of expectation [linked to] the 1994 election. People had hope and expected acceleration of change, that's what happened and it's not taking place. People hoped for better jobs, better houses, free education, free medical care. It's not happening. Now people want to go back to the culture of controlling themselves, people want to go back to the culture of taking leadership of their own life (anonymous respondent, cited in Harris 2001: 10).

I think people had a lot of expectations obviously when the whole political structure changed in this country ... People most probably vote under the illusion that things are going to happen overnight and when things did not happen overnight – this is my opinion - people started

becoming frustrated and disillusioned and maybe at that point, started to take the law into their own hands (anonymous respondent, cited in Harris 2001: 10).

In these extracts, vigilantism is conceptualised as a consequence of expectations about democracy, specifically, disappointed expectations about the political change. Vigilantism is portrayed as a manifestation of emotion, motivated by frustration and disillusionment. It is also seen as a form of empowerment, a way to take control. The implication of wanting to ‘go back to the culture of controlling themselves’ may indicate a sense of distance between the people’s will – reducing crime - and the state’s ability to carry out that will – improving policing and the criminal justice system.

The above is evidenced by the common explanation among proponents of vigilantism today that the government and the country’s new constitution have afforded criminals rights at the expense of victims.

What the people should mostly complain about is the police themselves, the corruption within the police, the lack of transparency within the police division ... and there are a number of guys who are corrupt within the justice system itself, apart from the police’ (anonymous respondent, cited in Harris 2001: 10).

Harris argues that through their criminal actions, the police are set up in opposition to the law, portrayed as not merely obstructive to justice but actively defiant of it. To defenders of vigilantism, this constitutes an abuse of power - vigilantism is then presented as the only alternative to fighting crime, both within and beyond the police service. From this position, the vigilante alternative is accompanied by a sense of morality or ‘righteousness’. As a result, vigilantism may be understood as a product of the sense that criminals ‘get away with it’ in the new order due to negligence, overcrowded jails, badly trained prosecutors, corruption and

poor investigations. Vigilantism, or autonomous citizen responses, can be interpreted on this reading as being motivated by citizens' sense of having been let down by the state:

There's a lot of talk, of course, with South Africa's new constitution, [about] access to justice ... [but it is] meaningless when you don't have effective remedial structures and that is essentially the problem: that wonderful constitution, wonderful bills in many respects, but no capacity to implement, protect or uphold rights (anonymous respondent, cited in Harris 2001: 18).

But it may not be simply the apparent failure of the criminal justice system on a practical level that gives rise to vigilante activity in South Africa. Autonomous citizen responses may be interpreted as the manifestation of citizens' divergent views on justice from that administered by the formal criminal justice system. For example, a specific form of vigilantism in parts of the Eastern Cape and Gauteng is where alleged criminals have their bail paid by their victims (or by a vigilante group on behalf of the victims) only to be beaten or in extreme cases killed by the original victim or vigilante group: 'the idea of paying bail for criminals and then killing them is liked by everyone. We want them to know that we will get them in the end' (anonymous respondent cited in Harris 2001: 21). Based on the results of her survey, Harris argues that this is a popular attitude, signifying an alternative view of justice from the liberal democratic emphasis on human rights in South Africa's post-apartheid constitution. In this context, vigilantism is not solely reducible to disappointed expectations about South Africa's transition and practical failings of the criminal justice system. Rather, vigilantism appears as a phenomenon generated through fundamental disagreements about democratic principles and processes. Where democracy is conceived of in terms of the liberal conception of rights, it is relatively uncontroversial to define these autonomous citizen responses as indeed undemocratic. Where it is conceived of in terms of the will of the people, it becomes more ambiguous.

The immediacy of vigilante ‘justice’ coupled with a perception that vigilantes are able to return belongings or extract financial compensation (via violence) is an argument commonly made in support of their methods:

Vigilantes [in Mamelodi are successful because] you find the community saying the police can’t do nothing, even if maybe my property was stolen and the person was found guilty by the court, they don’t get a way of compensation, they don’t get back what was stolen or whatever damage was sustained. They don’t get paid back so now if they take their case to the kangaroo court, judgement is passed and then people are paid back and so on (anonymous respondent cited in Harris 2001: 25).

This respondent bases community support for vigilantes on the latter’s apparent ability to restore belongings and compensate those who turn to them. The restoration of material belongings as a justification for vigilantism is important because it highlights a fundamental difference between the formal criminal justice model and vigilantism. As Harris points out, this difference is not reducible to practical failings of the former, but rather suggests an elementary distinction between the premises of each approach (rehabilitative justice versus compensatory, retributive justice). The fundamental difference behind each approach is additionally confused by the perception that vigilantes ‘help’ in the wake of police failure:

I won’t blame [people for taking the law into their own hands]. You know those people of the kangaroo courts [should] be paid. Those people are helpful. The kangaroo courts help. If the police say these people should stand back where as they the police fail? These people are helpful (anonymous respondent cited in Harris 2001: 11).

What is important in terms of the violence of vigilantism is the fact that it occurs publicly so as to act both as a deterrent and as an indication that justice has been served. Because the threat of being caught by the police for criminal activity is not credible, central to vigilante methodology is the role of witnesses and public participants, as well as the visibility of the punishment. This is thought to be effective and is acknowledged as such by police representatives:

They administer some kind of jungle justice...if you use that particular type of justice, you are bound to reduce crime [because you] instil fear in the minds of the people, who to an extent, would be frightened to commit crime. But whether in the long term, you would succeed to contain crime in such a fashion is quite debatable (police representative, cited in Harris 2001: 27).

Although police have repeatedly warned people against taking the law into their own hands, citizens continue to mete out ‘people’s justice’: ‘Who will protect us if we don’t do it ourselves?’ (*The Star* 12 September 2007). In Kathlehong, east of Johannesburg, people in the area do not have much faith in the police any more. On 28 August 2007 in the Silumaview section of Kathlehong, two robbers attacked a resident at gunpoint. A passer-by managed to grab one of the gunmen and soon a crowd had gathered and began beating the robbers with stones and sticks. Both men were rushed to hospital with serious injuries, under police guard. On the same day elsewhere in Kathlehong, another crowd attacked a young man who was found hiding inside a house after the owner raised the alarm. Beaten so badly by the crowd, he too was taken to hospital. In response to these incidents a member of the police explains:

Sometimes communities think that criminals have more rights than victims. They complain that criminals commit crimes over and over again. When they are arrested, they sometimes do not even go to court, or if they do, they do not spend enough time in prison. Communities therefore feel more comfortable to handle things their own way, which most of the time results in dangerous situations. The criminal activities then repeat themselves over and over as each one tries to take revenge for what has happened (*The Star* 12 September 2009).

One of the additional problems caused by ‘people’s justice’ – particularly in terms of crowd beatings – is that because the beatings are a criminal act, community members normally do not lay charges against the perpetrator of the crime (for which the beating occurs) since they

will face charges of assault themselves. Because no-one from the crowd comes forward to open a case, the perpetrator often ends up being released. This is then used to justify the actions of the crowd on the basis that the police are unable to deal with crime.

Opposition to vigilante justice is often (but obviously not exclusively) linked its *ad hoc* nature and thus the ‘rules of the game’ are not known beforehand which can make justice arbitrary and retroactive. Minnaar (1999: 30) however documents a ‘Code of Punishment’ drafted by an Ivory Park People’s Court which exemplifies the formalised, almost institutionalised, format that vigilantism can and does take:

Adultery:	five hundred lashes men, banishment for women
Murder:	necklacing or execution at gunpoint
Rape:	paraded naked before receiving four hundred lashes
Child Abuse:	three hundred and eighty lashes and banishment
Car hijacking:	death for repeat offenders and lashes for first-timers
Theft:	fifty lashes
Burglary:	two hundred lashes for first offence
Assault:	ninety lashes

Clearly, violent autonomous citizen responses elicit far more criticism and concern than less violent methods of popular justice. While vigilante groups are usually small, loosely organised and sporadic (Baker 2002: 35), there are and have been some large, formally organised and extremely powerful ones in South Africa.

Formed in 1996 by small black business interests, Mopogo-a-Mathamaga claims to have over seventy branches with 40 000 members in the Northern Province and Mpumalanga and 10 000 in Gauteng (Shaw 2002: 99; Baker 2002: 35). The group has become synonymous with brutal assaults of alleged criminals and its use of sjambokking is infamous. It is unashamedly

violent – indeed, if the organisation’s president is to be believed, this is its attraction: ‘They [members] feel protected by us because of our approach to crime. The main thing that attracts members...is that we know how to deal with criminals. We believe in corporal punishment and that really works’ (Baker 2002: 35). Not surprisingly, the police are investigating over 300 charges against Mopogo, including cases of serious assault, attempted murder and murder (Shaw 2002: 100). But according to Mopogo’s president, this is the ‘medicine’ needed to ‘cure [suspects] of their bad ways’ (*Mail & Guardian* 28 January 2000).

While Mopogo is largely reactive, hunting down and meting out punishment to those who commit crimes, vigilantism in the Western Cape has tended to take a more proactive stance, focusing on drug dealers and gang members (Shaw 2002: 99). Throughout the long history of conflict between gangs, communities across the Cape Flats have had to bear the brunt of attacks by gangs. Various organisations have formed over the years in an effort to deal with gangs and their violence and some of these would fall into the category of ‘responsible citizen responses’ such as the Western Cape Anti-Crime Forum (WCACF), a coalition of community organisations, CPFs and anti-crime committees. While these social movements have been able to lower crime rates in the inner city areas of Cape Town, these successes are generally short-lived. The inability of the police to act decisively and the perceived collusion of senior SAPS members with the gangs led to the abandonment of ‘responsible citizen responses’ with organisations degenerating into lawlessness as happened with the Peacemakers and with the notorious People Against Gangsterism and Drugs (PAGAD).

Like the WCACF, PAGAD set its objectives as the eradication from society of all drug and gang related activities in the Western Cape and support for PAGAD’s campaign was heard from the affected communities, to the broader public to government officials and ministers.

But unlike the WCACF, PAGAD soon set its sights on working outside the framework of the law to achieve these objectives. PAGAD began delivering ultimatums to drug dealers to quit dealing or face the mandate of the ‘people’. The execution of Hard Livings gang co-leader, Rashaad Staggie, in 1996, catapulted PAGAD on to the national scene and as the WCACF had predicted, PAGAD began to resort to lawlessness to eradicate and eliminate all drug dealers and gangsters (Kinnes 2000: 37).

The euphoria of public support for PAGAD’s activities soon died down as the media, the police and the government realised that they were dealing with a vigilante group that was strongly influenced by hardline extremism and would stop at nothing to achieve its aims. Even among its own ranks, some members felt that PAGAD had been hijacked by fundamentalists with an Islamic agenda. People who made such accusations were expelled from the organisation in the aftermath of a leadership purge in 1998. By 1998, the vigilantes had executed some thirty gang leaders and drug dealers. The attacks then shifted to police officers and businesses. Using an assortment of weapons, including pipe bombs, hand grenades and automatic weapons, police stations have been attacked to procure weapons. Resorting to extortion to fund its operations, PAGAD labelled any businessmen who refused to provide money ‘cohorts’ of drug dealers and either assassinated them or attacked their businesses using remote-controlled bombs and other sophisticated devices. Most of the charges brought by the police against vigilantes collapsed in the same way that charges had earlier collapsed against leaders of the Hard Livings gang (Kinnes 2000: 41). By 2003 however, the police had made inroads into the organisation’s leadership, resulting in a significant reduction in PAGAD’s activities. For example, the arrest in 2002 of PAGAD leader Abdus Salaam Ebrahim (who was then convicted of public violence and imprisoned

for seven years) has meant that the group has a much diminished presence on South Africa's landscape.

From the discussion above, it is clear that in South Africa, non-state policing (be it private sector security, non-profit community-based ventures or vigilantism) 'is ubiquitous to the point that few challenge its legitimacy, even if they criticise some of its practices' (Baker 2002: 46). But while the general public may not challenge the legitimacy of some or all of these initiatives, the phenomenon of non-state policing has drawn criticism from scholars, policy makers and politicians the world over. In the following sections, I will examine the variety of citizens' responses to crime in terms of the three accounts of democracy – and the 'good' democratic citizen – liberal representative, deliberative and categorical. It should be clear that in doing this, it is not just *that* and *how much* people participate but the *manner in which* they participate that matters.

I. Citizen Responses on a Liberal Account of Democracy

As was pointed out in earlier chapters, liberal representative democracy is premised on the idea that the party system provides citizens with a means of exercising voice and thus signalling their preferences to the government. This in turn provides the government with an opportunity to respond and on the basis of the response, citizens decide whether to return that party to power or to vote for an alternative party. To this end, the level of activism - in terms of exercising voice - in a polity is an indication of the extent or health of the democracy. Because it can be argued that it is dissatisfaction rather than satisfaction that is likely to lead people to contact representatives, protest, or pursue other avenues of interest satisfaction, in a functioning party democracy voice should increase as dissatisfaction increases until a level of

satisfaction is achieved in which case voice should decrease (but there is the latent potential of voice activity should the level of satisfaction decrease). The concern in one-party dominant regimes however is that the relationship between the exercise of voice and level of dissatisfaction may be inversely proportional: if outcomes are predetermined with performance having no bearing (due to ascriptive voting, the lack of viable opposition and so on), citizens will have no incentive to exercise voice and will either remain loyal to the ruling party, or may exit altogether (from politics, or from the country) instead of exiting to an opposition party (by which they exercise a form of voice).

So what is the level of activism in South Africa? Interestingly, while South Africans are so significantly affected by crime there has been a decrease in voice activity with regards to crime in the few years especially since it is no longer a first or second priority of most citizens. This may say less about citizens' satisfaction with the government's policy and more about their belief in the capacity of the political system to respond to felt needs. The lowering of voice levels may also be related to the moratorium on crime statistics imposed by the former Minister of Safety and Security – without information, lobbying, both intra-party and inter-party, is hampered. In 2010, the FIFA World Cup was held in South Africa and this too impacted on the issue of crime: on the one hand, the government significantly stepped up its efforts to deal with crime (increasing the number of police, speeding up the judicial process and so on) and on the other, reports in the media either inflated crime levels (particularly the overseas media) or understated them (the South African media). Alternatively, given the extent of the problem it may be a case that the cost of action (through the formal channels) outweighs the benefit.

In terms of intra-party lobbying, and at the elite level, what goes on behind the closed doors of government itself is obviously difficult to ascertain. To some extent it seems that bureaucrats and ANC politicians not directly involved in the criminal justice service are hesitant to get involved – given that it is an issue which produces more problems than solutions. Within the Tripartite Alliance, again, that crime is a problem is articulated (at both the policy and national conferences in 2002 for example), but how to deal with it is not. In addition, given that most ANC supporters prioritise employment over crime, and given that it is regarding this issue that the ANC and COSATU most frequently come to blows, it may simply be a case of fighting (what are perceived to be) the more important battles first.

In Chapters Two and Four, in the discussions of the South African electorate and the ways in which citizens vote, two opposing arguments were set out. On the one hand, following Horowitz, there are those who say that even if opposition parties offered voters (and specifically ANC supporters) exactly what they claim to want (job creation, crime reduction and so on), this would make little difference – the vast majority of these voters would continue to support the ANC. On the other hand, according to their public opinion survey findings, Mattes *et al.* have suggested that South African citizens are more discerning than the Horowitz framework allows when it comes to casting their votes (although they do accept that racial or ethnic differences affect preferences and attitudes as to what ought to be done and how). On the latter interpretation, it would seem that crime is an issue on which voters would look to affect policy and practice through lobbying opposition parties especially considering that supporters of those parties have (at least until very recently) prioritised crime above all else. In other words, if and because the policies of these parties (or those articulated during campaigning) focus on crime, citizens unhappy with the government's

performance regarding crime would have a clear alternative and could cast their votes accordingly.

In fact, such voter circumspection is not convincing. On one level, actual credible strategies for dealing with crime are rarely articulated either during campaigns or on party websites and in their offices. That is, even if citizens are amenable to voting for opposition parties, little is being offered to persuade them in terms of these parties' ability to deliver on crime reduction. There does seem to be merit to this argument: in 2006, 58 percent of the respondents in the Afrobarometer survey said they would move to another party if it met their interests: while the figure was highest among the less traditional supporters of the ANC (whites 65 percent, coloureds 72 percent and Indians 71 percent), the fact that 55 percent of black respondents were willing to consider an alternative party suggests that the problem is not necessarily one linked to racial or ethnic identity, but interest identity.

Ultimately, to the extent that crime may be interpreted more as a story of state failure than of individual party failure, options for intra-party and inter-party lobbying are limited. Given the minimal options available to citizens to exercise voice (and hence secure accountability and responsiveness that liberal representative democracies are supposed to secure) it is not surprising that citizens have begun to explore options beyond conventional party politics for fulfilling their security needs. Just how these responses fare on a liberal representative account of democracy and the 'good' democratic citizen needs to be assessed. We thus need to consider both responsible citizen responses and autonomous citizen responses in terms of the indicators of (a functioning) liberal democracy: the protection of rights and freedoms, respect for the rule of law, respect for state institutions and political equality.

The conventional argument levelled at private sector responses to security is that they do not fulfil the criterion of equality since quite clearly it is only the wealthier members of society who can afford to pay for personal security and thus it may further entrench inequality. In the context of South Africa's history, where race and class are so closely linked, responses to crime that involve private sector security are seen as a privilege of the white minority (and wealthy black minority). There are concerns that the discourse in the 'new Apartheid' of these initiatives - 'undesirable elements' who must be 'eliminated' - is promoting an under-class of 'subjects'. This is not only reminiscent of the past, but detractors of non-state policing argue that it undermines the notion of political equality. It is argued that non-state policing erodes a fundamental norm of democratic societies – that 'policing should be uniformly available to all, its powers exercised through universally applicable laws' (Shaw 2002: 224).

But proponents of private sector security argue that economic inequality is being confused with political inequality in that non-state policing does not prevent policing being uniformly available to all. One way to view private sector responses is that because wealthier citizens are able to purchase security services, they are less reliant on state policing and because pressure on the state police is reduced, poorer citizens may receive better service. In technical terms, these forms of non-state policing may well be a Pareto-relevant policy option. But while we should not dismiss this possibility, at present there is little evidence to suggest that this is the case. There is also the very real possibility that criminal activity is displaced from areas where there are private sector responses to crime to those where there are not. On this reading, not even the (generally regarded as innocuous) responsible community-driven forms of non-state policing can be deemed legitimate in terms of the liberal emphasis on equality.

Much of the criticism levelled at non-private policing in general is actually an attack on a particular form of private policing – the ‘gated community’ – and given the nature of South Africa’s past, where citizens were prevented from accessing parts of the country generally, and black citizens had to have a ‘dompas’¹⁰⁴, to access ‘white’ areas specifically, this is not altogether surprising. But again, while these privately managed and physically enclosed spaces may bear a similarity to the (racial) barriers of the past, proponents argue that this does not mean they are (necessarily) undemocratic. Gated communities represent private individuals voting with their feet, directly expressing their preferences and addressing their needs. But again, even if gated communities represent voters trying to exercise voice within the constraints of a poorly functioning party system, they are in general the preserve of the wealthy since gating requires the ‘purchase’ of sections of road on which to set up the access gates.

Moving away from political equality, let us focus on the notion of accountability which is supposed to accrue from liberal representative democracy. While corruption and abuse in the SAPS is a serious problem, improved transparency in government means that citizens are (more) able to hold the police to account. What is interesting is that non-state forms of policing which involve the registered private security industry, may by their very nature as market-based initiatives, be even more easily held to account. Because they work in a competitive environment, security companies are constrained by self-interest and this generates higher levels of performance and lower levels of corruption. Members of the SAPS service can be abusive, unhelpful and inefficient but because people often have no choice but to deal with the police, such low levels of service are tolerated. In contrast, the competitive nature of the private security market obliges security officers, who do not enjoy the secure

¹⁰⁴ Introduced in 1923, designed to regulate the movement of black South Africans, the ‘dompas’ was an identification document that had to be carried at all times by black South Africans to prove that they were authorised to live or travel outside of the black homelands.

position of police officers, to do their jobs properly (as the firms themselves will go out of business if they do not offer a competent service¹⁰⁵). On the original application of Hirschman's framework – to the market – we see that because the state has a monopoly on policing, there is no need or incentive for it to respond to consumers' demands and thus voice is ineffective (and in fact, there is no real exit option other than emigration). Non-state policing is by contrast, market-based and thus citizens can use the both voice and exit options to signal and satisfy their preferences (by switching to other security providers for example). While private security firms are subject to market disciplines and civil litigation, legislation and custom effectively give the public police immunity from punishment for the violation of citizens' rights that private security personnel do not have. Since individual private companies cannot command the resources that the state can, there is a greater incentive to 'behave appropriately' and this translates into an additional mechanism of accountability, more importantly, one that extends to all citizens, and not just those who contract the services of the industry. The competitive market system in this way encourages accountability – both to the stakeholders or members, and citizens in general (because it is a strictly regulated industry), far more so than the public police.

When it comes to the extent to which they are 'democratic' according to a liberal representative account, responsible citizen responses have mixed results. On a liberal representative account however, autonomous citizen responses are significantly more problematic. These responses, by definition, function outside the parameters of the law and hence already fail on the criterion of respect for the rule of law. Kangaroo courts indicate a lack of respect for due process as do the *ad hoc* punishments meted out by members of the

¹⁰⁵ The flip-side of the above (the lack of job security in the private security industry when compared with the SAPS) poses another possible problem in terms of whether the industry is democratic or not. This relates to the rights of the registered security officers themselves, who may be subjected to unfair treatment by their employers who rely on profit. These 'abuses' could include insufficient compensation, a failure to provide benefits, and their being sent into situations for which they lack adequate training and or resources.

‘court’. Many of these punishments also infringe on the rights of individuals: the right to dignity when ‘criminals’ are made to parade naked, the right to bodily integrity when ‘criminals’ are beaten and above all, the right to a fair trial and the presumption of innocence until proven guilty.

Concerning the non-violent punishments dispensed by community members, many have argued that this is a form of restorative justice which the South African criminal justice system itself employs. In *S v Maluleke* (2008) a woman was found guilty of murder after she and her husband (who died before the trial concluded) beat to death a young intruder who had broken into their home. The woman, a destitute mother of four, was sentenced to eight years imprisonment, but this was suspended for three years on condition that she apologise to the victim’s family since during sentencing, the victim’s mother expressed her desire for someone from the offender’s family to apologise for the wrongdoing. In another case in the same year in *S v Shilubane*, despite showing ‘genuine remorse’ the accused in the case was sentenced to nine months’ imprisonment for the theft of seven fowls. On review, the sentence was set aside and replaced with a suspended sentence so that he could repay the complainant who preferred to be compensated for his loss than have the accused sent to prison.

Respecting the perpetrator’s right to dignity is what often creates problems for the restorative justice dispensed and this is not a problem only for vigilante justice. Also in 2008, in *S v Saayman*, convicted on six accounts of fraud, a woman was given a suspended sentence linked to correctional supervision but the magistrate wanted to provide some measure of relief to the victims who had been blacklisted by the Credit Bureau (after having their identities fraudulently used by the accused). He added the further condition that she stand at

the entrance to the commercial crimes unit, and ask forgiveness from the victims by standing there for fifteen minutes, holding a placard bearing her apology. On appeal, the condition was found to be an infringement of the constitutional right to dignity and was thus repealed. Restorative justice in the South African criminal justice system is only permitted if the outcomes include apology, restitution, performance of service for the victim, community service or the referral of the offenders to some form of assistance to address some of their needs (Skelton and Batley 2008: 44). But even if the justice dispensed by communities conformed to these provisions, liberal representative democracy cannot condone the practice of citizens taking matters into their own hands, however much the state is deemed to be inadequate in addressing the matters.

The autonomous citizen responses pose another problem for liberal representative democrats in that some responses can be seen to be democratic in terms of the conception of democracy as ‘rule by the people’ – in other words, a majoritarian, ‘popular will’ type model of democracy. The claim is that while these forms of restorative justice may sit uncomfortably with liberal representative democrats, in that they may be the genuine expression of the people’s will, they are ‘democratic’, exposing as they may, the ‘warts and all’ aspects of popular justice. The emphasis on rights according to these accounts is an undemocratic restriction on the will of the majority.

There are at least two critical issues here: firstly that of ‘the people’ and secondly that of their ‘will’. Democracy – on any conception - requires there be some provision for or evidence of equally weighted citizen participation. Vigilante groups are usually comprised of a handful of individuals who wield power, and even PAGAD and Mopogo (and their supporters) are nowhere near big enough to be considered mass movements. While the individuals involved

may claim they are acting for the community, this is closer to oligarchy than to democracy. This relates to the second issue, that of vigilante justice being an expression of the people's 'will'. Beginning with Rousseau and continuing ever since, this notion has raised all kinds of problems. Even if we can define 'a people' (which it seems we cannot), do the individuals comprising the 'people' have a common will? Certainly alleged perpetrators of crimes have a different will from their victims and it is likely that those not directly involved in the crime will have a third 'will'. In addition, we may find that someone's will alters: particularly in the case of victims, the immediate response may be significantly different once the heat of the moment has passed; alternatively it may in fact become less tempered as time goes by (especially if there are long-term effects). While the emergence of autonomous responses exposes the limits of the liberal state (and thus suggests that there is a case to be made for a popular – direct democracy - state), it is not convincing that this form of non-state policing really does provide for citizen participation and where it does, it tends to be characterised by *ad hoc* and or corporal punishment, which we would surely not want to consider as constituting 'democracy on the ground'.

II. Citizen Responses on a Deliberative Account of Democracy

To what extent can the various responses to crime indicate that South Africans are 'good' citizens on a deliberative account? Maeve Cooke presents five arguments in favour of deliberative democracy: the 'community-generating power' of deliberation; 'the fairness of the procedure of public deliberation'; its 'educative' effects; the 'congruence of the deliberative democratic ideal with "whom we are"'; and the 'epistemic quality of its outcomes' (Cooke 2000: 947). She suggests that on the basis of these arguments, deliberative democracy should be preferred to a 'non-deliberative participatory model or a purely

procedural one' (Cooke 2000: 947). Not all of Cooke's five arguments are relevant here but three of them will be considered in the context of the way in which South Africans have responded to the issue of crime.

Cooke claims that 'in its simplest terms, deliberative democracy refers to a conception of democratic government that secures a central place for reasoned discussion in political life' (Cooke 2000: 947). While her definition is not wrong, her focus on government rather than on society in general is somewhat at odds with many other conceptions of deliberative democracy which emphasise the role of citizens in deliberative processes – that is, the horizontal aspect of deliberation. The focus on deliberation by members of a government is also problematic: as Hardin explains, after being rebuked at a public meeting for his comment that there was 'little real deliberation in American politics', he was told that there 'is deliberation everywhere, for example in the US Congress' (Hardin 2009: 235). Not only was he actually commenting on 'civilian' deliberation, but in terms of government deliberation, he points out that 'speeches in the Congress are more about re-election than about designing good policies' (Hardin 2009: 235). What is the most counter-intuitive aspect of Cooke's definition however, is that her first argument focuses on the benefits to citizens themselves, 'not merely as instrumental in bringing about, or implementing, qualitatively better decisions and laws' (Cooke 2000: 948). She draws on Mill and Hannah Arendt to justify her claim that it is deliberation, rather than non-deliberative participation that 'improves the moral, practical or intellectual qualities of those who participate: it makes them not just better citizens – though clearly this is crucial – but also better individuals' (Cooke 2000: 984). This is odd in itself since Mill does not deal with deliberative accounts of democracy but participatory ones and although Arendt is often invoked in discussions of deliberation, she also emphasises participation in general. Cooke claims that it is possible (although difficult) to show the

superiority of deliberation over non-deliberative participation and uses the example of ‘learning how to present an argument cogently’ and ‘the feeling of achievement derived from helping to set up a residents’ association group’ (Cooke 2000: 949). I want to examine her claim – she does not explain why this is the case – because in the context of South African citizens responding to crime, it makes her claim somewhat difficult to understand – presenting an argument cogently has not lowered the crime levels whereas residents’ associations actually have. More importantly, the extent to which deliberation itself is possible in South Africa in general and in terms of finding solutions to crime specifically, is unclear. This is because, as Dryzek explains, ‘deliberation across divided identities is hard. On a widely shared account, deliberation is what Bessette calls the “mild voice of reason” – exactly what is lacking in tough identity issues’ (Dryzek 2005: 219).

In a survey in 2004, while 74 percent of South Africans said they would only consider ‘lawful’ solutions to their problems even if it takes longer, almost a quarter of respondents said ‘it is sometimes better to ignore the law and solve problems immediately using other means’ and that it is sometimes ‘necessary to use violence in support of a just cause’ (Afrobarometer 2004). Given the examples of autonomous citizen responses discussed above, it is unlikely that these unlawful solutions would fulfil the deliberative democrat’s requirement of ‘reasonableness’. As Dryzek points out, mutual acceptance of reasonableness is exactly what is lacking in divided societies (Dryzek 2005: 219). What an alleged criminal might regard as a reasonable response is clearly very different from what the victim would.

In his discussion of deliberative democracy in divided societies, Dryzek suggests that part of the problem with deliberative accounts of reasonableness is that they seem in the main to be influenced by Rawls who excludes ‘background culture from the purview of public reason’

(Dryzek 2005: 219). For example, Gutmann and Thompson believe that deliberation can be extended to deep moral differences as long as all participants share ‘the capacity to seek fair terms of co-operation’ (Dryzek 2005: 219) but this too implies that there are accepted conceptions of ‘fair’: and it is exactly this which is often lacking in communities – even if they are not ‘divided’. As Dryzek points out, issues generated by the background culture and its ‘comprehensive doctrines’ (Dryzek 2005: 219) can be especially pressing and as such, the demands of ‘reasonableness’ may not be fulfilled. In Cooke’s terms, the ideal of deliberation may not be congruent with ‘who we are’; nor may it have the quality outcomes she supposes it will have (Cooke 2000: 947). Even the ‘fairness of the procedure of public deliberation’ may be problematic if certain arguments are excluded on the grounds of their not being reasonable because what counts as reasonable is contested.

If ‘good’ citizens on a deliberative account have to be reasonable, autonomous citizen responses cannot indicate ‘good’ citizens. While the actions of the communities may be instrumentally valuable in the sense that they ‘achieve results’, they are, in the main, neither reasonable nor democratic: the punishment is almost always excessive in terms of the alleged crime and these responses make no provision for equally weighted citizen participation – the perpetrator’s contribution simply does not count. Either we relax the demands of reasonableness somewhat, in other words, following Reykowski (2006), if we define deliberation in a broad sense in which any kind of exchange of information, ideas, viewpoints and so on constitutes deliberation, and hence value the instrumental benefits that accrue out of this ‘deliberative process’ or we accept that autonomous citizen responses are not deliberative.

What about responsible citizen responses then? A number of fora have been set up by the SAPS in order to assist in building relationships between the police and communities, and it does seem that these can – or could – constitute examples of public deliberation. CPFs do (or should) exist at every police station to co-ordinate the activities of the Sector Crime Forum (SCF). There are several SCFs since a sector is a sub-section of the area served by the police station. The managers of the SCFs and the SAPS work with each other and local businesses, schools and residents to identify crime-related issues specific to each sector and then set up neighbourhood initiatives to address these issues. The Community Safety Forum (CSF) addresses a wider range of safety issues than just policing. In most places, the CSF is driven by the municipality and involves courts, prisons, the police and community organisations. Given the nature of these institutions, they are likely to fulfil the deliberative criterion of reasonableness and there is no doubt that many of these public-private partnerships are in many cases, proving to be successful: that is, bringing about the instrumental benefits of crime reduction. That they provide a space to deliberate solutions, a space which citizens make use of, thus reflects to some extent, the ability of deliberative processes to achieve results.

But, and this is a large but, how much are citizens really making use of these deliberative spaces? This is not something that has been measured directly but evidence from various surveys can give us an indication of the level of willingness to engage in general: in 2004, respondents were asked what they would do in a number of situations: if their name had been left off the voter's roll; if they suspected a school or clinic official of stealing; if a member of their family was wrongfully arrested; and if their land was wrongfully seized. While there were a number of options, two scored the highest every time: 'lodge a complaint' and 'do nothing, because nothing can be done.' Given the seriousness of some of these problems,

the level of resignation by situations resulting in their apathy is very disconcerting. If citizens are too apathetic to lodge a complaint, what is the likelihood of their being willing to engage in time-consuming deliberative processes, especially if they are not certain that any real benefits will come of these processes? Taking matters into their own hands – whether through responsible or autonomous citizen responses - may well prove to be much more instrumentally valuable.

Interestingly, while generally the subject of significant criticism on some accounts of democracy (because they are exclusionary and do not recognise political equality), gated communities on a deliberative account are not necessarily problematic. In the sense that they are a collective response, they may in fact decrease social isolation within communities as the ‘joint sense of responsibility and a sense of cross-subsidy from the better off residents may even enhance community integration rather than fragment it’ (Webster 2001: 18). In this context, some argue that they should be viewed as ‘participatory mechanisms for more creative community engineering and urban service and infrastructure supply’ (Webster 2001: 5). Because this ‘engineering’ is seen to take the form of deliberation, citizens in gated communities may be ‘good’ on deliberative accounts.

What makes a ‘good’ citizen on deliberative accounts of democracy, what qualifies as ‘good’ deliberative participation is somewhat more difficult to ascertain than it is on liberal representative accounts. Of course, deliberative democrats expect more participation from citizens than do their liberal representative counterparts but they too expect citizens to respect the rights and freedoms of others, the rule of law and the idea of political equality. Of course, deliberative models can be criticised for being too demanding: in insisting on reasonableness, they are to some extent insisting of a particular conception of the good which may not be

shared by all the potential participants and hence may dissuade some citizens from participating in deliberative processes. In addition, the extent to which political equality is really taken seriously is also dubious since deliberative models seem to suggest that citizens are equally able to participate which is clearly inaccurate – socio-economic circumstances have a tremendous effect on citizens' abilities. Good citizens on a deliberative account participate a lot, and participate reasonably, in that they come willing to have their preferences transformed. In the context of crime, and police failure to deal effectively with crime, citizens may be unwilling to participate given the lack of effect it has. And if they do participate, as frequent victims of crime, they may be unwilling to have their preferences 'transformed' because what seems reasonable to others who have been less affected may not seem reasonable to them.

Having looked at two conceptions of democracy which privilege the instrumental benefits of participation, in terms of crime, the extent to which a little or a lot of citizen participation achieves legitimate, accountable and responsive government is mixed. The government's failure to address the high levels of crime in the country may thus decrease the value of participation perceived by citizens who are exiting from the formal channels and turning to non-state policing. The problem with this for democracy is not only that it may make participation seem redundant, but if non-state policing is seen to have better results, the state may fail to secure a monopoly on the instruments of coercion and hence non-state policing may undermine the legitimacy of the public police by creating the perception that the latter is unnecessary. If the value of participating in politics is tied to its instrumental benefits, citizens may turn to other forms of participation – as they have – in dealing with crime. And if these other forms of participation are successful in dealing with crime, there is little incentive for citizens to participate in public affairs. The problem then, as Baker explains,

seeing the state police as irrelevant is one step away from seeing the state itself as irrelevant (Baker 2002: 51).

III. Citizen Responses on a Categorical Account of Democracy

If South Africa were less crime-ridden, and if the SAPS was more able and better equipped to respond to crime, the instrumental benefits of citizens' participation (whether minimal or extensive) in the formal political system would likely result. But since this is not the case, the potential for participation rates to decline even further is a real possibility, as is the choice by citizens to opt out of the system and choose alternative forms of solving their problems. I have suggested that there is a benefit to be had if we can attach a categorical value to participation – that is, if citizens can consider participation not in terms of its instrumental benefits but as a moral duty they owe to themselves, we may be able to stem the tide of non-participation. But because self-knowledge, humanity, moral development cannot obviously be achieved by any kind of participation, we cannot simply establish that there is a moral duty to participate: we need to examine what kinds of participation can be valued on this account. This means that autonomous citizen responses cannot be considered categorically valuable since they completely ignore the humanity and dignity of the perpetrators; gated communities too raise problems because they contribute to an 'us versus them' mentality which again disrespects the value of 'the other'. Some responsible citizen responses, especially the community-driven initiatives like neighbourhood watch do seem to indicate some level of morality (alleged criminals are turned over to the correct authorities, citizens take on the responsibility of their communities' safety at a cost to themselves and so on) but others may not: the increasing power given to security companies to 'deal' with alleged criminals is very problematic if we are trying to define them as morally valuable responses.

The main problem with attempting to analyse participation in terms of whether citizens judge it to be categorically valuable however is that there has not been any attempt to do this empirically: surveys do not pose questions that would allow us to test for this. Indeed, the point of this research is to draw attention to the need to examine whether this kind of participation is considered important among South Africans so that we can promote it.

That we may have a duty to participate and to participate in a morally acceptable way is not however completely unknown in South African public discourse. In his address at the Consultative Meeting of the Moral Regeneration Movement (MRM) held in November 2001, then deputy President Zuma and leader of the MRM made the following statement:

The lack of respect for the sanctity of human life, for the next person, private property, disregard for the law of the land, lack of parental control over children, and the general blurring of the lines between right and wrong are continuing to plague our communities...Moral regeneration is not something which can be left to either the Government or to the religious community alone. We require the participation of all sectors in this campaign, all spheres of government, labour, women, men, youth, business, academics, traditional leaders, the media and professionals.¹⁰⁶

Deputy President Motlanthe made a similar statement at the National Conference of the MRM in 2009: 'Morality is a responsibility of us all. Individually, we have to be accountable for our decisions, actions or behaviour. In this regard, failure can be poisonous not only to us as individuals but to society as a whole including generations to come.'¹⁰⁷ The MRM was set up towards the end of 2001 and launched in 2002 as a broad coalition of individuals and organisations in civil society who would 'rebuild the social fabric of society and improve the moral fibre of the nation' (Rauch 2005: 3). Particular attention was paid to the issue of crime as being a sign of 'moral breakdown' in South Africa resulting from Apartheid which

¹⁰⁶ <http://www.iss.co.za/pubs/Monographs/No114/Chap4.htm>. [Accessed 9 December 2010]

¹⁰⁷ <http://www.info.gov.za/speeches/2009/09112713451002.htm> .[Accessed 9 December 2010]

‘brutalised all – its perpetrators, victims as well as its beneficiaries.’¹⁰⁸ The intention behind the MRM was, said Zuma in 2002, to ‘stake stock of the moral barometer of our country’ so as to ‘chart a way forward for a mass-based moral regeneration campaign.’¹⁰⁹ He stressed that there could be no moral regeneration without ordinary South Africans driving the process.

The MRM does not provide guidance however as to how ‘the ordinary South African’ is supposed to become actively involved moral regeneration other than in very broad terms. According to an undated pamphlet from the MRM entitled *What is the moral regeneration movement?*, there needs to be a ‘revival of the spirit of Ubuntu and the actualisation and realisation of the values and ideals enshrined in our constitution, using all available resources and harnessing all initiatives in government, business and civil society.’¹¹⁰ Reading the various statements made about and pamphlets produced by the MRM, it seems to be based on an idea of the ‘natural morality’ of South Africans which is articulated in the Constitution. In relation to the issue of crime, the MRM calls on communities to be ‘vigilant’ in identifying ‘potential acts of immoral behaviour and refer to legitimate institutions with a mandate to deal with such issues.’¹¹¹ At the same time, the contribution of citizens in the ‘moral renewal crusade is necessary and encouraged.’¹¹² Given the perceptions of citizens of the failure of the legitimate institutions who have a mandate to deal with crime, perhaps they could justify their taking matters into their own hands as a contribution to the ‘crusade’.

Despite its good intentions, the MRM has not captured the public’s attention in any meaningful way. While this may be linked to the rather insipid nature of the MRM itself, a

¹⁰⁸ <http://www.iss.co.za/pubs/Monographs/No114/Chap4.htm>. [Accessed 9 December 2010]

¹⁰⁹ <http://www.iss.co.za/pubs/Monographs/No114/Chap4.htm>. [Accessed 9 December 2010]

¹¹⁰ <http://www.iss.co.za/pubs/Monographs/No114/Chap4.htm>. [Accessed 9 December 2010]

¹¹¹ http://www.mrm.org.z/national/nat_about.html. [Accessed 9 December 2010]

¹¹² http://www.mrm.org.z/national/nat_about.html. [Accessed 9 December 2010]

more serious problem stems from the fact that during its early days, the initiative was dogged by allegations of corruption levelled at its leader, then deputy President Zuma. Whatever the reasons, and despite the tendency of some MRM supporters to suggest that the concept of restorative justice and its implementation in South Africa is linked to the MRM, to find evidence of actually existing morally valuable participation in the context of crime, we need to look elsewhere.

Although it focused on the crimes committed during Apartheid rather than ‘ordinary crime’, South Africa’s Truth and Reconciliation Commission (TRC) is the real source of the idea of restorative justice in general, and a commitment to moral citizenship in general. At its establishment, then Justice Minister Dullah Omar explained that the aim of the TRC was to ‘enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation.’¹¹³ The ability of victims to forgive the offenders was nothing short of remarkable: the TRC provided a place in which victims could express their anger in a constructive way and offenders could express their remorse. Because participants knew that the TRC could only make recommendations regarding reparation (although it could grant amnesty), victims and offenders had little to gain in material terms which made their participation all the more extraordinary. As Archbishop Emeritus Desmond Tutu wrote in his account of the TRC:

Forgiving and being reconciled are not about pretending that things are other than they are...It means taking what has happened seriously and not minimising it, drawing out the sting in the memory that threatens to poison our entire existence. It involves trying to understand perpetrators and so have empathy, to try to stand in their shoes, and to appreciate the sort of pressures and influences that might have brought them to do what they did.¹¹⁴

¹¹³ <http://www.justice.gov.za/trc>. [Accessed 9 December 2010]

¹¹⁴ <http://www.justice.gov.za/trc>. [Accessed 9 December 2010]

The importance of the TRC to the way in which South Africans could – and should – respond to crime cannot be understated. While the TRC was specific to a particular time and place – set up to deal with injustices committed during Apartheid, the willingness of citizens to participate despite the rather ambiguous matter of the form – if any – reparations would take does perhaps suggest that the hope of achieving (material) outcomes is not the only reason for participation. Choosing to participate and choosing the manner in which we participate cannot be linked solely to the instrumental benefits of participation because factors beyond the control of the participants can seriously diminish the extent to which these instrumental benefits are achieved. In addition, if participation in formal politics is justified solely in terms of its outcomes, why should citizens participate when private sector policing, community initiatives, gated communities and perhaps even certain ‘autonomous’ responses are better able to achieve these outcomes? If the reasons for victims’ participation in the TRC was in order to receive financial compensation or to see the perpetrators punished, far fewer would have participated. The fact that so many did participate suggests that among some South Africans at least, participation has a value beyond its instrumental one.

Conclusion

So just how democratic are South African citizens in the context of their responses to crime and the state’s failure to deal with it? In terms of the extent to which citizens’ approaches ‘work’, that is, bring about the instrumental benefits participation is supposed to bring about, the results are ambiguous. Participation in the formal channels – whether it is on the liberal representative account of minimal participation or the deliberative account of extensive participation, there is little to suggest that this kind of participation will succeed in meeting the demands of citizens for a safer South Africa. So much of what is required to fight crime

is beyond the control of the citizenry – the legacy of Apartheid and its effects on the current police force, the failure of the party system to provide a mechanism for citizens to ‘throw out the rascals’ who may be responsible for the failure to reduce crime, the flawed mechanisms for citizens to participate at the local level and so on. The way in which citizens choose to deal with crime does indicate however whether we can judge them to be ‘good’ citizens and again, the results of this were somewhat mixed. In terms of liberal conceptions of citizenship, some citizens’ responses indicate a respect for rights and freedom, but others sacrifice equality for the sake of efficiency; in terms of deliberative accounts, many responses are neither reasonable nor deliberative. As mentioned above, examining responses to crime on a categorical account is of course somewhat different in that we are not focusing on the extent to which citizens’ participation ‘gets results’ – that is achieves the political ends desired by the participants but rather whether citizens firstly are participating and secondly, whether their participation promotes (or looks to be able to promote) their moral development. Also mentioned above is the problem of such an examination since it is not possible, in the absence of specifically designed survey data, to understand whether citizens do consider participation to be a moral duty or whether they are participating in the hope that its instrumental benefits will result. That said, some of the ways in which citizens do participate do not indicate a moral form of participation – that is, a form of participation that contributes to their moral development – but others do. I do think that the potential for this kind of participation does exist as the discussions of the TRC and certain instances of restorative justice have indicated. Whether a conception of participation as having categorical value will be enough to convince citizens to continue to participate in public affairs in the absence of the instrumental benefits of participation, remains to be seen.

Chapter Seven

Conclusion

It emerged from apartheid a bright young democracy, but Mandela's South Africa is today a fading miracle.

(Raenette Taljaard 14 April 2009¹¹⁵)

The purpose of this thesis has been to examine and explain the state of democracy in South Africa in 2010. Many may question whether this audit – undertaken by a South African, living in South Africa – could ever be objective given that the point of conducting a due diligence audit is to give parties ‘a chance at a better deal’ (Taulli 2002: 34). That is, in attempting to rebuff the conventional arguments about democracy in South Africa – that the ‘rainbow miracle’ is ‘mired in decay’¹¹⁶ – there exists the risk that this research is itself one-sided, albeit in the opposite direction from the increasingly negative pictures that are being painted. While I have of course attempted to avoid such a risk, I do not pretend that this research is based on a ‘view from nowhere’. It is however not an attempt to give South Africa a better deal, but rather, a fairer one. I have endeavoured to do this by examining whether some of the concerns about the state of South Africa’s democracy stem from a particular understanding of democracy itself, rather than an understanding of the particularities of South Africa.

Such an understanding of democracy – what has been described in this thesis as the instrumental account of democratic participation – is based on the idea that democracy’s value lies in its ability to ‘produce the goods’. The extent to which we can say that a

¹¹⁵ http://www.foreignpolicy.com/articles/2009/04/13/think_again_south_africa. [Accessed 28 December 2010]

¹¹⁶ <http://sabarometerblog.wordpress.com/2010/06/08/ijr-featured-in-the-economist>. [Accessed 28 December 2010]

particular democracy is 'working' is thus contingent on whether or not the goods are in fact being produced. The analytic purchase of such a conception of democracy is clear – once we have identified just what these goods are, all that is required to deem a state democratic or not is to see whether and to what extent these goods exist. In liberal representative democracies where there is an absence of widespread citizen participation outside of elections, how responsive elites are to citizens is taken to be a key indicator (a 'good') of democracy and of 'rule by the people'. In a multi-party system, the threat of being replaced serves to encourage the party in power to be responsive. It is argued that the stronger the opposition, the greater the threat of replacement, and the lesser the chances of unresponsive, authoritarian domination. It is on the basis of this logic that electoral systems are designed to promote multi-party democracy and that constitutional checks and balances are put in place to prevent the sustained incumbency of a single, all powerful party. It is clear then that on a liberal representative account of democracy, the concerns about the degree of monopolisation and centralisation of power by the ANC are not unwarranted: despite the existence of the institutions and mechanisms usually understood to constitute a liberal democratic state under a constitution based on human rights, effective multi-party democracy in South Africa is somewhat hypothetical, and alternation in government in the short to medium term is unlikely. As such, analysts of democracy have tended to predict that South Africa is sliding towards authoritarianism, perhaps even the misery of hegemonic one-party rule especially given the African experience of democratic failure (particularly the adoption of one party states) whether soon after democracy's introduction, or as in the cases of Kenya and Zimbabwe, decades later.

In contrast to liberal representative accounts of democracy, where the primary mechanism of participation is voting, deliberative accounts of democracy see voting as something of a

‘blunt instrument’ (Verba and Nie 1972: 322) and argue therefore that additional mechanisms of participation are required if democracy is to ‘produce the goods’. Like liberal representative accounts, the objective of participation on deliberative accounts of democracy is to influence decision-making with the aim of securing one’s interests. Proponents of deliberative democracy argue that meaningful participation cannot be attained through the registration of a single preference (what they consider voting to be). For them, it is only through deliberation that citizens can convey and protect their own interests in competition with others and receive fair treatment from the government. In the context of South Africa, the concern for deliberative democrats is that citizens are either not aware of opportunities for meaningful participation or do not have (or feel that they have) the skills and resources required to take up these opportunities. As was discussed in Chapter Four, most formal deliberative institutions in South Africa exist at the level of local government but this is the level considered to be the most flawed: a fact recently recognised by members of the DCGTA. On 6 October 2009, deputy DCGTA Minister Yunus Carrim announced that a ‘major overhaul’ was to take place since the current model was ‘not working’ and the country cannot afford to let local government continue the way it does.¹¹⁷ By March 2010, a number of pilot projects had been rolled out as part of turning around local government¹¹⁸ but the focus has tended to be on financial improvements - simplifying financial rules and stepping up financial training for councillors and municipal officials – although Carrim has argued for the need to create more professional local government by ‘discouraging political parties from implementing “populist and short-term” measures.’¹¹⁹ But given that local government elections are due to take place in 2011, it is somewhat unlikely that local officials will heed Carrim’s directive. At present, and for the foreseeable future then, opportunities for ‘real

¹¹⁷ <http://www.allafrica.com/stories/200910071059.html>. [Accessed 28 December 2010]

¹¹⁸ http://www.sacities.net/2010/mar5_muni.stm. [Accessed 28 December 2010]

¹¹⁹ <http://www.servicepublication.co.za/index.php/magazine/development/168-governance-in-search-of-the-ideal-municipality>. [Accessed 28 December 2010]

deliberation' which result in responsive and accountable government are limited at best and participation in local government in general is likely to decline even further – a worrying sign for deliberative democrats.

In terms of the accounts of democracy in which participation is valued on instrumental grounds in the context of South Africa, there is no refuting that the miracle democracy is much less impressive than it was in its early days. The realities of everyday politics in South Africa are indeed undermining the theoretical value of democracy: the continued dominance of the ANC despite major failures in service delivery, widespread corruption and pervasive controversy are hardly indicators of the accountable and effective government democracy is supposed to bring about. While there is no denying both the challenges for and successes of the ANC (and its alliance partners) over the last sixteen years, there are increasing signs that citizen participation in the formal institutions of democracy is on the decline, particularly among non-ANC supporters. This is obviously a problem, especially considering the youth of South Africa's democracy. Participation levels which ebb in any democracy are not ideal, but in the case of non-consolidated democracies, it can be disastrous and it is this possibility on which conventional analyses of democracy in South Africa tend to focus. Because these analyses consider the value of democratic participation to be the ability to produce 'good government', in the case of South Africa, where such government is clearly lacking, some analysts (particularly foreign ones) have tended to criticise the participants - the 'blind loyalty' of citizens to the liberation movement which reduces their capacity to hold the government to account. Other accounts suggest that the problem lies with the types of participation that exist in South Africa – that is, the failings of the electoral system, the inability of legislators to restrict the power of the executive and the limited opportunities for deliberation. But while there is evidence to suggest that both these critiques are justified, the

question I have raised in this thesis is whether the existence of the instrumental benefits supposedly accrued from participation should be the sole means of judging the health of South Africa's democracy. This is not to say that we should ignore the importance of these instrumental benefits but rather, that we should consider whether participation may have another value – a value to citizens themselves as moral agents rather than simply political ones. Not only is this an important value of democratic participation which has tended to be overlooked or at least underplayed by many analysts; it also seems to explain why citizens continue to participate in South Africa although not necessarily in the formal institutions.

Those who see the value of democracy in its capacity to bring about 'good' government argue that South Africa is moving steadily and inevitably in an anti-democratic direction in the face of a lack of good government. I have argued that this analysis may be unnecessarily pessimistic because it fails to take account of South Africa's particular historical and cultural circumstances. I am aware however, as mentioned above, that the wariness I have conveyed regarding the negative analysis of South African democracy may be a result of the biases I have as a South African who wants the miracle to continue. But even if this is the case, there is a much less subjective explanation for why I object to characterisations of democracy in South Africa as 'sham' or 'truncated'. This explanation has less to do with the substance of democracy in South Africa itself, but with the methodologies generally employed to analyse it.

In essence, contributions to the study of democracy fall into two distinct categories: research seems to be driven either by empirical (specifically quantitative) concerns where democracy is treated as a strangely scientific matter on the one hand or by normative concerns, in which democracy is considered as an abstract and idealised notion on the other and the two seldom

interact. Of course, empirical positivists are moving from an assumption of democracy as the hegemonic model of (acceptable) political systems while normative idealists construct democracy in relation to certain key values so this separation is somewhat understandable. That said, its consequences for current conceptions of ‘democracy’ are significant. Many contemporary contributions of ‘political scientists’ seem to be offering a ‘blueprint’ for achieving accountable and legitimate government, whether it is more democracy or less. Alternatively, ‘political philosophers’ seem to be caught up in naïve abstraction, detached from the reality of actual politics. For example, Thompson and Hoggett suggest that much of the literature (specifically on deliberative democracy) exists ‘at such a high level of abstraction’ that it seems ‘quite unaware’ of the many empirical issues that actually characterise contemporary democracies (Thompson and Hoggett 2000: 354). As such, the importance of treating the study of democracy in an engaged and concrete manner has been neglected. In terms of South Africa specifically, (pseudo-)scientific approaches, focused as they are on making broad generalisations, tend to ignore the effects on democracy of the particular circumstances of South Africa’s history and normative approaches often fail to take account of the effects of South Africa’s structural and socio-economic inequalities on meaningful deliberation. In approaching the study of democracy in South Africa in the way that I have, combining normative concerns with empirical realities, I hope to have shown that the implications of the separation of political philosophy and political science are not simply a matter of methodology: what is at stake is how we judge democracy in substantive terms.

Bringing the twains of political philosophy and political science together is in my view extremely important if we are to understand democracy – both on a general level and in specific cases. As mentioned in Chapter Five, Ricci describes the ‘tragedy’ of political

science as being the conflict between the commitment to science and the commitment to the good:

Critical, normatively charged questions about the foundations of politics and democracy have been relegated to political philosophy, replaced, in the brave new world of mass data and policy analysis, by bloodless technical concepts like ‘attitude’, ‘cognition’, ‘socialisation’ and ‘system’ (Ricci 1984: 297).

What is somewhat curious about this divergence is that when political science began to emerge as a modern academic discipline in the late nineteenth and early twentieth centuries, classical political theory had a great impact: political philosophy began with moral reflections on and attempts to justify political structures in the context of established cultural, social, economic and historical considerations. The concern with political ideals and duties was accompanied by a preoccupation with ascertaining which political institutions produce the most desirable society and individuals. Evidence of this can be seen in the works of Plato, Aristotle, Machiavelli, Hobbes, Locke, and Rousseau among others. Today however, political science is concerned with that which is empirically manageable; and because concepts such as justice, nation, rights, patriotism, society, virtue and tyranny cannot be operationalised, they are devalued, studied only by an ‘insightful minority’ who

...remain faithful to the conversation concerned with the good life, wisdom, genuine human needs, illuminated by the intelligence derived from a study of history and rewarded by an appreciation of the political verities to be found in the good or great books (Riemer 1985: 609).

It is not the first time that political science has suffered from this segmenting of research. In *Political Parties* (1987), Alan Ware observes that the fragmenting of research in political studies from the 1950s onwards led to a stark separation between democratic theorists and specialists in institutions. This meant that those scholars who were concerned with the concept of democracy and its relation to other concepts such as liberty, truth, justice and

equality, were no longer the same people who had great expertise in political institutions. After the initial revival of interest in the 1940s and 1950s in the nature of democracy, in which many important contributions were made focusing on both normative and empirical issues, developments in America began to undermine this approach of empirically informed works of democratic theory. The ‘behavioural revolution’, as the movement to create a political science through the study of political behaviour would come to be known, helped rid American political science of the legalistic tradition it had adopted, an achievement even Dahl heralded. But after the initial concern to apply behavioural techniques to the study of institutions, the main thrust of behaviouralism was to deflect attention away from institutions per se, leading to a split between those who studied institutions and democratic theorists (Ware 1987: 3), the former the domain of quantitative comparativists, the latter of political theorists.

Separating political science and political philosophy when studying democracy is problematic for two reasons: firstly, however sophisticated, a ‘one-size-fits-all’ model of democracy does not take account of the effect that particular circumstances – geographical, historical, socio-economic and cultural – may have on the success or failure of democratic mechanisms to ‘produce the goods’; secondly, the goods themselves are often so abstract that they cannot be understood beyond the realm of the ideal. Aware of the pitfalls of this separation, Geuss suggests that understanding politics requires understanding history, particularly the history of political thought which paid attention to political practices unlike many contemporary offerings (Geuss 2008: 38). Indeed, he makes the further claim that such an undertaking is what distinguishes political philosophy from other kinds of ahistorical philosophical pursuits.

Geuss argues that the very fact that politics is historically located means that ‘excessive generalising’ (Geuss 2008: 13) – the pursuit of which is so often the preoccupation of political scientists – is not always helpful. Even the most innocuous of generalisations – he gives the example that ‘all humans have to eat to survive’ – is not enlightening: such generalisations are ‘mere schemata that need to be filled with concrete historical content’ (Geuss 2008: 14) such as what kinds of food different people eat, why some people abstain from particular foods and in extreme cases, why some people choose to go on hunger strikes. Geuss’s point is that while the main claim – that humans need to eat to survive – holds, this is far less interesting (and perhaps not even worthy of much attention) than the eating habits of particular individuals.

Geuss’s proposal for how we should approach the study of (democratic) politics is in essence, a proposal for how we bring together the twains of political philosophy and political science. He contends that ‘political philosophy must be realist’ but that we must also understand that politics is not value-free: that understanding political action requires us to take seriously ‘the ethical dimension of their [political agents’] actions...their various value-judgements about the good, the permissible, the attractive, the preferable, that which is to be avoided at all costs’ (Geuss 2008: 2).

Geuss wants us to recognise that politics is about action and the contexts in which such action takes place – it is not about ‘mere beliefs or suppositions’ (Geuss 2008: 9). He describes as ‘fetishes’ distinctions between is and ought, fact and value, descriptive and normative and claims that if ‘political philosophy wishes at all to be connected with a serious understanding of politics...it needs to return from the present reactionary forms of neo-Kantianism to something like the “realist” view’ (Geuss 2008: 99). Provocatively, no doubt intentionally so,

Geuss terms this approach ‘neo-Leninism’ where the ‘real’ starting point for political philosophy is Lenin’s observation that politics (and the study of politics) is concerned with the question of ‘Who whom?’ (Geuss 2008: 23). Geuss does concede that despite the attraction of its ‘clarity and pithiness’, Lenin’s formula needs to be extended: firstly, to read ‘who does what to whom for whose benefit?’ and secondly, ‘who will or could do what to whom for whose benefit?’ (Geuss 2008: 23-26).

What Geuss is clearly driving at is the issue of power, an understanding of which he argues cannot be derived from abstract discussions of the ‘good, the right, the true or the rational’ (Geuss 2008: 28). But he does not limit the issue of power to political actors – he wants us to recognise that approaches to studying power are themselves products of the power of certain historical contexts: that even the theories we invoke are necessarily partisan. He argues that the actual political implications of a theory ‘cannot be excluded as in principle, irrelevant’ (Geuss 2008: 30) and hence, intellectual honesty requires us to reflect and admit the contribution our particular theory makes.

Essentially, Geuss’s offering is a subtle reworking of critical theory which he believes to be the appropriate methodology for real politics. He discards the (Rawlsian) theoretical approach to political philosophy because it has no regard for a theory of power: indeed the veil of ignorance ignores the very existence of power relations and their influence on our ‘intuitions’ about the world – specifically what we consider right, good, fair or just. In this way, critical theory challenges the convictions that

what is, or what is in the process of becoming or what appears to be, or what is most commonly understood to be, or what is dominantly conveyed to be, is also at the same time right and true, good and just, and necessary and inevitable (Nowlan 2001: 1).

The recognition by the first generation of critical theorists, of the need to make philosophy ‘practical’, (of the need to transform modern capitalist societies into ‘real’ democracy) is just as important for political philosophers today. While moral reflections may have gained *de facto* priority in political philosophy, we need to recognise that an equally important role for political philosophy is to organise the claims of empirical research. This does not mean excluding ‘normative’ considerations of fairness, equality, and various other virtues but it does mean that an equally important task of political philosophy is to examine whether a morally desirable political conception can take root in a particular cultural context; and to decide whether morally desirable and culturally acceptable political conceptions are socially and economically feasible in a specific context.

Echoing the need to recognise the importance of the methodology of political philosophy as well as its substance, Tully argues that the first question for political philosophy is how to attend to the ‘strange multiplicity of political voices and activities without distorting or disqualifying them in the very way we approach them’ (Tully 2008: 20). He suggests that what is needed is not a doctrine, but an attitude. His ‘public philosophy’ has a three-fold approach: practical, critical and historical. In terms of the first, Tully stresses the need to give primacy to practice – to reflect philosophically ‘on practices of governance in the present that are experienced as oppressive in some way and are called into question by those subject to them’ (Tully 2008: 26). These practices, or the system in which they occur, then become the problem for which reforms in theory and policy are sought. While Tully does not directly mention the issue of power, it is surely implicit in the reference to ‘subject’ and ‘oppressive’.

The second characteristic of Tully’s practical, critical and historical approach is that there is no aim to develop a normative theory (whether centred around justice, fairness or equality) as

a solution to problems of governance but rather to disclose ‘historically contingent conditions of possibility’ (Tully 2008: 16). Instead, the aim is to develop a practical philosophy (one which combines politics and ethics), or as Tully himself puts it, ‘a philosophical way of life oriented towards working on ourselves in specific contexts’ (Tully 2008: 16).

I have argued that the methodological bifurcation in the study of democracy has been to its detriment substantively, specifically in terms of the way in which we have come to value democratic participation. While there is little doubt that participation (whether more or less) is the cardinal feature of a democracy, I have suggested that *why* this is so has not been explored completely. That is, in attaching an instrumental value to democratic participation, another, equally important value has been neglected: that participation has a categorical value in that democracy provides the opportunity for facilitating human fulfillment *irrespective* of its benefits for creating legitimate, accountable and responsive government. Not only do I believe that this provides an original and distinctive approach to the study of democracy in general, and to democracy in South Africa specifically, but once we recognise this value, we can begin to examine whether and to what extent participatory mechanisms are providing potential and real opportunities for this human fulfillment. In so doing, we do justice to the ‘people’ part of democracy as well as the ‘rule’ part: in South Africa, we do justice to the miracle as well as the misery.

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